Cannabis and the Workplace

Allan S. Bloom
Partner

Andrew M. Sherwood
Associate

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Proskauer

Introduction

- Employers must confront a patchwork of **federal, state, and local statutes** regarding cannabis use and regulation.
- As more states enact medical and recreational use statutes, the intersection of these laws and workplace laws will continue to present complex issues for employers, employment counsel, and HR professionals.
- Given the varied approach states and cities are taking, an employer's approach to cannabis policies must be very mindful of local requirements, and a one-size-fits-all to certain issues approach may be challenging.

Agenda

- What is cannabis?
- Federal law
- State and local laws
- Common issues employers will face
  - On-duty use
  - Off-duty use
  - Anti-discrimination protections
  - Disabilities and accommodation
  - Safety-sensitive positions
  - Government contractors
  - Drug testing and screening
  - Union/labor-management considerations
  - Attorney ethics issues
  - Recent developments

Definitions

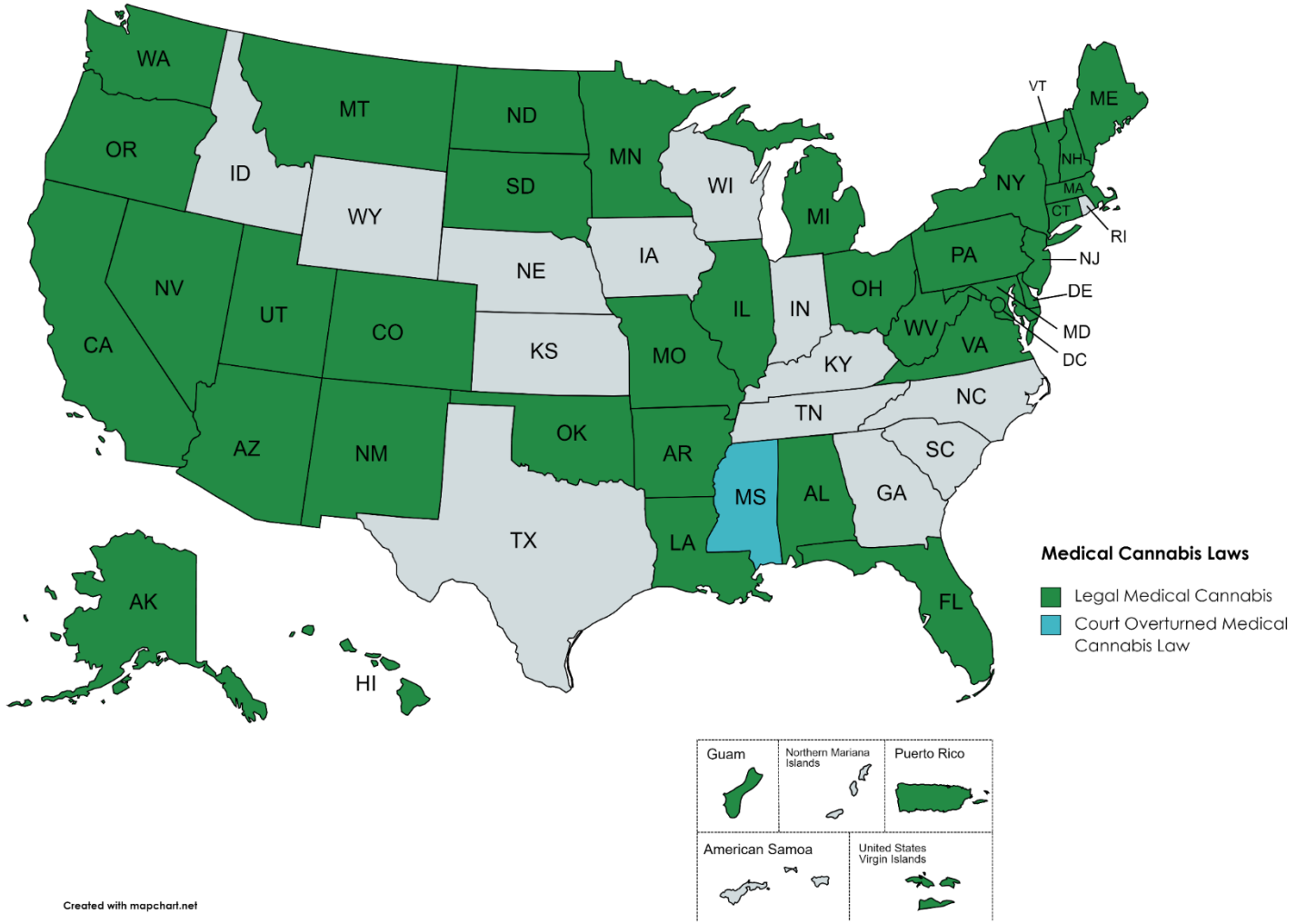
- **Cannabis** refers to all products derived from the plant *cannabis sativa*. The cannabis plant contains approximately 500+ chemical substances.
- **Marijuana** refers to parts of (or products from) the plant *cannabis sativa* that contain substantial amounts of tetrahydrocannabinol ("THC").
- **THC** is the substance that is primarily responsible for the effects of marijuana on a person's mental state.
- **Cannabinoids** are a group of substances found in the cannabis plant. The main two cannabinoids are THC and cannabidiol ("CBD").
- **CBD** is a non-psychoactive portion of the plant *cannabis sativa.*
- **Hemp (or Industrial Hemp)** is a distinct variety of the plant *cannabis sativa* that contains minimal (less than 1%) amounts of THC.

