



Marijuana Policy Project
 236 Massachusetts Ave. NE, Suite 400
 Washington, DC 20002
 p: (202) 462-5747 • f: (202) 232-0442
 info@mpp.org • www.mpp.org

“We change laws.”

Medical Marijuana Laws and Civil Protections

This chart reviews medical marijuana laws’ language that *may* support claims for civil protections, such as protections from discrimination in housing, employment, child custody cases, or enrollment in a university. It also includes known state court cases related to civil protections and explicit limitations in the laws. In addition to the medical marijuana laws’ text, other state laws may provide some civil protections, and those are generally not discussed in this memo. Further, it is possible an employee may be protected based on an employment contract or collective bargaining agreement. This chart does not include information about protections for physicians.

State	Court Decisions or Litigation	Language Most Relevant to Civil Protections	Limitations Related to Civil Protections
Alaska	None known.	A.S. 17.37.030 (b) “Except as otherwise provided by law, a person is not subject to arrest, prosecution, or penalty in any manner for applying to have the person’s name placed on the confidential registry maintained by the department under AS 17.37.010.”	A.S. 17.37.030 (d) “Nothing in this chapter requires any accommodation of any medical use of marijuana (1) in any place of employment ...”
Arizona	None known.	A.R.S. § 36-2814 says registered patients and caregivers are not “subject to ... penalty in any manner, or denial of any right or privilege, including any civil penalty or disciplinary action by a court or occupational or professional licensing board ...” for the permissible conduct. A.R.S. § 36-2813 prohibits discrimination by schools, landlords, and employers, as well as discrimination in respect to organ transplants, other medical care, and custody and visitation, unless an exception applies. Employers generally cannot penalize patients for a positive drug test for marijuana “unless the patient used, possessed or was impaired by marijuana at or during work.” Per A.R.S. §36-2805, nursing homes, assisted living centers, and similar facilities generally “may not unreasonably limit a registered qualifying patients’ access to or use of marijuana authorized under this chapter.”	A.R.S. § 36-2813, 36-2814, 36-2802, and 36-2805 provide limitations on the protections. The prohibitions on discrimination by employers, landlords, schools, and assisted living facilities do not apply if “failing to [penalize the cardholder] would cause the [entity] to lose a monetary or licensing related benefit under federal law or regulations.” ARS §36-2802 provides that the chapter does not allow anyone to undertake “any task under the influence of marijuana when doing so would constitute negligence or professional malpractice.” Nursing homes and similar facilities are not required to allow marijuana to be smoked at the facility, to store marijuana, or to provide marijuana for patients. HB 2541 passed in 2011. It allows employers to take actions based on “good faith” beliefs about employee impairment.

NOTE: This is not intended for or offered as legal advice. It is for informational and educational purposes only. Please consult with an attorney licensed to practice in the state in question for legal advice.

State	Court Decisions or Litigation	Language Most Relevant to Civil Protections	Limitations Related to Civil Protections
California	In <i>Ross v. Ragingwire</i> , the state Supreme Court ruled that the law does not protect patients from firing for testing positive for metabolites. It noted that the legislature could enact such protections. The legislature did so in 2008, passing AB 2279, but the bill was vetoed.	In the introduction, voters declared their intent “[t]o ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes” and to “ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.” (Calif. Health & Safety Code § 11362.5 (b))	Calif. Health & Safety Code § 11362.785 (a) provides “Nothing in this article shall require any accommodation of any medical use of marijuana on the property or premises of any place of employment or during the hours of employment or on the property or premises of any jail, correctional facility, or other type of penal institution in which prisoners reside or persons under arrest are detained.”
Colorado	A paralyzed patient is suing his employer because his employment was terminated for the medical use of marijuana. In addition, at least a few medical marijuana employment cases have been settled out of court in favor of patients.	C.R.S. § 25-1.5-106 (8) says “the use of medical marijuana is allowed under state law” to the extent it is carried out in accordance with the state constitution, statutes, and regulations. Patients and caregivers may be protected by the state’s “Lawful Off-Duty Activities Statute,” which protects employees from being penalized for legal outside-of-work behavior.	Col. Const. Art. XVIII, § 14. (10) (b) specifies “Nothing in this section shall require any employer to accommodate the medical use of marijuana in any work place.”
Delaware	None known.	16 Del. Code §4903A (a-b) says registered patients and caregivers are not “subject to ... denial of any right or privilege, including but not limited to civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau ...” for the permissible conduct. §4905A (a-b) prohibits discrimination by schools, landlords, and employers, as well as discrimination in respect to organ transplants, other medical care, and custody or visitation, unless an exception applies. Employers generally cannot penalize patients for a positive drug test for marijuana unless the patient “used, possessed, or was impaired by marijuana on the premises of the place of employment or during the hours of employment.”	16 Del. Code §4904(A) and 4905A (a-b) provide limitations on the protections. The prohibitions on discrimination by employers, landlords, and schools do not apply if “failing to [penalize the cardholder] would cause the [entity] to lose a monetary or licensing-related benefit under federal law or regulation.” §4904A (a) provides that the chapter does not allow anyone to undertake “any task under the influence of marijuana, when doing so would constitute negligence or professional malpractice.”

