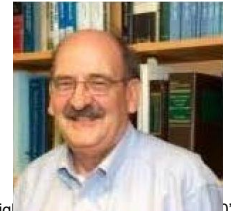
Cannabis Law

by
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Biography



Robert (“Bob”) Brian Fitzpatrick is the principal in the law firm of Robert B. Fitzpatrick PLLC in Washington, D.C. where represents clients in employment law matters. Mr. Fitzpatrick has concentrated his practice in employment law disputes for more than fifty years. He has represented clients in individual and class actions. He has represented clients in employment discrimination, workplace harassment, retaliation, age discrimination, FMLA, ADA, whistleblower, wrongful termination, non-compete, trade secrets, Computer Fraud and Abuse Act, and wage and hour claims, among others. He counsels numerous executive clients regarding employment agreements and compensation issues. He has negotiated literally thousands of severance agreements. He is also a frequent speaker on employment law topics, and has written countless articles on employment law, a few of which can be found on his website and his blog, Fitzpatrick on Employment Law. In addition to his law practice, he teaches mythology, the French Revolution, and Shakespeare to elementary school students.

Prior to entering private practice, Mr. Fitzpatrick served as a staff attorney in the Jackson, Mississippi office of the Lawyers’ Committee for Civil Rig D’s; as a staff attorney in the Office of General Counsel of the Equal Employment Opportunity Commission in the early 1970’s; and with the Washington Research Project (now the Children’s Defense Fund) training minority attorneys in the Deep South to litigate employment discrimination cases. He has been in private practice in Washington, D.C. since 1970. He is an avid hiker and kayaker. He is a Fellow of the College of Labor & Employment Lawyers, having been inducted as a Fellow at the first annual induction ceremony in 1996. He has been listed as one of The Best Lawyers in America® for at least 25 continuous years.

He is admitted to practice in all courts of the District of Columbia (Superior Court, D.C. Court of Appeals, and the Federal District Court of the District of Columbia), the Federal District Court for Maryland, the Federal District Court for the Northern District of Mississippi, the Supreme Court of the United States, the Federal Circuit, the Court of Federal Claims, and the United States Courts of Appeals for the District of Columbia as well as the Fourth and Sixth Circuits.

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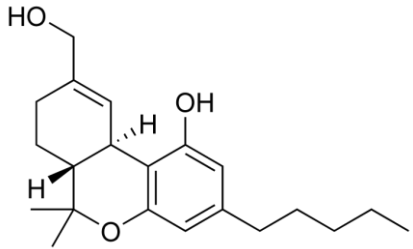
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I welcome questions, suggestions for future presentations, and criticism. All are welcome. Please do not hesitate to email me.

What is Marijuana?

- Marijuana Concentrates DrugFacts
- Marijuana DrugFacts
- Delta-9 is the psychoactive compound of the cannabis plant.
- Tetrahydrocannabinol (Wikipedia)



History

- "Marijuana Timeline" (PBS)
- "The Mysterious History of ‘Marijuana’" (NPR, July 22, 2013)
- "The Origins of Cannabis Prohibition in California" (Contemporary Drug Problems, Summer 1999)
- Harrison Act (Encyclopedia)
- Marijuana Tax Act of 1937 (Wikipedia)
- "The Boggs Act and Mandatory Minimums" (Student MMJ)
- "A brief history of federal mandatory minimum sentencing" (Tilem & Associates, January 10, 2009)
- "The Narcotics Control Act of 1956" (Schaffer Library of Drug Policy)

History

- "Former Nixon Advisor Admits ‘War on Drugs’ Was Racist" (Colorlines, March 22, 2016)
- "Legalize It All" (Harpers Magazine)
- "A Brief History of the Drug War" (Drug Policy Alliance)
- "Report: Aide says Nixon’s war on drugs targeted blacks, hippies" (CNN, March 24, 2016)
- National Commission on Marijuana and Drug Abuse (Wikipedia)
- Drug Enforcement Agency - The Early Years (Drug Enforcement Agency)
- "The History of The War on Drugs: Reagan Era and Beyond" (Landmark Recovery, February 13, 2019)
- Solomon-Lautenberg Amendment (Wikipedia)

