

# 1. Experts: Employers Have the Upper Hand With New Legalization of Recreational Marijuana

Connecticut employment attorneys weigh in on the state's new law, which took effect July 1, legalizing recreational marijuana use.

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## 2. Robert Storage [→](#)

Reporter

Marijuana

5 minute read



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## 3. What You Need to Know

- New workplace restrictions regarding marijuana use take effect July 1, 2022.
- Employers can test their workers on the spot if they have 'reasonable suspicion.'

- Smoking rooms in the state will be illegal Oct. 1, because of the Clean Air Act.

Connecticut's new law legalizing recreational marijuana came with many questions and concerns for employers, who called their attorneys asking for a breakdown of what the legislation meant for them.

It came as a surprise to many employers that they still retained much of the rights related to whether or not drugs—such as marijuana—could be used in the workplace, or even outside the workplace.

While decriminalizing marijuana took effect July 1, many rules related to the workplace and cannabis don't take effect until a year later, in 2022.

Still, employment attorneys whose practice includes marijuana said they've been busy explaining the new rules and ramifications to their clients.

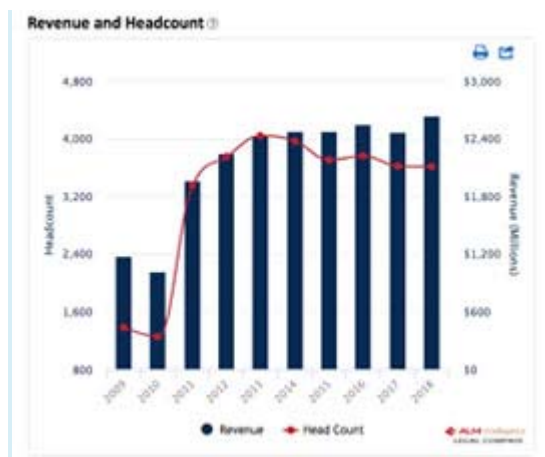
"Employers still have the upper hand," said Shipman & Goodwin's Sarah Westby, also a member of the firm's defense and labor relations group. "Even though, in a legal sense, you now can't be arrested for use, the employer can prohibit it in the workplace. A lot of people think they now have a free rein to use marijuana; there is a misconception out there. Employers still have a lot of power."

Experts said one must for employers, large and small, is to have a written policy in place as of July 1, 2022. That, they

said, would protect employers legally, and would help them avoid headaches down the road.

“My big takeaway is that it is imperative to implement a clear written policy and to circulate it to your employees,” said attorney Megan Carannante, co-chair of the labor employment and employee benefits department at Pullman & Comley.

Carannante said she’s spoken to more than a dozen clients who have asked about the new law and had many questions. “We’ve worked with them to take a look at their drug-free workplace policies,” she said.



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Those interviewed for this story said, as it relates to the new law, there are two types of employers: exempt employers who can pretty much set their own drug policies and non-exempt employers.

Exempt employers include businesses like health care, aviation and trucking and jobs with a safety element to it. Those businesses don't have to have a written policy come next summer, although it's advised they do.

The biggest difference in the law, experts said, is that non-exempt employers can no longer refuse to hire an individual who failed a test prior to employment. But, there is a catch.

"Once you are a current employee for a non-exempt employer then the employer can, if they want to, regulate off-duty cannabis use, but only if they have a written policy in place. That provides notice to employees that they may face adverse actions if they engage in off-duty use," Carannante said.

So why, if marijuana is legal in Connecticut, can individuals still be penalized for using it?

The experts say the intent of the law was to decriminalize the use, but the actual wording of the law still gives employers lots of power.

Even though employers can take adverse action against those who use the drug, the question is: will they?

“Now that marijuana is legal, many people will test positive for recreational marijuana. It’s a question of your workforce and the job,” said Patricia Reilly, chairperson of Murtha Cullina’s labor employment practice group. “If an applicant applies for a job that is not a high risk job and the employer is having difficulty filling positions, does the employer want to test for recreational marijuana? That might rule out some of the workforce and reduce the applicant pool. Do they want to do that?”

For some federal jobs, random drug testing is legal. In most cases, however, it’s not.

But employers can test their workers on the spot if they have “reasonable suspicion” even without a written policy; however, it’s best practice for employers to have a written policy that addresses all aspects of drug testing, Reilly said.

“The employer can do reasonable suspicion drug testing if it can articulate the ways in which the employee is impaired,” Reilly said. “Are they spacing out? Are they unbalanced? Reasonable suspicion is sometimes hard to establish.”

One takeaway from the new law is that it’s possible more employers might actually test workers for marijuana under the “reasonable suspicion” guidelines, Reilly said.

“You were able to test under reasonable suspicion in Connecticut previously, but now that it is articulated in the new law, we might see more reasonable suspicion drug

testing in the state. It will be interesting to see if there is an increase in reasonable suspicion drug testing expressly for marijuana,” Reilly said.

Westby said that while the new law legalizing recreational cannabis use might seem to benefit users of the drug, business owners still have a right to enforce their own rules.

“Employers have the ability to control how they want to enforce the rules,” Westby said. “They can choose whether they allow marijuana in the workplace and they can also control whether employers use marijuana outside the workplace. Even though marijuana is legal, they can still do this. It’s legal in the sense that it’s not a crime.”

There is another wrinkle in the smoking laws in the state. And, that is that so-called “smoking rooms” in workplaces will be banned as of Oct. 1 in the Nutmeg State.

Westby said the restrictions go into effect Oct. 1 in Connecticut under the Clean Air Act.

“Prior to Oct. 1, employers had safe places like a smoking room or right outside the door to smoke,” Westby said.

“Under the new law taking effect, employers can’t provide a place for smoking anywhere in the workplace and that includes outside within 25 feet of any doorway to the business.”

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