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"We change laws."

Medical Marijuana Laws and Anti-Discrimination Provisions

Patients who use prescription medications often have recourse under the Americans With Disabilities Act if they are discriminated against for using their medicine. However, courts have found that ADA protections do not apply to medical cannabis since it is federally illegal. Several of the more recent medical marijuana laws have included language intended to prevent discrimination against medical marijuana patients in housing, child custody cases, organ transplants, enrollment in a college, or employment, with some limitations. Courts in states without strong language preventing such discrimination have typically ruled against patients who challenge the discrimination.

The below chart includes excerpts from state laws that might be relevant to court cases challenging discrimination against state-legal patients who use or test positive for marijuana, along with known court cases in each state.

State	Court Decisions	Relevant Statutory Language	Language Limiting Possible Protections
Alaska	None known.	"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."	"Nothing in this chapter requires any accommodation of any medical use of marijuana (1) in any place of employment …"
Arizona	None known.	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. 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." 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."	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." The law also does not allow anyone to undertake "any task under the influence of marijuana when doing so would constitute negligence or professional malpractice." A 2011 law allows employers to take actions based on "good faith" beliefs about employee impairment. A 2012 law bans the use of marijuana on college campuses and vocational schools. The restrictions the legislature passed might be challenged as illegal meddling with an initiative under the Voter Protection Act.

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California	In *Ross v. Ragingwire*, 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.	In 2015, Gov. Brown signed into law a bill to prevent organ transplants from being denied based solely on a person's status as a medical marijuana patient or a patient's positive test for medical marijuana, "except to the extent that the qualified patient's use of medical marijuana has been found by a physician and surgeon, following a case-by-case evaluation of the potential recipient, to be medically significant to the provision of the anatomical gift."	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	In *Coats v. DISH Network*, the Colorado Supreme Court ruled against a paralyzed patient who sued after being terminated for off-hours medical marijuana use.	Colorado's law 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. Mr. Coats' attorney unsuccessfully argued his medical marijuana use was 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."
Conn.	None known.	The law says patients and caregivers should not be "denied any right or privilege, including, but not limited to, being subject to any disciplinary action by a professional licensing board" for the permitted conduct. It also includes protections from discrimination based on one's status as a patient or caregiver by landlords, employers, and schools.	The protections from discrimination by landlords, schools, and employers include an exception for if it is "required by federal law or required to obtain federal funding." The law does not "restrict an employer's ability to discipline an employee for being under the influence of intoxicating substances during work hours." Patients cannot use marijuana on any school grounds, including in dorms or other college property.

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Delaware	None known.	Registered patients and caregivers may not be denied "any right or privilege" or be subject to "disciplinary action by a court or occupational or professional licensing board or bureau " for the permissible conduct. The law 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."	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." The law also does not allow anyone to undertake "any task under the influence of marijuana, when doing so would constitute negligence or professional malpractice."
District of Columbia	None known.	"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."	"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.	In 2015, a bill was enacted to ban discrimination against medical marijuana patients and caregivers by schools, landlords, and condominiums and to prevent discrimination in medical care and parental rights.	The state medical marijuana law's authorization does not extend to "in the workplace of one's employment." The protections from discrimination from a school or landlord do not apply if they would cause a loss of "a monetary or licensing-related benefit under federal law or regulation." The child custody protections do not apply if the person's conduct "created a danger to the safety of the minor." Condominiums may prohibit medical marijuana smoking if they also prohibit tobacco smoking.
Illinois	None known.	Schools, employers, and landlords cannot refuse to enroll, lease to, or otherwise penalize someone for his or her status as a registered patient or caregiver, unless failing to do so would create an issue with federal law, contracts, or licensing. Patients' authorized use of marijuana cannot disqualify a person from receiving organ transplants or other medical care and will not result in the denial of custody or parenting time, unless the patient's actions created an unreasonable danger to the minor's safety.	Landlords may prohibit the smoking of cannabis on the rented premises. Schools, employers, and landlords, may penalize a person for their status as a patient or caregiver if "failing to do so would put the school, employer, or landlord in violation of federal law or unless failing to do so would cause it to lose a monetary or licensing-related benefit under federal law or rules." The law does not "prohibit an employer from enforcing a policy concerning drug testing, zero-tolerance, or a drug free workplace provided the policy is applied in a nondiscriminatory manner."