Introduction – Federal Law

- Marijuana possession and use is still **unlawful** on the federal level.
- For the past fifty years, the federal **Controlled Substances Act** ("CSA") has listed marijuana as a Schedule I drug because of its "high potential for abuse," lack of any "currently accepted medical use in treatment in the United States," and "lack of accepted safety for use of the drug … under medical supervision."
  - 21 U.S.C. §§ 812(b)(1) (definition of Schedule I drugs); *id.* § 812(c)(10) (Schedule I).
- The **use, possession, cultivation, and distribution** of marijuana therefore remains illegal under federal law.
- In December 2020, the House of Representatives passed legislation to remove cannabis from the CSA; the bill was referred to the Senate Committee on Finance.
  - Marijuana Opportunity, Reinvestment, and Expungement ("MORE") Act, H.R. 3884, 116th Cong. (2020).

Introduction – Medical Marijuana Laws Across the U.S.

- A total of **37 states and 4 territories** have enacted laws to permit the **medical** use of marijuana.
- This map does not reflect states with “low THC” or CBD programs (no psychoactive effect).



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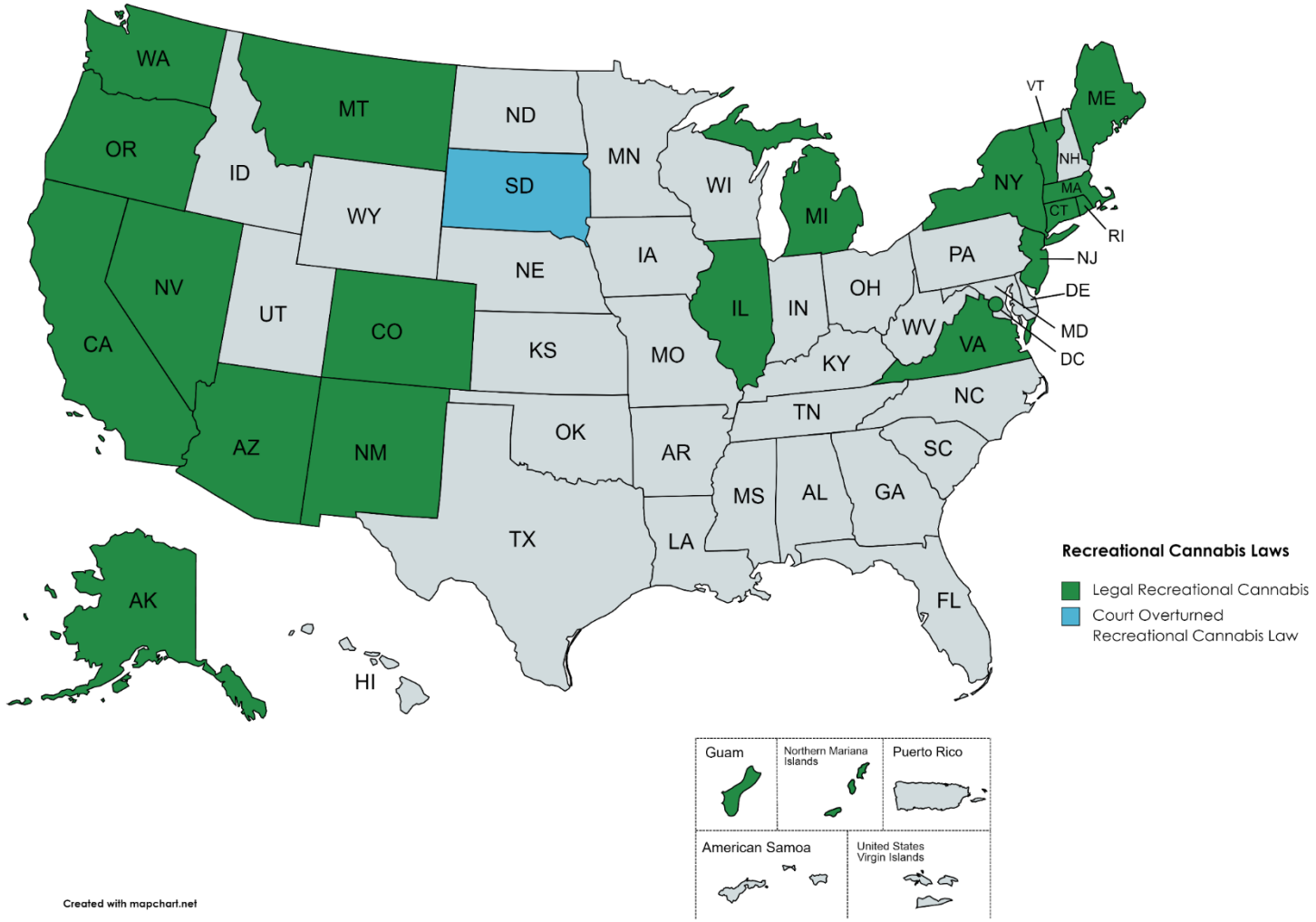
Introduction – Recreational Marijuana Laws Across the U.S.