History

- "The History of Marijuana: Learn About The Origin of Marijuana" (Recovery)
- "Chapter 14 - Sociopolitical History of Marijuana and America's War on Drugs" (From Bud to Brain: A Psychiatrist's View of Marijuana by Time L. Cermak, 2020)
- "Marijuana - The First Twelve Thousand Years" (Schaffer Library of Drug Policy, 1980)
- "The 1937 Marijuana Tax Act" (David F. Musto, Archives of General Psychiatry, February 1972)
- Cole Memo of 2013 (U.S. Department of Justice, 2013)
- Sessions rescission of 2018 (U.S. Department of Justice, 2018)

The Controlled Substances Act

- Controlled Substances Act of 1970
- The Controlled Substances Act (United States Drug Enforcement Administration)
- "The Controlled Substances Act (CSA): A Legal Overview for the 117th Congress" (Congressional Research Service)
- Controlled Substances Act (Wikipedia)

The Two Exceptions to the Controlled Substances Act

- Marinol® (dronabinol) and Syndros® (dronabinol), which are FDA approved and used to treat patients with Cancer, Glaucoma, Aids, and HIV.
- Marinol®, approved as a schedule III drug to treat nausea associated with chemotherapy.
- Syndros®, approved as a schedule II drug to treat nausea associated with chemotherapy.
- Sesamet® (nabilone), approved as a schedule II drug to treat nausea associated with chemotherapy and weight loss associated with Aids.
- Epidiolex® (cannabidiol/CBD), approved by the FDA to treat seizures and is a schedule V drug.

Dangers

- 1 in 10 people who use marijuana will become addicted. The rate of addiction rises to 1 in 6 if use starts before 18.
- Permanent IQ loss of as much as 8 points when people start using it at a young age.
- Links to depression, anxiety, suicide planning, and psychotic episodes.
- Affects timing, movement, and coordination, which can harm athletic performance.
- For drivers: slower reactions, lane weaving, decreased coordination, and difficulty reacting to signals and sounds on the road.
- During pregnancy may cause fetal growth restriction, premature birth, stillbirth, and problems with brain development, resulting in hyperactivity and poor cognitive function. THC can be passed from a mother to her baby through breast milk.
- Research shows that people who use marijuana are more likely to have relationship problems, worse educational outcomes, lower career achievement, and reduced life satisfaction.The national survey on drug use and health in 2016 reported that 7.2 million individuals between the ages of 18 and 25 self-identified as current users of cannabis and 15.2 million individuals 26 and older self-identified as current users.

Dangers

- In 1992, the concentration of THC was on average 3.8%.
- In 2014, the average has increased to 12.2%.
- Positive test results for cannabis increased 33% between 2015 and 2017.
- Study by Quest Diagnostics.
- Patients at risk of ingesting mold, fungi, bacteria, pesticides, carcinogens, and other dangerous toxins. The National Institute on Drug Abuse reports that cannabis use in its study group resulted in 85% more injuries, 55% more industrial accidents, and 75% higher absenteeism from work.
- "How does marijuana use affect school, work, and social life?" (National Institute on Drug Abuse)
- “Persistent cannabis users show neuropsychological decline from childhood to midlife” (PNAS, 2012)
- Colorado data shows significant increase in marijuana-related traffic deaths as well as marijuana-related hospitalizations.

Medical Marijuana

- California Proposition 215 of 1998
- Colorado Amendment 20
- H.R. Joint Resolution 117
- "Medical marijuana" (Harvard Health Blog, April 10, 2020)
- "Are There Benefits of Marijuana for Medical Use?" (Healthline, January 6, 2020)
- "How Medical Marijuana Works, and Which Conditions It Treats" (WebMD, August 20, 2020)
- "Does Marijuana Help Treat Glaucoma or Other Eye Conditions?" (American Academy of Ophthalmology, March 8, 2021)
- "After 50 Years, U.S. Opens The Door To More Cannabis Crops For Scientists" (NPR, May 30, 2021)
- "Medical Marijuana and Epilepsy" (Epilepsy Foundation)
- Doctors do not prescribe marijuana, but rather only can recommend.

