



# Tri State Update: Cannabis in the Workplace



Relationships



Communication



Budgeting  
and Staffing



Know-How



Results



**Zachary D. Bombatch**  
(724) 749-3133  
zachary.bombatch  
@stepToe-johnson.com



**Nelva J. Smith**  
(614) 456-1656  
nelva.smith@  
stepToe-johnson.com



**Mark C. Dean**  
(304) 353-8105  
mark.dean@  
stepToe-johnson.com



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# A National Perspective



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# Schedule I of the CSA (Federal)

Schedule I drugs, substances, or chemicals are defined as drugs with no currently accepted medical use and a high potential for abuse. Some examples of Schedule I drugs are:

heroin, lysergic acid diethylamide (LSD), **marijuana (cannabis)**, 3,4-methylenedioxymethamphetamine (ecstasy), methaqualone, and peyote

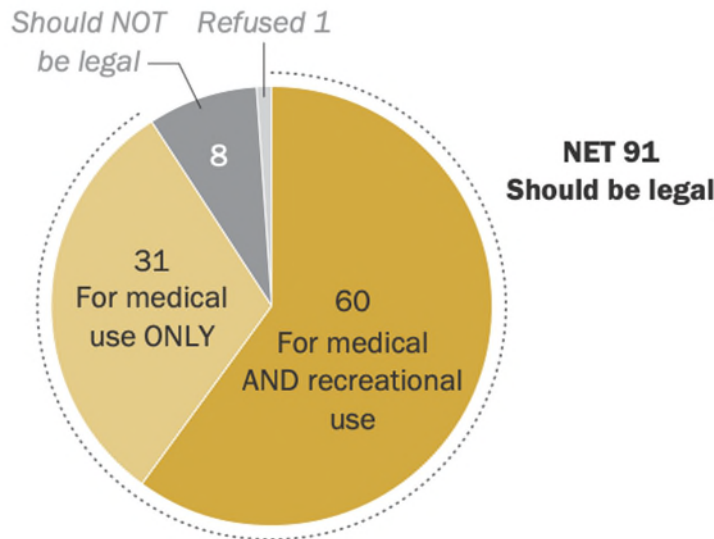
# National Public Opinion

Majorities across age groups – except 75 and older – say marijuana should be legal for medical and recreational uses

% who say marijuana should be ...

## Fewer than 10% of U.S. adults say marijuana should not be legal at all

% who say marijuana...



Source: Survey of U.S. adults conducted April 5-11, 2021.

PEW RESEARCH CENTER

	Legal for medical AND recreational use	Legal for medical use ONLY	NOT be legal
Total	60	31	8
White	63	29	7
Black	65	26	8
Hispanic	52	35	12
Asian*	43	46	8
Ages 18-29	70	24	4
30-49	65	25	10
50-64	59	32	8
65+	46	44	9
65-74	53	40	6
75+	32	53	14
Rep/Lean Rep	47	40	12
Conserv	39	45	15
Mod/Lib	60	34	6
Dem/Lean Dem	72	23	5
Cons/Mod	63	30	7
Liberal	82	14	3

\*Asian adults were interviewed in English only.

Notes: White, Black and Asian adults include those who report being one race and are not Hispanic. Hispanics are of any race. No answer responses not shown.

Source: Survey of U.S. adults conducted April 5-11, 2021.

