



WEED BETTER TALK...

*WHAT EMPLOYERS NEED TO KNOW ABOUT
PENNSYLVANIA'S MEDICAL MARIJUANA LAW*



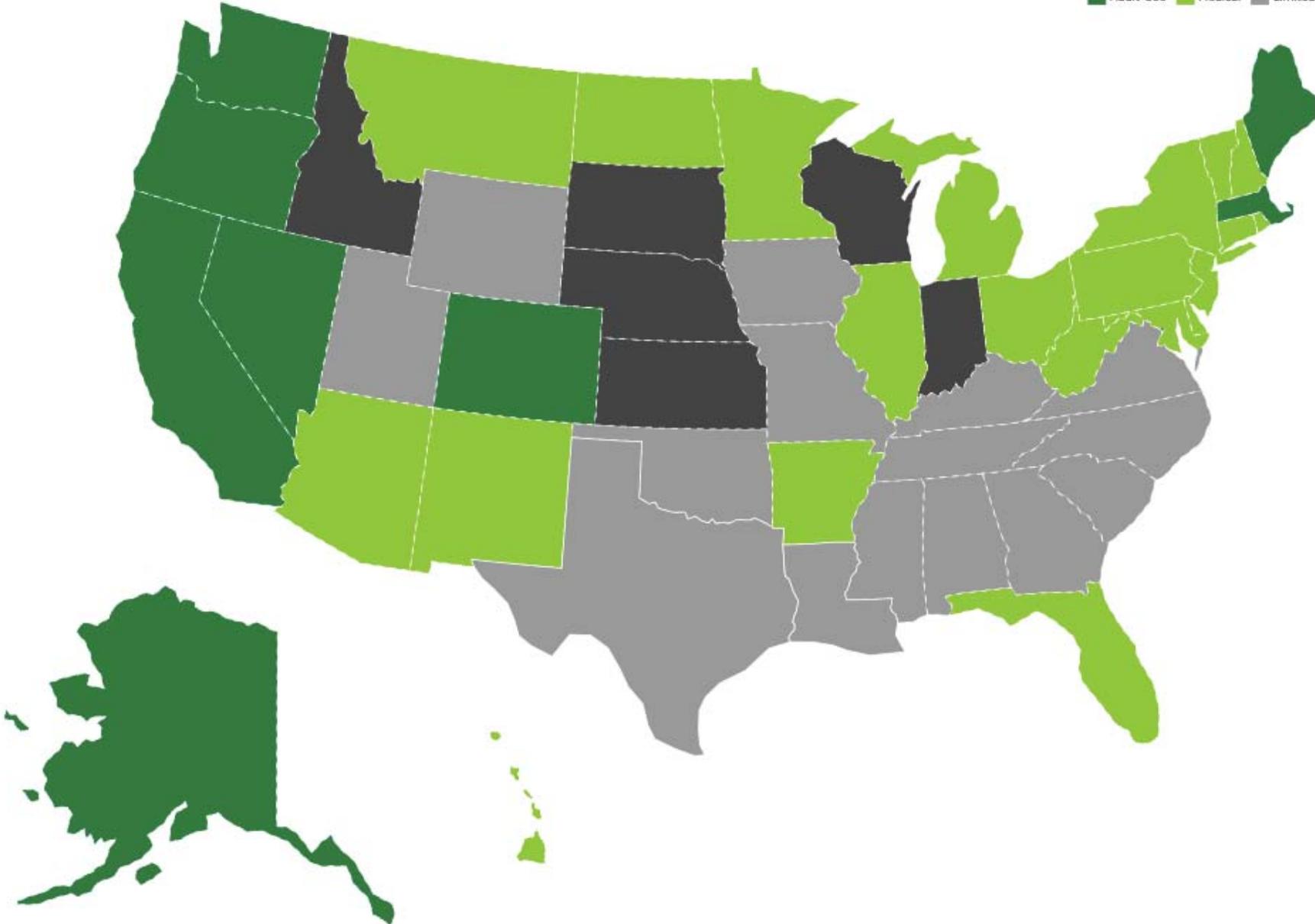
PENNSYLVANIA
MEDICAL MARIJUANA
PROGRAM



PILLAR+AUGHT



Adult-Use Medical Limited



pillaraught.com

Public Opinion Leading the Way...

Americans' Views on Legalizing Marijuana

Do you think the use of marijuana should be made legal, or not?

