LANER MUCHIN SM
The Workplace Intelligence Firm SM

A SURVEY OF MEDICAL MARIJUANA LAWS IMPACTING THE WORKPLACE

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The survey results set forth below summarize the medical marijuana laws in Washington, D.C. and the twenty-four (24) listed states. The results are grouped into two (2) categories as follows: (1) states where employers likely have a duty to accommodate; and (2) states where the relevant laws are either silent or expressly exempt employers from providing accommodations to medical marijuana users.

In reviewing these materials, please keep in mind that the limited protected status of registered qualifying patients in the various statutes listed below and the obligation to "accommodate" such individuals is separate and apart from state disability discrimination laws and the ADA. Thus, an individual who enjoys a protected status under one of the statutes listed below may, nevertheless, be excluded from disability laws as a result of their status as a current user of illegal drugs because marijuana remains an illegal drug under federal law. For this reason, the employer of such an employee may have no accommodation obligation under state or federal disability laws. The survey is current as of July 1, 2015.

I. States Where Employers Likely Have A Duty To Accommodate

Arizona (ARIZ. REV. STAT. ANN. Title 36, Chapter 28.1, § 36-2802, §36-2807, §36-2813, §36-2814)

- Summary:
  - An employer may not discriminate against a person in hiring, termination or imposing any term or condition of employment or otherwise penalize a person based upon either:
    - the person's status as a cardholder;
    - a registered qualifying patient's positive drug test for marijuana components or metabolites, unless the patient used, possessed or was impaired by marijuana on the premises of the place of employment or during the hours of employment.
  - There is an exception if the employer's compliance would cause the employer to lose a monetary or licensing related benefit under federal law or regulations.
  - Employers are not required to allow the ingestion of marijuana in their workplaces or allow an employee to work while under the influence of marijuana. However, a registered qualifying patient is not considered to be under the influence of marijuana where the presence of metabolites or components of marijuana appear in insufficient concentration to cause impairment.
  - The statute does not specifically discuss restrictions on the operation of heavy machinery. However, the Act expressly states that it does not authorize operating, navigating or being in actual physical control of any motor vehicle while under the influence of marijuana.

- What proof of medical marijuana use is required?
    - An employer may use the verification system only to verify a registry identification card that an employee or applicant provided to the employer after receiving a conditional offer of employment.

Connecticut (CONN. GEN. STAT. ANN. § 21a-408a, § 21a-408p (2012))

- Summary:
    - Unless required by federal law or required to obtain federal funding, no employer may refuse to hire a person, or discharge, penalize or threaten an employee solely on the basis of such person's status as a qualifying patient for medical marijuana use.
    - The statute does not prohibit an employer from prohibiting the use of intoxicating substances during work hours or disciplining an employee for being under the influence of intoxicating substances during work hours.
    - The statute does not discuss operating heavy machinery. However, the statute expressly states that ingestion of marijuana while in a moving vehicle is not a protected activity.

Delaware (DEL. CODE ANN. Title 16, Ch. 49A, § 4902A, §4904A, §4905A, §4907A, §4921A)

- Summary:
    - Unless a failure to do so would cause the employer to lose a monetary or licensing-related benefit under federal law or federal regulations, an employer may not discriminate against a person in hiring, termination or any term or condition of employment, or otherwise penalize a person, if the discrimination is based upon either of the following:
        - the person's status as a cardholder; or
        - a registered qualifying patient's positive drug test for marijuana components or metabolites, unless the patient used, possessed or was impaired by marijuana on the premises of the place of employment or during the hours of employment.
    - An employer is not required to allow the ingestion of marijuana in any workplace or to allow an employee to work while under the influence of marijuana. However, a registered qualifying patient cannot be considered to be under the influence of marijuana solely because of the presence of metabolites or components of marijuana.
    - Employers are not prohibited from disciplining an employee for ingesting marijuana in the workplace or working while under the influence of marijuana.
    - The statute does not discuss operating heavy machinery. However, operating, navigating or being in actual physical control of any motor vehicle while under the influence of marijuana is not authorized under the statute. A registered qualifying patient or visiting qualifying patient is not considered to be under the

influence of marijuana solely because of the presence of metabolites or components of marijuana.