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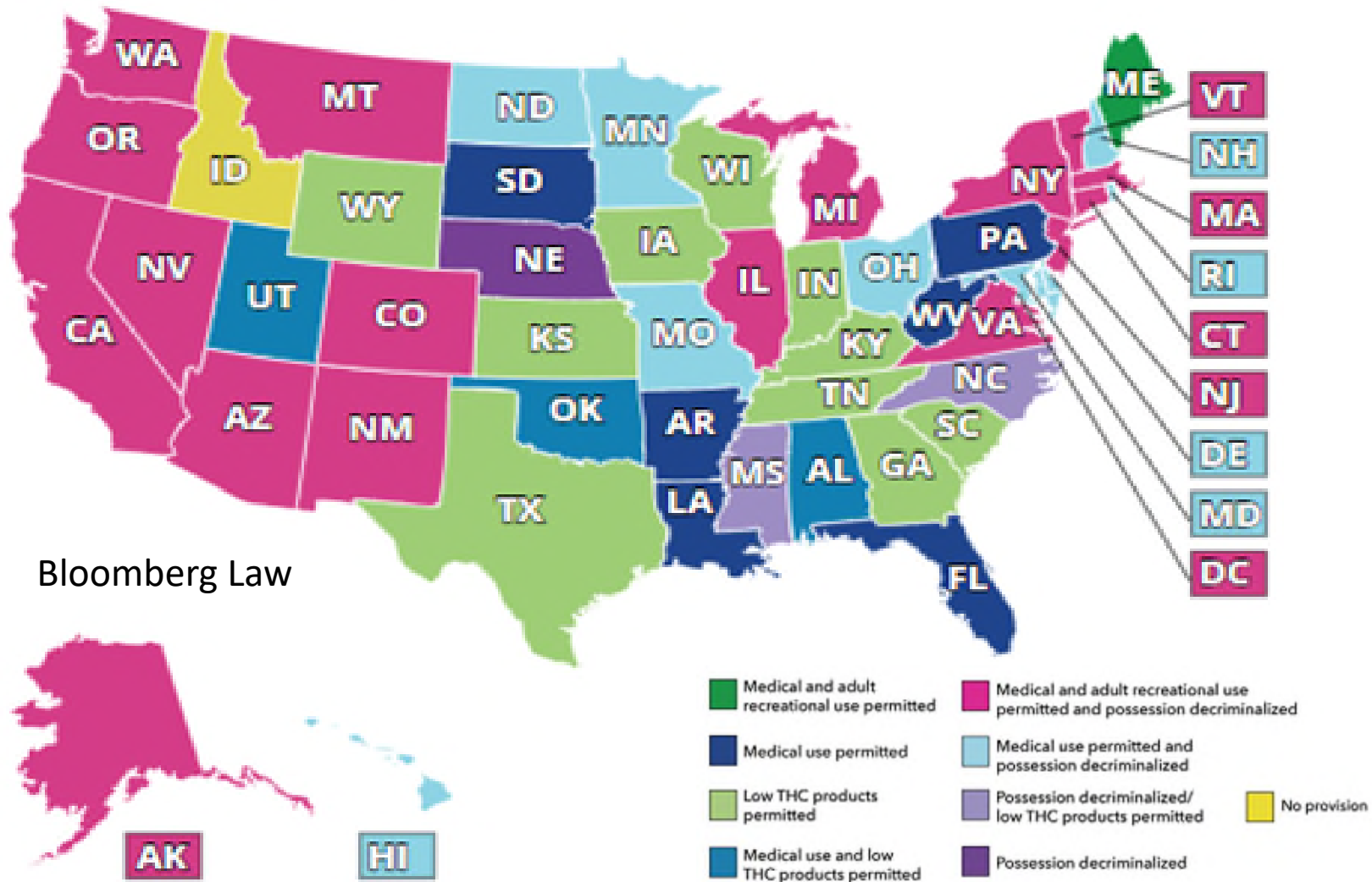


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# National Legal Landscape



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# Employer Friendly Cases

- Employer **not required to waive drug test for marijuana** as a condition of continued employment following a forklift incident
- State may exempt medical marijuana users from reach of criminal law, but it **cannot require employers to accommodate what federal law prohibits**
- Quadriplegic customer service rep. discharge upheld because **federal law controls**
- Applying to be a marijuana dispensary is **not protected activity under** marijuana statute



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# Employee Friendly Cases

- Employer liable for damages for firing certified medical marijuana user **testing positive for marijuana**
- Employer discriminated against individual when it rescinded job offer following a **positive drug test for THC**
- Off-site use of medical marijuana may be a “**reasonable accommodation**” under state’s anti-discrimination law for disabled individuals
- The **purpose of the CSA** is “quite distant from the realm of employment and anti-discrimination law.”



