



The Legal Landscape of Hospitality: Key Perspectives and Considerations

Part 1: Navigating Cannabis in the Hospitality Industry

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Seyfarth Shaw LLP

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Speakers



Stanley Jutkowitz
Senior Counsel
WASHINGTON DC



Jennifer Mora
Senior Counsel
SAN FRANCISCO

Agenda

- 1 Current legal status: medical vs. adult use and jurisdictional variations
- 2 Can a hotel prohibit marijuana use in a state where it is legal?
- 3 Employment protections for marijuana users and issues for regulated employers
- 4 Considerations for drug testing and managing accommodation requests
- 5 Marijuana best practices for the hospitality industry

What is the current status of federal law?

Federal and state laws are very different in how they address marijuana. Under Federal law, the possession, sale and use of marijuana is illegal under what is known as the Controlled Substances Act (CSA). The CSA classifies marijuana as a Schedule 1 drug, the most restrictive schedule under the CSA.

What is the current status of state law?

Twenty-four states have legalized both medical and recreational marijuana and another fourteen states have legalized medical marijuana. In 2024, several states in which medical marijuana is legal are considering legalizing adult use and additional states are going through the process of legalizing medical marijuana. The laws in each state are very different.

Dos and Don'ts

- Is a hotel or other hospitality venue required to allow consumption of marijuana in a state where it is legal? **NO**
- Does a hotel with a “no smoking” policy have to change its policy to accommodate smoking of marijuana? **NO**

Consumption of Marijuana in a State in which it is Illegal

What if a hotel or other hospitality wants to allow consumption of marijuana in a state in which it is illegal?

Ownership must review business arrangements with its:

- Bank
- Insurance provider
- Landlord
- Hotel franchisor/manager
- Authority issuing its liquor license

Medicinal Cannabis Laws

- Alabama
 - Alaska
 - **Arizona**
 - **Arkansas***
 - **California**
 - Colorado
 - **Connecticut**
 - **Delaware**
 - **District of Columbia**
 - Florida
 - Hawaii
 - **Illinois**
 - Louisiana
 - **New York**
 - North Dakota
 - Ohio
 - **Oklahoma***
 - Oregon
 - **Pennsylvania**
 - **Rhode Island**
 - South Dakota
 - Utah
 - Vermont
 - **Virginia**
 - Washington
 - **West Virginia***
 - **Maine**
 - Maryland
 - **Massachusetts**
 - Michigan
 - **Minnesota**
 - Mississippi
 - **Missouri***
 - **Montana***
 - **Nevada**
 - **New Hampshire**
 - **New Jersey**
 - **New Mexico***
-

Recreational Cannabis Laws

- Alaska
 - Arizona
 - California
 - Colorado
 - Connecticut
 - Delaware
 - District of Columbia
 - Illinois
 - Maine
 - Maryland
 - Massachusetts
 - Michigan
 - Minnesota
 - Missouri
 - Montana
 - Nevada
 - New Jersey
 - New Mexico
 - New York
 - Ohio
 - Oregon
 - Rhode Island
 - South Dakota**
 - Vermont
 - Virginia
 - Washington
-

What Does the Science Tell Us?

- What gets people high?
 - Delta-9-tetrahydrocannabinol (THC).
 - Once metabolized, THC is converted and stored in the body as non-psychoactive cannabis metabolites.
- Urine and hair tests target the metabolite, which is non-psychoactive.
 - What this tells you – someone has used in the past (days or weeks).
 - What this does not tell you – when or whether they are impaired.
- Oral fluids tests.
 - THC is the primary target and found in greater concentrations.
 - What this tells you – recent use.
 - What this does not tell you - whether they are impaired.

California AB 2188

Effective January 1, 2024

- Covered employers who wish to test for cannabis should consider discontinuing urine testing regardless of whether the test is for a job applicant or a current employee.
- Saliva/oral fluids.
 - Job applicants – suggests employers can consider and take action on a positive test based on saliva/oral fluids.
 - Employees – significant risk!
 - Off-duty protections.
 - Oral fluids may not be the solution to your problems.
- Protected by the FEHA's anti-discrimination scheme.

Washington

Effective January 1, 2024

Washington employers cannot discriminate against a person in the initial hiring for employment if the discrimination is based on:

- Their use of cannabis off the job and away from the workplace **or**
- An employer-required drug test that has found the person to have nonpsychoactive cannabis metabolites in their hair, blood, urine, or other bodily fluids.

The law does not prohibit an employer from basing initial hiring decisions on scientifically valid drug screening conducted through methods that do not screen for nonpsychoactive cannabis metabolites.

Washington employers can reject job applicants for cannabis use if the employer uses the appropriate drug testing methodology.

Testing of current employees—business as usual.

Broad list of exceptions, including if the person will work in a “safety sensitive position for which impairment while working presents a substantial risk of death.”

- Must provide advance notice.

Minnesota

Effective August 1, 2023

- Protects off-duty use.
- Pre-employment tests for cannabis disallowed.
 - Exceptions including safety-sensitive, CDL, government contract requires.
- Other tests.
 - Business as usual.
- Must comply with the Drug and Alcohol Testing in the Workplace Act.

Should Employers Test for Marijuana?

A Few Considerations

- Reasonable suspicion
- Accommodating medicinal use
- Government contractors
- Culture and worker pool
- Go back to the science!

Drug Testing Policies

Keep in mind state drug and alcohol testing statutes and any policy requirements.

Heavily regulated in some states (e.g., Boulder, San Francisco, Iowa, Minnesota).

- Maine: has the state approved your policy?
- Some policy requirements based on case law (e.g., California, Massachusetts, New Jersey and West Virginia).
- Have a clear definition of “illegal drugs” and need carve-outs in Minnesota
- California
 - Authorization for the release of medical information



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For more information please contact:

Stanley Jutkowitz
email: sjutkowitz@seyfarth.com

Jennifer Mora
email: jmora@seyfarth.com