

Off-Duty Conduct Protections for Employees' 4/20 Celebrations: A Look at the High Points of a Few States' Marijuana Laws

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With the arrival of the unofficial annual holiday known as “4/20,” employers can celebrate by reminding themselves of the state laws that could protect employees’ off-duty 4/20 celebrations.

Quick Hits

- States have begun to pass laws that protect employees’ lawful off-duty marijuana use.
- California, Minnesota, Montana, New York, and Washington all have specific laws that protect off-duty marijuana use.
- The recreational marijuana laws of Connecticut, New Jersey, and Rhode Island explicitly protect employees’ off-duty recreational marijuana use.

As a reminder, at the federal level, marijuana is still classified as a Schedule I drug under the Controlled Substances Act. However, the recreational use of cannabis has been legalized in [twenty-four states](#), three U.S. territories, and the District of Columbia—and that number continues to climb. With the rise of recreational legalization, states have begun to pass laws—or amend existing off-duty conduct laws—to protect citizens from adverse employment action due to their legal, outside-of-work, enjoyment of marijuana.

Currently, the following states have specific laws providing for off-duty conduct protections that expressly include lawful marijuana use: California, Minnesota, Montana, New York, and Washington.

California

In addition to restricting an employer’s ability to take adverse action based upon the results of certain types of marijuana tests, [Assembly Bill \(AB\) 2188](#) prohibits employers from taking adverse employment action based on an employee’s off-duty, off-premise marijuana usage.

Minnesota

The Minnesota Consumable Products Act [states](#) that “[a]n employer may not refuse to hire a job applicant or discipline or discharge an employee because the applicant or employee engages in or has engaged in the use or enjoyment of [marijuana], if the use or enjoyment takes place off the premises of the employer during nonworking hours.”

Montana

Montana’s [House Bill 701](#), signed into law by the governor in May 2021, provides that employers in Montana may not take an adverse employment action against applicants or employees who use marijuana off the employer’s premises during non-working hours.

New York

The New York Off-Duty Conduct Law, which generally prohibits employers from taking adverse employment action against employees for certain off-duty lawful conduct, was [amended in 2021](#) to include protections for employees’ lawful use of marijuana.

Washington

In addition to restricting an employer’s ability to take adverse action based upon certain types of marijuana tests, [Senate Bill 5123](#) protects applicants and employees from adverse employment actions based on lawful off-duty use of marijuana.

Other States

In addition to the above, some states—such as [Connecticut](#), [New Jersey](#), and [Rhode Island](#)—protect, through the statutory language of the recreational marijuana laws themselves (versus through the indirect protections for off-duty conduct in the previously discussed states), employees’ lawful recreational marijuana use.

With all this being said, there is no requirement that employers allow employees to use, possess, or be under the influence of marijuana [while at work](#) or during working hours. So, should employees in the above states take their 4/20 celebrations (or the impairing effects of those celebrations) to the workplace, employers may still take adverse employment action against them.

Ogletree Deakins’ [Drug Testing Practice Group](#) will continue to monitor developments with respect to state drug testing laws and will publish updates on the [Drug Testing](#) and [State Developments](#) blogs as additional information becomes available.

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