State	Court Decisions or Litigation	Language Most Relevant to Civil Protections	Limitations Related to Civil Protections
District of Columbia	None known.	57 DCR 3360 (1) provides “All seriously ill individuals have the right to obtain and use marijuana for medical purposes when a licensed physician has found the use of marijuana to be medically necessary and has recommended the use of marijuana ...” Sec. 3 “(a) Notwithstanding any other District law, a qualifying patient may possess and administer medical marijuana, and possess and use paraphernalia, in accordance with this act and the rules issued pursuant to section 14.”	57 DCR 3360 (4) (d) says “Nothing in this act permits a person to: (1) Undertake any task under the influence of medical marijuana when doing so would constitute negligence or professional malpractice ...”
Hawaii	None known.	HRS § 329-122 states: “Notwithstanding any law to the contrary, the medical use of marijuana by a qualifying patient shall be permitted only if: ...”	HRS § 329-122 (c) provides: “The authorization for the medical use of marijuana in this section shall not apply to: ... (2) The medical use of marijuana: ... (B) In the workplace of one’s employment ...”
Maine	None known.	22 M.R.S.A. § 2423-E provides that persons whose conduct is authorized by the act “may not be denied any right or privilege or be subjected to arrest, prosecution, penalty or disciplinary action” for the authorized conduct. The same section provides, “A school, employer, or landlord may not refuse to enroll or employ or lease to or otherwise penalize a person solely for that person’s status as a qualifying patient or a primary caregiver” unless an exception noted in the next column applies. It also provides, “A person may not be denied parental rights and responsibilities with respect to or contact with a minor child ...” unless the person’s behavior is contrary to the best interests of the child.	The protections from discrimination by employers, landlords, and schools do not apply if “failing to [penalize the person] would put the school, employer, or landlord in violation of federal law or cause it to lose a federal contract or funding.” Maine’s law also does not prohibit a restriction “on the administration or cultivation of marijuana on [rented] premises when that administration or cultivation would be inconsistent with the general use of the premises.” It “does not permit any person to: Undertake any task under the influence of marijuana when doing so would constitute negligence or professional malpractice or would otherwise violate any professional standard ...” The law also does not require “An employer to accommodate the ingestion of marijuana in any workplace or any employee working while under the influence of marijuana.”

State	Court Decisions or Litigation	Language Most Relevant to Civil Protections	Limitations Related to Civil Protections
Maryland	None known.	Maryland’s law only includes an affirmative defense and sentencing mitigation for possession and use of marijuana, both of which can be raised in criminal court. The bill that passed in 2011 also sets up a work group to look into a comprehensive law.	Maryland’s law only includes an affirmative defense and sentencing mitigation for possession and use of marijuana, both of which can be raised in criminal court. The bill that passed in 2011 also sets up a work group to look into a comprehensive law.
Michigan	On Feb. 11, 2011, the U.S. District Court for the Western District of Michigan ruled against sinus cancer survivor Joe Casias, who sued Wal-Mart for terminating his employment for failing a drug test. The Michigan ACLU, which represents Mr. Casias, is appealing to the Sixth Circuit Court of Appeals.	The introductory clause to the measure said a purpose is to “provide protections for the medical use of marihuana.” MCL 333.26424 (a) provides that those abiding by the act cannot 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” for actions allowed by the law. Sec. 4 (c) provides, “A person shall not be denied custody or visitation of a minor for acting in accordance with this act, unless the person's behavior is such that it creates an unreasonable danger to the minor that can be clearly articulated and substantiated.”	MCL 333.26424 provides “(b) This act shall not permit any person to do any of the following: ... (1) Undertake any task under the influence of marihuana, when doing so would constitute negligence or professional malpractice. ... (c) Nothing in this act shall be construed to require: ... (2) An employer to accommodate the ingestion of marihuana in any workplace or any employee working while under the influence of marihuana.”
Montana	In 2009, the Montana Supreme Court upheld the dismissal of a patient who tested positive for marijuana metabolites in <i>Johnson v. Columbia Falls Aluminum</i> . The decision is a memorandum opinion, and is not binding precedent on other cases.	MCA § 50-46-201 provides that those abiding by the act “may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by a professional licensing board or the department of labor and industry” for the medical use of marijuana in accordance with the act.	SB 423, Sec. 11, which was enacted in 2011, does not require employers to accommodate medical marijuana use, a school to allow patients to participate in extracurricular activities, or a landlord to allow medical marijuana cultivation or use. It provides that employers can prohibit medical marijuana use in contracts, and it does not provide a cause of action for wrongful discharge or discrimination. A patient or provider may only cultivate with his or her landlord’s written permission. (Sec. 4 and 5, SB 423.)