- A total of **18 states and 3 territories** have approved measures to regulate cannabis for adult **recreational** use.
- This map reflects states that have passed measures but the programs have not yet launched (*e.g.*, NY, NJ, and CT).



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Common Issues Employers Will Face

On-Duty Conduct

Ability to Regulate Employees' On-Duty Conduct

- **No medical or recreational cannabis law allows an employee to:**
  - **use cannabis at work; or**
  - **be under the influence of cannabis at work.**

- The Americans with Disabilities Act permits an employer to "prohibit the illegal use of drugs … at the workplace by all employees[.]"
  - 42 U.S.C. § 12114

- Most state cannabis laws expressly allow employers to **prohibit cannabis use on premises and on-the-job impairment**.
  - *E.g.*, N.Y. Pub. Health Law § 3369(2) ("This subdivision shall not bar the enforcement of a policy prohibiting an employee from performing his or her employment duties while impaired by a controlled substance.").

Ability to Regulate Employees' On-Duty Conduct

- While the specific statutory language varies widely by state, the following states expressly provide employers with the ability to **prohibit use on premises and on-the-job impairment**:
  - Alaska, Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Hawaii, Illinois, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, Vermont, Washington, and West Virginia.
- In these states, the law expressly provides that **an employer may lawfully take adverse action** against an employee who uses cannabis at work or is under the influence of cannabis while in the workplace.

Practical Takeaway

- All employers can (and should) have and enforce a policy **categorically prohibiting** their employees from (1) using cannabis at work and (2) being under the influence of cannabis at work.
  - Multi-state employers should be mindful of any state-specific nuances.
- What does it mean to be "at work"?
  - The policy should state that the prohibition extends beyond the office or physical workplace, and includes the employer's facilities and premises, clients' or customers' facilities and premises, work-related off-site events, and any other situations where the employee is performing services on behalf of (or otherwise representing) the employer.
  - Given the current prevalence of **remote work**, it is important for the policy to prohibit an employee from performing any work under the influence of cannabis, regardless of where the work is being performed.

Practical Challenges

- How do you know if an employee is “using” at work?
  - Absent visual observation (or the employee’s admission), having a good faith, reasonable belief that an employee is “using” will be difficult, and may lead to allegations of pretext.
- What does it mean to be “under the influence” of cannabis?
- How does an employer tell if an employee is “under the influence” of cannabis at work?

