

EMPLOYMENT LAW SUMMARY

Arizona Legalized Marijuana and Drug Testing Laws



Though all marijuana use remains illegal under the federal [Controlled Substances Act](#), Arizona has adopted laws that allow certain individuals to purchase, possess, use and grow limited amounts of marijuana in the state.

This Employment Law Summary provides an overview of Arizona's medical and recreational marijuana laws and describes how their provisions may impact employer policies and procedures in the state. It also provides brief information about Arizona's drug testing law, which imposes specific obligations on employers that choose to test employees or applicants for drugs or alcohol, and about another state law that imposes zero-tolerance drug policy requirements on employers that operate livery vehicles, taxis or limousines in Arizona.

Medical Marijuana

The Arizona Medical Marijuana Act (AMMA), enacted in 2010, provides protections against arrest, prosecution, civil penalties and denial of any rights or privileges for certain medical uses of marijuana. These protections are only available to registered qualifying patients (RQPs), which are individuals who have applied for and received a marijuana registry card from the [Arizona Department of Health Services](#) (ADHS). Certain caregivers may register to obtain legal protections relating to an RQP's use medical marijuana as well.

The AMMA also provides a system for nonprofit medical marijuana dispensaries to become established and registered to sell medical marijuana to RQPs in the state.

Registered Qualified Patients (RQPs)

To become an RQP, an individual must submit a written certification from their physician indicating that they have been diagnosed with one or more "debilitating medical conditions." This certification must be dated no earlier than 90 days prior to the date on which the individual submits it (along with their application and other materials) to the ADHS.

The AMMA includes a list of debilitating medical conditions that may qualify an individual for status as an RQP. It also provides a process for members of the public to petition the ADHS to include additional conditions in the list.

The list below shows the debilitating medical conditions currently listed in the AMMA.

Debilitating medical conditions

- Cancer
- Glaucoma
- Human immunodeficiency virus

- Crohn's disease
- Hepatitis C
- Amyotrophic lateral sclerosis
- Acquired immune deficiency syndrome
- Alzheimer's disease
- Any chronic or debilitating disease or medical condition that produces one or more of the following:
 - Cachexia or wasting syndrome;
 - Severe and chronic pain;
 - Severe nausea;
 - Seizures, including those characteristic of epilepsy; or
 - Severe and persistent muscle spasms, including those characteristic of multiple sclerosis.

Permitted Actions for RQPs

In general, a valid registry identification card allows its holder to acquire and possess **up to 2.5 ounces of usable marijuana**.

For this purpose, the term "usable marijuana" only includes dried flowers of a marijuana plant and any mixture or preparation of them. It does not include the seeds, stalks and roots of a plant nor the weight of any non-marijuana ingredients that may be combined with marijuana flowers for consumption as food or drink.

An RQP may also obtain the ADHS's authorization to possess **up to 12 marijuana plants**, but only if there is no registered nonprofit medical marijuana dispensary operating within 25 miles of their home.

An RQP's authority to cultivate marijuana is conditioned on ensuring that their plants are contained in an enclosed, locked facility at all times (except that an RQP may transport plants if they are moving).

Restrictions on Medical Marijuana Use

The AMMA's protections do **not** apply for certain uses of medical marijuana. In particular, the law does **not** allow any individual, including any RQP or other registered cardholder, to:

- Undertake any task under the influence of marijuana that would constitute negligence or professional malpractice;
- Possess or use marijuana on a school bus, on the grounds of any preschool or primary or secondary school or in any correctional facility;
- Smoke marijuana in any public place or on any form of public transportation;
- Operate, navigate or be in physical control of any motor vehicle, aircraft or motorboat while under the influence of marijuana (except that an RQP may not be considered to be under the influence solely because of the presence of metabolites or components of marijuana that appear in "insufficient concentration to cause impairment"); or
- Use marijuana in any manner that is not authorized under the AMMA.

