

## **Cannabis Policies in the Maryland Workplace**

### **Introduction**

Cannabis has been legal in Maryland for adult recreational use since 2023. Despite its legal status, private businesses and employers may continue to prohibit cannabis use by employees even outside of the workplace and may discipline or fire employees for cannabis consumption regardless of whether it is legal or illegal under state law.<sup>1</sup> Because of the importance of employment in providing for basic necessities like housing, food, and healthcare, loss of a job is one of the most significant consequences that can arise from legal cannabis consumption in Maryland. It is important to understand the laws and policies that regulate drug testing and the adverse employment outcomes that can result.

Regulation of employee cannabis use implicates several important considerations that require delicate balance. On one hand, use of any intoxicating substance during or immediately prior to work can create genuine safety concerns for other employees and members of the public. Cannabis consumption can result in dizziness, nausea, vomiting, drowsiness, disorientation, confusion, loss of balance, and hallucination,<sup>2</sup> any of which can lead to accidents if experienced in a safety-sensitive workplace and all of which are disruptive even in non-sensitive job sites.

On the other hand, standard drug testing methods identify cannabis metabolites in the body for many days after consumption occurs,<sup>3</sup> meaning they cannot distinguish between hazardous impairment on the job and personal use on an employee's day off. Punishment for non-hazardous personal use away from the workplace may significantly harm that individual's welfare without actually improving workplace safety. Aspects of both Maryland and federal law affect the rights of employers and employees on this issue, and it is important that all parties have a basic understanding of the implications of both sources of law.

### **Employment and Health**

While employment law may seem like a distinct issue from public health, access to employment is a critical social factor impacting both individual and community health.<sup>4</sup> Stable

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<sup>1</sup> See *Patient FAQ*, MD. CANNABIS ADMIN., [https://cannabis.maryland.gov/pages/patients\\_faq.aspx](https://cannabis.maryland.gov/pages/patients_faq.aspx) (last visited May 28, 2026) (“Maryland law does not prevent an employer from testing for use of cannabis (for any reason) or taking action against an employee who tests positive for use of cannabis (for any reason).”).

<sup>2</sup> Jamie Osborne & John Howard, *Cannabis and Work: The Need for More Research*, CDC (Aug. 20, 2020), [https://www.cdc.gov/niosh/blogs/2020/cannabis-and-work.html#cdc\\_bulletin\\_section\\_1-uses-and-health-effects](https://www.cdc.gov/niosh/blogs/2020/cannabis-and-work.html#cdc_bulletin_section_1-uses-and-health-effects).

<sup>3</sup> See *Cannabinoid Screen and Confirmation (Urine)*, U. ROCHESTER MED. CTR., [https://www.urmc.rochester.edu/encyclopedia/content?contenttypeid=167&contentid=cannabinoid\\_screen\\_urine](https://www.urmc.rochester.edu/encyclopedia/content?contenttypeid=167&contentid=cannabinoid_screen_urine) (last visited May 28, 2025).

<sup>4</sup> See *Employment*, OFF. DISEASE PREVENTION & PUB. HEALTH, <https://odphp.health.gov/healthypeople/priority-areas/social-determinants-health/literature-summaries/employment> (last visited May 28, 2025).

income is essential to maintaining safe housing and accessing fresh, healthy food.<sup>5</sup> Most Americans also get their health insurance through their employer, which provides access to medical care that would otherwise be difficult to afford.<sup>6</sup> Losing income and benefits can lead to homelessness, malnutrition, increased risk of mental illness, and loss of health insurance.<sup>7</sup>

The loss of employment affects not only the individual who has been terminated or laid off, but also the children that may be dependent on them to provide food, housing, clothes, and transportation; a partner who may not have enough income or healthcare benefits to support the entire family alone; and other family or friends who rely on the individual for support.<sup>8</sup> These negative impacts ripple out from the immediate context of the individual and their family and can impact the health of the community as a whole. Neighborhoods with lower median income are subject to increased structural and environmental risk factors, such as decreased access to fresh food; decreased access to open space for physical activity; higher levels of violence, discrimination, and material deprivation; exposure to pollutants; and risk of home loss through eviction.<sup>9</sup>

While employers must adopt policies that restrict drug misuse that is harmful to the safety of employees or the function of the business, it is also important to recognize that needless termination of employment for behaviors unrelated to workplace safety create public health harms of their own, and that it is essential to consider those harms in evaluating the impact of a workplace drug policy.