State	Court Decisions or Litigation	Language Most Relevant to Civil Protections	Limitations Related to Civil Protections
Nevada	None known.	NRS 453A.510 “A professional licensing board shall not take any disciplinary action against a person licensed by the board on the basis that: 1. The person engages in or has engaged in the medical use of marijuana in accordance with the provisions of this chapter; or 2. The person acts as or has acted as the designated primary caregiver of a person who holds a registry identification card issued to him or her pursuant to paragraph (a) of subsection 1 of NRS 453A.220 .”	NRS 453A.800 “The provisions of this chapter do not: ... 2. Require any employer to accommodate the medical use of marijuana in the workplace.”
New Jersey	None known.	N.J.S.A 24:6I-2 (e) states “... the purpose of this act is to protect from arrest, prosecution, property forfeiture, and criminal and other penalties, those patients who use marijuana to alleviate suffering from debilitating medical conditions, as well as their physicians, primary caregivers, and those who are authorized to produce marijuana for medical purposes.” N.J.S.A 24:6I-6 (b) provides that patients, caregivers, and others acting in accordance with the law "shall not be subject to any civil or administrative penalty, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a professional licensing board, related to the medical use of marijuana."	N.J.S.A 24:6I-14 “Nothing in this act shall be construed to require ... an employer to accommodate the medical use of marijuana in any workplace.”

State	Court Decisions or Litigation	Language Most Relevant to Civil Protections	Limitations Related to Civil Protections
New Mexico	None known.	N.M.S.A. § 26-2B-4 (4) (a) provides that qualified patients "shall not be subject to arrest, prosecution or penalty in any manner for the possession of or the medical use of cannabis if the quantity of cannabis does not exceed an adequate supply."	N.M.S.A. § 26-2B-5(A) "Participation in a medical use of cannabis program by a qualified patient or primary caregiver does not relieve the qualified patient or primary caregiver from: ... (3) criminal prosecution or civil penalty for possession or use of cannabis: ... (c) in the workplace of the qualified patient's or primary caregiver's employment ..."
Oregon	In April 2010, the Oregon Supreme Court ruled in <i>Emerald Steel v. BOLI</i> that patients are not protected from being fired for testing positive for metabolites.	ORS 475.302 (10) "Registry identification card" means a document issued by the authority that identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any." ORS 475.328 "(1) No professional licensing board may impose a civil penalty or take other disciplinary action against a licensee based on the licensee's medical use of marijuana in accordance with the provisions of ORS 475.300 to 475.346 or actions taken by the licensee that are necessary to carry out the licensee's role as a designated primary caregiver to a person who possesses a lawful registry identification card."	ORS 475.340 "Nothing in ORS 475.300 to 475.346 shall be construed to require: ... (2) An employer to accommodate the medical use of marijuana in any workplace."

State	Court Decisions or Litigation	Language Most Relevant to Civil Protections	Limitations Related to Civil Protections
Rhode Island	None known.	RIGL § 21-28.6-4 (a) and (c) provide that patients and caregivers abiding by the act “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” for the medical use of marijuana. RIGL § 21-28.6-4 (c) provides, “No school, employer, or landlord may refuse to enroll, employ, or lease to or otherwise penalize a person solely for his or her status as a cardholder.” RIGL § 21-28.6-4 (n) provides, “For the purposes of medical care, including organ transplants, a registered qualifying patient’s authorized use of marijuana shall be considered the equivalent of the authorized use of any other medication used at the direction of a physician, and shall not constitute the use of an illicit substance.”	RIGL § 21-28.6-7 states “(a) This chapter shall not permit: (1) Any person to undertake any task under the influence of marijuana, when doing so would constitute negligence or professional malpractice ...” and “(b) Nothing in this chapter shall be construed to require: ... (2) An employer to accommodate the medical use of marijuana in any workplace.”
Vermont	None known.	The explicit patient and caregiver protections in the medical marijuana law are from criminal penalties, “A person who has in his or her possession a valid registration card issued pursuant to this subchapter and who is in compliance with the requirements of this subchapter ... shall be exempt from arrest or prosecution under subsection 4230(a) of this title.” (18 V.S.A. § 4474b.)	18 V.S.A. § 4474c. provides “(a) This subchapter shall not exempt any person from arrest or prosecution for: (1) Being under the influence of marijuana while: ... (B) in a workplace or place of employment; or ... (2) The use or possession of marijuana by a registered patient or a registered caregiver: ... (B) in a manner that endangers the health or well-being of another person.”

State	Court Decisions or Litigation	Language Most Relevant to Civil Protections	Limitations Related to Civil Protections
Washington	In <i>Roe v. Teletech Customer Care Management</i> , the Washington State Supreme Court ruled in favor of an employer who was sued after terminating a medical marijuana patient. The ruling was issued on June 9, 2011.	Under SB 523 (enacted in part in 2011), medical marijuana cannot be the “sole disqualifying factor” for an organ transplant unless it could cause rejection or organ failure, though a patient could be required to abstain before or during the transplant. (Sec. 408) The law also limits when parental rights and residential time can be limited due to the medical use of marijuana. (Sec. 409, SB 523)	“Nothing in this chapter requires any accommodation of any on-site medical use of cannabis in any place of employment, in any school bus or on any school grounds, in any youth center, in any correctional facility, or smoking cannabis in any public place or hotel or motel.” ((RCW 69.51A.060(4).) An employer explicitly does not have to accommodate medical marijuana if it establishes a drug-free workplace. (RCW 69.51A.060 (6))