



Cannabis and the Hospitality Industry

As most people are aware, the United States has seen a steady increase in the number of states with legal medical cannabis and/or adult-use cannabis policies in place. These states have created statutory frameworks for individuals to obtain and use cannabis within a given state. In California, medical cannabis has been legal since 1996 and adult use was legalized on January 1, 2018. So what does that mean for the hospitality industry? How should companies be treating employees who obtain a medical use recommendation? What about employees who use cannabis recreationally? Finally, how should they deal with visitors and guests who either want to use cannabis on hotel property or want recommendations where they can obtain cannabis. Our overarching recommendation is use caution when determining what policy(ies) you put in place.

Usage is Increasing

Since January 1, 2018, California has had legal adult-use cannabis. Any person over the age of 21 can purchase it. Adults are permitted to possess, transport, and/or purchase up to 28.5 grams (1 oz.) of cultivated marijuana and/or 8 grams of marijuana concentrate and grow up to six living marijuana plants in a private residence for personal use. Keep in mind that consumption of marijuana is permitted in private residences or in structures/outdoor areas that are adjacent. A hotel is not a private residence. So our very first recommendation is to maintain a no smoking policy on your property.

Cannabis is first and foremost a drug. Whether used medicinally or recreationally, it can result in side effects¹. Having a blanket policy that prohibits smoking on your property — cannabis or tobacco — helps to limit your potential exposure. Make sure there are no exceptions to this rule and that enforcement is uniform. Keep your policy in written form and make sure it is communicated to all guests upon check-in. Post signs and make sure that if the policy is disobeyed, there are repercussions for everyone involved. Whether the refusal to obey the policy carries with it a monetary fine, a request to vacate the premises, or some other consequence, make sure the policy is enforced without concern for who broke the rules. Failure to enforce the policy in a uniform fashion could lead to legal action against your hotel/property.

What about Employee Usage?

The first question you as an employer must ask is whether you are concerned about cannabis use by your employees at work. That answer is yes. You **MUST** be concerned about cannabis use by your employees at work. We understand that in creative industries such as marketing, artists and writers may consume cannabis as a means to help them perform their jobs. As it pertains to the

¹ This discussion assumes use of cannabis with a THC content. Medical cannabis with low THC/no THC and high CBD content does not carry with it the same psychoactive component that a high THC plant/product would carry.

hospitality industry in California, your property also needs to develop a uniform policy towards employee use of cannabis.

First, you must be aware that the current law in California does not require employers to make an accommodation for an employee who uses medical cannabis. The California Supreme Court opined in *Ross v. Raging Wire Telecommunications* (2008) that the disability discrimination provisions of California's Fair Employment and Housing Act (FEHA) do not require an employer to accommodate an employee who used medicinal marijuana.

We recognize that more employees may use cannabis now that adult use has been legalized. With that in mind, employers can still maintain a drug-free workplace and prohibit employees from using/bringing marijuana to work. An employer can (and should) insist employees refrain from working under the influence. If an employee uses medical cannabis, you as an employer must decide what type of policy you want to have in place. Regardless of your decision, that policy **MUST** be uniformly applied. Even one instance of uneven application of the policy could result in legal action against your company.

If you decide to conduct pre-employment drug testing, it must be conducted in a fair and consistent manner. You cannot single out certain individuals. If you are going to drug test one individual or candidate for a position/job class, you need to test **ALL** and generally, only after a conditional offer of employment has been made.

What about testing an individual after an incident occurred? As an example of when you can test after an incident, OSHA requires that there be **reasonable suspicion** that drugs were involved prior to testing. This means that generally speaking, random testing is not allowed. Random testing is allowed in San Diego, but some municipalities have begun banning random testing altogether, such as San Francisco. Check with your specific locality for its rules and regulations.

So what have learned about employee use of cannabis — medicinal or otherwise? There is no requirement to accommodate on the job usage. California Health & Safety Code section 11362.7-11362.83 provides in relevant part: *“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 . . .”* We encourage clients to view recreational marijuana like alcohol and treat your employees use of it the same way.

Where the Law is Going

Marijuana is still a Schedule I drug under federal law and California law does not require reasonable accommodations for medical marijuana usage. **However**, several other states have enacted legislation prohibiting discrimination against applicants and employees abased on medicinal marijuana permission and usage. It is possible that this same protection is eventually extended to employees in California. We recommend that when crafting workplace policies you keep in mind the following principles:



- Make policies about impairment (inability to perform the essential functions of the job);
- Make policies about safety and productivity;
- Clarity in policies is best;
- Ensure policies are being enforced uniformly;
- All handbooks should include language reserving the right to test, if there is reasonable suspicion;
- Have a checklist for **reasonable suspicion** (e.g., glassy eyes) and have supervisors walk through checklist prior to implementing drug-testing; and
- Train managers who will be charged with upholding policies.

Cannabis as it Relates to Hotel Employees

Keep in mind that under California’s Proposition 64, cannabis use is not allowed in public places where smoking or vaping is prohibited and workplaces that maintain a drug and alcohol free environment. Medical marijuana users may not smoke “in a place where **smoking is prohibited by law**” such as inside hotels. (Cal. Health & Safety Code section 11362.79.) However, if you have “smoking rooms” or “smoking areas” medical use where the guest has a valid medical prescription or Sate ID card authorizing medical marijuana use **may** have to accommodated.

Cannabis as it Relates to Hotel Guests’ Usage Immediately Outside of the Hotel

Marijuana users are no different from cigarette smokers and may smoke in designated “smoking areas” outside of the hotel. What about addressing guests who may be intoxicated as a result of cannabis use? Train your restaurant servers and bartenders (if you have them) in the same manner you train them to observe signs of alcohol intoxication. Hotels should update alcohol training programs to include signs of cannabis impairment and risks associated with the drug. Once again, we recommend hotels following our Best Practices:

- Investigate guest complaints of marijuana use in the hotel;
- Make any “non-smoking” policy clear;
- Place marijuana users in “smoking rooms”;
- Be cautious where marijuana user is a person with a physical disability;
- Every hotel has the right to ask a guest who is smoking marijuana to stop, unless they have a **legitimate** prescription, from a **licensed** physician to be using medical marijuana; and
- If the guest does not have legal paperwork, you can prevent them from doing so within the boundaries of the hotel’s premises.