- What proof of medical marijuana use is required?
  - With the cardholder's permission, the Department of Health and Social Services shall confirm a person's status as a registered qualifying patient to an employer.
  - Qualifying patients are given access to medical marijuana at state-regulated, "compassion centers."
- Delaware's statute protects "visiting" qualifying patients, as well. A visiting qualifying patient is a person who:
  - has been diagnosed with a debilitating medical condition;
  - possesses a valid registry identification card, or its equivalent, that was issued pursuant to the laws of another state, district, territory, commonwealth, insular possession of the United States or country recognized by the United States that allows the person to use marijuana for medical purposes in the jurisdiction of issuance; and
  - is not a resident of Delaware or who has been a resident of Delaware for less than 30 days.

Illinois (410 ILL. COMP. STAT. ANN. 130/40, 130/30, 130/50)

- Summary:
  - Unless a failure to do so would cause the employer to lose a monetary or licensing-related benefit under federal law or federal regulations, an employer may not penalize a person solely for his or her status as a registered qualifying patient or a registered designated caregiver.
  - The statute does not require a private health insurer to reimburse a person for costs associated with the medical use of cannabis.
  - An employer may not be penalized or denied any benefit under State law for employing a cardholder.
  - An employee remains subject to civil, criminal or other penalties if he or she were to engage in any task under the influence of cannabis, when doing so would constitute negligence, professional malpractice or professional misconduct.
  - A private business may restrict or prohibit the medical use of cannabis on its property.
  - The statute does not protect or permit the use of cannabis in any motor vehicle.
  - Operating, navigating or being in actual physical control of any motor vehicle or aircraft while using or under the influence of cannabis, is not authorized under the statute.
  - The use of medical cannabis is not permitted by:
    - an active duty law enforcement officer, correctional officer, correctional probation officer or firefighter; or
    - a person who has a school bus permit or a Commercial Driver's License.

- An employer may adopt reasonable regulations concerning the consumption, storage or timekeeping requirements for qualifying patients related to the use of medical cannabis.
- An employer may enforce a policy concerning drug testing, zero-tolerance or a drug free workplace provided the policy is applied in a nondiscriminatory manner.
- An employer may discipline a registered qualifying patient for violating a workplace drug policy.
- An employer may discipline an employee for failing a drug test if failing to do so would put the employer in violation of federal law or cause it to lose a federal contract or funding.
- An employer may consider a registered qualifying patient to be impaired when he or she manifests specific, articulable symptoms while working that decrease or lessen his or her performance of the duties or tasks of the employee's job position, including symptoms of the employee's speech, physical dexterity, agility, coordination, demeanor, irrational or unusual behavior, negligence or carelessness in operating equipment or machinery, disregard for the safety of the employee or others, or involvement in an accident that results in serious damage to equipment or property, disruption of a production or manufacturing process or carelessness that results in any injury to the employee or others. If an employer elects to discipline a qualifying patient under this subsection, it must afford the employee a reasonable opportunity to contest the basis of the determination.
- The statute does not create or imply a cause of action for any person against an employer for:
  - actions based on the employer's good faith belief that a registered qualifying patient used or possessed cannabis while on the employer's premises or during the hours of employment;
  - actions based on the employer's good faith belief that a registered qualifying patient was impaired while working on the employer's premises during the hours of employment;
  - injury or loss to a third party if the employer neither knew nor had reason to know that the employee was impaired.

Maine (ME. REV. STAT. ANN. tit. 22 § 2421, §2423-E, §2426)

- Summary:
  - An employer may not refuse to employ or otherwise penalize a person solely for that person’s status as a qualifying patient unless failure to do so would put the employer in violation of federal law or cause it to lose a federal contract or funding.
  - An employer is not required to accommodate an employee’s ingestion of marijuana in its workplace.

- A business owner may prohibit the smoking of marijuana for medical purposes on the premises of the business if the business owner prohibits all smoking on the premises and posts notice to that effect on the premises.
- The statute does not discuss operating heavy machinery. However, operating, navigating or being in actual physical control of any motor vehicle or all-terrain vehicle while under the influence of marijuana is not authorized under the statute.

