

# HIGH TIMES

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MEDICAL MARIJUANA IN THE WORKPLACE

HAND ARENDALL  
HARRISON SALE LLC

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## NATIONAL OVERVIEW: GROWING LIKE A WEED

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- 1996, California passes first medical marijuana law.
- 29 States, District of Columbia, Guam, and Puerto Rico have comprehensive medical marijuana programs.
- Alaska, California, Colorado, District of Columbia, Maine, Massachusetts, Nevada, Oregon, Washington State have legalized recreational marijuana.
- State laws vary greatly.
- Local governments have also enacted ordinances regulating dispensaries.

# Marijuana Laws by State *As of December 2017*



Note: Each state may further define specific conditions

# HERE TO STAY: LUCRATIVE AND POPULAR

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- Colorado Recreational Sales:
  - \$1.3 billion in 2016.
  - \$1.5 billion in 2017.
  - Total since 2014: \$4.5 billion.
- Quinnipiac National Poll: August 2017:
  - 94% support medical marijuana.
  - 60% support recreational marijuana.
  - Compare to 1969 Gallup poll: 12% support for legalization.

## FLORIDA JOINS THE PARTY: AMENDMENT 2

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- In 2014, Florida enacted "Charlotte's Web" law allowing low-THC medical marijuana use.
- November 2016: Amendment 2 approved by over 70% of voters.
- Created constitutional right to medical marijuana for individuals with debilitating medical condition.
- Problem: Amendment left many questions unanswered.



## LEGISLATURE CLEARS THE AIR: SENATE BILL 8A

- June 2017: Florida enacts §381.986 implementing Amendment 2 and clarifying the rules.
- Defines term “debilitating medical conditions.”
- Removes 90-day waiting period for patients from Charlotte’s Web law.
- Makes no limit on the maximum concentration of THC.
- Preempts local regulation except to essentially allow or ban dispensaries.
- Prohibits ingestion by smoking.

# THE 13 QUALIFYING CONDITIONS FOR MEDICAL MARIJUANA USE

- Cancer
- Epilepsy
- Glaucoma
- HIV
- AIDS
- PTSD
- ALS
- Crohn's disease
- Parkinson's disease
- Multiple sclerosis
- Medical conditions of the same kind of class as or comparable to those enumerated
- Terminal conditions diagnosed not by the prescribing physician but a separate physician
- Chronic nonmalignant pain

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## QUALIFIED PATIENTS

Must prove residency in Florida.

Diagnosed with qualifying condition by certified physician.

Be issued qualifying patient ID card by Dept. of Health.

Suspended if charged with drug crime.

Revoked if in possession of more than prescribed or possess it from an unapproved source.





This Compassionate Use Registry identification card is issued by the Florida Department of Health under authority of Section 381.986, F.S. and Rule 64-4.011, F.A.C. This card indicates that the pictured patient or legal representative is registered in the Compassionate Use Registry. All patients and legal representatives must have a Compassionate Use Registry identification card to possess, purchase, or use medical cannabis. Marijuana remains illegal under federal law.

An application for a replacement card must be submitted to the Department within 10 days of a name, address, or assigned legal representative change. Renewal applications must be submitted 45 days prior to expiration.

The Compassionate Use Registry can be accessed at:  
<https://curegistry.flhealth.gov/>

The Office of Compassionate Use can be reached by visiting:  
<http://www.floridahealth.gov/OCU>

## WEED IN THE WORKPLACE: STATUTORY HELP

- §381.986 expressly protects employers from several concerns.
- Does not limit ability to enforce drug-free workplace program or policy.
- Does not require accommodation of employee using medical marijuana Does not create cause of action against employer for wrongful discharge.
- Marijuana is not reimbursable under Workers Compensation law.
- Bans use of marijuana in workplace if restricted by employer.

# THE AMERICANS WITH DISABILITIES ACT

- ADA requires employers to reasonably accommodate disabled individuals.
- Accommodation: allowing use of prescription medication.
- Does not protect use of illegal drugs.
- Because marijuana is still illegal under the Controlled Substance Act, no requirement to accommodate.
- Also applies to claims under Florida Civil Rights Act.
- BUT: only applies accommodating *marijuana use*, NOT the underlying disability.

## CAN AN EMPLOYEE USE OFF THE CLOCK?

- Until very recently, Courts refused to protect employees from termination due to off-work use.
- Rhode Island, Connecticut, Massachusetts have all upheld right to use off-site.
- BUT: Those states do not have statutory language protecting employees.
- Florida law more in-line with cases upholding right to refuse to accommodate.



## CONCERNS FOR ALLOWING USE

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- Obvious: Liability of having impaired workers.
- Florida Workers Comp Drug-Free Workplace:
  - Employers entitled to discounts if they establish a drug-free workplace.
  - Allowing medical marijuana use would violate program.
- Federal Contracts: Drug Free Workplace Act
  - Entity that receives Federal contracts over \$100k must have drug free work place.
  - Could lose eligibility by allowing use.



## CONCLUSION

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- Like it or not, medical marijuana is here to stay.
- Very new area of law with no Florida decisions on these issues.
- Legislature has put protections for employers in place.
- Plaintiffs lawyers will test those protections.

**QUESTIONS?**