■ % Yes, legal



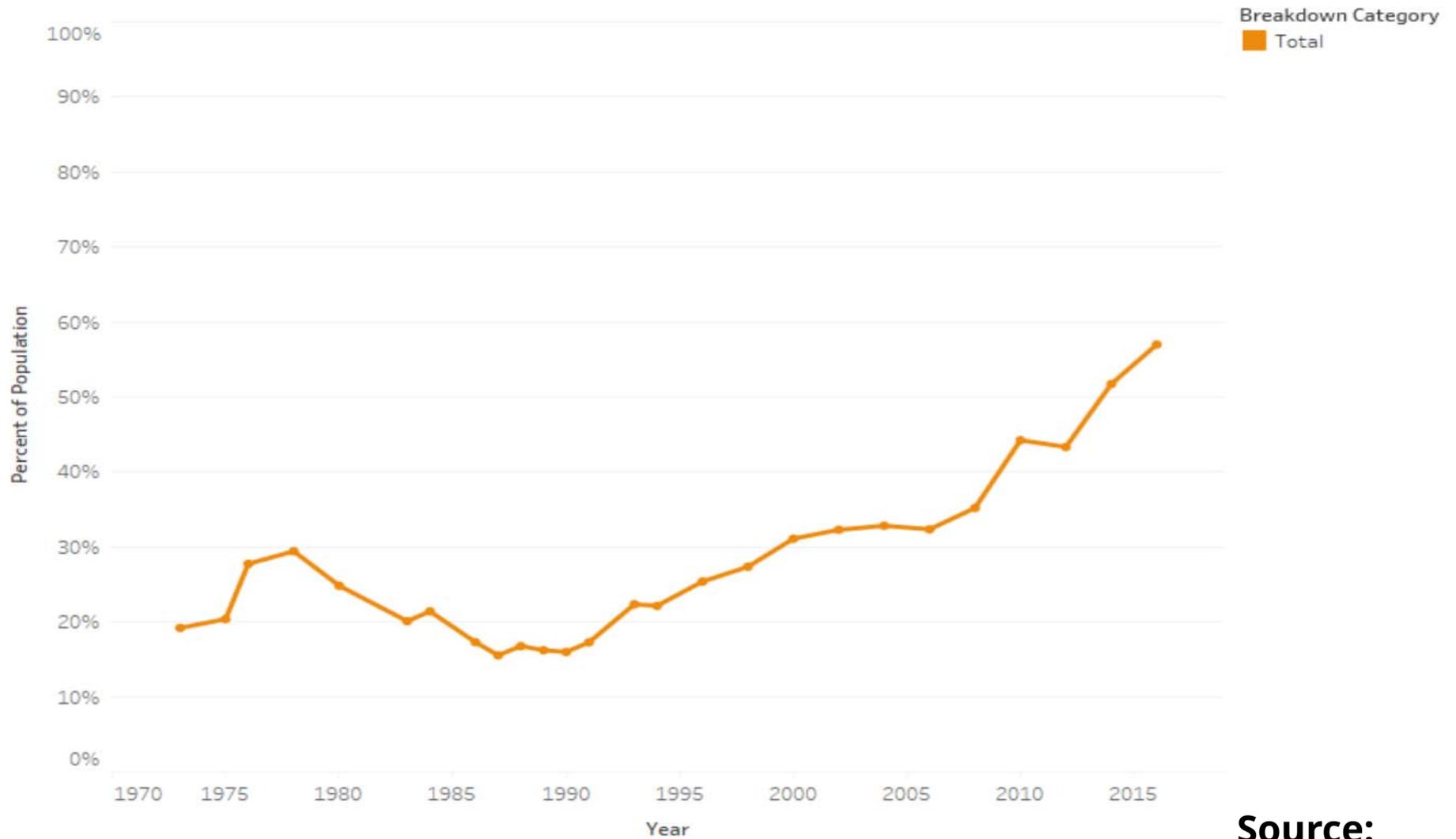
GALLUP®

Source:
Gallup Poll
October 2016

Civil Liberties: Should marijuana be made legal

Response: Legal

Breakdown: Total





**Tim Malloy, Assistant Director
(203) 645-8043**

**Rubenstein
Pat Smith (212) 843-8026**

FOR RELEASE: APRIL 20, 2017

**U.S. VOTER SUPPORT FOR MARIJUANA HITS NEW HIGH;
QUINNIPIAC UNIVERSITY NATIONAL POLL FINDS;
76 PERCENT SAY THEIR FINANCES ARE EXCELLENT OR GOOD**

American voters say 60 – 34 percent “that the use of marijuana should be made legal in the U.S.,” the highest level of support for legalized marijuana in a Quinnipiac University national poll. Republicans and voters over 65 years old are the only listed party, gender, education, age or racial groups to oppose legalized marijuana.

