

# High Times... Medical Marijuana in the Workplace

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# Who is Rob?

# Why should you care?

## Outline

- 1. How did we get here?**
- 2. What Options do you Have?.**
- 3. Advice: worth what you paid for it!**

Interactive:  
questions at anytime.

## History:

....MJ in workplace has been growing like a  
Weed

## Nationwide

### Early Medical Use

- Cannabis used medicinally in the U.S. since the 1800s
- Listed in the U.S. Pharmacopeia until 1942

### Federal Prohibition

- 1937: Marihuana Tax Act of 1937
- 1970: Controlled Substances Act (Schedule I classification)
- 1996: California Proposition 215 (first medical marijuana law)

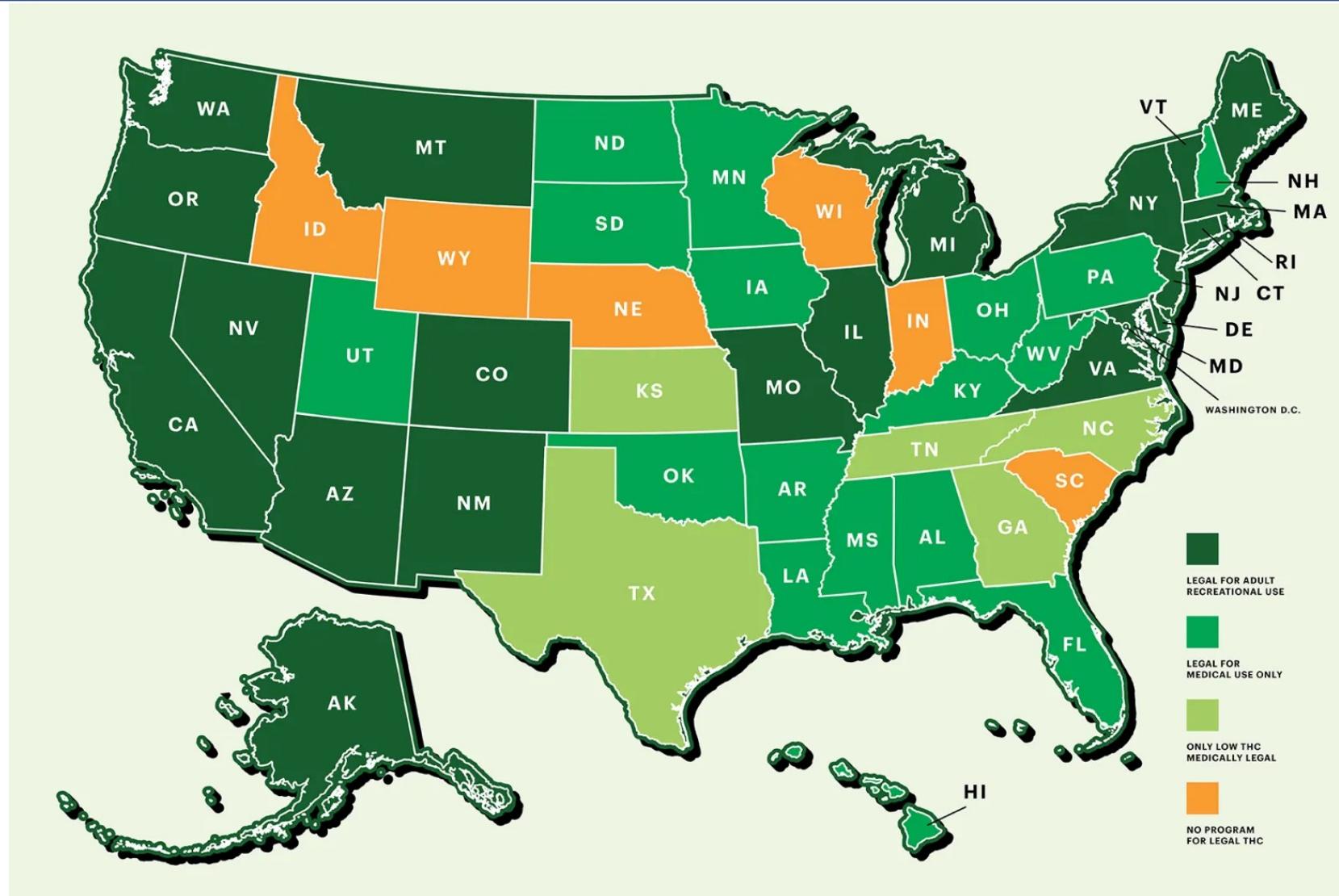
### State-Led Reform

### Current Landscape

- Rapid state adoption through voter initiatives and legislation
- Medical marijuana legal in a strong majority of states
- Recreational use in a little under half
- Ongoing federal rescheduling debate
- Expanding clinical research and accepted medical uses