Medical Marijuana

- Legality of cannabis by U.S. jurisdiction (Wikipedia)
- "Marijuana legalization is sweeping the US. See every state where cannabis is legal." (Business Insider, July 9, 2021)
- "Cannabis Overview" (NCSL, July 6, 2021)
- "Medical Marijuana and the ADA: Following the Path Blazed by State Courts to Extend Protection" (Saint Louis University Journal of Health Law & Policy, 2019)
- "New Nevada law: Job seekers can't be denied employment because of positive marijuana test" (Safety and Health Magazine, July 17, 2019)
- "Medical Marijuana and the ADA: Removing Barriers to Employment for Disabled Individuals" (Health Matrix: The Journal of Law-Medicine, 2012)
- "Ninth Circuit Court Holds Medical Marijuana Use Not Protected Under the ADA" (Ogletree Deakins, May 24, 2012)
- "Medical Marijuana vs. ADA in the Workplace" (National Juris University, 2014)

Medical Marijuana

- Colorado permits employer to fire employee even if using cannabis in compliance with the state's medical marijuana law.
- As of June 1, 2021, Oklahoma had a total of 11,636 medical marijuana businesses.
- Oklahoma has 369,247 registered medical marijuana patients and 2,255 caregivers, representing nearly 10% of the state population.
- Oklahoma allegedly has the highest per-capita number of patients of any state in the country.
- "Why red Oklahoma is home to a booming medical marijuana market" (MJ Biz Daily, June 28, 2021)

Medical Marijuana

- The Colorado statute provides: unless required by Federal law or required to obtain funding…(3) no employer may refuse to hire a person or may discharge, penalize, or threaten an employee solely on the basis of such person's or employee's status as a qualifying patient or primary caregiver under the law. Nothing in this subdivision shall restrict an employer's ability to prohibit the use of intoxicating substances during work hours or restrict an employer's ability to discipline an employee for being under the influence of intoxicating substances during work hours.
- Palliative Use of Marijuana Act (PUMA) passed in 2012.
- In *Noffsinger v. SSC Niantic Operating Co., LLC*, 273 F. Supp. 3d. 326, 338, 341 (D. Conn. 2017) and in *Bulerin v. City of Bridgeport*, 2019 WL 1766067 (Super. Ct. March 8, 2019) recognized an implied cause of action.
- Connecticut Gov. Lamont signs marijuana bill; possession will be legal on July 1, retail sales could begin by the end of 2022 (Hartford Courant, June 22, 2021)
- Nevada explicitly requires an accommodation by law. In Nevada, an employer must attempt to make reasonable accommodation for the health needs of an employee who engages in the medical use of cannabis if the employee holds a valid registry identification card, providing that such reasonable accommodation would not: (1) pose a threat of harm or danger to person or property; (2) impose an undue hardship on the employer; or (3) prohibit the employee from fulfilling any and all of his/her job responsibilities.

Medical Marijuana

- The Rhode Island statute provides that a qualifying patient cardholder who has in his/her possession a registry identification card shall not be…denied any right or privilege…for the medical use of marijuana. The court held that it was not a violation of law to hire someone using medical marijuana outside the workplace.
- The Delaware statute provides: an employer may not discriminate against a person in hiring, termination, or any term or condition of employment, or otherwise penalize a person, if the discrimination is based upon either of the following: a) the person's status as a cardholder; or b) a registered qualifying patient's positive drug test for marijuana components or metabolites, unless the patient used, possessed, or was impaired by marijuana on the premises of the place of employment or during hours of employment.

Medical Marijuana

- In Pennsylvania, no employer may discharge, threaten, refuse to hire or otherwise discriminate or retaliate against an employee regarding an employee's compensation, terms, conditions, location or privileges solely on the basis of such employee's status as an individual who is certified to use medical marijuana.
- Nothing in this act shall require an employer to make any accommodation of the use of medical marijuana on the property or premises of any place of employment.
- This act shall in no way limit an employer's ability to discipline an employee for being under the influence of medical marijuana in the workplace or for working while under the influence of medical marijuana when the employee's conduct falls below the standard of care normally accepted for that position.
- Are Medical Marijuana Users Protected by the Pennsylvania Human Relations Act? (Pennsylvania Labor & Employment Blog, March 3, 2021)

Medical Marijuana

- In West Virginia, no employer may discharge, threaten, refuse to hire or otherwise discriminate or retaliate against an employee regarding an employee's compensation, terms, conditions, location or privileges solely on the basis of such employee's status as an individual who is certified to use medical marijuana. Nothing in this act shall require an employer to make any accommodation of the use of medical cannabis on the property of premises of any place of employment. This act shall in no way limit an employer's ability to discipline an employee for being under the influence of medical cannabis in the workplace or for working while under the influence of medical cannabis when the employee's conduct falls below the standard of care normally accepted for that position. Nothing in this act shall require an employer to commit any act that would put the employer or any person acting on its behalf in violation of federal law. Prohibits termination based on medicinal cannabis use. Employers must publish written drug testing policy. Not required to accommodate cannabis use at work. Limits types of work an employee can perform while under the influence (more than three nanograms of active tetrahydrocannabis per milliliter of blood in serum) of cannabis.
- "Can I Use Medical Marijuana at Work in California?" (Miranda Rights Law Firm, June 15, 2020)