State	Court Cases	Relevant Statutory Language	Language Limiting Possible Protections
Maine	None known.	Individuals whose conduct is authorized by the law "may not be denied any right or privilege or be subjected to arrest, prosecution, penalty or disciplinary action." Unless an exception applies, "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 the person's behavior is contrary to the best interests of the child, "a person may not be denied parental rights and responsibilities with respect to or contact with a minor child …".	The protections do not apply if failing to penalize the person would put a "school, employer, or landlord in violation of federal law or cause it to lose a federal contract or funding." Maine's law 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 does not require "an employer to accommodate the ingestion of marijuana in any workplace or any employee working while under the influence of marijuana."
Maryland	None known.	Maryland's law protects qualifying patients, caregivers, certifying physicians, licensed growers, licensed dispensaries, academic medical centers, those entities' staff, and hospitals or hospices that are treating a qualifying patient from "any civil or administrative penalty, including a civil penalty or disciplinary action by a professional licensing board, or be denied any right or privilege" when acting in accordance with the law.	The law does not allow anyone to undertake "any task under the influence of marijuana, when doing so would constitute negligence or professional malpractice." It allows landlords and condominiums to restrict marijuana smoking.
Mass.	None known.	"The citizens of Massachusetts intend that there should be no punishment under state law for qualifying patients, physicians and health care professionals, personal caregivers for patients, or medical marijuana treatment center agents for the medical use of marijuana, as defined herein." The law also says that persons meeting its requirements shall not be "penalized under Massachusetts law in any manner, or denied any right or privilege."	"Nothing in this law requires any accommodation of any on-site medical use of marijuana in any place of employment, school bus or on school grounds, in any youth center, in any correctional facility, or of smoking medical marijuana in any public place."

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Michigan	In *Casias vs. Wal-Mart*, the U.S. Court of Appeals for the Sixth District ruled against a registered medical marijuana patient who sued Wal-Mart for terminating his employment for testing positive for marijuana.	Those abiding by the act cannot be subject to "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. In addition, "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."	The law does not allow any person to "undertake any task under the influence of marihuana, when doing so would constitute negligence or professional malpractice." Employers are not required "to accommodate the ingestion of marihuana in any workplace or any employee working while under the influence of marihuana."
Minnesota	None known.	Unless an exception applies, an individual's status as a registered medical marijuana patient may not be used: 1) by schools as a reason to refuse enrollment; 2) by landlords as reason to refuse to lease to the person; 3) by employers as a reason to refuse to hire or as a reason to terminate employment; or 4) as a reason to deny custody or visitation rights. An employer generally cannot discriminate against a patient based on a failed drug test for marijuana.	The law does not require accommodation if it would violate federal law or regulations, or cause the entity to lose a federal licensing or monetary benefit. Employers may punish patients if they are impaired at work or possess marijuana at work. In addition, patients may face civil penalties for undertaking a task under the influence of marijuana that would constitute negligence or professional malpractice.
Montana	The Montana Supreme Court upheld the dismissal of a patient who tested positive for marijuana metabolites in *Johnson v. Columbia Falls Aluminum*. The decision is a memorandum opinion, and is not binding precedent on other cases.	The law 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.	The law 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. Employers may prohibit medical marijuana, and it does not provide a cause of action for discrimination. Cultivation requires a landlord's written permission.