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# Polling Question 1



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# Pennsylvania

# Employer Restrictions

- Employers cannot discriminate against an employee **solely on the basis of an individual's medical marijuana ID**
- No marijuana use on company property or during working hours
- Employees are not permitted to work while under the influence
- Employees can be disciplined **if under the influence and their conduct falls below the standard of care normally accepted for that position**



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# Medical Marijuana & the Workplace

- **10 nanograms of active THC per milliliter of blood in serum:**
  - No working with **chemicals** which require a permit from government
  - No working with **high-voltage electricity** or **any other public utility**
  - No employment duties at **heights** or **confined spaces** (includes mines)
  - No activities the employer deems to be **life-threatening**



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# Drug Testing

- No general drug testing statute in Pennsylvania
- Drug testing under PUC jurisdiction for transportation employee
- How can we test if an employee is “**under the influence**” of marijuana?



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# What Will Happen in Pennsylvania?

- “In essence, the MMA creates a **temporary program** for qualified persons to access medical marijuana, for the safe and effective delivery of medical marijuana, and for research into the effectiveness and utility of medical marijuana.”
- “Significantly, **the MMA does not declare that marijuana is safe and effective for medical use**; instead, the MMA is a temporary vehicle to access the substance pending research into its medical efficacy and utility.”

# Polling Question 2



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# What Will Happen in Pennsylvania?

- Unemployment compensation benefits awarded where employer's drug testing policy permits employees to use **“lawfully obtained substances”**



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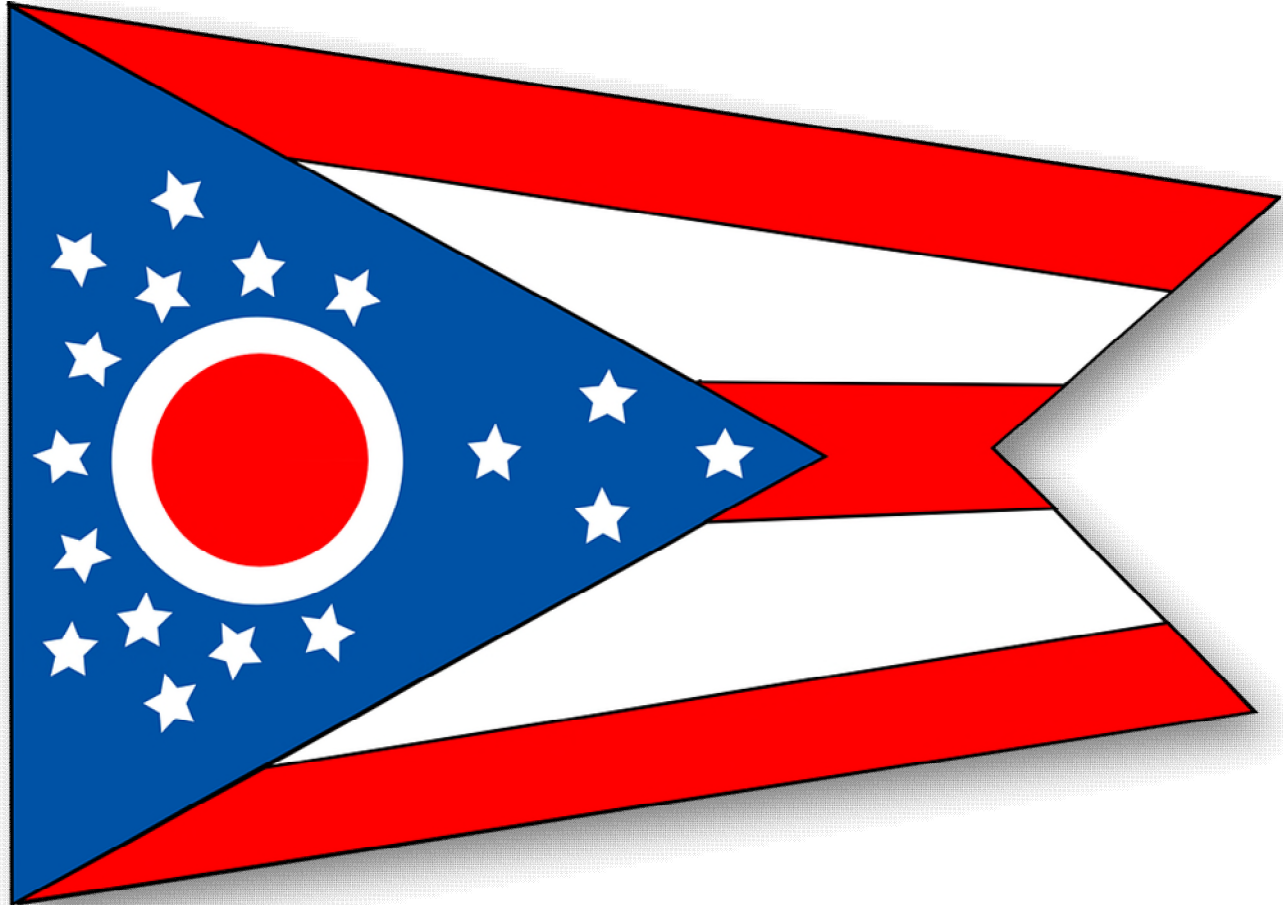