- Relevant Case Law:
  - An employee filed a claim in state court that her employer violated ME. REV. STAT. ANN. tit. 22 § 2423-E, because the employer refused to rehire the employee, a qualifying patient, after she failed a drug-test. The employer moved to have the case removed to federal court and the United States District Court of Maine decided that federal jurisdiction was proper under diversity jurisdiction, as the parties were from diverse states and the amount in controversy would likely exceed $75,000. *Thomas v. Adecco USA, Inc.*, No. 1:13-CV-00070-JAW, 2013 WL 6119073 (D. Me. Nov. 21, 2013). The case settled in 2014.

Minnesota (MINN. STAT. §§ 152.21-.37, § 152.32, § 152.23)

- Summary:
  - Unless a failure to do so would violate federal law or regulations or cause an employer to lose a monetary or licensing-related benefit under federal law or regulations, an employer may not discriminate against a person in hiring, termination, or any term or condition of employment, or otherwise penalize a person, if the discrimination is based upon either of the following:
    - (1) the person's status as a patient enrolled in the registry program under sections 152.22 to 152.37; or
    - (2) a patient's positive drug test for cannabis components or metabolites, unless the patient used, possessed or was impaired by medical cannabis on the premises of the place of employment or during the hours of employment.
  - An employee who is required to undergo employer drug testing pursuant to state law, may present verification of enrollment in the patient registry as part of the employee's explanation under the state law.
  - An employee remains subject to civil, criminal or other penalties if he or she were to undertake any task under the influence of medical cannabis that would constitute negligence or professional malpractice.
  - A private business may restrict or prohibit the medical use of cannabis on its property.
  - The statute does not permit the vaporization of medical cannabis in a place of employment.
  - The statute does not discuss operating heavy machinery. However, operating, navigating or being in actual physical control of any motor vehicle, aircraft, train,

or working on transportation property, equipment or facilities while under the influence of medical cannabis is not authorized under the statute.

Nevada (NEV. REV. STAT. §§ 435A.010-.810, § 453A.800, § 453A.300)

- Summary:
  - An employer is not required to modify the job or working conditions of a person who engages in the medical use of marijuana that are based upon the reasonable business purposes of the employer, but the employer must attempt to make reasonable accommodations for the medical needs of an employee who engages in the medical use of marijuana if the employee holds a valid registry identification card, provided that such reasonable accommodation would not:
    - (a) Pose a threat of harm or danger to persons or property or impose an undue hardship on the employer; or
    - (b) Prohibit the employee from fulfilling any and all of his or her job responsibilities.
  - The statute does not require that an employer allow the medical use of marijuana in the workplace.
  - An insurer or any person or entity who provides coverage for a medical or health care service is not required to pay for or reimburse a person for costs associated with the medical use of marijuana.
  - The statute does not discuss operating heavy machinery. However, a person who holds a registry identification card cannot establish an affirmative defense to charges arising from driving, operating or being in actual physical control of a vehicle or a vessel under power or sail while under the influence of marijuana.

- Relevant Case Law:
  - In *Clevenger v. Nevada Employment Sec. Dept.,* 770 P.2d 866, 868 (Nev. 1989), the Supreme Court of Nevada faced the issue of whether an employee's off-the job marijuana use in violation of the employer's drug policy was "misconduct connected with his work" for purposes of unemployment benefits eligibility.
    - The Court held that when off-the-job conduct violates an employer's rule or policy, such as the prohibition of marijuana use, courts must determine if the employer's rule or policy has a reasonable relationship to the work to be performed; and if so, whether there has been an intentional violation or willful disregard of that rule or policy.
    - The Court held there was a reasonable connection between the employer's policy prohibiting illegal drug use off-the-job and the employer's legitimate safety interests where the employer manufactured explosives. Additionally, the fact that the employee was a continuous marijuana user demonstrated she intentionally violated the employer's drug policy.
  - In *Hohenstein v. Nevada Employment Sec. Div.,* 346 P.3d 365 (2015), the Supreme Court of Nevada addressed the issue of whether an employee who

pleaded guilty to possessing marijuana and was subsequently terminated from his teaching position by the district was properly denied unemployment benefits. The decision was made "in light of [the State's] Uniform Controlled Substances Act provision affording certain first-time drug offenders the opportunity to avoid criminal conviction if [the] offender pleads guilty and then successfully completes a probationary period."