Medical Marijuana Case Law

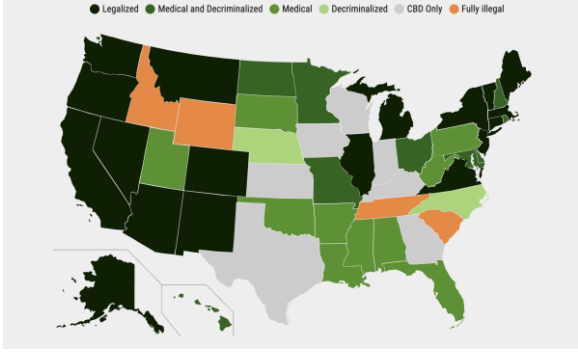
- Drugs and the Workplace by Barbara L. Johnson: https://drive.google.com/file/d/1qCj6iCC1EB4sgXUn5tqqDEe-qTdWCnoY/view?usp=sharing
- Ross v. RagingWire Telecommunications (California 2008)
- Johnson v. Columbia Falls Aluminum, 213 P.3d 789 (Montana 2009)
- Emerald Steel Fabricators v. Bureau of Labor and Industries, 348 Or. 159 (Oregon 2010)
- Roe v. Teletech Customer Care Management, 257 P.3d 586 (Washington 2011)
- Casias v. Wal-Mart Stores, 695 F.3d 428 (6th Cir. 2012)
- Coats v. Dish Network, 350 P.3d 849 (Colorado 2015)

Americans with Disabilities Act Case Law

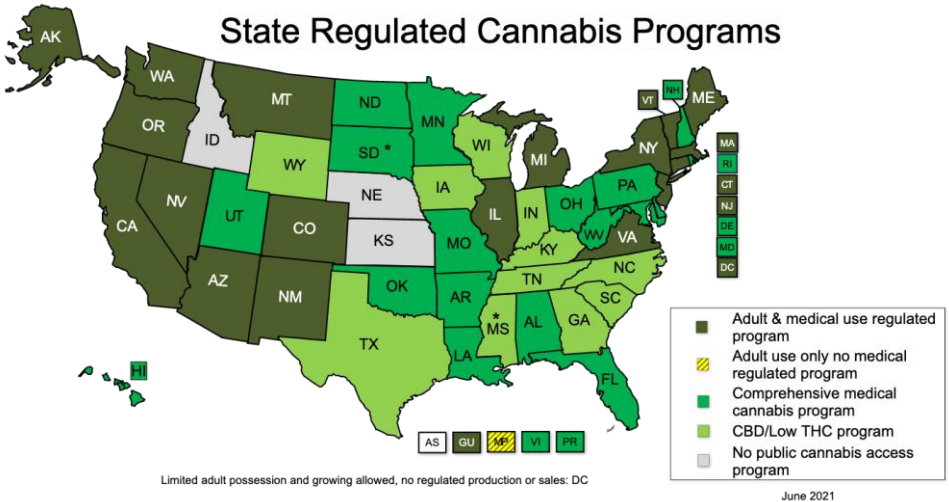
- For the purposes of this chapter, the term “individual with a disability” does not include an individual who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.
- The term “illegal use of drugs” means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act. Such term does not include the use of a drug taken under the supervision by a licensed healthcare professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

Status of Marijuana Legalization

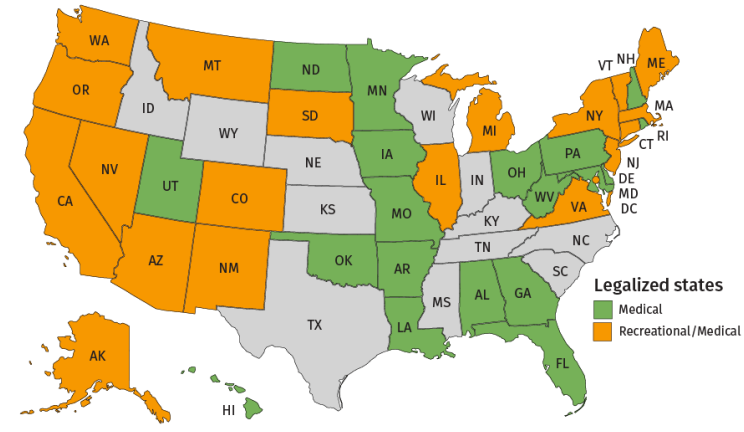
Interactive Map of Cannabis Legalization



State Regulated Cannabis Programs



Status of Marijuana Legalization



Source: MJBizDaily research

Note: Does not include states that have legalized only CBD-based oils.