### **Maryland Drug Testing Laws**

Maryland law permits employers to subject any employee or prospective employee to a test of a biological sample to detect use of “any controlled dangerous substance or alcohol.”<sup>10</sup> Maryland’s list of “controlled dangerous substances” corresponds closely to the substances regulated under Schedules I to V of the U.S. Controlled Substances Act (“CSA”), with limited exceptions determined by the Maryland Department of Health.<sup>11</sup> Because cannabis is a scheduled substance under the CSA and not subject to an exception, it is considered a controlled dangerous substance for the purpose of Maryland laws, despite being legal for both medical and recreational adult use in Maryland.<sup>12</sup>

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<sup>5</sup> See Jennie E. Brand, *The Far-Reaching Impact of Job Loss and Unemployment*, 41 ANN. REV. SOCIO. 359 (2015), <https://pmc.ncbi.nlm.nih.gov/articles/PMC4553243/#R55>.

<sup>6</sup> *Employment*, *supra* note 2.

<sup>7</sup> See Brand, *supra* note 4.

<sup>8</sup> *Id.*

<sup>9</sup> Dhruv Khullar & Dave A. Chokshi, *Health, Income, & Poverty: Where We Are & What Could Help*, HEALTH AFFAIRS (Oct. 4, 2018), <https://www.healthaffairs.org/content/briefs/health-income-poverty-we-could-help>.

<sup>10</sup> MD. CODE ANN., HEALTH-GEN. § 17-214.

<sup>11</sup> CRIM. LAW §§ 5-402 to -406.

<sup>12</sup> OFF. OF CONTROLLED SUBSTANCES ADMIN., MD. SUPPLEMENTAL CDS LIST (updated Mar. 6, 2025), <https://health.maryland.gov/ocsa/Documents/Maryland%20Controlled%20Substances%20List%20on%20Website.pdf> (indicating the substances scheduled differently in Maryland than under federal law, which does not include cannabis).

This means that employers can test for cannabis, as well as illegal drugs, prescription medication, and alcohol, either as a condition for employment or to determine disciplinary consequences for employees. The particular policies an employer implements may differ from workplace to workplace. Employers may be as strict or permissive as they would like and may choose to discipline employees for use of substances that are legal under Maryland law.

Employer discretion over drug testing is not absolute; there are requirements for how testing must be conducted. Drug tests must be verified by state-approved laboratories, and employers must provide the individual with the name and address of the laboratory where their sample will be tested.<sup>13</sup> For pre-employment drug screenings, employers may use a single-use test kit at an appropriate test site of their choosing, but if the pre-screening test comes back positive, the sample must then be sent to a state-approved laboratory.<sup>14</sup> If a lab test for an employee or applicant comes back positive, the employer must send the individual the lab test results, the employer's written policy regarding drug or alcohol use, notice of any disciplinary action the employer intends to take, and notice regarding the individual's right to request independent lab testing of the same biological sample.<sup>15</sup>

These requirements convey a few protections to potential employees. For one, if they believe their drug screening results to be incorrect, they have the right to obtain a test from a different laboratory to verify the report.<sup>16</sup> However, the applicant will be responsible for paying the cost of the follow-up test.<sup>17</sup> Second, the requirement that the employer provide the employee or applicant with a written drug policy limits the ability of hiring managers to make arbitrary determinations about an individual applicant's test results. In other words, drug policies would have to be applied consistently and not on a case-by-case basis. State law does not, however, control how strictly or permissively companies set their written drug policies.

It is important to note that a positive drug test is not necessarily required for an employer to take disciplinary action against an individual for cannabis or any other prohibited drug use. If an employer becomes aware of prohibited drug use through some other means, such as through the employee's own statements, reports by coworkers, or notice of criminal charges related to drug use, the employer may take disciplinary action up to and including termination of employment without having to obtain a positive drug test.