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# Ohio





# Ohio Medical Marijuana Control Program - Numbers

- 54 Dispensaries with Certificates of Operation
- As of June 30<sup>th</sup>
  - 313,052 Recommendations (204,114 as of 11/20)
  - 215,874 Registered Patients (154,376 as of 11/20)
    - 13,477 Patients with Veteran status
    - 14,876 Patients with Indigent status
    - 842 Patients with a Terminal diagnosis
  - 173,228 Unique patients who purchased medical marijuana
  - 23,472 Registered Caregivers
- 650 Physicians



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# Ohio Medical Marijuana Control Program - Numbers

- Sales Figures
  - 53,723 lbs of plant material
  - 4,529,453 units of manufactured product
  - \$471.2 million in product sales
    - Compared to \$221.5 million in 2020



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# Ohio's Medical Marijuana Law

## *Employment O.R.C. § 3796.28*

*Effective September 30, 2021*

- Employers are not required to permit or accommodate an employee's use, possession, or distribution of medical marijuana
- Employers are not prohibited from refusing to hire, discharge, discipline, or otherwise take adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment because of that person's use, possession, or distribution of medical marijuana



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# Ohio's Medical Marijuana Law

## *Employment O.R.C. § 3796.28*

*Effective September 30, 2021*

- Employers are not prohibited from establishing and enforcing a drug testing policy, drug-free workplace policy, or zero-tolerance drug policy



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# Ohio's Medical Marijuana Law

## *Employment O.R.C. § 3796.28*

*Effective September 30, 2021*

- Does not permit a person to commence a cause of action against an employer for refusing to hire, discharge, discipline, discriminate, retaliate, otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment related to medical marijuana
- A person who is discharged because of medical marijuana use – is considered discharged for just cause if the use was in violation of the employer's policy



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# Polling Question 3



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# Ohio's Medical Marijuana Law

## *Employment O.R.C. § 3796.28*

*Effective September 30, 2021*

- Not a violation of Ohio Civil Rights law if an employer discharges, refuses to hire, or otherwise discriminates against a person because of that person's use of medical marijuana if the person's use of medical marijuana is in violation of the employer's drug-free workplace policy, zero-tolerance policy, or other formal program or policy regulating the use of medical marijuana [*new section to be effective 09/30/21*]



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# Ohio Recreational Marijuana

- Ohio Democrats are planning to introduce legislation to legalize recreational marijuana.
  - Adults 21 and older could grow up to 12-15 plants and carry as much as 5 ounces and paraphernalia and/or sell limited amounts of marijuana
  - Anyone convicted for growing or selling marijuana would have their record cleared
  - 10% excise tax to education, repairing roads and bridges, and local governments
  - Keep the medical marijuana program intact
- Current governor does not support legalization