- The Court adopted the reasoning used by a Maryland court in interpreting its parallel statute and decided that the Nevada statute "forestalls a final judgment of conviction 'for purposes of employment, civil rights or any statute or regulation or license or questionnaire or for any other public or private purpose' if the offender successfully completes probation, the guilty plea may not be used to establish misconduct-based grounds for termination for purposes of denying unemployment compensation during the probationary period."
- The Court remanded the case to the Employment Security Division to determine whether the school district met its burden to demonstrate that the teacher had committed misconduct, without considering his guilty plea, that would make him ineligible for unemployment benefits.

New York (N.Y. PUB. HEALTH LAW §§ 3360 to 3369-d (McKinney), § 3369; N.Y. COMP. CODES R. & REGS. tit. 10, § 1004, § 1004.18)

- Summary:
  - Certified patients and designated caregivers shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, solely for the certified medical use or manufacture of marijuana, or for any other action or conduct in accordance with this Act.
  - Being a certified patient shall be deemed to be having a "disability" under the executive law (human rights law), the civil rights law, sections of the penal law, and a section of the criminal procedure law.
  - An employer may enforce a policy of prohibiting an employee from performing his or her employment duties while impaired by a controlled substance.
  - The statute shall not require any person or entity to do any act that would put the person or entity in violation of federal law or cause it to lose a federal contract or funding.
  - Approved medical marijuana products shall not be vaporized in places of employment.
  - The statute does not discuss operating heavy machinery. However, consumption of approved medical marijuana products is not permitted in any motor vehicle, either public or private, that is located upon public highways, private roads open to motor vehicle traffic, parking area of a shopping center or any parking lot.

Rhode Island (R.I. GEN. LAWS ANN. §§ 21-28.6-4, 21-28.6-7)

- Summary:
  - No employer may refuse to employ or otherwise penalize a person solely for his or her status as a cardholder.
  - The statute does not discuss operating heavy machinery. However, operating, navigating or being in actual physical control of any motor vehicle while under the influence of marijuana is not authorized. A registered qualifying patient shall not be considered to be under the influence solely for having marijuana metabolites in his or her system.
  - An employer is not required to accommodate the medical use of marijuana in its workplace.

II. State Medical Marijuana Laws That Do Not Require Workplace Accommodations

Alaska (ALASKA STAT. § 17.37, § 17.37.040)

- Summary:
  - No accommodation of medical marijuana use is required in any place of employment.

California (CAL. HEALTH & SAFETY CODE § 11362.5, §11362.785, §11362.79 (West))

- Summary:
  - Employers are not required to accommodate any marijuana use on the property or premises of any place of employment or during the hours of employment.
  - The law does not discuss operating heavy machinery. However, a qualified patient cannot engage in smoking medical marijuana while operating a motor vehicle.
- Relevant Case Law:
  - The California Supreme Court held employers do not have to accommodate their employee's medical marijuana use. *Ross v. RagingWire Telecommunications, Inc.*, 42 Cal. 4th 920, 930 (2008).
    - In *Ross*, the Plaintiff was fired after a pre-employment drug test required of all new employees revealed marijuana use. The court held that an employer's requirement of a pre-employment drug test and subsequent discharge of the employee after a positive test did not violate California's anti-discrimination statute or public policy because the statute did not require employer accommodations.

Colorado (COLO. CONST. art. XVIII, § 14)

