

# CALIFORNIA EMPLOYMENT LAW

## Legalized Marijuana Laws



Though all marijuana use remains illegal under the federal [Controlled Substances Act](#), California has adopted laws that allow individuals to possess and use marijuana in the state.

This Employment Law Summary provides a high-level overview of California's medical and recreational marijuana laws and information about their impact on employers in the state.

### STATE RESOURCES

[California Department of Industrial Relations website](#)

[California Department of Consumer Affairs, Bureau of Cannabis Control website](#)

[California Department of Health Care Services website](#)

#### Marijuana Laws

The text of California's medical and recreational marijuana laws is available [here](#).

### OVERVIEW

California was the first state to legalize medical marijuana. In 1996, the state's voters approved Proposition 215, now known as the California Compassionate Use Act of 1996, to protect against criminal prosecution for certain medical uses of marijuana.

In 2016, California voters legalized recreational marijuana by approving Proposition 64. This is now known as the California Control, Regulate and Tax Adult Use of Marijuana Act. Under this law, individuals who are age 21 or older may possess, cultivate and use limited amounts of marijuana in the state.

### IMPACT ON EMPLOYERS

California's legalized marijuana laws do **not** affect an employer's rights to establish or enforce workplace policies that restrict or prohibit marijuana use by employees. In other words, the state's marijuana laws generally permit employers to:

- Perform drug testing (without any specified limitations); and
- Take adverse employment actions against an individual solely based on his or her positive test for marijuana, even if the individual is authorized to use marijuana for medical purposes.

The California Supreme Court confirmed this in its 2008 decision in [Ross v. Raging Wire Telecommunications](#). In this case, the court held that an employee who was authorized to use marijuana for medical purposes did **not** have the right to sue his employer for terminating his employment based on his off-duty medical marijuana use. The court ruled that California's **Fair Employment and Housing Act**, under which the employee brought a disability discrimination claim, does **not** require employers to accommodate an employee's use of drugs that are illegal under federal law.

# CALIFORNIA EMPLOYMENT LAW

## Legalized Marijuana Laws



### RECREATIONAL MARIJUANA

As of **June 27, 2017**, the **California Control, Regulate and Tax Adult Use of Marijuana Act (CAUMA)** protects individuals who are **age 21 or older** from state or local prosecution for possessing, cultivating or using limited amounts of marijuana in California. The table below provides additional information about what the CAUMA allows.

<i>Individuals age 21 and older may:</i>	
Possess, process, transport, purchase, obtain, or give away to others who are 21 or older without any compensation whatsoever:	<ul style="list-style-type: none"> <li>✓ 28.5 grams of marijuana;</li> <li>✓ Eight grams of marijuana concentrate; and</li> <li>✓ Marijuana accessories.</li> </ul>
Possess, plant, cultivate, harvest, dry, or process (and possess cannabis produced by):	<ul style="list-style-type: none"> <li>✓ Six living marijuana plants.</li> </ul>
Smoke or ingest:	<ul style="list-style-type: none"> <li>✓ Marijuana and marijuana products.</li> </ul>

### IMPACT ON EMPLOYERS

The CAUMA specifies that it does **not**:

- Affect employers' rights to maintain drug and alcohol free workplaces or to have policies that prohibit employees and applicants from using marijuana;
- Require employers to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale or growth of marijuana in the workplace; or
- Prevent employers from complying with state or federal law.

### OTHER RESTRICTIONS ON RECREATIONAL USE

The CAUMA includes certain time and place restrictions on legalized recreational marijuana use. These are summarized in the table below.

<i>Individuals may NOT:</i>	
<b>Use</b> marijuana:	<ul style="list-style-type: none"> <li>✗ In any public place;</li> <li>✗ While driving, operating or riding as a passenger in any vehicle used for transportation; or</li> <li>✗ In or on the grounds of a school, day care center or youth center while children are present.</li> </ul>
<b>Possess</b> marijuana:	<ul style="list-style-type: none"> <li>✗ In unsealed containers or packages while driving, operating or riding as a passenger in any vehicle used for transportation; or</li> <li>✗ In or on the grounds of a school, day care center or youth center while children are present.</li> </ul>
<b>Smoke or vaporize</b> marijuana:	<ul style="list-style-type: none"> <li>✗ In any location where smoking tobacco is prohibited; or</li> <li>✗ Within 1,000 feet of a school, day care center or youth center where children are present (subject to limited exceptions).</li> </ul>

# CALIFORNIA EMPLOYMENT LAW

## Legalized Marijuana Laws



In addition, the CAUMA allows California cities and counties to enact local regulations that restrict where or when recreational marijuana may be used. These regulations may **not** completely prohibit recreational marijuana use in either of the following:

- A private residence (such as a house, an apartment unit, a mobile home or other similar dwelling); or
- Any fully enclosed and secure accessory structure to a private residence (such as a garage or enclosed porch).