AMMA Impact On Employers

The AMMA protects employers from being penalized or denied any benefit under state law for employing an RQP. It also makes clear that employers and their health and workers' compensation insurance providers do **not** have to cover any costs related to any RQP's medical marijuana use and that employers may still:

- Conduct drug tests on employees and applicants;
- Prohibit all marijuana use and possession on their premises; and
- Prohibit employees from using or being under the influence of marijuana at work and during their working hours.

Employment Protections For RQPs

The AMMA specifies that, **unless** compliance would result in the employer's loss of any monetary- or licensing-related benefit under federal law or regulations (such as the [federal regulations](#) that apply to employers in the commercial transportation industry, for example), an employer is **prohibited** from taking any adverse employment action against:

- Any individual based solely on the fact that they are an RQP; or
- Any RQP based solely on the fact that they test positive for marijuana components or metabolites, **unless** the employer had reason to believe that the RQP who tested positive was either using or under the influence of marijuana at work.

For purposes of the exception to the prohibition against adverse actions based on a positive test for marijuana alone, the AMMA does not indicate how an employer may prove that it had reason to believe that an RQP was under the influence of marijuana at work. However, it does state that a drug test showing the presence of marijuana metabolites or components "in insufficient concentration to cause impairment" is **not** enough. Therefore, employers should be prepared to present more than just a positive test result (regardless of the marijuana concentration level it shows) any time they take adverse employment actions based on a belief that an RQP was under the influence of marijuana.

The U.S. District Court for the District of Arizona confirmed that this is necessary in a decision issued on Feb. 7, 2019. In [Whitmire v. Wal-Mart Stores](#), the court ruled that a result showing "the maximum reading the test can measure for marijuana" was **not** sufficient to prove that an RQP was impaired by marijuana. This was because the employer failed to present any expert testimony regarding the test result's concentration level or any other evidence of impairment. The court also ruled that RQPs have a right to sue their employers in court for violating the AMMA's employment protections, even though the law itself does not explicitly address how RQPs may enforce those provisions.

Recreational Marijuana

Arizona voters legalized recreational marijuana by approving [Proposition 207](#) on Nov. 3, 2020. Also known as the Smart and Safe Arizona Act, this law allows individuals age 21 and older to:

- Possess, use, purchase, process, manufacture or transport **up to 1 ounce** of marijuana (up to 5 grams of which may be in concentrate form); and
- Cultivate **up to 12 marijuana plants** in a single residence as long they are kept in an enclosed and locked area.

Impact on Employers

The recreational marijuana law specifies that Arizona employers are not prevented or restricted from:

- Maintaining drug and alcohol-free workplaces;
- Having workplace policies that restrict the use of marijuana by employees or job applicants; or
- Prohibiting or regulating conduct otherwise allowed under the law, when that conduct occurs on or in their properties.

Other Drug Testing Considerations

The **Arizona Drug Testing of Employees Act** provides protection against certain lawsuits for employers that choose to implement drug or alcohol testing programs, as long as these programs meet certain requirements (such as establishing a written policy, providing notice to employees and following specific testing protocols).

As noted by the court in *Whitmire v. Wal-Mart Stores*, compliance with this law does **not** conflict with the AMMA's prohibitions against discrimination based solely on a positive test for marijuana. Therefore, employers that implement drug testing policies should ensure that these policies do not allow for any unlawful discrimination against RQPs under the AMMA.

Similarly, employers that provide local transportation services through the use of **livery vehicles, taxis or limousines** in Arizona should ensure that they do not violate the AMMA when carrying out their compliance obligations under a state law that requires them to adopt zero-tolerance drug- and alcohol-use policies for drivers. In part because this law does not define the term “zero tolerance” or require drug testing, it does **not** provide a defense against AMMA lawsuits for taking adverse employment actions against an RQP based **solely** on a positive test for marijuana.

More Information

Please contact Heffernan Insurance Brokers for more information on medical marijuana and drug testing laws in Arizona.

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