# Destin Chamber – Medical Marijuana



## Initial Attempts

## Constitutional Amendments

## Regulatory Framework

## Expansion

### Florida

- Compassionate Medical Cannabis Act (Low THC)
- “Charlottes Web” – 2014, Narrow qualifying conditions
- 2014: First Try Failed
- 2016: Second Try passed (Amendment 2) - rewritten
- 2024: Full Legalization Failed (will try again)
- State-licensed Medical Marijuana Treatment Centers (MMTCs)
- Mandatory physician certification and patient registry
- Vertical integration requirement
- Highly regulated, Centralized model
- Smoking initially banned, later restored by court ruling
- Broad physician discretion for qualifying conditions
- Large and growing registered patient population

## Florida – Statutory Challenges

### Senate Bill 8-A (2017)

Created Florida's modern MJ framework:

- Medical Marijuana Treatment Centers (MMTCs)
- Vertical integration (grow–process–dispense)
- Patient registry & physician certification
- Ban on smoking marijuana (allowed oils, edibles, vapor)
- Challenged Smoking ban...Successful
- Legislature repealed, rather than appeal - limited court decisions
- “The Legislature may regulate but may not materially restrict the constitutional MJ right.”
- Supply (70 days) and License caps' mandatory recertification
- Advertising restrictions and rules. Potency limits
- **Consistently Provided:**
  - No homegrown MJ
  - No insurance coverage mandates
  - Employer Flexibility

### Legal Challenges

### Continuing Regulations

# Qualifying Conditions:

### Specifically Enumerated

- Cancer
- Epilepsy
- Glaucoma
- HIV/AIDS
- Post-Traumatic Stress Disorder (PTSD)
- Amyotrophic Lateral Sclerosis (ALS)
- Crohn's disease
- Parkinson's disease
- Multiple sclerosis (MS)

**Catch All:** “Medical conditions of the same kind or class as or comparable to those enumerated above.”

*Commonly included:*

- Chronic pain (especially neuropathic pain)
- Severe arthritis
- Migraines
- Fibromyalgia
- Sickle cell disease
- Endometriosis
- Traumatic brain injury (TBI)
- Severe anxiety disorders (when clinically documented)

# Must be Registered and Hold a Card:



## Fla. Statutes §381.986

2017: Florida enacts §381.986 implementing Amendment 2.

**§381.986(15) 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.  
NO 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.

## Fla. Statutes §381.986

Florida strict compared to other states – Pro Employer

Medical marijuana is treated as a lawful medical authorization, NOT a workplace entitlement.

More legislation filed: HB 689, SB 1702 (Civil Immunity for Employers) if:

1. Possession on worksite
2. Positive Test
3. Impairs ability to perform

## Florida – ADA Applicable to MJ?

ADA requires employers to reasonably accommodate disabled individuals. One possible accommodation: *allowing use of prescription medication.* *BUT*

**ADA DOES NOT protect use of illegal drugs.**

Because marijuana is illegal (for now) under the Controlled Substance Act

NO requirement to accommodate under ADA or FCHR

BUT: only applies to accommodating marijuana use,  
NOT the underlying disability.

## Florida – Off the Clock Use?

MJ Unlike other “drugs”

Stays in system long time (90 days)

Impairment not easily measured like BAC

Also, tolerance can build

So could have a worker with same THC level:

1.     Totally impaired and dangerous
2.     Not impaired at all,

Both testing positive ...

**Ok ... So how in the hell do you  
deal with all of this...**

## Florida – What to do

### Three Mains Paths:

1. Allow no use (safest for now)
2. Allow off-site use, no on-site use. (focus on worksite)
3. Allow on-site use. (potentially dangerous)

Have a policy even if internal only . . Carefully think it through and how it applies to your workplace

## No Use at All

- Florida Law does NOT authorize MJ use in ANY workplace – employer choice
- “Prescription” or not, can outright prohibit use – on or off site
- Test Positive - gone
- Federal Contracts (over \$100K) – required to have a drug-free workplace policy
- Discounts on Workers Comp insurance with a Drug-Free Workplace policy

## Florida – Concerns for No Use

Can't find anyone that can pass drug test and work

No. 1 question I have been asked in last few years

It's a delicate balance  
Workplace specific questions

## Allowing On Site Use

Obvious: Liability of having impaired workers.

Florida Workers Comp Drug-Free Workplace:  
Employers entitled to discounts with drug-free workplace..

Federal Contracts: Drug Free Workplace Act  
Federal contracts over \$100k MUST have drug free work place.

Insurance – Can you still get it?

Impact on Customers? – all right all right all right

## Suggestions

Tolerate Off-Site Use

Look for On The Job Use and Impairment Only

Recommend a specific well-thought out policy...  
in advance

# Your Principles – define them

No use at Workplace

No Impairment at Work

No storage or possession of MJ at worksite

No violation of any rules (health, safety, etc...)

No distribution or selling

No driving company vehicles (safety sensitive standards)

### Focus on Impairment

Safety, Performance, Customers

Treat like being intoxicated at work

Supervisors – observe and document

Reasonable suspicion and post-accident testing

Emphasis on professionalism and customer standards

Impairment Checklist?

## Questions?

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