

# Recreational Marijuana Use Legalized in Four States, But Employers' Ability to Enforce Workplace Drug Policies Undisturbed



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While the presidential election took center stage earlier this week, five states – Arizona, California, Maine, Massachusetts, and Nevada – voted on whether to legalize the use of recreational marijuana. Voters in four of these states – all but Arizona (where medical marijuana is already legal) – approved the measures.

The laws passed in the four states mirror each other in most respects. Each of the laws permits the possession, use, and cultivation of marijuana up to certain specified amounts. Similar to most states' alcohol regulations, the minimum age for marijuana use/possession is 21. Although the new laws legalize the *private* use of marijuana, *public* use is subject to a \$100.00 fine for a first time offender, with escalating penalties and possible jail time for repeat offenders depending on the state's particular penal scheme. Additionally, each of the laws prohibits operating a motor vehicle while impaired by marijuana.

In drafting the statutes, the state legislatures specifically had employer protection on their mind, and each expressly allows employers to maintain their existing drug and alcohol free workplace policies, or to adopt new ones. Since the language of the statutes somewhat differs from state to state, we'll take a closer look at each statutory scheme. Employers should keep in mind that, like Arizona, all four states have existing medical marijuana statutes. All four of the new recreational marijuana statutes provide that the new laws do not affect, alter, or limit any separate rights under those medical marijuana schemes. Finally, employee drug testing is not addressed by any of the statutes. Therefore, in light of statutory language expressly maintaining the status quo for employers' established drug and alcohol policies, it can be assumed that an employer's ability to drug test employees also remains the same consistent with existing state law.

In California, voters passed Proposition 64, also known as the Adult Use of Marijuana Act ("[AUMA](#)") by a 56% to 44% margin, meaning that the United States' entire western seaboard (California, Oregon, and Washington) now has legalized recreational marijuana use. California's new law adds sections to and amends the California Health and Safety Code. Notably, AUMA expresses an intent to continue to "[a]llow public and private employers to enact and enforce workplace policies pertaining to marijuana." Moreover, AUMA makes clear that nothing in the statute should be construed or interpreted to amend, repeal, or affect the "rights and obligations of public and private employers to maintain a drug and alcohol free workplace or require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growth of marijuana in the workplace, or affect the ability of employers to have policies prohibiting the use of marijuana by employees and prospective employees..."

California's neighbor directly to the east also voted for the legalization of recreational marijuana by a similar margin. [Nevada's recreational use law](#) largely mirrors its neighbor, leaving an employer's ability to enforce existing policies undisturbed. Section 4(2)(a) of the statute explains that the new law "do[es] not prohibit a public or private employer from maintaining enacting, and enforcing a workplace policy prohibiting or restricting actions or conduct otherwise permitted" by the statute. Nevada's law also specifically prohibits the undertaking of "any task under the influence of marijuana that constitutes negligence or professional malpractice."

Across the coast, Massachusetts passed the [Regulation and Taxation of Marijuana Act](#). The law expressly does "not require an employer to permit or accommodate conduct otherwise allowed by [the law] in the workplace and shall not affect the authority of employers to enact and enforce workplace policies restricting the consumption of marijuana by employees." Massachusetts also looks down upon negligence and professional malpractice by imposing civil, criminal or other appropriate remedies on anyone performing tasks impaired by marijuana that would lead to such a finding.

And last but not least, residents of Maine enacted the [Marijuana Legalization Act](#), which adds § 2441 *et seq.* to Chapter 417 of the Main Revised Statutes. §2454(2) of the Maine law expressly protects "the ability of employers to enact and enforce workplace policies restricting the use of marijuana by employees or to

discipline employees who are under the influence of marijuana in the workplace.” Further to that point, the Marijuana Legalization Act provides that it “may not be construed to require an employer to permit or accommodate the use, consumption, possession... [or] sale... of cannabis in the workplace.”

The takeaway here is that although these states, like other states before them, legalized the private use of marijuana for non-medical, recreational purposes, these laws do not require that employers change the application or enforcement of any existing drug policies, nor prevent employers from adopting new drug policies.

Employees in those states where recreational marijuana use is now legal therefore would be well served to ensure that their lawful conduct outside the workplace does not have adverse consequences in the workplace based on their employers’ workplace policies.

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