



MARIJUANA LEGALIZATION Issue Brief


State Laws Addressing Discrimination Against Medical Cannabis Patients

Introduction

Thirty-six states and Washington, D.C. recognize medical cannabis as a lawful medication. A licensed health provider must determine that medical cannabis is a necessary treatment for the patient. These health providers themselves must be certified by the state to recommend medical cannabis to patients. If a qualified provider determines the patient requires medical cannabis, the patient should be able to take their medication without fear of reprisal. But the law in many of these states fails to adequately protect these patients in their efforts to secure employment, enroll in school, rent a home, or even secure child custody or visitation rights.

Treating medical cannabis patients differently from other patients is inherently discriminatory and produces harmful stigma, which creates negative short- and long-term health effects. A study conducted on California's medical cannabis patients discovered that patients experienced chronic stress because of the stigma they perceived.¹ Chronic stress negatively impacts an individual's mental health and can contribute to many physical health conditions, such as high blood pressure, heart disease, and diabetes.² Further, these researchers discovered that the stigmatization of medical cannabis led patients to delay or not seek medical cannabis treatment at all. Both concerns, chronic stress and the underutilization of care, can contribute to an individual's poor health outcomes.³

Without key legal protections against discrimination, medical cannabis patients are at an increased risk for negative health outcomes. Without explicit state protections from discrimination in employment, employees who use medical cannabis face the threat of economic instability. Economic instability makes it difficult to access essential resources, including quality housing, food, and a stable, living wage. Without the ability to access the necessities of a healthy life, individuals are at an increased risk of various illnesses and even premature death.⁴ Without state law protections, economic instability and various other circumstances, such as housing insecurity and the inability to enroll in school, are a real threat to medical cannabis patients. This issue brief will examine the range of state legal protections focused on preventing discrimination and will discuss the importance of these protections in securing the health and wellbeing of medical cannabis patients. To learn



more about your state's specific policies, the Network for Public Health law has provided a [companion survey](#) of state policies.

Research

Employment Protections


Despite the legalization of medical cannabis amongst states, it remains unlawful at the federal level.⁵ Under the Controlled Substances Act, cannabis is classified as a Schedule I drug and is deemed to have a high potential for abuse with no currently accepted medical use.⁶ Therefore, the use of cannabis, even for medical purposes, is not permitted under federal law and precludes the applicability of the Americans with Disabilities Act (“ADA”).

The ADA prohibits discrimination on the basis of a disability in the workplace, state and local government, public accommodations, commercial facilities, transportation, and telecommunications.⁷ A disability is defined as a “physical or mental impairment that substantially limits one or more major life activities;” however, it does not include individuals “engag[ed] in the illegal use of drugs.”⁸ Because cannabis is illegal under federal law, the use of medical cannabis is considered an “illegal use of drugs” that precludes protections afforded by the ADA. Without the ADA, state law protections are crucial to ensuring medical cannabis patients are not subjected to workplace discrimination.

Thirteen states and Washington, D.C. have enacted statutes to provide medical cannabis patients explicit protection from workplace discrimination. Generally, these protections prohibit an employer from discriminating against an employee or prospective employee for their legal use of medical cannabis. For example, Delaware prohibits discrimination against a person in “hiring, termination, or any term or condition of employment, or otherwise penalize a person, if the discrimination is based upon the employee’s status as a card holder.”⁹ Some states have opted for broader language, such as, Illinois’s statute that prohibits “penaliz[ing] a person solely for his or her status as a registered qualifying patient.”¹⁰

Importantly, seven of the thirteen states provide protection for medical cannabis patients who test positive on a drug test. Such protection implicitly recognizes that a positive drug test alone is not indicative of impairment. Rather, determining impairment requires a comprehensive evaluation of the totality of the circumstances. For example, Drug Recognition Experts (DREs) follow a 12-step protocol to determine impairment and whether that impairment is related to illicit drug use or a medical condition.¹¹ These explicit employment protections recognize the intricacies of determining impairment and protect medical cannabis patients from adverse employment action based solely on a positive drug test.