- Summary:
  - An employer is not required to accommodate the medical use of marijuana in any workplace.
- Relevant Case law:
  - On June 15, 2015, in *Coats v. Dish Network, LLC*, No. 13SC394, (Colo. June 15, 2015), the Colorado Supreme Court affirmed a 2013 Colorado Court of Appeals' decision that an employee's off-duty medical marijuana use was not "lawful activity" protected by Colorado's "lawful activities statute," COLO. REV. STAT. § 24-34-402.5, as the term "lawful" refers to activities that are lawful under both state and federal law.
    - In *Coats*, Petitioner, a quadriplegic who obtained a medical marijuana license and "consume[d] medical marijuana at home, after work, and in accordance with his license and Colorado state law . . . tested positive for tetrahydrocannabinol ("THC") during a random drug test" by his employer. Petitioner's employment was terminated "for violating the company's drug policy."
    - Petitioner filed a wrongful termination lawsuit under COLO. REV. STAT. § 24-34-402.5, claiming that his use of medical marijuana was a protected, lawful activity. A Colorado District Court granted the employer's motion to dismiss and "found that the Amendment provided registered patients an affirmative defense to state criminal prosecution without making their use of medical marijuana a 'lawful activity' within the meaning of section 24-34-402.5."
    - The Colorado Court of Appeals affirmed the district court's ruling based on the plain language of the term "lawful" in COLO. REV. STAT. § 24-34-402.5, which means "'permitted by law.'" For an activity to be "lawful" where the activity is "governed by both state and federal law [the activity] must 'be permitted by, and not contrary to, both state and federal law.'" Under the federal Controlled Substances Act, 21 U.S.C. § 844(a) (2012), marijuana use is prohibited, therefore, the majority "concluded that [the employee's] conduct was not 'lawful activity' protected by the statute."
    - The Colorado Supreme Court, agreeing with the Court of Appeals, determined "that a 'lawful' activity is that which complies with applicable 'law,' including state and federal law." The federal Controlled Substances Act, 21 U.S.C. § 844(a), makes marijuana a Schedule I substance thus "meaning federal law designates it as having no medical accepted use, a high risk of abuse, and a lack of accepted safety for use under medical supervision." The Court held that Petitioner's "use of medical marijuana was unlawful under federal law and thus not protected by section 24-34-402.5."

        - The Court declined "to address the issue of whether Colorado's Medical Marijuana Amendment deems medical marijuana use 'lawful' by conferring a right to such use."
    - A court found that an employee, per employer's "standard policies, took a drug screen that tested positive for cannabinoids" and that "[u]nder established Colorado law, discharging an employee under [those] circumstances [was] lawful, regardless of whether the employee consumed marijuana on a medical recommendation, at home or off work." *Curry v. MillerCoors, Inc.*, No. 12-CV-02471-JLK, 2013 WL 4494307 (D. Colo. Aug. 21, 2013). The employee claimed that his "termination violated the employment discrimination provisions found in C.R.S. §§ 24–34–402(1)(a), C.R.S. § 24–43–402.5, C.R.S. § 24 34–402(1)(d), and also that MillerCoors tortiously invaded his privacy."
        - The court found that the employee's first cause of action failed to state a claim for which relief can be granted because a positive test for marijuana, whether from medical or any other use, is a legitimate basis for discharge under Colorado law.
        - The court also found that the employer's request for information regarding the employee's status as a medical marijuana patient did not constitute "an unreasonable manner of intrusion or an intrusion for an unwarranted purpose."
        - The court cited *Beinor v. Industrial Claims Appeals Office*, 262 P.3d 970, 976 (Div. VII, 2011) which held "that the Colorado Constitution as amended with respect to medical marijuana 'does not give medical marijuana users the unfettered right to violate employers' policies and practices regarding use of controlled substances."
        - The court also found that because the employee's "state-licensed medical marijuana use was, at the time of his termination, subject to and prohibited by federal law, it was not 'lawful [off-site] activity' for the purposes of C.R.S. § 24–34–402.5."

District of Columbia (D.C. CODE §§ 7-1671.01-.13, D.C. MUN. REGS tit. 22-C, § 1001.1; D.C. CODE § 7-1671.03)

- Summary:
    - The statute does not discuss employment-related issues dealing with medical marijuana use, but D.C. Municipal Regulations, Title 22-C (1001.1) states that it does not relieve a qualifying patient or caregiver from criminal prosecution or civil penalties for possession, distribution or transfer of marijuana or use of marijuana at the qualifying patient's or caregiver's place of employment.
    - The statute does not discuss operating heavy machinery. However, operating, navigating, or being in actual physical control of any motor vehicle, aircraft or motorboat while under the influence of medical marijuana, is not authorized.

- The statute does not permit a person to undertake any task under the influence of medical marijuana when doing so would constitute negligence or professional malpractice.