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# West Virginia



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# West Virginia Medical Cannabis Act

- *W. Va. Code § 16A-1-1, et seq.*
- Passed in 2017
- Attempted revisions in 2021
  - Increase list of “serious medical conditions” from 14 to 56
  - Allow dry leaf, plant, and edibles
  - “Compassion certificate” – allow patients 12 mature plants and 12 seedlings
  - Increase authority of advisory board
- Program will finally be in operation late 2021



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# West Virginia Medical Cannabis Program

- 10 growers/10 processors
  - Plants are “in the ground”
- 100 dispensaries statewide
  - Expected to open late fall/early winter 2021
- Patient and physicians applications opened February 2021
- As of July 29:
  - over 2,000 patient registrations
  - 58 physicians



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# West Virginia Medical Cannabis - Employers

- Employers cannot discharge, threaten, refuse to hire, discriminate, or retaliate against an employee **solely on the basis of an individual's certification to use medical cannabis**
  - Terms and conditions of employment
- However, no workplace accommodation is required:
  - Employees need not be permitted to work while under the influence
  - Employees need not be permitted to use cannabis use on company property
- Employees can be disciplined if under the influence and their conduct falls below the standard of care normally accepted for that position



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# West Virginia Medical Cannabis - Employees



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- A patient may not operate or be in physical control of any of the following while under the influence with a blood content of more than **3 nanograms of active tetrahydrocannabinis [“THC”] per milliliter of blood in serum:**
  - Work with **chemicals** which require a permit from government
  - Work with **high-voltage electricity** or any other **public utility**
  - Vehicle, aircraft, train, boat, or heavy machinery

# West Virginia Medical Cannabis - Employees

- A patient may not operate or be in physical control of any of the following while under the influence with a blood content of more than **3 nanograms of active tetrahydrocannabinis [“THC”] per milliliter of blood in serum:**
  - Perform employment duties at **heights** or **confined spaces** (includes mines)
  - Activities employer deems to be **life-threatening** (to employee or others)
  - Activities involving public safety risks



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# West Virginia – Recreational Marijuana

- Legislation
  - Democrats introduced bills legalizing use for adults age 21 and over; regulate similar to alcohol
  - Decriminalization on the table?



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# West Virginia – Recreational Marijuana

- Changing tide in the Governor’s Mansion
  - “I will say, adamantly, **I am 100% against recreational marijuana.**” - *Governor Jim Justice (3/26/19)*
  - “I’m not educated enough to make a really good assessment [of recreational marijuana] as of yet, but I can tell you just this: **I do believe that is coming** and that a wave is coming across all of our states.” - *Governor Jim Justice (3/2/21)*



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# West Virginia – Drug Testing

- Since 2017 –Safer Workplace Act
- Private employers
  - Except those already covered by statutory scheme (mining) or West Virginia Alcohol and Drug-Free Workplace Act (public contracts)
- Coverage:
  - Alcohol
  - Drugs – “any substance considered unlawful for non-prescribed consumption or use under the Controlled Substances Act”