### **State Law Employee Protections**

As part of the process of cannabis legalization, some states have passed statutes that prohibit employers from firing employees or from taking other disciplinary action based solely

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<sup>13</sup> HEALTH-GEN. § 17-214(b)(1)(ii).

<sup>14</sup> *Id.* § 17-214(b)(2).

<sup>15</sup> *Id.* § 17-214(c).

<sup>16</sup> *Id.* § 17-214(e)(1).

<sup>17</sup> *Id.* § 17-214(e)(2).

on the legal consumption of cannabis outside of work hours.<sup>18</sup> Many of these protections apply only to medical cannabis, although some cover all legal use. These laws draw an important distinction: they do not prohibit employers from taking action when an employee consumes cannabis on the job, or if they show up to work impaired by recent cannabis use. Rather, they protect individuals who use cannabis outside of work hours (and specifically long enough before work hours for the effects of intoxication to have worn off), by preventing off-duty cannabis use from being the sole justification for termination or other disciplinary action. Such laws balance the need of the employer to maintain a safe and productive workspace and the right of the employee to partake in legal medical cannabis use outside of the workplace.

In 2026, the Maryland General Assembly passed a law that granted this type of employment protection to firefighters and emergency rescue personnel who use cannabis medically.<sup>19</sup> The law protects such employees from workplace disciplinary action based on the use of medical cannabis, while not permitting on-the-job impairment or consumption. While this form of employment protection is currently limited to individuals in a very specific set of occupations, it marks the first grant of such rights to employees in the state.

### **Protections for Employees with Disabilities**

One significant restriction on the ability of employers to discipline workers for drug use is the federal Americans with Disabilities Act, which requires employers to make reasonable accommodations for employees with disabilities.<sup>20</sup> As a practical matter, this requires employers to make exceptions for employees who take prescription medications to treat a disabling condition.

However, whether this requirement applies to medical cannabis users remains to be determined. The ADA specifically states that it does not protect the use of illegal drugs,<sup>21</sup> and because it is a federal law, its applicability concerns whether the drug use in question is legal under federal law. On April 22, the Acting Attorney General of the United States ordered that cannabis that is “subject to a state medical marijuana license” be rescheduled from Schedule I to Schedule III of the Controlled Substances Act (“CSA”), which would allow such products to be used legally for medical purposes.<sup>22</sup>

As such, medical cannabis use consistent with the requirements for Schedule III substances could be subject to protection under the ADA. However, because state medical cannabis programs all developed outside the framework of the CSA, cannabis businesses and

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<sup>18</sup> *E.g.*, CAL. GOV'T CODE § 12954; MONT. CODE ANN. § 39-2-313; NEV. REV. STAT. § 613.333; N.J.S.A. 24:6I-52; N.Y. LAB. LAW § 201-d; 21 R.I. GEN. LAWS ANN. § 21-28.11-29; WASH. REV. CODE § 49.44.240.

<sup>19</sup> S.B. 439, 2026 Leg., 449th Sess. (Md. 2026).

<sup>20</sup> 42 U.S.C. § 12112.

<sup>21</sup> *Id.* § 12114.

<sup>22</sup> Schedules of Controlled Substances: Rescheduling of Food and Drug Administration Approved Products Containing Marijuana from Schedule I to Schedule III: Corresponding Change to Permit Requirements, 91 F.R. 22,714 (Apr. 28, 2026).

cannabis patients have not historically complied with the strict standards regarding prescription, packaging, and labeling that the CSA requires for the legal use of Schedule III drugs. Any use of cannabis that is inconsistent with the CSA would categorically not be protected under the ADA, even if that use was consistent with state law. This would include all recreational use, and all medical use not strictly compliant with CSA requirements. As such, the applicability of the ADA to medical cannabis patients could be extremely variable based on individual circumstances and will likely need to be clarified through administrative guidance or court cases.