Voters also support 94 – 5 percent “allowing adults to legally use marijuana for medical purposes if their doctor prescribes it,” also the highest level of support in any national poll by the independent Quinnipiac (KWIN-uh-pe-ack) University.



pillaraught.com

PENNSYLVANIA



pillaraught.com

PA's Medical Marijuana Act

- Act 16, "***The Medical Marijuana Act***," 35 P.S. § 10231.101 *et seq.*
- Signed into law on April 17, 2016.
- Department of Health is implementing the Medical Marijuana Program.
- The process is expected to take up to 24 months and, when completed, will provide medical marijuana to individuals for the treatment of serious medical conditions.
- Several "temporary" regulations have been published:
 - Safe Harbor Letters (28 Pa. Code § 1131.1, *et seq.*)
 - General Provisions (28 Pa. Code § 1141.1, *et seq.*)
 - Growers/Processors (28 Pa. Code § 1151.1, *et seq.*)
 - Dispensaries (28 Pa. Code § 1161.1, *et seq.*)



PA's Medical Marijuana Act

- What form will the medical marijuana be in and how will it be taken?
 - Pill;
 - Oil;
 - Topical forms, including gel, creams, or ointments;
 - A form medically appropriate for administration by vaporization or nebulization;
 - Tincture; or
 - Liquid.
- **It is unlawful to smoke medical marijuana (e.g., leaf/flower).**
- What about brownies (i.e. “edibles”)?
 - **One section of the Act:** “It is unlawful to ... except as provided under subsection (C), incorporate medical marijuana into edible form.”
 - **Subsection (C):** “Nothing in this Act shall be construed to preclude the incorporation of medical marijuana into edible form by a patient or a caregiver in order to aid ingestion of the medical marijuana by the patient.”



HOW TO GET MEDICAL MARIJUANA IN PENNSYLVANIA

WHEN THE PROGRAM IS FULLY IMPLEMENTED

1



Discuss medical marijuana with your doctor.

2



Get a recommendation from your doctor saying that medical marijuana is right for you.

3



Apply to the Department of Health for a medical marijuana ID card.