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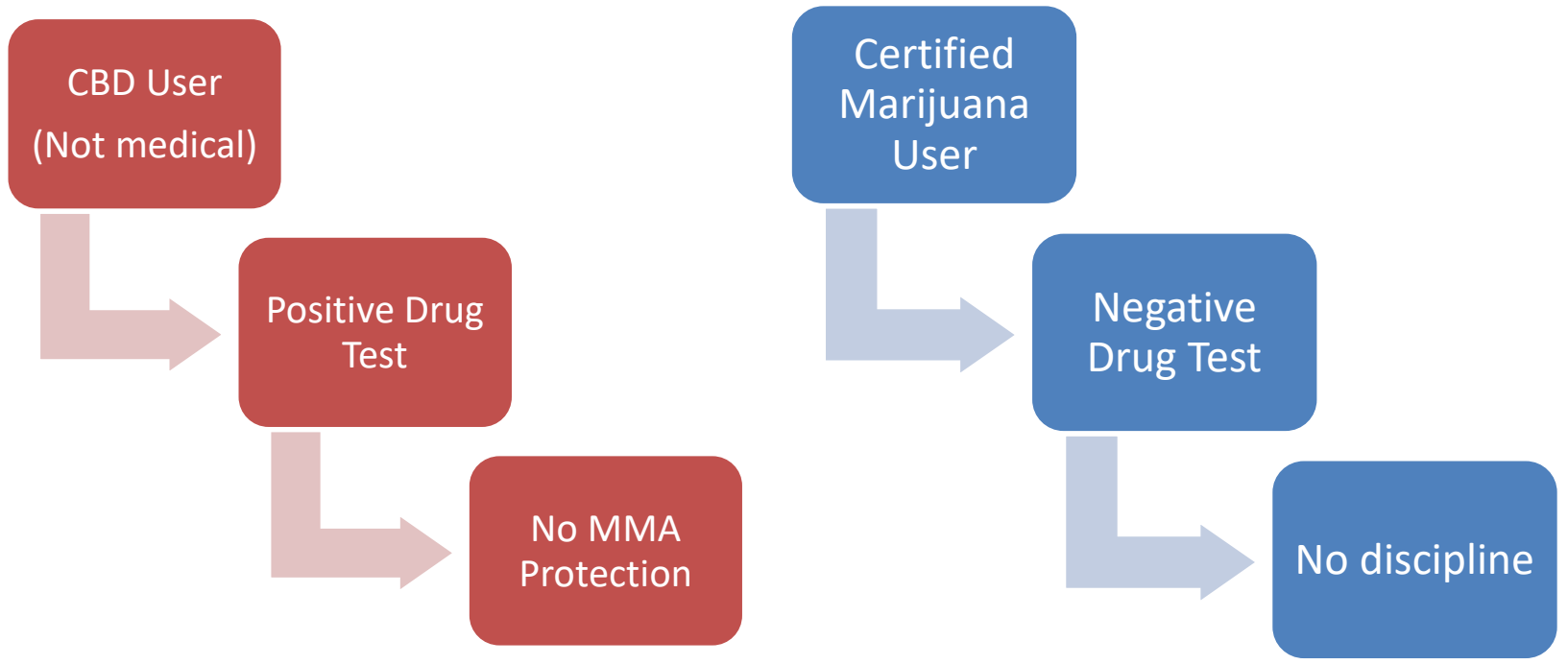


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# What Will Happen in Your State?



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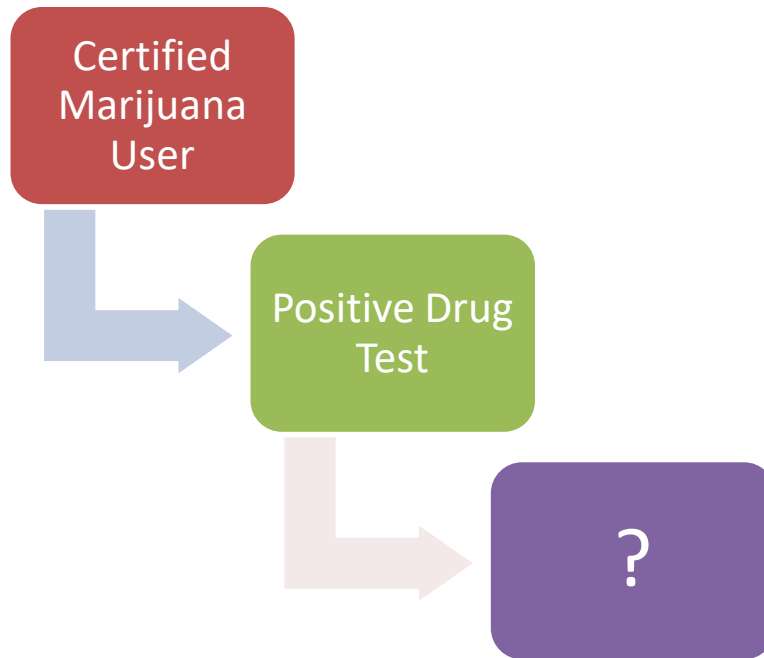


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# What Will Happen in Your State?