“Under the Influence” Challenges

- There are currently **no rapid tests** to detect when an employee is “under the influence” of cannabis.
- Cannabis can remain in a user’s system for weeks, and therefore any test likely will be inconclusive to establish impairment on any particular date.
- Some state laws place limitations on what it means to be “under the influence.”
  - *E.g.*, “[A] registered qualifying patient shall not be considered to be under the influence of marijuana solely because of the presence of **metabolites or components of marijuana** that appear in insufficient concentration to cause impairment.” Ariz. Rev. Stat. § 36-2814.
- Management therefore must rely upon their **observation** of the employee and their conduct to determine if they are “under the influence,” which may be challenging.

Observation Challenges

- As with any disciplinary action based on managerial or co-worker observation, employers must be prepared for employee challenges.
- Corroborated observation is preferable, although not always possible.
- Concerning behavior may not be the result of cannabis use.
  - Could it be alcohol, or stress, or another health condition, or just a “bad day”?
- An assumption that concerning behavior is the result of cannabis use may lead to allegations of pretext (*i.e.*, that the observer or employer is concluding that the employee is under the influence of cannabis because of actual or unconscious biases).

Hypothetical #1

- An employer's policy prohibits cannabis use on the premises. A supervisor observes an employee smoking marijuana in the parking lot during a break.
  - This is a violation of the employer's cannabis policy and the employee's actions—regardless of whether they are a medical cannabis user—are not protected by any existing state law.
  - The employer therefore may discipline or terminate the employee without violating any existing laws.
- Recommendations:
  - Obtain a written record of the supervisor's observation.
  - Interview the employee to allow them to provide an explanation.
  - Consider the credibility of both the observer and the employee.
  - Create a contemporaneous record of the evidence to support any adverse action.

Hypothetical #2

- An employee approaches a supervisor and claims that a co-worker is high at work. The employee states “his eyes are red and watery and he’s acting weird.”
- Reality: It is not 100% certain the employee is under the influence of cannabis.
- Recommendations:
  - Obtain a written record of the supervisor’s observation.
  - Interview the employee to allow them to provide an explanation.
  - Consider the credibility of both the observer and the employee.
  - Best to focus on any **performance issues** potentially resulting from impairment, rather than the (alleged) fact of impairment itself.
    - For example, if the employee is acting inappropriately, or disrupting the workplace, or otherwise not acting in a professional manner, focus on the actions and not the potential causes.
  - Create a contemporaneous record of the evidence to support any adverse action.

Off-Duty Conduct

Ability to Regulate Employees' Off-Duty Conduct

- An employer's ability to take adverse action because of **employees' use of cannabis outside the workplace** varies considerably depending on the state and whether the cannabis use is medical or recreational.
- In most cases, private sector employers are not likely to be concerned with an employee's off-duty cannabis use if it is not affecting performance.
- If an employee's performance is impacted by what you suspect is off-duty cannabis use, best to focus on the performance issues, and not the (suspected) cause.
  - If the employee points to legal, off-duty cannabis use as a reason for underperformance, best to engage in an interactive dialogue around performance expectations and to consider whether any obligation exists to provide an accommodation.
- In unique circumstances, employer may want to restrict off-duty cannabis use or public impairment by key employees (*e.g.*, those who might have morality clauses in their employment agreements).

Ability to Regulate Employees' Off-Duty Conduct

- State laws fall into four broad categories:

1. The statute expressly prohibits adverse action because of the employee's use of medical cannabis or status as a registered user of medical cannabis.
2. The statute generally prohibits adverse action because of the employee's lawful "outside activities," which is expressly defined to include the use of medical cannabis.
3. The statute permits adverse action because of the employee's use of medical cannabis or status as a registered user of medical cannabis.
4. The state has no medical cannabis statute or the medical cannabis statute is silent on the issue of whether an employer may take adverse action against an employee for use of medical cannabis.