Georgia (GA. CODE ANN. § 16-12-191)

- Summary:
  - The statute does not require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale or growing of marijuana in any form.
  - An employer may have a written zero tolerance policy prohibiting the on-duty, and off-duty, use of marijuana, or prohibiting any employee from having a detectable amount of marijuana in such employee's system while at work.

Hawaii (HAW. REV. STAT. §329)

- Summary:
  - The authorization of medical marijuana use does not apply to the medical use of marijuana in the workplace.
  - The statute does not discuss operating heavy machinery. However, use of medical marijuana in any moving vehicle, is not authorized.

Maryland (MD. CODE ANN., Health-Gen. §§ 13-3301-16 (West))

- Summary:
  - The statute does not discuss employment-related issues dealing with medical marijuana use.
  - The statute does not prevent the imposition of any civil, criminal or other penalties for the following:
    - Undertaking any task under the influence of marijuana or cannabis, when doing so would constitute negligence or professional malpractice;
    - Operating, navigating or being in actual physical control of any motor vehicle, aircraft, or boat while under the influence of marijuana or cannabis;
    - Smoking marijuana or cannabis in any public place; or
    - Smoking marijuana or cannabis in a motor vehicle.
  - The statute does not discuss operating heavy machinery.

Massachusetts (105 MASS. CODE REGS. 725.650)

- Summary:
  - An employer is not required to accommodate the medical use of marijuana in any place of employment.
  - The act does not require any health insurance provider to reimburse any person for the expenses of the medical use of marijuana.
  - The regulation does not limit the applicability of other law as it pertains to the rights of employers.
  - The regulation does not discuss operating heavy machinery. However, the statute does not allow for the operation of a motor vehicle, boat or aircraft while under the influence of marijuana.

Michigan (MICH. COMP. LAWS §333.26421, §333.26427)

- Summary:
  - An employer is not required to accommodate the ingestion of marijuana in any workplace or accommodate any employee working while under the influence of marijuana.
  - The act does not require a commercial or non-profit health insurer to reimburse a person for costs associated with the medical use of marijuana.
  - The act does not permit a person to undertake any task under the influence of marijuana, when doing so would constitute negligence or professional malpractice.
  - The statute does not discuss operating heavy machinery. However, operating, navigating or being in physical control of any motor vehicle, aircraft or motorboat while under the influence of marijuana, is not authorized by the statute.
- Relevant Case Law:
  - The Sixth Circuit Court of Appeals recently held that Michigan's Medical Marihuana Act does not impose restrictions on private employers. *Casias v. Wal-Mart,* 2012 WL 4096153 (6th Cir. 2012).
    - In *Casias*, the plaintiff sued his employer after the employee was terminated for testing positive for marijuana, in violation of the company's drug policy. The plaintiff contended that he complied with state laws and never used marijuana while at work, nor did he attend work under the influence of marijuana.
    - The Court held that private employers are not prohibited from disciplining employees as a result of their medical marijuana use, and that private employers are not required to accommodate the use of medical marijuana in the workplace.
  - The Michigan "Court of Appeals held that claimants, who all had medical marijuana cards pursuant to the Michigan Medical Marihuana Act (MMMA) and were all discharged for failing a drug test as a result of having used marijuana,

were not disqualified from receiving unemployment compensation benefits." *Braska v. Challenge Mfg. Co.*, 861 N.W.2d 289 (2014).

Montana (MONT. CODE ANN. §50-46-3, §50-46-320)

- Summary:
  - An employer is not required to accommodate the use of marijuana by a registered cardholder.
  - An employer can include, in a contract, a provision prohibiting the use of marijuana for a debilitating medical condition.
  - Neither group benefit plans nor insurers, as defined by statute, are required to reimburse a person for costs associated with the use of marijuana by a registered cardholder.
  - The Medical Marijuana Act does not provide a cause of action for wrongful discharge or discrimination.
  - The statute does not discuss operating heavy machinery. However, operating, navigating or being in actual physical control of a motor vehicle, aircraft or motorboat while under the influence of marijuana, is not authorized by the statute.
- Relevant Case Law:
  - The Supreme Court of Montana upheld the dismissal of the plaintiff's wrongful discharge claims after the plaintiff was discharged for testing positive for marijuana. *Johnson v. Columbia Falls Aluminum Co., LLC*, 350 Mont. 562 (2009).
    - In *Johnson*, the plaintiff filed suit against his former employer for, among other things, violations of Montana's Wrongful Discharge from Employment Act, the Americans with Disabilities Act ("ADA") and the Montana Human Rights Act. In rejecting all of the plaintiff's claims, the Court held that the Medical Marijuana Act does not provide an employee with an express or an implied private right of action against an employer. Additionally, the Court held that the statute does not require employers to accommodate the medical use of marijuana in any workplace. [Note: this is an unpublished decision and not binding precedent, but has been codified in the statute listed above.]

