
MARIJUANA LEGALIZATION: FREQUENTLY ASKED QUESTIONS

Is recreational use of marijuana legal under California law? Yes, for adults on private property. In November 2016, California voters passed Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”). Under the AUMA, it is legal for adults, age 21 and older, to grow up to six marijuana plants at home, and possess, transport, purchase, privately consume, and share up to an ounce of cannabis. As of January 1, 2018, recreational marijuana can be sold legally by licensed dispensaries in California. Adults, 21 and over, can buy up to one ounce of cannabis or up to eight grams of concentrated cannabis, which is found in marijuana edibles. Licensed dispensaries are allowed to make sales and deliveries of recreational marijuana only between 6:00 a.m. and 10:00 p.m.

Where can marijuana be used? Marijuana can be used on private property, but “you cannot use, smoke, eat, or vape cannabis in public places and you cannot smoke cannabis or cannabis products in places where it is illegal to smoke tobacco,” according to the California Department of Public Health’s website. *See also* Cal. Health & Safety Code § 11362.3(a). Additionally, you cannot smoke or ingest marijuana or any marijuana product while driving or riding in a car. Vehicle Code § 23220. As with alcohol, you may not “[p]ossess an open container or open package of cannabis or cannabis products while driving, operating, or riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation.” Cal. Health & Safety Code § 11362.3(a)(4).

Does the AUMA permit use of marijuana in the workplace? Absolutely not! Alcohol is a legal substance for adults, but just as school employees cannot drink alcohol in the workplace, school employees cannot smoke or ingest marijuana at school.

Doesn’t federal law prohibit marijuana use? Yes. Although AUMA made the recreational personal use of marijuana legal in California under *state* law, possession, manufacture, and sale of marijuana is still prohibited by *federal* law under the Controlled Substances Act (“CSA”), 21 U.S.C. §§ 801 et seq. Although the Obama administration had recommended a hands-off approach to marijuana prosecution in states that have legalized marijuana, U.S. Attorney Jeff Sessions rescinded that Obama administration guidance in early January 2018. Thus, you should not consume or possess cannabis on federal property like national parks, even if the park is in California, or take cannabis across state lines, even if you are traveling to another state where cannabis is legal.

Does the AUMA’s passage mean that marijuana will be more prevalent at my school? In theory, it should be less prevalent. The AUMA prohibits the sale of nonmedical marijuana to individuals under age 21. Part of the intent of the AUMA was to “incapacitate the black market and move marijuana purchases into a legal structure with strict safeguards against children accessing it.” Further, the AUMA bars marijuana businesses from being located within 600 feet of schools and other areas where children congregate, and it mandates that marijuana and marijuana products cannot be advertised or marketed towards children. State law also prohibits using cannabis within 1,000 feet of a school, day care center, or youth center while children are present. Cal. Health & Safety Code § 11362.3(a)(3).

Does the AUMA require my employer to allow off-duty recreational use? Not expressly. The AUMA allows “public and private employers to enact and enforce workplace policies pertaining to marijuana.” *See also* Cal. Health & Safety Code § 11362.45(f) (AUMA does not restrict or affect the “ability of employers to have policies prohibiting the use of marijuana by employees and prospective employees.”). This is similar to the law that was passed in Colorado, where employees face an uphill battle when arguing that employers should be prohibited from penalizing the legal use of marijuana outside the workplace. *See Coats v. Dish Network, LLC*, 350 P.3d 849 (2015). Although the AUMA does not prohibit an employer from barring recreational marijuana use during nonwork time, discipline or dismissal based on violations of such a policy may nonetheless be subject to legal challenge under other state laws and/or collective bargaining agreements. In addition, if an employer is considering a marijuana use policy, the local CTA chapter should demand to bargain over the policy (or at least the effects of that policy on employee discipline).

How would my employer find out if I use marijuana on nonwork time? Marijuana contains tetrahydrocannabinol (THC), which quickly metabolizes into a compound that can remain in a user’s body for days or even weeks after initial use. Urine tests, the most common form of drug testing done by employers, detect non-psychoactive THC metabolites, which means they measure prior use, and are not accurate at measuring impairment. Thus, if your employer requires you to take a drug test, you may test positive for marijuana even if the use was many days earlier. Blood and saliva tests generally measure impairment more accurately.

Can my public school employer require that I take a drug test? It depends. Compelled drug testing by public employers implicates federal and state rights to be free of unreasonable searches and seizures, and the state right of privacy. *See* U.S. Constitution, 4th amendment; California Constitution, art. I, §§ 1, 13; *Loder v. City of Glendale*, 14 Cal.4th 846, 876, 896 (1997). While a public school employer may require applicants for employment to submit to drug testing before accepting employment, drug testing of current employees is generally prohibited unless the employer has “reasonable suspicion” that the employee is impaired by drugs or alcohol at work. Random drug-testing programs have only been upheld for employees in safety-sensitive positions, such as law enforcement and operators of vehicles and heavy equipment. *Smith v. Fresno Irrigation Dist.*, 72 Cal. App. 4th 147 (1999). Just as you have the right to request a union representative at an investigatory interview that could result in discipline, you have the right to request a union representative before consenting to a drug test. Be sure to request a union representative if your employer directs you to take a drug test.

Could my credential be impacted if I use marijuana? Yes. Just as with alcohol, if you are impaired at work from marijuana, you can be subject to discipline and credential proceedings.

What if I have a prescription for marijuana? Although California’s Compassionate Use Act, Cal. Health & Safety Code § 11362.5, protects patients who use marijuana for serious medical conditions from criminal liability under state law, in 2008, the California Supreme Court ruled that neither the Compassionate Use Act nor the Fair Employment and Housing Act requires employers to accommodate employees’ medical marijuana use. *Ross v. RagingWire Telecommunications, Inc.*, 42 Cal.4th 920 (2008). According to the Court, “[n]o state law could completely legalize marijuana for medical purposes because the drug remains illegal under federal law.” Additionally, the AUMA does not require an employer to permit or accommodate the use of marijuana in the workplace. Cal. Health & Safety Code § 11362.45.