Maryland employees are subject to state-law protections against disability discrimination, in addition to the federal ADA.<sup>23</sup> Since these are state, rather than federal, protections, it is not specifically dependent on federal drug control standards.<sup>24</sup> Conceivably, this means that Maryland law could be construed to require reasonable accommodations for medical cannabis use. However, to date no Maryland court has yet found that an employer is required to accommodate employee cannabis use. Still, the changing stance of national cannabis policy is likely to impact how state courts apply state discrimination protections as well, meaning that the applicability of state discrimination protections to medical cannabis could also be clarified through administrative or judicial decisions over the next few years.

### **Federal Drug-Free Workplace Requirements**

While Maryland law generally allows for employers to set their own policies regarding cannabis use, federal law requires certain employers to maintain strict drug prevention policies if they work in certain industries, perform contract work for the federal government, or receive federal grants.<sup>25</sup> Employees working in these federally regulated jobs must be subject to drug testing and drug prevention policies, which would apply federal standards relating to recreational and medical cannabis use.

The Department of Transportation regulations require that employees working in most transportation-related industries be subject to strict drug policies prohibiting all illegal drug use, including cannabis use prohibited by federal law, and conduct preemployment, reasonable suspicion, post-accident, and random drug testing.<sup>26</sup> Covered employees are safety-sensitive workers in aviation, commercial trucking, railroads, and public transportation. The Nuclear Regulatory Commission has fitness for duty requirements for employees of nuclear safety plants and other facilities that handle nuclear materials, requiring that they be subjected to drug testing requirements and sanctions on employees found to be abusing drugs.<sup>27</sup>

The Drug-Free Workplace Act of 1988 imposes mandatory drug-free policies on federal workplaces and on private employers who work on federal contracts of \$350,000 or more<sup>28</sup> or

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<sup>23</sup> STATE GOV'T § 20-606.

<sup>24</sup> *See id.*

<sup>25</sup> 41 U.S.C. §§ 8102-8103.

<sup>26</sup> 49 U.S.C. §§ 5331, 20140, 31306, 45102.

<sup>27</sup> 10 C.F.R. § 26.31.

<sup>28</sup> *Id.* § 8102.

federal grants of any amount.<sup>29</sup> Organizations that conduct qualifying work on behalf of the federal government are required to:

- Implement and distribute a formal drug-free workplace policy statement;
- Prohibit the use, distribution, and manufacture of controlled substances in the workplace; and
- Impose consequences for violations.<sup>30</sup>

If an employee of a covered organization is convicted of a drug possession offense, the employer has an obligation to report the conviction to the federal contracting agency and take disciplinary action against that employee, which can include termination or mandatory participation in a substance use treatment program.<sup>31</sup>

In all of these contexts, the rescheduling of medical cannabis could create exceptions for individuals who use medical cannabis in compliance with federal law. However, it will still be prohibited for individuals to use cannabis in a manner consistent with state but not federal regulations, including all recreational use and any medical use that does not comply with federal standards. Since state medical cannabis programs developed independently of federal regulation, most do not currently strictly comply with all the requirements of the CSA, the Food, Drug & Cosmetics Act, and other federal requirements. As such, employees in these federally-regulated industries should not rely on compliance with state medical cannabis regulations as a guarantee of protection, and should ensure personal cannabis use does not violate any aspect of federal drug control restrictions.

## **Conclusion**

Cannabis use in the workplace creates genuine concerns for employers, employees, and the public, and workplace drug policies play an important role in mitigating that risk. However, drug testing policies that limit personal cannabis use outside of the workplace during personal time can jeopardize the health of individuals and communities without actually improving workplace safety.

It is important that individuals who use or are considering using cannabis be aware of their workplaces' cannabis policies, whether they may face consequences for cannabis use outside of work, and under what circumstances they may be subject to cannabis testing. In addition to educating employees about workplace policies, the public health community can also engage with local employers to encourage them to adopt cannabis policies that protect workplace safety without imposing harms for private, legal cannabis use.

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<sup>29</sup> *Id.* § 8103.

<sup>30</sup> *Id.* §§ 8102-8103.

<sup>31</sup> *Id.* § 8104.

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