New Hampshire (N.H. REV. STAT. ANN. § 126-X, § 126-X:3)

- Summary:
  - An employer is not required to accommodate the therapeutic use of cannabis on the property or premises of any place of employment.
  - The statute in no way limits an employer's ability to discipline an employee for ingesting cannabis in the workplace or for working while under the influence of cannabis.

- Under the statute a person is not exempt from arrest or prosecution for being under the influence of cannabis while:
  - Operating a motor vehicle, commercial vehicle, boat, vessel or any other vehicle propelled or drawn by power other than muscular power; or
  - In his or her place of employment, without the written permission of the employer; or
  - Operating heavy machinery or handling a dangerous instrumentality.
- Under the statute a person is not exempt from arrest or prosecution for the possession of cannabis in a place of employment, without the written permission of the employer.
- The statute does not require any health insurance provider or health care plan to be liable for any claim for reimbursement for the therapeutic use of cannabis.

New Jersey (N.J. STAT. ANN. § 24:6I-1-16, § 24:6I-14, § 24:6I-8)

- Summary:
  - Employers are not required to accommodate the medical use of marijuana in any workplace.
  - Private health insurers are not required to reimburse a person for costs associated with the medical use of marijuana.
  - The statute does not discuss operating heavy machinery. However, operating, navigating or being in actual physical control of any vehicle, aircraft, railroad train, stationary heavy equipment or vessel while under the influence of marijuana is not authorized under the statute.

New Mexico (N.M. STAT. ANN. § 26-2B-1-7, § 26-2B-5)

- Summary:
  - Participation in the Medical Cannabis Program does not relieve the qualified patient from criminal prosecution or civil penalty for possession or use of marijuana in the qualified patient's workplace.
  - The statute does not discuss operating heavy machinery. However, a qualified patient remains liable for damages or criminal prosecution arising out of the operation of a vehicle while under the influence of cannabis or cannabis-derived products.
  - There are currently two cases pending in the New Mexico state and federal courts dealing with employee use of medical marijuana. See Smith v. Presbyterian, D-202-CV-201403906 (New Mexico state court); Stanley v. County of Bernalillo, 1:14-cv-00550 (New Mexico federal court). Both cases involve veterans whose doctors recommended medical marijuana to treat PTSD. In Smith v. Presbyterian, Donna Smith, a physician's assistant, sued Presbyterian Healthcare Services after she was fired four (4) days into her job at an urgent care clinic because she tested positive for marijuana during a company-mandated drug test. In her

lawsuit, Smith claimed that Presbyterian violated her rights under the NMHRA by wrongfully terminating her due to her physical or mental handicap or serious medical condition, PTSD. In Stanley v. County of Bernalillo, Lieutenant Augustine Stanley, an experienced corrections officer at a county jail, was terminated when he tested positive for marijuana during a random drug test and jail officials made his continued employment contingent on future negative tests. Stanley claimed that he used medical marijuana only after work, and that his supervisors never noticed any negative effects in his performance. He alleges that his employer violated his rights under the ADA and NMHRA by refusing to accommodate his PTSD.

