



MEDICAL CANNABIS

Frequently Asked Questions

1. What is the West Virginia Medical Cannabis Act?

The West Virginia [Medical Cannabis Act, W.Va. Code § 16A-1-1 et. seq.](#), (MCA) legalizes the use, possession, and distribution of medical cannabis to treat serious medical conditions, while also providing employees with protection from discrimination based on the employee’s certification for use of medical cannabis.

The MCA decriminalizes the use and possession of medical cannabis for patients suffering from fifteen “serious medical conditions” specified in the MCA: cancer, HIV or AIDS, amyotrophic lateral sclerosis (Lou Gehrig’s disease), Parkinson’s disease, multiple sclerosis, spinal nerve damage, epilepsy, neuropathies, Huntington’s disease, Crohn’s disease, post-traumatic stress disorder, intractable seizures, sickle cell anemia, severe chronic or intractable pain, and terminal illness. The MCA does not authorize patients to grow or smoke cannabis in plant form.

2. What is Medical Cannabis?

Upon recommendation of a licensed medical cannabis physician, West Virginia (WV) residents with qualifying serious medical conditions may be certified to use medical cannabis or cannabis as part of a medical treatment plan. The WV medical cannabis card developed by the Office of Medical Cannabis is issued through the West Virginia Department of Health and Human Resources (WVDHHR), Bureau for Public Health (BPH). The types of medical cannabis forms that are approved for use include: pill, oil, tincture, liquid, topical forms, including gels, cream or ointments, dermal patch or any form medically appropriate for administration by vaporization or nebulization, including dry leaf or plant form.

3. What protections do employees have who are using medical cannabis?

The MCA provides that employers may not discharge, threaten, refuse to hire, or otherwise discriminate or retaliate against an employee solely based on that employee’s status as a registered medical cannabis cardholder.

4. How does the passage of the Medical Cannabis Act change the workplace?

While the MCA decriminalizes the use and possession of medical cannabis for registered patients in WV, under the federal law, possession of cannabis remains illegal in all fifty states. Additionally, both the Division of Personnel (DOP) [Drug-and Alcohol-Free Workplace](#) policy (DOP-P2), and the federal Drug-Free Workplace Act of 1988 are unchanged by state legislation of medical cannabis and prohibit the possession, use or being under the influence of illegal drugs in the workplace.

5. What is considered the “workplace”?

A workplace is a site where service or work is performed in connection with an independent contractor’s, volunteer’s, or employee’s public employment or service. The workplace shall include facilities, property, buildings, offices, structures, automobiles, trucks, trailers, other vehicles, and parking areas provided by the State, even if not owned, leased, or operated by the State.

6. Are employers required to accommodate a registered patient’s use of medical cannabis?

The MCA does not require an employer to accommodate the use of medical cannabis. Employees are prohibited from the use, possession or being under the influence of medical cannabis in the workplace by the DOP [Drug- and Alcohol-Free Workplace](#) policy (DOP-P2).

Further use of medical cannabis is prohibited by state and federal regulations for positions identified as safety sensitive. Absent a formal policy or regulation, it shall be within the discretion of the appointing authority to prohibit or impose additional restrictions for positions engaged in hazardous or specialized duty as determined by the appointing authority or designee. Differences/variances based on this premise must be defended based on factors and circumstances specific to the position and business necessity. Agency standards may be more restrictive but not less restrictive than those established by law, rule, or policy.

In addition, the Americans with Disabilities Act does not protect medical cannabis users who claim to face discrimination on the basis of their medical cannabis use or require employers to allow medical cannabis use as a reasonable accommodation for someone with a disability, even if that person is a registered medical cannabis patient.

7. What types of positions are prohibited from the use of medical cannabis?

An employer may prohibit an employee from performing any duty which could result in a public health or safety risk or when doing so while under the influence of medical cannabis would constitute negligence, professional malpractice, or professional misconduct.

Specific prohibitions established by the West Virginia Medical Cannabis Act include:

- Use or possession of medical cannabis in a state correctional facility or Regional Jail Authority facility, including a facility owned or operated or under contract with the Bureau of Corrections or the Regional Jail Authority, which houses inmates serving a portion of their sentences on parole or other community correction program.
- Use or possession of medical cannabis in a youth detention center or other facility which houses children adjudicated delinquent, including the separate, secure state-owned facility or unit utilized for sexually violent delinquent children.
- Use if performing work at heights or in confined spaces, including, but not limited to, mining while under the influence of medical cannabis.