Is a positive test for  
THC/marijuana  
indicative of  
impairment?



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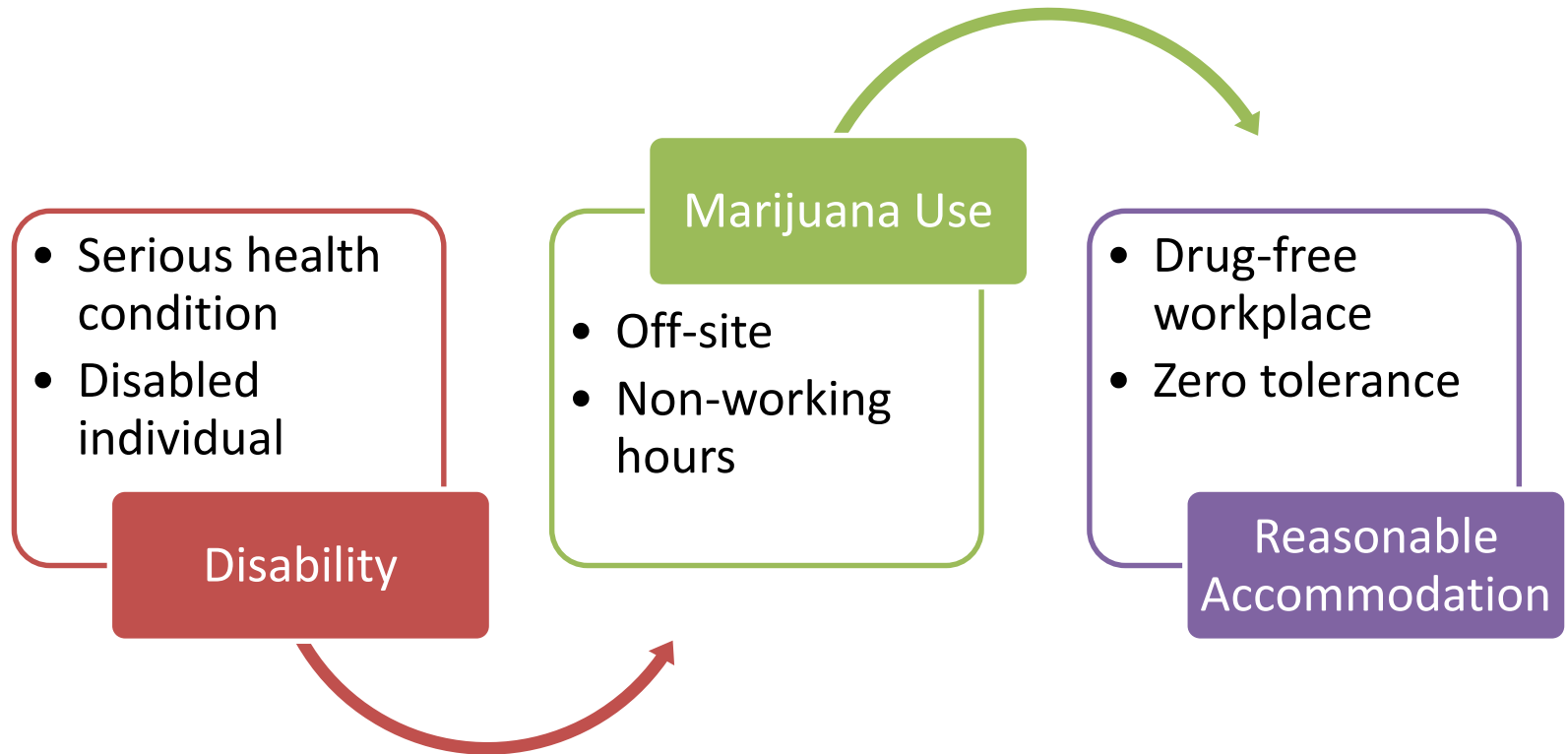


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# State Anti-Discrimination Statutes



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# Questions?



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