



Cannabis Legalization and Employment Protections

Drug testing for cannabis is an ineffective approach to workplace safety. Because THC and its metabolites stay in one’s system long after the last use¹, drug tests result in completely sober, capable workers losing their jobs for having used cannabis days or even weeks earlier. These policies also push people to use far more addictive and dangerous medications, including opioids. Meanwhile, drug testing doesn’t detect workers who are impaired by alcohol, hangovers, fatigue, or a myriad of other factors. Employers with a safety-sensitive workforce should instead consider performance-based tests², which can detect workers who are unable to safely perform regardless of the cause.

Legalization states are increasingly acting to ensure workers don’t lose their jobs for relaxing with cannabis instead of alcohol after hours. At least nine of the 24 legalization states — California, Connecticut, Nevada, New Jersey, New York, Minnesota, Montana, Rhode Island, and Washington — have some employment protections for adult-use cannabis consumers. And 22 of the 38 medical cannabis states have some employment protections³. These laws only apply to off-hours cannabis use. Every state allows employers to fire workers who are impaired at work.

Some of the employment protection laws add cannabis to existing “lawful off-duty conduct” statutes, which at least 29 states have enacted to protect workers from being fired for using tobacco or for otherwise engaging in certain other legal activities outside of work.⁴

Adult-Use States with Employment Protections for Cannabis

	Protections	Exceptions
California (Calif. Govt Code § 12954, takes effect on Jan. 1, 2024)	Prohibits firing, not-hiring, and otherwise penalizing workers for using cannabis off-hours and off-site. Prohibits drug screening for non-psychoactive metabolites of cannabis.	Excludes workers in building and construction trade; instances where federal contracts, licenses, or funding requires otherwise; and positions requiring a federal background clearance.
Connecticut (C.G.S.A. § 21a-422p)	Protects job applicants and employees for discrimination based on cannabis use before they worked at the employer, with exceptions. For an employer to penalize an employee for off-hours cannabis use or a positive test for cannabis, they must do so pursuant to a written policy that was distributed to all employees and prospective employees.	The protections do not apply to several types of employers and employees, including those with a primary activity of mining, construction, utilities, manufacturing, educational services, health care, social services, public order, safety, national security, and international affairs. They also don't apply if failing to act would put the employer in violation of a federal contract or cause it to lose federal funding.

	Protections	Exceptions
<p>Minnesota (Minn. St 181.951. Subds. 5, 8, 9; 181.952, Subd 3)</p>	<p>Reduces instances where drug testing workers for cannabis (or adverse actions for a positive test) is allowed. In many cases, it prohibits random selection and pre-employment testing for cannabis.</p>	<p>Allows random selection cannabis testing of employees in cases of safety sensitive positions and if it is consistent with collectively bargained agreements and contracts covering professional athletes. Appears to continue allowing drug testing and penalties for safety sensitive positions, police officers, firefighters, anything with a CDL license, federally-grant funded work,, and of those providing face-to-face care or supervision for children, vulnerable adults, and/or medical patients.</p> <p>Allows reasonable suspicion drug testing for cannabis, including if the employee was involved in a work-related accident or if they were injured at work. Does not apply if federal law requires adverse action or testing.</p>
<p>Montana (M.C.A. § 39-2-313)</p>	<p>Includes cannabis in a statute prohibiting discrimination against workers for using lawful products.</p>	<p>Does not apply if the employer believes their "actions are permissible under an established substance abuse or alcohol program or policy, professional contract, or collective bargaining agreement."</p> <p>Does not apply to a non-profit with a mission that is discouraging the use of lawful products.</p>
<p>Nevada (N.R.S. 613.132)</p>	<p>Bans most employers from using pre-employment drug testing with cannabis (Does not include protections for current employees).</p>	<p>Exceptions include safety sensitive positions, if federal law requires otherwise, and if the law is inconsistent with collective bargaining agreements.</p>

	Protections	Exceptions
<p>New Jersey (N.J.S.A. 24:61-52a)</p>	<p>Prohibits firing, not-hiring, or penalizing workers because they use (or do not) use cannabis. Prohibits taking negative action based on metabolites in the system.</p>	<p>Exceptions: using cannabis/being under influence at work and federal contractors can revise to be consistent with federal laws, rules, and regs. To take action if under influence at work: (1) the employer’s testing program must use scientifically valid methods (e.g., saliva, urine, or blood tests); AND (2) a certified Workplace Impairment Expert (certification developed by the Cannabis Regulatory Commission in conjunction with the New Jersey Police Training Commission) must have conducted a physical evaluation of the employee and determined the employee is under the influence of cannabis.</p>
<p>New York (N.Y., Labor Law, § 201-d.)</p>	<p>Includes cannabis "in accordance with state law, outside work hours, off of the employer's premises and without use of the employer's equipment or other property" in lawful off-duty activities statute. New York’s lawful off-duty activities law makes it illegal for employers to “refuse to hire, employ or license, or to discharge from employment or otherwise discriminate against an individual in compensation, promotion or terms, conditions or privileges of employment” for the covered activities.</p>	<p>Exceptions for federal mandate or loss of federal funding. Employers can have a drug and alcohol policy and can act based on the belief actions were permissible under that policy.</p>
<p>Rhode Island (R.I.G.L. § 21-28.11-29 See also: § 28-6.5-1 for drug testing limitations)</p>	<p>Prohibits negative action “solely for an employee’s private, lawful use of cannabis outside the workplace and so long as the employee has not and is not working under the influence of cannabis.” State law also restricts when drug testing is allowed for employees and what actions can be taken based on it (not just for cannabis).</p>	<p>Exceptions for collective bargaining agreement provisions allowing discrimination and when mandated by federal law, licensing, or contracts. For safety-sensitive positions, employers can prohibit cannabis use 24 hours prior to work.</p>

	Protections	Exceptions
Washington (not yet codified, new section in 49.44 RCW; was SB 5123 (2023))	Beginning January 1, 2024, employers are generally prohibited from rejecting job applicants because they use cannabis off-hours or test positive for cannabis metabolites.	The bar does not apply to jail and prison workers, first responders (including fire protection and law enforcement), airline or aerospace jobs, positions that are identified as safety sensitive, or jobs that require federal background checks or a security clearance. It does not apply if federal law requires otherwise.

Note: This is offered for educational purposes only and may not be taken as legal advice.

¹ See: "How long can you detect marijuana (cannabis) in the body?," Medical News Today.

² For example: <https://predictivesafety.com/alertmeter/>

³ The states are: Arizona, Arkansas, Connecticut, Delaware, Illinois, Louisiana, Maine, Massachusetts, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Utah, Virginia, and West Virginia. For details, see: <https://www.mpp.org/issues/medical-marijuana/medical-marijuana-laws-anti-discrimination-provisions/>

⁴ See: <https://www.ncsl.org/documents/employ/off-dutyconductdiscrimination.pdf> (As of 2010, 29 states and Washington D.C. had some off-duty conduct and/or product protections.)