The operation or physical control of any of the following while under the influence with a blood content of more than three nanograms of active tetrahydro cannabis per 3 milliliter of blood in serum:

- Chemicals which require a permit issued by the Federal Government or a state government or an agency of the Federal Government or a state government.
- High-voltage electricity or any other public utility.
- Operations of a vehicle, aircraft, train, boat, or heavy machinery.

Additionally, special restrictions exist pertaining to transportation workers under the U.S. Department of Transportation [federal regulations](#).

8. May use of medical cannabis, by a registered card holder, jeopardize their employment?

Employees are responsible to adhere to the state and federal regulations, and policies in relation to their job duties and positions with the State of West Virginia. Employees, including registered medical cannabis patients, are subject to disciplinary action up to and including dismissal for violating provisions of such policies as the *Drug- and Alcohol-Free Workplace* policy (DOP-P2), Fleet Management Division policies, and agency specific policies etc.

9. With an exception for employees who are impaired in the workplace, is an employee who has been certified for the medical use of cannabis by the BPH, protected from disciplinary actions or dismissal?

Use, possession and/or distribution of medical cannabis contrary to the provisions established in the MCA is unlawful and subject to penalty provided by law. The DOP *Drug-and Alcohol-Free Workplace* policy (DOP-P2), requires employees to report convictions to their supervisor and their appointing authority within five (5) days of the conviction. Failure to report such incidents in accordance with this requirement may result in disciplinary action, up to and including dismissal. Employees found to have committed or concealed a criminal act or incident(s) will be subject to disciplinary action, up to and including dismissal, depending upon the severity of the offense and the nexus to the employee's job responsibilities.

10. Does the law allow employees to consume medical cannabis on breaks or lunch periods?

No. Use, possession, and being under the influence of medical cannabis is prohibited. Additionally, paraphernalia associated with the use of cannabis is prohibited in the workplace.

11. Is medical cannabis allowed in an employee's personal vehicle?

Medical cannabis is not allowed in an employee's personal vehicle if the vehicle is parked at the workplace. Provisions of the DOP *Drug-and Alcohol-Free Workplace* policy (DOP-P2) apply to any area where work is conducted including parking areas. A workplace is a site where service or work is performed in connection with an independent contractor's, volunteer's, or employee's public employment or service. The workplace shall include facilities, property, buildings, offices, structures, automobiles, trucks, trailers, other vehicles, and parking areas provided by the State, even if not owned, leased, or operated by the State.

12. Do the types of medical cannabis forms that are approved for use emit an odor indicative of use like smoking cannabis?

The types of medical cannabis forms that are currently approved for distribution and use by registered medical cannabis patients include: pill, oil, liquid, topical forms, including gels, cream or ointments, dermal patch, dry leaf or any form medically appropriate for administration by vaporization or nebulization. Patients may experience some lingering odors from lawful use of these products during non-work hours. Absent reasonable suspicion the employee is under the influence of medical cannabis, excessive or distracting odors should be handled in the same manner as with other scented products in the workplace.

13. What do I do if I suspect an employee is “impaired”?

Where reasonable suspicion exists, employees may be required to submit to a drug and alcohol test. When an employee is observed in the workplace to be in violation of or in a condition that appears to be in violation of the DOP *Drug- and Alcohol-Free Workplace* policy (DOP-P2), the supervisor or other appropriate personnel should contact the agency Human Resources (HR) or Personnel office for assistance. If agency HR/Personnel staff are not available, the supervisor should contact agency legal counsel or the DOP Employee Relations section at (304) 414-1853.

If an agency determines an employee is unable to perform the duties of the position and the decision is made to send the employee home, necessary arrangements should be made to ensure the employee is safe.

14. If an employee is in an accident while on the job, is the employee required to submit to a drug test?

If the employee’s position is one that is subject to testing permitted by the agency’s drug testing policy, the employee could be subjected to such test. Agencies are encouraged to seek the advice of legal counsel to ensure both the employee’s and agency’s rights are protected.

15. Who is responsible to cover the cost when a drug test is administered?

The employer is responsible for payment of all drug tests they may require. If an employee wishes to have the specimen retested, it will be at the employee’s expense.

16. Who issues patient identification cards?

The WVDHHR, BPH, Office of Medical Cannabis is responsible for implementation of the MCA. Please refer to the Office of Medical Cannabis website for additional information.