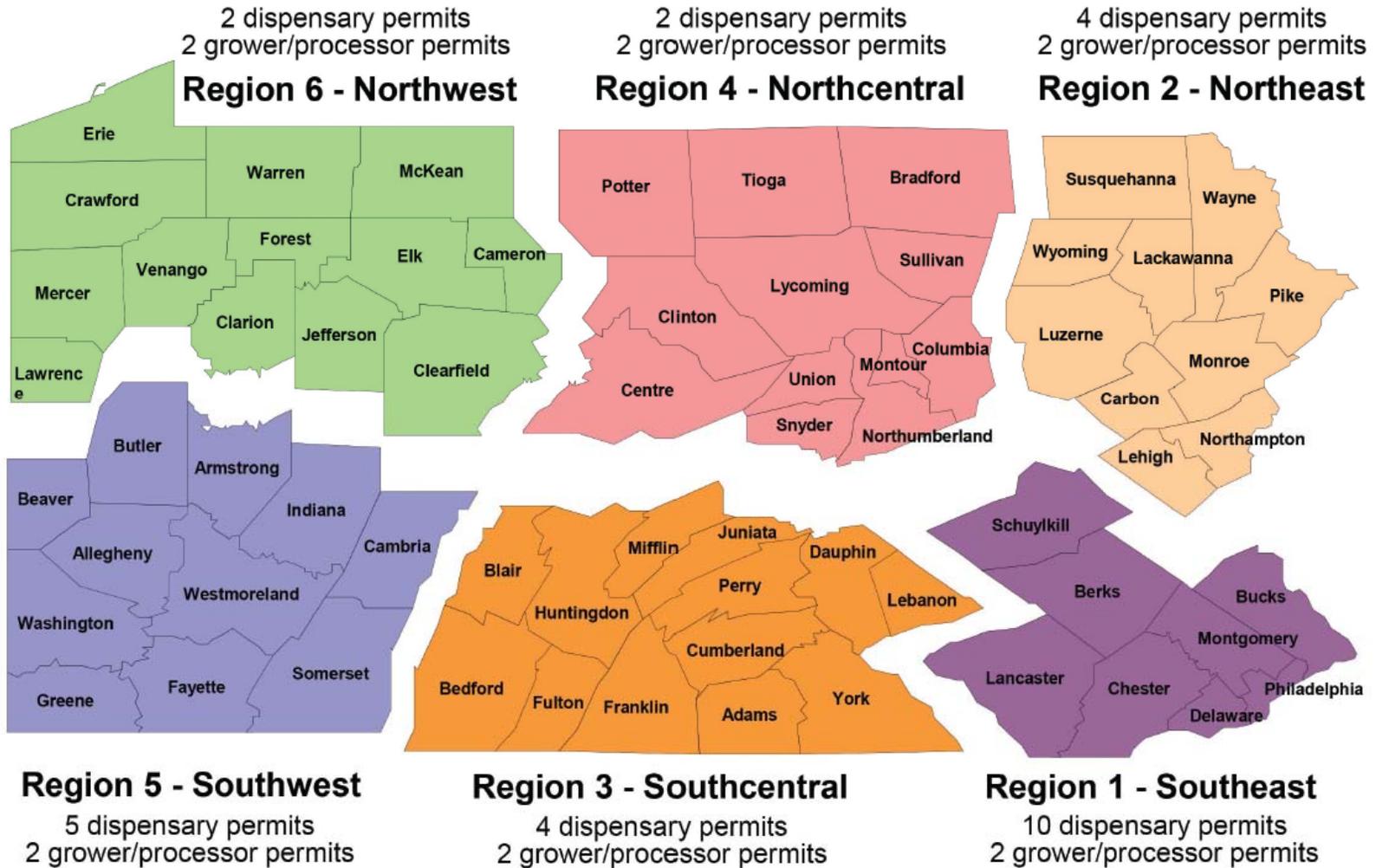
4



Visit a dispensary in Pennsylvania to obtain medical marijuana.



Pennsylvania Department of Health Medical Marijuana Regions



PA's Medical Marijuana Act

- In the meantime, *Safe Harbor Letters* are being issued.
- The very first regulations under the Act; published June 25, 2016.
 - Pertain to Section 2106 of the Act, which provides:
 - (a) General Rule.** It is not a violation of this act or ... The Controlled Substance, Drug, Device and Cosmetic Act, if a parent or guardian of a minor under 18 years of age lawfully obtains medical marijuana from another state, territory of the United States or any other country to be administered to the minor.
 - (b) Expiration.** This section shall expire 730 days after the effective date of this section.
- The regulations outline the specific requirements that must be followed when a parent or legal guardian is administering medical marijuana obtained from outside of Pennsylvania to a minor in his/her care.
 - As of August 2016, 282 safe harbor letters have been issued.



But hold up...
Isn't this illegal?



Federal Law vs. State Law

- Marijuana remains **illegal** under federal law. It is a “Schedule I” drug under the Controlled Substances Act of 1970, which means it has a high potential for abuse and no accepted medical value.
- Marijuana can be “rescheduled” either legislatively or through the executive branch.
 - Congress has so far rejected all bills to reschedule marijuana.
 - The United States Attorney General can reschedule marijuana administratively through a petition process.
- Section 2109(a) of the PA Medical Marijuana Act provides: *“The provisions of this act with respect to dispensaries shall not apply beginning 1,095 days from the effective date of an amendment ... removing marijuana from Schedule I of the Controlled Substances Act.”*



- Faced with a proliferation of state laws that have either “legalized” or “decriminalized” the use of marijuana, the federal government, under the Obama administration, opted for **prosecutorial discretion...**
- Written guidance from the U.S. Department of Justice came in the form of the “**Cole Memo**” on August 29, 2013.
 - Per the memo, the federal government will focus its efforts and resources on **eight enforcement priorities**:
 1. the distribution of marijuana to minors
 2. revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels
 3. the diversion of marijuana from states where it is legal under state law in some form from going to other states
 4. state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity
 5. violence and the use of firearms in the cultivation and use of marijuana
 6. drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use
 7. the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands
 8. marijuana possession or use on federal property



“Good people don’t smoke marijuana.”

