



# NEW MARIJUANA LAWS BLITZ OLD WORKPLACE RULES

BY JACK GARSON

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In the good old days, say five years ago, you knew you could fire your pothead employees. The rules were simple. You adopted a strict “No Drugs” policy, required drug testing and then booted all of the stoners who failed a drug test. It even felt a little patriotic—like you were helping clean up America’s act. Then, pot became the new kale—with a kick. Now, [medical marijuana laws](#) are sprouting up all over and, legally speaking, they’re starting to harsh a lot of employers’ buzz.

Yep, there are a couple of new sheriffs in town. One wears a white lab coat and is handing out get-out-of-jail cards (a/k/a medical marijuana cards). The other wears a black robe and has started issuing rules that medical pot users can’t be fired, even if they fail drug tests.

Just this fall, [a Connecticut court](#) ruled that a company should not have refused to hire an employee because of medical marijuana use. In short, Connecticut protects medical marijuana users who can’t get a job or who lose one either because they fail a drug test or use marijuana outside of work.

## **This Party’s Just Getting Started**

The trend is clear. As of 2018, [at least nine states](#) prohibit certain adverse employment actions against medical marijuana users: Arizona, Connecticut, Delaware, Illinois, Maine, Minnesota, Nevada, New York and Rhode Island. Courts in Rhode Island and Massachusetts have already issued rulings that protect medical marijuana users as long as they don’t partake on the job or show up for work stoned.

These rulings are sending a lot of employers to the bar for a stiff drink. The courts may have solved one or two problems for employees, but they have created chaos for companies. Here’s the deal. Companies have been drug-testing for years. Often they have contracts—with even bigger “socially conscious” outfits—that require drug testing. Plus, [federal law still says pot is illegal](#) and requires many businesses to use reasonable efforts to maintain a drug-free workplace. To a lot of folks, that sure sounds like they have to test for marijuana use.

Employers also have very practical concerns. When they’re handing out chainsaws and arc welders, they wanna know why your eyes are bloodshot and where all the donuts went. Then there are a crazy number of technical complexities. Plenty of insurance policies, including worker’s compensation policies, won’t provide insurance, disability or death benefits to intoxicated employees. In addition, there’s the potential danger to others—you can’t have your pilots, train operators and truck drivers exposing the public to even a remote chance of harm.

Again, for businesses, a complicated situation has only gotten more complex.

So consider the following new practices:

- Monitor these rapidly changing marijuana laws in every state where you do business. Then, revise your employment policies to keep up with new legislation and court cases.
- Train your supervisors to be alert for intoxication on the job. Generally, no one is protected if they're impaired while working—whether the drugs are homegrown, bought at the pharmacy or poured at a bar. However, disability laws could be interpreted to require you to make certain accommodations, such as letting a groggy employee take a break. It's the law. Maybe.
- Renegotiate your contracts—up and down the line. Tell your customers if they are requiring you to impose drug testing policies that violate local laws. Then amend your contract with them to comply. Likewise, if you require your subs, vendors and suppliers to conduct drug tests, make any necessary revisions. You don't want to be blamed by one of their employees for causing an illegal firing.
- Recognize that the lines are just being drawn. What's "legal" isn't yet clear in all circumstances. But exercise caution. No one wants to be sued because your stoned employee injured someone—or worse.
- But...you need to roll with the times. Forty years ago, plenty of businesses tolerated the "three martini lunch" and cigarette smoking in the workplace. Now you may have to deal with off-duty pot smoking. The times they are a changin'.

Let's also remember that strict drug testing could eliminate a lot of good candidates. Some businesses cling to an old, rigid "one puff and your gone" drug testing policy. With new medical marijuana laws, a lot of good people are convinced it's okay to consume pot as long as they do their jobs. You need policies that adapt to our changing culture. Even though marijuana is still illegal under federal law, that doesn't mean you want to disqualify so many job candidates—especially when unemployment is under 4% and courts are telling you to "back off, dude."

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