Oregon (OR. REV. STAT. ANN. § 475.300-.342, § 475.340, § 475.316)

- Summary:
  - An employer is not required to accommodate the medical use of marijuana in the workplace.
  - A private health insurer is not required to reimburse a person for costs associated with the medical use of marijuana.
  - The statute does not discuss operating heavy machinery. However, a person authorized to possess marijuana for medical use remains subject to criminal laws if the person drives under the influence of marijuana.
- Relevant Case Law:
  - The Oregon Supreme Court held employers do not have a duty to accommodate employee use of medical marijuana because federal law, which explicitly prohibits marijuana use, preempts the sections of Oregon's Medical Marijuana Act that authorize the use of medical marijuana. *Emerald Steel Fabricators, Inc. v. Bureau of Labor and Industries*, 230 P.3d 518 (2010).
    - In *Emerald*, the plaintiff claimed his former employer had failed to accommodate his disability when the plaintiff was terminated after he told his employer that he used marijuana for medical reasons. Because the plaintiff was engaged in the illegal use of drugs according to federal law and the employer discharged him for that reason, the protections of Oregon's discrimination statute did not apply.

Vermont (VT. STAT. ANN. tit. 18, § 4474c)

- Summary:
  - The Act does not exempt any person from arrest or prosecution for being under the influence of marijuana while:
    - operating a motor vehicle, boat or vessel, or any other vehicle propelled or drawn by power other than muscular power;
    - in a workplace or place of employment; or
    - operating heavy machinery or handling a dangerous instrumentality.

- The Act does not exempt any person from arrest or prosecution for the smoking of marijuana in any public place, including a workplace or place of employment.
- The Act does not require that coverage or reimbursement for the use of marijuana for symptom relief be provided by a health insurer, any insurance company or an employer.

Washington (WASH. REV. CODE § 69.51A, § 69.51A.060)

- Summary:
  - The Act does not require accommodation of any on-site medical use of marijuana in any place of employment.
  - Employers may establish drug-free work policies. Nothing in the Act requires an accommodation for the medical use of marijuana if an employer has a drug-free workplace.
  - The Act does not require a health carrier or health plan to be liable for any claim for reimbursement for the medical use of marijuana.
  - The Act does not protect anyone who engages in the medical use of marijuana in a way that endangers the health or well-being of any person through the use of a motorized vehicle on a street, road or highway.
- Relevant Case Law:
  - The Supreme Court of Washington has held the Washington State Medical Use of Marijuana Act does not regulate a private employer's conduct nor does it protect an employee for being discharged due to authorized medical marijuana use. *Roe v. Teletech Customer Care Management LLC*, 257 P.3d 586, 591-92 (2011).
    - In *Roe*, the Plaintiff was discharged for failing a drug test. Even though the Plaintiff was not ingesting marijuana while at work, the court held the statute does not require employers to accommodate an employee's off-site use of medical marijuana.

For some helpful reference materials regarding the impact of marijuana laws in the workplace, *see* the following:

James M. Shore, MARIJUANA USE AND THE WORKPLACE, ABA Section of Labor & Employment Law, 8th Annual Conference (Nov. 2014), http://www.americanbar.org/content/dam/aba/events/labor_law/2014/11/papers/76b_shore.authcheckdam.pdf

Joseph D. Elford, A CASE STUDY *OF ROSS v. RAGINGWIRE* FROM THE PLAINTIFF'S PERSPECTIVE, ABA Section of Labor & Employment Law, 8th Annual Conference, (Nov. 2014), http://www.americanbar.org/content/dam/aba/events/labor_law/2014/11/papers/76c_elford.authcheckdam.pdf

Tiffanie Benfer, BUDDING ISSUE: DO THE STATE LAWS LEGALIZING MEDICAL MARIJUANA PROVIDE JOB PROTECTION?, ABA Section of Labor & Employment Law, ERR Midwinter Meeting (March 2015), http://www.americanbar.org/content/dam/aba/events/labor_law/2015/march/err/papers/err10b.authcheckdam.pdf

John M. Husband,"TAKING IT TO THE STATES:" A LOOK AT BUDDING ISSUES FROM STATE LAWS LEGALIZING MARIJUANA, ABA Section of Labor & Employment Law, ERR Midwinter Meeting (March 2015), http://www.americanbar.org/content/dam/aba/events/labor_law/2015/march/err/papers/err10a.authcheckdam.pdf

Kevin M. McCarthy, 21st CENTURY ARBITRATION DECISIONS ON DISCHARGES FOR POSSESSION OR USE OF MARIJUANA (February 2015), http://www.americanbar.org/content/dam/aba/events/labor_law/2015/february/adr/11.authcheckdam.pdf