*“We need grown-ups in charge in Washington to say marijuana is not
the kind of thing that ought to be legalized...”*

That it is, in fact, a very real danger.”



pillaraught.com

The Washington Post

Post Politics

Spicer: Feds could step up enforcement against marijuana use in states

By John Wagner and Matt Zapposky February 23

White House press secretary Sean Spicer said Thursday that he expects states to be subject to “greater enforcement” of federal laws against marijuana use, a move that could undercut the growing number of jurisdictions moving to legalize the drug for recreational purposes.

Spicer, speaking at a White House press briefing, said that President Trump sees “a big difference” between use of marijuana for medical purposes and for recreational purposes.

Newsweek

U.S.

CONGRESS WON'T GIVE JEFF SESSIONS MONEY TO FIGHT STATE MARIJUANA LAWS

BY **GRAHAM LANKTREE** ON 5/2/17 AT 2:27 PM



THE HUFFINGTON POST

POLITICS 05/01/2017 06:35 pm ET | Updated May 02, 2017

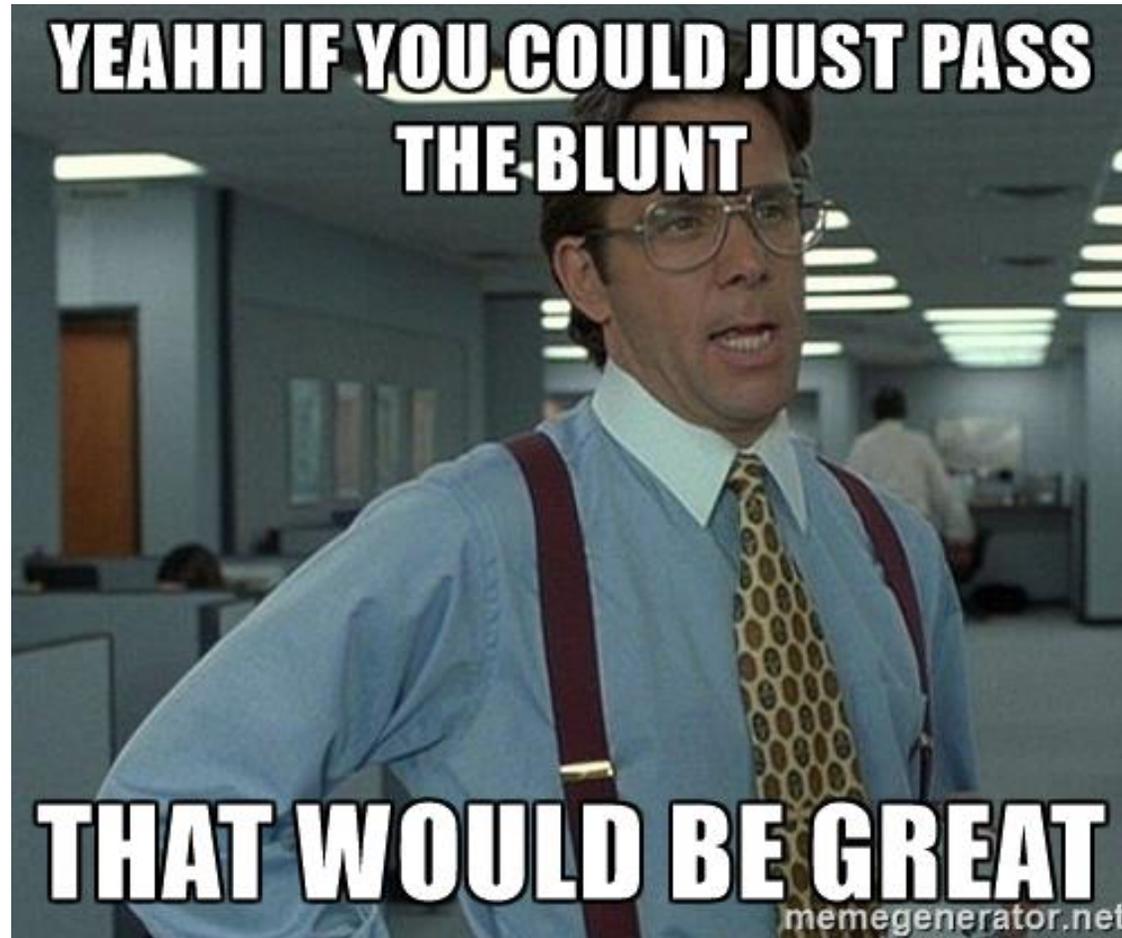
Congress Gives Jeff Sessions \$0 To Go After Medical Marijuana Laws