Ability to Regulate Employees' Off-Duty Conduct

- **California** – *Ross v. RagingWire Telecommunications, Inc.*, 174 P.3d 200 (Cal. 2008)
  - The California Supreme Court held that the state's medical cannabis law does not address the rights of employees and therefore **does not prevent an employer from terminating the employment of an employee for off-duty use of medical cannabis**. The court held that "[n]othing in the text or history of the Compassionate Use Act suggests the voters intended the measure to address the respective rights and duties of employers and employees." The court rejected the plaintiff's claims for disability-based discrimination and wrongful termination in violation of public policy.
- **Colorado** – *Coats v. Dish Network, L.L.C.*, 350 P.3d 849 (Colo. 2015)
  - The Colorado Supreme Court held that an employee's use of medical cannabis under the state statute permitting its use is **not a "lawful" activity under the Colorado lawful activities law** because the use of cannabis remains illegal under federal law.
  - Colorado's lawful activities law does not enumerate cannabis as a lawful activity.
  - The court rejected the employee's attempt to argue that "lawful" simply meant legal under state law and held that to be a qualifying lawful activity requires the activity to be legal under state and federal law.

Practical Takeaways

- Employers that take adverse action against employees for the off-duty use of cannabis that does not directly impact performance at work—particularly medical cannabis in a state that permits it—should carefully consider the internal (ER) and external (PR) implications of that decision.

- A plaintiff may argue that a termination for cannabis use is a pretext for employment discrimination based on a protected category (e.g., race, national origin, etc.).

Disability Discrimination and Accommodation

Disability Discrimination and Accommodation

- Employers must consider (1) federal, state, and local disability discrimination laws, (2) whether use of medical cannabis is protected, and (3) whether the employee is entitled to a reasonable accommodation.

- Under **federal law**, the answer is clear: the ADA does not protect "any employee or applicant who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use."

  – 42 U.S.C. § 12114

- Cannabis is illegal under federal law, so the ADA does not consider a medical cannabis user to be a "qualified individual with a disability."

  – *See James v. City of Costa Mesa*, 700 F.3d 394 (9th Cir. 2012) ("[T]he ADA defines 'illegal drug use' by reference to federal, rather than state, law[.]").

Disability Discrimination and Accommodation

- An employee's right to be free from disability discrimination because of their use of medical cannabis may arise under **state and local disability discrimination statutes**, which present a challenging and evolving patchwork of laws.

- Many state laws legalizing medical cannabis provide for **express protection** against "disability discrimination" and require an employer to engage in the **interactive process** with respect to potential reasonable accommodations.

  - *E.g.*, Under New York's Compassionate Care Act, certified medical marijuana patients are considered persons with a "disability" under the New York State Human Rights Law and "shall not be … denied any right or privilege, including but not limited to … **disciplinary action by a business** … solely for the certified medical use" of marijuana."

    - PBH § 3369(1), (2).

New York CCA – Human Rights Law Protections

- Under the NYSHRL, employers may not refuse to **hire, discipline, discharge, or otherwise discriminate** against an employee or applicant "in compensation or in terms, conditions or privileges of employment" because of such individual's "disability."
  - N.Y. Exec. L. § 296(1)(a).
- Also under the NYSHRL, employers must provide certain **reasonable accommodations** to employees and applicants with "disabilities" and must engage in the interactive process when such individuals request an accommodation.
  - N.Y. Exec. L. § 296(2)(c).

New York CCA Exceptions

- The CCA's anti-discrimination protections contain two critical **exceptions**:
  - Employers are not barred from enforcing a policy prohibiting employees from **performing their employment duties while impaired** by a controlled substance.
  - Employers are not required to do "any act that would the put the person or entity in **violation of federal law** or cause it to lose a federal contract or funding."
    - PBH § 3369(2).
- There is scant case law regarding the CCA and specifically its non-discrimination provision.

Illustrative Case Law

- *Barbuto v. Advantage Sales & Mktg., LLC*, 477 Mass. 456 (2017)
  - The Massachusetts Supreme Court held that an employee could assert state disability discrimination and failure-to-accommodate claims against her employer after she was terminated for a positive marijuana drug test, even where the state's medical cannabis law did not expressly prohibit employment discrimination.
  - The employer argued that because the only accommodation plaintiff sought was to use medical cannabis, which is illegal under federal law, her accommodation request was facially unreasonable such that the employer was not required to entertain it.
  - The court rejected the argument, holding that medical cannabis is legal under state law and therefore "an exception to an employer's drug policy to permit its use is a facially reasonable accommodation."

The Interactive Process

- In states where it is required, employers who employ individuals who are certified users of medical cannabis should engage in the **interactive process** with these employees to determine whether a reasonable accommodation exists.

