

2017's New Marijuana Laws

Tips for California Employers



A WHITE PAPER PROVIDED BY ULTIMATE STAFFING SERVICES

Defined as the “Legal Haze,” the new laws regulating marijuana usage may make employers feel like they are in a weird place, unsure of the role the new law will play in their workplace.

Recreational marijuana use is now legal in eight states, including California. Passed in November 2016, this new legislation – known as Proposition 64 – may change how some of your employees spend their free time. Currently, in California, you are not required to accept marijuana usage amongst your workforce.

However, before you make any changes, we highly recommend checking with your local legal counsel to see if your workplace policies need to be modified. We've included some general information to keep everyone safe, informed, and out of legal trouble – employers included.

The Basics

California now *permits* the following:

- Possession and use of up to one ounce of marijuana (or 8 grams of concentrates) and personal use cultivation of up to six plants per residence by adults 21 and over.
- Reduced penalties for most illegal cultivation, sale, transport, and possession for sale offenses from felonies to misdemeanors, with possible exceptions for repeat or violent offenders or other aggravating circumstances.

- Prior offenders may petition the court to have their criminal records changed to what the offense would have been if Prop 64 had been in effect.
- Establishing a licensed regulation system for commercial production and sale of adult use cannabis beginning on Jan 1, 2018.

California *prohibits*:

- Smoking or consumption of marijuana in any “public place” or while driving.
- Possession on school grounds.
- Possession of an open container of marijuana while driving or riding in a motor vehicle.

Note: These are just a few of the basics. For more details, go [here](#).

Drug-Testing Policies

Even though recreational use is now legal, employers can maintain a zero-tolerance drug policy, if they choose.

The law does not restrict “the rights and obligations of public and private employers to maintain a drug and alcohol-free workplace or require an employer to permit or accommodate the use, consumption, [or] possession, ... of marijuana in the workplace, or affect the ability of employers to have policies prohibiting the use of marijuana by employees and prospective employees, or prevent employers from complying with state or federal law.”

(See the full text of Proposition 64 [here](#).)

As an employer, you can also maintain a drug-testing policy.

According to the Society for Human Resource Management (SHRM), there is no comprehensive federal law that regulates drug testing in the private sector, leaving the issue open to state regulation. California is one of the few states with a state Constitution that includes a right to privacy, so this can sometimes complicate drug-testing practices. [Nolo](#), a publisher specializing in DIY legal books and software, provides additional information on the matter.

In regards to applicants, as long as an employer tests all applicants for particular job positions, and doesn't single out certain applicants based on protected characteristics (such as race or disability), drug testing is accepted. Prior to passage of Proposition 64, the California Supreme Court in [Ross v. Ragingwire Telecommunications, Inc., 42 Cal.4th 920 \(2008\)](#), held that employers were not required to accommodate medicinal marijuana use under California's Compassionate Use Act of 1996 (which provided that persons using marijuana under the care of a physician were not subject to criminal prosecution). The court held that it did not constitute disability discrimination for an employer to refuse to hire an applicant who tested positive for marijuana, even though the drug was prescribed under the Compassionate Use Act.

(continued...)

Testing current employees is trickier. With limited exceptions (typically in safety-sensitive industries), employers are prohibited from requiring or conducting drug tests on existing employees (SHRM).

However, if an employer has a reasonable suspicion that an employee is using drugs and the suspicion is based on objective facts, the employer may be able to require the employee undergo a drug test (Nolo). Reasonable suspicion is suspicion that requires further investigation based on some factual foundation. Reasonable suspicion drug testing is likely to be upheld as lawful by courts if the employer requires such testing under an established **written policy** and if the suspicion is legitimate based on objective factual foundations.

Some local ordinances may restrict drug testing in the workplace, so we **highly recommend** consulting with local legal counsel.

Random drug testing is unpredictable and not recommended (Nolo).

If you drug test an employee and they test positive for marijuana, “the law says companies can choose to let them go – even if there’s no indication they were actually high on the job,” according to the [Orange County Register](#).

Regardless of how relaxed you want your policy to be, work with your local legal counsel to **map out** your drug and drug-testing policies, **document** them, and make them **readily available** to all employees.

*At Roth Staffing Companies (parent company of Ultimate Staffing Services), we have a **zero-tolerance drug policy** for our internal employees and Ambassadors (the temporary employees who represent us on assignment). You can rest assured that you will receive the safest, highest quality service.*

The Present & the Future

Laws are changing all the time, even in the time it takes to get this White Paper out. One piece of advice will remain constant: **seek guidance from your general counsel or local legal professional to ensure your policies are fair and accurate.** Having proper legal guidance will protect both your business and your employees.

ABOUT US

A DIFFERENT KIND OF STAFFING FIRM

In 1994, we envisioned a company unique to the industry, one based on pride and purpose. We wanted Roth Staffing Companies, the parent company of Ultimate Staffing Services, to be an organization our business customers consistently raved about.

Ultimate Staffing Services currently operates in nearly every major metropolitan market nationwide. We also manage numerous on-site locations.

We are the only national company in the commercial staffing space that has been recognized with all four of the industry’s major awards for service excellence and coworker engagement.

As a business line of Roth Staffing Companies, L.P., we have received awards for quality and service excellence in alignment with the Malcolm Baldrige criteria and we remain the only staffing company to be ranked the #1 fastest-growing, privately-held company in the United States by *Inc.* magazine. We are consistently ranked as one of the largest, privately-held staffing companies in the nation.

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