It's the latest sign that a major federal crackdown on state pot laws isn't likely.



pillaraught.com

Employment Issues



Federal Employment Laws

- There are several federal laws that are implicated when dealing with workplace drug testing and/or employee drug use.
 - U.S. Department of Transportation Drug & Alcohol Testing Regulations
 - The Drug Free Workplace Act of 1988
 - The Family and Medical Leave Act (FMLA)
 - The Americans with Disabilities Act (ADA)
 - 4th and 14th Amendments (Public Employers)



- **The Family and Medical Leave Act (FMLA)** & leave for treatment of abuse
- **The Americans with Disabilities Act (ADA)** & substance abuse
 - **Alcohol:** an alcoholic is protected by the ADA as having a disability.
 - A person who currently uses alcohol is not automatically denied protection simply because of the alcohol use. An alcoholic is a person with a disability under the ADA and may be entitled to consideration of accommodation, if s/he is qualified to perform the essential functions of a job. However, an employer may discipline, discharge or deny employment to an alcoholic whose use of alcohol adversely affects job performance or conduct to the extent that s/he is not “qualified.”
 - **Drugs:** a drug addict is protected as having a disability only if he or she is receiving recovery treatment and is not a current user of illegal drugs.
 - Persons addicted to drugs, but who are no longer using drugs illegally and are receiving treatment for drug addiction or who have been rehabilitated successfully, are protected by the ADA from discrimination on the basis of past drug addiction.



- **James v. City of Costa Mesa**, 700 F.3d 394 (9th Cir. 2012)
 - *"We hold that doctor-recommended marijuana use permitted by state law, but prohibited by federal law, is an illegal use of drugs for purposes of the ADA, and that the plaintiffs' federally proscribed medical marijuana use therefore brings them within the ADA's illegal drug exclusion."*
 - *"We recognize that the federal government's views on the wisdom of restricting medical marijuana use may be evolving. But for now Congress has determined that, for purposes of federal law, marijuana is unacceptable for medical use."*



What Have Other States Done?

- **Ross v. RagingWire Telecomm'n, Inc.**, 174 P.3d 200 (Cal. 2008)
 - “No state law could completely legalize marijuana for medical purposes because the drug remains illegal under federal law, even for medical users.”
 - “The Compassionate Use Act ... simply does not speak to employment law. Nothing in the act’s text or history indicates the voters intended to articulate any policy concerning marijuana in the employment context, let alone a fundamental public policy requiring employers to accommodate marijuana use by employees.”
- **Emerald Steel Fabricators, Inc. v. Bureau of Labor & Indus.**, 230 P.3d 518 (Ore. 2010)
 - “To the extent that [state law] affirmatively authorizes the use of medical marijuana, federal law preempts that subsection, leaving it ‘without effect.’”
 - “[T]here is no dispute that Congress has the authority under the Supremacy Clause to preempt state laws that affirmatively authorize the use of medical marijuana.”
- **Coats v. Dish Network, LLC**, 350 P.3d 849 (Colo. 2015)
 - “Coats does not dispute that the federal Controlled Substances Act prohibits medical marijuana use. The CSA lists marijuana as a Schedule I substance, meaning federal law designates it as having no medical accepted use, a high risk of abuse, and a lack of accepted safety for use under medical supervision. This makes the use, possession, or manufacture of marijuana a federal criminal offense There is no exception for marijuana use for medicinal purposes, or for marijuana use conducted in accordance with state law.”

What Have Other States Done?

- Callaghan v. Darlington Fabrics Corp., PC-2014-5680 (R.I. Super. Ct. 2017)
 - "Ultimately, this Court finds the purpose of the CSA—the 'illegal importation, manufacture, distribution, and possession and improper use of controlled substances'—to be quite distant from the realm of employment and anti-discrimination law. The CSA is concerned with stopping the illegal trafficking and use of controlled substances. To read the CSA as preempting either the Hawkins-Slater Act or RICRA would imply that anyone who employs someone that violates federal law is thereby frustrating the purpose of that law. The connection must, at some point, be deemed too attenuated."
 - "One last consideration reassures the Court in finding that the CSA does not preempt Rhode Island law in this narrow question. Congress is definitely aware of the existence of various states' medical marijuana schemes. Indeed, over the past several years, Congress has passed an amendment to various omnibus spending bills preventing the funds appropriated therein to the Department of Justice to be used to prevent any of a number of listed states, including Rhode Island, 'from implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana.'"