- Employers are not required to accommodate (1) employee use at work or (2) an employee being under the influence while at work.

- Employers should consider setting **ground rules** around how many hours prior to the beginning of work the employee needs to stop using cannabis.
  - Employers can (and likely should) consider the views of the employee's health care practitioner.
  - If an employee needs to use marijuana on a workday—*e.g.*, because a medical condition has flared up—the employee should feel free to approach HR and request intermittent leave as an accommodation.

Exceptions to Anti-Discrimination Protections: DOT Regulations, Safety-Sensitive Positions, and Government Contractors

State Specific Exceptions

- A number of states that protect registered cannabis users against discrimination have specific **exceptions** to those law.

- Where an exception applies, an employer **may** take an adverse action against an employee (*e.g.*, refuse to hire, fire) because of otherwise lawful cannabis use.

Examples of State Specific Exceptions

- **Safety-sensitive position exceptions**
  - "Safety-sensitive position" means "a position in which performance by a person under the influence of drugs or alcohol would constitute an **immediate or direct threat of injury or death** to that person or another." (New Mexico)
  - "Safety-sensitive" means "any job that includes tasks or duties **that the employer reasonably believes could affect the safety and health of the employee** performing the task or others including [enumerated list of positions]." (Oklahoma)

- **Other position-specific exceptions**
  - Firefighter, EMT (Nevada)
  - Position involving hazardous materials, dispensing pharmaceuticals, carrying a firearm, direct patient care or direct child care (Oklahoma)

- **Where federal compliance or benefit would be at risk**
  - Where employing a cannabis user "**would violate federal law or regulations** or cause an employer to lose a monetary or licensing-related benefit under federal law or regulations" (Minnesota).

Federal Regulations

- The U.S. Department of Transportation ("DOT") has very stringent regulations that apply to covered employers.
  - DOT Regulations **do not** allow any medical or recreational marijuana use under state law to serve as a valid medical explanation to negate a positive drug test required to perform transportation safety-sensitive positions under 49 C.F.R. § 40.151(e).
  - On November 19, 2019, the DOT issued an Office of Drug and Alcohol Policy and Compliance Notice that responded to U.S. Department of Justice guidelines for federal prosecutors in states that have enacted laws permitting the use of medical cannabis. The notice emphasized that DOT's regulations remain in effect.
  - Safety-sensitive transportation employees – *e.g.*, pilots, school bus drivers, truck drivers, train engineers, subway operators, aircraft maintenance personnel, etc.

Safety-Sensitive Positions

- Not all states have “safety-sensitive” carve-outs.
- *E.g.*, New York’s “lawful activities”/off-duty conduct law (NYLL § 201-d) prohibits discrimination against employees who use **medical or recreational cannabis** off-duty.
  - No *per se* ability for most employers to prevent off-duty cannabis users from working in specific positions.
  - Employers may take adverse action if the employee is under the influence of cannabis at work if the employee “manifests **specific articulable symptoms while working** that decrease or lessen the employee's performance of the duties or tasks of the employee's job position, or such **specific articulable symptoms** interfere with an employer’s obligation to provide a safe and healthy work place, free from recognized hazards, as required by state and federal occupational safety and health law.” (NYLL § 201-d(4)-a)

Safety-Sensitive Positions

- Where state law provides for a “safety-sensitive position” exception, expect litigation concerning whether a role is actually “safety-sensitive.”
  - *Mohr v. Butterball, LLC*, No. 2:21-cv-2163 (W.D. Ark. filed Oct. 6, 2021)
    - Certified medical marijuana patient alleges an employer unlawfully failed to hire him for a “production assistant” position because he tested positive during a pre-hire drug test.
    - Plaintiff claims he was never told the position was “safety-sensitive” and the application and other materials did not identify it as safety-sensitive.
    - Arkansas law provides for an express carve-out for safety-sensitive positions.
- Consider what positions are safety-sensitive.
- Review and revise application materials and job descriptions.