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Nevada	None known.	"A professional licensing board shall not take any disciplinary action against a person licensed by the board" for engaging in the medical use of marijuana or acting as a caregiver. An employer must "attempt to make reasonable accommodations for the medical needs" of patients who are employees, unless the accommodation would "(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 law does not require employers to "allow the medical use of marijuana in the workplace" or 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."
New Hampshire	None known.	"For the purposes of medical care, including organ transplants, a qualifying patient's authorized use of cannabis in accordance with this chapter shall be considered the equivalent of the authorized use of any other medication … and shall not constitute the use of an illicit substance." Further, "a person otherwise entitled to custody of, or visitation or parenting time with, a minor shall not be denied such a right solely for conduct allowed under this chapter, and there shall be no presumption of neglect or child endangerment."	The law does not require "any accommodation of the therapeutic use of cannabis on the property or premises of any place of employment." It also does not "limit an employer's ability to discipline an employee for ingesting cannabis in the workplace or for working while under the influence of cannabis."
New Jersey	None known.	The law's purpose "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." § 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."	"Nothing in this act shall be construed to require … an employer to accommodate the medical use of marijuana in any workplace."

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New Mexico	In August 2015, a district court ruled against a physician assistant and registered patient who sued after being fired by Presbyterian Healthcare Services for testing positive for marijuana. Presbyterian argued it must comply with the Federal Drug-Free Workplace Act because it receives Medicaid and Medicare reimbursements.	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."	"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: ... criminal prosecution or civil penalty for possession or use of cannabis … in the workplace of the qualified patient's or primary caregiver's employment."
New York	None known.	Patients may not be subject to "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 medical marijuana law. Being a certified patient is considered a disability for purposes of the state's anti-discrimination laws. Patients are also protected from discrimination in family law and domestic relations cases.	The law does not "bar the enforcement of a policy prohibiting an employee from performing his or her employment duties while impaired by a controlled substance." It also does 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."
Ohio	None known.	Patients receive protections from unfair treatment in child custody cases. They also may not be denied rental housing due to patient status. Further, patients are protected from discrimination in organ transplant determinations.	Employers are not required to "permit or accommodate an employee's use, possession, or distribution of medical marijuana." They may "refuse to hire a patient and may discharge, discipline, or otherwise take adverse employment action" against a patient. Employers may "establish and enforce a drug testing policy, drug-free workplace policy, or zero-tolerance drug policy," and the law may not be used to interfere with any federal restrictions on employment.

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Oregon	In April 2010, the Oregon Supreme Court ruled in *Emerald Steel v. BOLI* that patients are not protected from being fired for testing positive for metabolites.	"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," pursuant to state law.	"Nothing in ORS 475.300 to 475.346 shall be construed to require … An employer to accommodate the medical use of marijuana in any workplace."
Penn.	None known.	"No employer may discharge, threaten, refuse to hire or otherwise discriminate or retaliate against an employee" based on an employee's status as a medical cannabis patient. An action in accordance with the medical marijuana law "shall not by itself be considered by a court in a custody proceeding." State agencies will promulgate rules regarding marijuana possession at schools and daycares.	The law does not "require an employer to make any accommodation of the use of medical marijuana [at] … any place of employment." It does not "limit an employer's ability to discipline an employee for … working while under the influence of medical marijuana when the employee's conduct falls below the standard of care normally accepted for that position." Nor does it require employers to break federal law.
Rhode Island	None known, though at least one case was pending as of September 2015.	Patients and caregivers abiding by the act may not be subject to "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. Also, "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." Further, "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."	The law does not allow "any person to undertake any task under the influence of marijuana, when doing so would constitute negligence or professional malpractice …" In addition, "nothing in this chapter shall be construed to require: … an employer to accommodate the medical use of marijuana in any workplace."

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Vermont	None known.	The patient and caregiver protections in the medical marijuana law are from criminal penalties.	The law does not exempt patients from arrest or prosecution for being under the influence of marijuana "in a workplace or place of employment" or for using or possessing marijuana "in a manner that endangers the health or well-being of another person."
Washington	In 2011, the Washington State Supreme Court ruled in favor of an employer who was sued after terminating a medical marijuana patient *(Roe v. Teletech Customer Care Management)*.	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. The law also limits when parental rights and residential time can be limited due to the medical use of marijuana.	"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." An employer explicitly does not have to accommodate medical marijuana if it establishes a drug-free workplace.