What Have Other States Done?

- **Barbuto v. Advantage Sales and Marketing**, 78 N.E.3d 37 (Mass. 2017)
 - “Here, the defendants contend that, because the prescribed medication is marijuana, which is illegal to possess under Federal law, an accommodation that would permit the plaintiff to continue to be treated with medical marijuana is per se unreasonable. They also contend that, because such an accommodation is facially unreasonable, it owed the plaintiff no obligation to participate in the interactive process to identify a reasonable accommodation before they terminated her employment. We are not persuaded by either argument.”
 - “The fact that the employee's possession of medical marijuana is in violation of Federal law does not make it per se unreasonable as an accommodation. The only person at risk of Federal criminal prosecution for her possession of medical marijuana is the employee. An employer would not be in joint possession of medical marijuana or aid and abet its possession simply by permitting an employee to continue his or her off-site use.”
 - “Nor are we convinced that, as a matter of public policy, we should declare such an accommodation to be per se unreasonable solely out of respect for the Federal law prohibiting the possession of marijuana even where lawfully prescribed by a physician. To declare an accommodation for medical marijuana to be per se unreasonable out of respect for Federal law would not be respectful of the recognition of Massachusetts voters, shared by the legislatures or voters in the vast majority of States, that marijuana has an accepted medical use for some patients suffering from debilitating medical conditions.”



PA's Medical Marijuana Act

- Prior to the enactment of the Medical Marijuana Act, Pennsylvania did not have *any* laws that specifically limited an employer's right to terminate an employee for failing a drug test.
- In fact, certain provisions of PA's Unemployment Compensation law actually *encourage* the implementation of a comprehensive workplace drug testing policy.
 - "An employe[e] shall be ineligible for compensation for any week ... [i]n which his ***unemployment is due to discharge*** or temporary suspension from work ***due to failure to submit and/or pass a drug test conducted pursuant to an employer's established substance abuse policy***, provided that the drug test is not requested or implemented in violation of the law or of a collective bargaining agreement." 43 P.S. § 802(e.1).



PA's Medical Marijuana Act

Employment provisions of the Medical Marijuana Act:

Section 510. Prohibitions.

The following prohibitions shall apply:

- (1) A patient may not operate or be in physical control of any of the following while under the influence with a blood content of more than 10 nanograms of active tetrahydrocannabinis per milliliter of blood in serum:
 - i. Chemicals which require a permit issued by the Federal Government or a state government or an agency of the Federal Government or a state government.
 - ii. High-voltage electricity or any other public utility.
- (2) A patient may not perform any employment duties at heights or in confined spaces, including, but not limited to, mining while under the influence of medical marijuana.



PA's Medical Marijuana Act

Employment provisions of the Medical Marijuana Act:

Section 510. Prohibitions. (cont'd)

The following prohibitions shall apply:

- (3) A patient may be prohibited by an employer from performing any task which the employer deems life-threatening, to either the employee or any of the employees of the employer, while under the influence of medical marijuana. The prohibition shall not be deemed an adverse employment decision even if the prohibition results in financial harm for the patient.
- (4) A patient may be prohibited by an employer from performing any duty which could result in a public health or safety risk while under the influence of medical marijuana. The prohibition shall not be deemed an adverse employment decision even if the prohibition results in financial harm for the patient.



PA's Medical Marijuana Act

Employment provisions of the Medical Marijuana Act:

Section 2103. Protections for patients and caregivers.

(b) Employment.--

- (1) No employer may discharge, threaten, refuse to hire or otherwise discriminate or retaliate against an employee regarding an employee's compensation, terms, conditions, location or privileges solely on the basis of such employee's status as an individual who is certified to use medical marijuana.
- (2) Nothing in this act shall require an employer to make any accommodation of the use of medical marijuana on the property or premises of any place of employment. This act shall in no way limit an employer's ability to discipline an employee for being under the influence of medical marijuana in the workplace or for working while under the influence of medical marijuana when the employee's conduct falls below the standard of care normally accepted for that position.
- (3) Nothing in this act shall require an employer to commit any act that would put the employer or any person acting on its behalf in violation of Federal law.



Questions?