Government Contractors

- Employers with federal contracts or grants must comply with the **Drug-Free Workplace Act** (41 U.S.C. §§ 8101 to 8106).
- Generally, however, the DFWA is a paper tiger as it relates to employee use of medical cannabis permitted under state law.
- The DWFA requires that a qualifying employer:
  - "**publish a statement** notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance"—defined by reference to the CSA—is "prohibited in the person's workplace and specifying the actions that will be taken against employees for violations of the prohibition"; and
  - "**establish a drug-free awareness program** to inform employees about: (i) the dangers of drug abuse in the workplace; (ii) the person's policy of maintaining a drug-free workplace; (iii) available drug counseling, rehabilitation, and employee assistance programs; and (iv) the penalties that may be imposed on employees for drug abuse violations."

Government Contractors

- The DFWA does **not**:
  - affect any employers that do not have qualifying governmental contracts or grants;
  - require an employer to conduct mandatory drug testing of employees;
  - require an employer to terminate employees for drug-related infractions (it requires only a sanction, which could include mandatory drug counseling); or
  - require employees to disclose drug use, as it requires only reporting of drug-related convictions that occur in the workplace.
- *Noffsinger v. SSC Niantic Operating Co.,* 338 F. Supp. 3d 78 (D. Conn. 2018)
  - Granted plaintiff's motion for summary judgment on her discrimination claim under Connecticut's medical cannabis law.
  - Rejected several of the employer's defenses, including that the DFWA required it to rescind the plaintiff's job offer.

Drug Testing

Drug Testing Laws: Federal

- The ADA does **not** prohibit employers from drug testing applicants or employees.
  - *See* 42 U.S.C. § 12114(d)(1) ("[A] test to determine the illegal use of drugs shall **not** be considered a medical examination.").
  - *See* 42 U.S.C. § 12114(d)(2) ("Nothing in [the ADA] shall be construed to … prohibit … the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on such test results.")
  - In *E.E.O.C. v. U.S. Steel Corp.*, No. 10-1284, 2013 WL 625315 (W.D. Pa. Feb. 20, 2013), the court rejected the EEOC's position that the **randomized drug testing** of an employer's probationary employees violated the ADA, holding that the employer's policy was **job related and consistent with business necessity**. In reaching its decision, the court gave no deference to the EEOC's Enforcement Guidance, which advises that an employer must have a reasonable belief, based on objective evidence, that an employee's impairment will affect their ability to perform their job or pose a direct threat, before it can conduct a medical examination.

Drug Testing Laws: New York and Elsewhere

- **New York State** does not have a statute that regulates drug testing in private-sector workplaces.
- In **New York City**, it is unlawful to require a prospective employee to submit to testing for the presence of any THC or marijuana in such individual's system as a condition of employment.
  - Other jurisdictions have similar laws (*e.g.*, Minnesota, Nevada).
- In **Connecticut**, an employer may not take an adverse action against an employee on the basis of a positive test result unless their positive test result is confirmed by a second test result.
  - Conn. Gen. Stat. Ann. § 31-51u(a).
- **California** employers should use **random drug tests** only for employees who work in safety-sensitive positions.
  - *Smith v. Fresno Irrigation Dist.*, 72 Cal. App. 4th 147 (1999)

NYC Pre-Employment Drug Testing Law

- Under the **NYC Human Rights Law** ("NYCHRL"), it is unlawful to require a prospective employee to submit to testing for the presence of any THC or marijuana in such individual's system as a condition of employment.

- The law contains a number of **exceptions**, including for:
  - Law enforcement personnel;
  - Certain building and construction personnel;
  - Position requiring a commercial driver's license;
  - Positions requiring the supervision or care of children, medical patients or vulnerable persons; and
  - Positions with the potential to significantly impact the health or safety of employees or members of the public promulgated by the commission.

- *See* N.Y.C. Admin. Code § 8-107(31).

NYC Pre-Employment Drug Testing Law

- The NYCHRL prohibitions also do not apply to drug testing required pursuant to:
  - Any regulation promulgated by the **U.S. Department of Transportation** that requires testing of a prospective employee.
  - Any contract entered into between the federal government and an employer or any grant of financial assistance from the federal government to an employer that requires drug testing of prospective employees as a condition of receiving the **contract or grant**.
  - Any federal or state statute, regulation, or order that requires drug testing of prospective employees for purposes of **safety or security**.
  - Any applicants whose prospective employer is a party to a valid **collective bargaining agreement** that specifically addresses the pre-employment drug testing of such applicants.

Drug Testing: Practical Considerations

- Because THC can remain in the system for some time, testing employees for current impairment is challenging.
- As a practical matter, available diagnostic tests only detect whether a person has previously used marijuana, not whether they are currently impaired.
- Employers have to rely on observation and “reasonable suspicion” tests.