Among the states with explicit employment protections, only two states, Nevada and New York, require employers to reasonably accommodate medical cannabis patients. Nevada law requires that employers attempt to reasonably accommodate the medical needs of a medical cannabis patient. A reasonable accommodation includes “any change in the work environment or policy and procedure that enables an individual with a disability to have equal employment opportunities.”¹² However, the employer is not required to modify the job or working conditions for the patient, as long as those conditions have a reasonable business purpose.¹³ Further, Nevada does not require the employer to implement any accommodation that would pose a threat of harm or danger to persons or property, impose undue hardship on the employer, or prohibit the employee from fulfilling their job.¹⁴ In New York, the use of medical cannabis is considered a disability and therefore afforded protection from discrimination or harassment in the workplace under the state’s civil rights laws.¹⁵



However, the explicit employment protections discussed above do not prevent employers from adopting policies and procedures that prohibit impairment at work. Also, these employment laws do not require employers to comply if the action would violate federal law or risk the loss of federal funding. This allows employers to comply with the federal Drug Free Workplace Act, which requires any organization that receives a federal contract or federal grant of at least \$100,000 to establish a drug-free workplace policy and awareness program.¹⁶ Typically, these programs involve taking action against employees who violate the drug-free program and notifying the federal contracting agency of the violation.

The exemption to comply with federal law also creates an exception for specific occupations. There are federal provisions that prohibit the employment of individuals who use Schedule I drugs in certain occupations. These are commonly found in, for example, the railroad and commercial trucking industries.¹⁷ The applicability and substance of these federal provisions remain unchanged even in light of the states' employment protections for medical cannabis patients because the state protections do not require employers to violate federal law. However, it is important to note that impairment at work is prohibited regardless of the profession. Risk of impairment from medical cannabis is no different from the risk of impairment from other prescribed medication or alcohol. The state employment protections are not about accommodating or normalizing these risks, but about protecting an employee's right to use their medication off-site during off-hours.

Non-Employment Protections

In addition to workplace protections, some states also protect medical cannabis patients from discrimination related to school enrollment, anatomical gifts, home rentals, and child custody and visitation rights.

1. School Enrollment

Currently, ten states prohibit schools from denying enrollment or otherwise penalizing medical cannabis patients. Because education is an influential social determinant of health, such protections are crucial for allowing people to live longer, healthier lives.¹⁸ Specifically, an applicant with more education is more likely to be employed in higher paying jobs and secure a job that provides health-promoting benefits, such as health insurance, paid leave benefits, and retirement accounts.¹⁹ Further, families with higher incomes are better able to buy healthier foods, have more leisure time to regularly exercise, and pay for health services and transportation.²⁰ By protecting medical cannabis patients in their pursuit of education, these ten states are contributing to healthier and longer lives for their residents.

2. Organ Transplants

Similarly, eleven states prohibit the disqualification of a patient from medical care, including organ transplants, because of their status as a medical cannabis patient. As these states recognize that medical cannabis is just like any other legitimate medication, a medical cannabis patient cannot be denied participation in organ transplant programs on this basis alone. Traditionally, cannabis patients were denied organ transplants because of a concern that cannabis use would increase the risk of organ transplant failure.²¹ Therefore, many providers opted for "safer" transplant options, specifically, non-cannabis users. Contrary to these beliefs, research indicates that medical cannabis does not necessarily place the organ recipient at an increased risk for rejection.²² Rather, research finds that THC, a major component of cannabis, is actually extremely beneficial to recipients of organ transplants because of its role as an immunosuppressant. Accordingly, these eleven states are ensuring that medical cannabis patients have equal access to life-saving organ transplants.



3. Home Rentals

Additionally, eleven states prohibit landlords from refusing to lease to or otherwise penalizing a tenant solely for the tenant's status as a medical cannabis patient. For example, Connecticut law provides that "no landlord may refuse to rent a dwelling unit to a person or take action against a tenant solely on the basis of such person's or tenant's status as a qualifying patient or primary caregiver."²³ Importantly, however, landlords still have the right to ban the smoking of cannabis on the premises, even if the smoking is medicinal and the state has legalized medical cannabis. Given that housing is a social determinant of health, these laws are vital to reducing housing instability.²⁴ Specifically, frequent moves may prevent families from building ties to neighborhoods and communities, which strongly influence health.²⁵ Further, children who frequently move are more likely to develop chronic conditions and are less likely to maintain steady health insurance.²⁶ Providing protections to medical cannabis tenants decreases the likelihood of housing instability and negative health outcomes.


4. Child Custody and Visitation

Lastly, twelve states provide that a person entitled to child custody or visitation rights may not be denied these rights solely due to their use of medical cannabis unless their use creates an unreasonable danger to the minor child. Moreover, these statutes deny any presumption of neglect or child endangerment solely based on the parent's use of medical cannabis. These protections are crucial given the importance of the family unit as a social determinant of health.²⁷ Families have a critical role in the health and happiness of an individual, especially children. Specifically, parental presence plays a significant role in a child's development.²⁸ Longitudinal research has demonstrated that one of the best predictors in terms of a child's happiness, social and emotional development, leadership skills, meaningful relationships, and academic and career success is whether at least one person has cared adequately for the child.²⁹ In addition, these protections recognize the constitutional right to parent by ensuring that the parent's right to care for their child is not taken away simply because of the parent's medical condition.³⁰ Ensuring custody and visitation rights of a medical cannabis patient allows them to foster such a relationship with their children while also meeting their personal health needs.