However, local regulations **may** completely prohibit individuals from using recreational marijuana virtually anywhere else within a particular city or county. For example, a city or county may prohibit individuals from using recreational marijuana in their own yards or anywhere else that is not part of an enclosed residential structure.

Finally, the CAUMA specifically allows individuals and other private entities to prohibit or restrict marijuana possession or use on the individual or entity's privately owned property.

### MEDICAL MARIJUANA

Under the **California Compassionate Use Act (CCUA)**, individuals called "qualifying patients" (QPs) and their primary caregivers may possess and cultivate larger amounts of marijuana than the CAUMA allows for individuals age 21 and over in general. The table below provides more information about what the CAUMA allows.

*For each QP, the QP and his or her primary caregiver may:*

Possess	<ul style="list-style-type: none"><li>✓ Up to eight ounces of dried marijuana; or</li><li>✓ Any amount of marijuana consistent with the QP's needs, if the QP's physician recommends that the eight ounces does not meet those needs.</li></ul>
Maintain	<ul style="list-style-type: none"><li>✓ Up to six mature or 12 immature marijuana plants</li></ul>

Unlike in most other states that have legalized medical marijuana, an individual does **not** have to register with any government agency in order to be considered a QP in California. Instead, an individual may be considered a QP if a physician determines that his or her health would benefit from marijuana use and the physician recommends or approves marijuana use by the individual for treatment of any of the following:

- Cancer;
- Anorexia;
- AIDS;
- Chronic pain;
- Spasticity;
- Glaucoma;
- Arthritis;
- Migraine; or
- Any other illness for which marijuana provides relief.

Under the law, the recommendation or approval by a physician may be written or oral. In addition, the CCUA defines "primary caregiver" simply as an individual who:

- Is designated by a QP; and
- Has consistently assumed responsibility for the housing, health or safety of the QP.

However, a primary caregiver must be at least 18 years old unless he or she is:

# CALIFORNIA EMPLOYMENT LAW

## Legalized Marijuana Laws



- The parent of a minor child who is a QP; or
- Otherwise entitled to make medical decisions for a QP.

Despite having no requirement for a QP or primary caregiver to register with the state, the CCUA establishes a voluntary program that requires county health departments to issue identification cards to QPs and primary caregivers who apply for them. The main advantage of obtaining an identification card under this program is that a state or local law enforcement official must accept a valid card as proof that its holder is entitled to the CCUA's protections against prosecution (unless the official has probable cause to believe that the card is being used fraudulently).

### IMPACT ON EMPLOYERS

The CCUA specifies that it does **not** require employers to accommodate medical marijuana use "on the property or premises of a place of employment or during the hours of employment."

As noted above, the California Supreme Court has also confirmed that the CCUA does **not** require employers to accommodate an employee's **off-duty** medical marijuana use, even if the employee is a QP. In other words, the CCUA does **not** prohibit employers from taking adverse employment actions against employees based solely on the fact that the employees violate a workplace drug policy by testing positive for marijuana.

In addition, the CCUA makes clear that medical marijuana does **not** have to be covered under any health care plan.

*Employers in certain California cities may be prohibited from conducting any **random** employee drug tests. For example, a [San Francisco ordinance](#) prohibits employers from requesting, requiring or conducting random or company-wide drug tests under any circumstances. Employers should become familiar and comply with all laws that apply where their employees' workplaces are located.*

### OTHER RESTRICTIONS ON MEDICAL USE

The CCUA specifies that it does **not** authorize any QP to smoke medicinal marijuana under any of the following circumstances:

- In a place where smoking is prohibited by law;
- In or within 1,000 feet of the grounds of a school, recreation center, or youth center (unless the medicinal use occurs within a residence);
- On a school bus;
- While in a motor vehicle that is being operated; or
- While operating a boat.

### MORE INFORMATION

For more information on marijuana laws in California, contact your Conrey Insurance Brokers representative.