Labor-Management Issues

Labor-Management Issues

- Unionized workplaces present additional considerations:
  - Drug testing policies and punishment are **mandatory subjects of bargaining**.
  - Employee discipline is ordinarily subject to **grievance arbitration**.
- Statutory exceptions for CBAs
  - Some state marijuana statutes contain exceptions for contrary provisions in collective bargaining agreements.

Attorney Ethics Issues – NY

NY Attorney Ethics Opinion 1225

- On July 8, 2021, the New York State Bar Association issued Ethics Opinion 1225, which states the New York Rules of Professional Conduct permit a lawyer to:
  - **assist a client** in conduct designed to comply with New York's Recreational Marijuana Law and its implementing regulations, notwithstanding that federal narcotics law prohibits the activities authorized by that law.
  - **use marijuana for recreational purposes** and, when the law becomes fully effective, **cultivate** an authorized amount of marijuana plants at home for personal use
  - accept an **equity ownership interest in a cannabis business** in exchange for legal services, subject to compliance with other ethics rules.

Recent Developments in New York and New Jersey – Recreational Cannabis Laws

Legal Recreational Use - New York and New Jersey

- NY created an Office of Cannabis Management – cannabis.ny.gov
- September 2021 – Gov. Hochul appointed the final members to the NY Cannabis Control Board
- NY recreational sales are likely 18-24 months away

- NJ – in August 2021, the NJ Cannabis Regulatory Commission ("CRC") released rules outlining the basic parameters for the application process for a recreational license.
- The CRC was expected to open applications for recreational cannabis business licenses in September 2021, but this did not occur.
- NJ recreational sales are likely to begin in mid-2022.

- Expect NJ to begin its recreational cannabis program before NY.

The Case for Weed

- Some estimates predict the total economic impact of legal cannabis sales in the U.S. at up to **$130 billion** by 2024.
- In **New York**, full legalization is expected to generate more than $300 million in annual tax revenue, create 60,000 new jobs, and promote $3.5 billion in economic activity.
- A supermajority of Americans support legalization, compared to 12% in 1969.

Biographies

Allan S. Bloom
Partner, New York

T: +1.212.969.3880
abloom@proskauer.com

Allan S. Bloom is a nationally recognized trial lawyer and advisor who represents management in a broad range of employment and labor law matters. As a litigator, Allan has successfully defended a number of the world's leading companies against claims for unpaid wages, employment discrimination, breach of contract and wrongful discharge, both at the trial and appellate court levels as well as in arbitration. He has secured complete defense verdicts for clients in front of juries, as well as injunctions to protect clients' confidential information and assets.

As the leader of Proskauer's Wage and Hour Practice Group, Allan has been a strategic partner to a number of Fortune 500 companies to help them avoid, minimize and manage exposure to wage and hour-related risk. Allan's views on wage and hour issues have been featured in *The New York Times*, *Reuters*, *Bloomberg* and *Fortune*, among other leading publications. His class-action defense work for clients has saved hundreds of millions of dollars in potential damages.

Allan is regularly called on to advise boards of directors and senior leadership on highly sensitive matters such as executive transitions, internal investigations and strategic workforce planning. He also has particular expertise in the financial services industry, where he has litigated and arbitrated cases, including at FINRA and its predecessors, for more than 20 years.

A prolific author and speaker, Allan was the Editor of the New York State Bar Association's *Labor and Employment Law Journal* from 2012 to 2017. He is a member of the NYSBA's House of Delegates, sits on the Executive Committee of the NYSBA's Labor and Employment Law Section, and is a Fellow of the College of Labor and Employment Lawyers.

Biographies

Andrew M. Sherwood
Associate, New York

T: +1.212.969.3532
asherwood@proskauer.com

Andrew M. Sherwood is an associate in the Labor & Employment Law Department and a member of the Employment Litigation & Arbitration Group. His practice focuses on defending employers in state and federal court lawsuits and alternative dispute resolution forums against claims of discrimination, retaliation, wrongful termination, defamation and breach of contract.

From 2010 through 2012, Andrew served as an honors trial attorney for the U.S. Equal Employment Opportunity Commission, where he litigated anti-discrimination claims against private employers and managed administrative investigations.

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