Workers' Compensation

In many of the states that recognize medical cannabis as a legitimate medication, the law does not require that workers' compensation coverage include reimbursement for medical cannabis. In fact, only six states have recognized that workers' compensation must reimburse injured workers for the costs associated with medical cannabis treatment, if the treatment is "reasonable and necessary." Importantly, states have arrived at these decisions in different ways and on varying legal theories. For example, courts in New Mexico and New Jersey decreed that employers are required to reimburse employees for their use of medical cannabis to treat a workplace injury.³¹ By contrast, New York and California made this decision through the opinions of their Workers' Compensation Commissions, not their courts.³² Further, two states, Louisiana and New Hampshire, through their courts, allow for reimbursement of medical cannabis medication but do not require it.³³

By contrast, thirteen states explicitly provide that medical cannabis is not reimbursable by workers' compensation. Given cannabis's status at the federal level, one concern within these states is that requiring reimbursement of medical cannabis would force employers and insurers to break federal law. However, there is no demonstrable threat of federal prosecution for several reasons. Six states already require workers' compensation insurers to reimburse employees for medical cannabis treatment and no federal prosecution or



threats thereof have been issued against employers or insurers in any of these states. For example, New Mexico made its decision that employers and insurers were required to reimburse employees for the costs associated with medical cannabis treatment in 2015. There has been no threat of federal prosecution against New Mexico since this decision was issued.

Further, while medical cannabis is still illegal under federal law, the federal government, under its prosecutorial discretion, is not prosecuting well-controlled medical cannabis programs and individuals who are in strict compliance with those programs.³⁴ More practically, there is also a federal appropriations rider, the Rohrabacher-Farr Amendment, that explicitly prohibits the United States Department of Justice from using any funding to prevent a state from instituting a medical cannabis program.³⁵ While the federal appropriations rider must be renewed annually, it has been renewed for the last seven years. Accordingly, there is no real fear that insurers and employers will be interfered with because the federal government has implicitly acknowledged that state medical cannabis programs may exist. Thus, without any real threat of federal prosecution, the approach taken in these thirteen states merely undermines the effectiveness of the medical cannabis system.

Providing workers' compensation coverage for medical cannabis patients who lawfully obtain certification improves the health and wellbeing of workers. For example, a study published in the International Journal of Drug Policy found an association between a 19.5% drop in the number of workplace fatalities among workers aged 25-44 and the legalization of medical cannabis.³⁶ This research indicates that legalizing medical cannabis benefits employees and their families by improving workplace safety and reducing the number of employees who die on the job.

Further, allowing for reimbursement of medical cannabis under workers' compensation mitigates the devastating effects of the opioid epidemic. There is a distinct overlap between medical cannabis treatment and chronic pain for which employees often file workers' compensation claims. Since the early 2000s, almost 220,000 Americans have died as a result of opioids.³⁷ As related to the workplace, a 2017 study by the National Safety Council found that 70% of employers reported that their businesses were affected by opioid drug abuse, including absenteeism, injuries, accidents, and overdoses.³⁸ The Bureau of Labor Statistics reports that workplace opioid overdose deaths have been increasing by 25% or more each year since 2010.³⁹

Several scientific studies have found that cannabis is effective in treating pain symptoms and that many patients would even prefer medical cannabis to opioids to treat their symptoms.⁴⁰ In fact, medical cannabis is already frequently used to control and relieve pain symptoms outside the workers' compensation system. Almost two-thirds of patients in the United States use medical cannabis as a treatment for chronic pain.⁴¹ Similarly, in Maryland's medical cannabis system, chronic pain is the most treated condition with over 63,000 patients certified for this reason.⁴² Therefore, providing medical cannabis as an option under workers' compensation is a way to treat workplace injuries that often cause pain symptoms and lead to the filing of claims. In turn, this incentivizes workers to turn to medical cannabis in the first place and curb the vicious cycle of addiction that often starts with a workplace injury.⁴³

Conclusion

Despite the recognition of medical cannabis as a legitimate medical treatment in thirty-six states and Washington, D.C., many of these states fail to adequately protect medical cannabis patients from discrimination. Without anti-discrimination measures in place, states risk undermining the effectiveness of their medical cannabis programs and the well-being of its patients. To learn more about your state's specific

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policies, please visit the Network for Public Health for a [companion survey of state policies](#).

SUPPORTERS




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