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OSHA

- OSHA's Anti-Retaliation Rules: Section 11(c) of the OSHA Act.
- 29 C.F.R. 1904.35 and 1904.36
- Clarification of OSHA's Position on Workplace Safety Incentive Programs and Post-Incident Drug Testing Under 29 C.F.R. § 1904.35(b)(1)(iv)
- Clarification of OSHA Rule Regarding Drug Testing and Safety Incentive Programs
- In October 2018, OSHA issued a clarification of its 2016 guidance.
- Trump Administration Repeals OSHA guidance
- "State Medical Marijuana Legalization and OSHA Anti-Retaliation Rules: Post-Accident Drug Testing Considerations for Employers" (Scitech Lawyer, Spring 2017)

New York

- "As NY legalizes recreational marijuana, AAA study says users admit taking more risks" (13 WHAM, April 13, 2021)
- "New York Law Protects Employee Marijuana Use" (JD Supra, April 1, 2021)
- "New York State Legalizes Recreational Marijuana, Places Limits on Employers' Ability to Take Drug Use Into Account When Making Employment Decisions" (Gibson Dunn, April 7, 2021)
- "Does legal marijuana spell end of testing for the drug at NY businesses?" (Syracuse, May 7, 2021)
- "New York Issues Employer Guidance Regarding Recreational Use of Cannabis" (JD Supra, November 4, 2021)
- "New York Department of Labor Issues Guidance on Cannabis and the Workplace" (Law and the Workplace, October 27, 2021)
- "Cannabis and the Workplace: New York DOL Clears the Smoke with New Guidance" (The National Law Review, October 28, 2021)

Maryland

- …may not be subject to arrest, prosecution, or any civil or administrative penalty, including a civil penalty or disciplinary action by a professional licensing board, or be denied any right or privilege, for the medical use of possession of medical cannabis.
- Employer may terminate employee who tests positive for marijuana.
- "The Intersection of Medical Marijuana and Disability Laws in Maryland" (Whiteford Taylor Preston LLP, December 1, 2017)
- "Maryland House speaker supports referendum on legalizing marijuana" (The Washington Post)
- "Here are the challenges that remain for legalizing recreational cannabis in Md. in 2022" (Baltimore Business Journal, June 30, 2021)
- "Maryland's cannabis market hit $1 billion in sales. The next billion will come quicker." (Baltimore Business Journal, April 26, 2021)
- "Maryland's medical cannabis rollout was blasted for its lack of diversity. Meet a woman helping to change that." (The Washington Post)
- "How to qualify for medical cannabis in Maryland" (Maryland Reporter, June 2, 2021)
- "Six rejected Md. cannabis business applicants appeal license decisions" (Baltimore Business Journal, April 20, 2021)
- "What you need to know about medical marijuana in Maryland" (Maryland Reporter, September 4, 2020)

District of Columbia

- "After A Period of Confusion And Fear, Many District Employees Can Use Marijuana Off The Clock" (DCist, September 17, 2019)
- "D.C. Sued Over Medical Marijuana Policies For District Employees" (WAMU, October 4, 2019)
- *Davis v. Impregilo Healy Parsons Joint Venture*, Civil Action No. 2016 CA 000026 B
- "Washington, D.C. Could Allow Marijuana Sales Under Mayor's New Bill And Democratic Control of Congress" (Mariijuana Moment, February 28, 2021)
- "6 ways to support Black cannabis in Washington D.C." (Leafly, April 30, 2021)
- "DC update: Senate leader calls for legal weed, Biden pushes infrastructure package" (NC Policy Watch, July 15, 2021)
- "Washington DC could see long-delayed start to recreational cannabis sales, new medical opportunities" (MJ Biz Daily, February 15, 2021)
- "Biden's proposed budget keeps a block on recreational weed sales in Washington, DC" (The Verge, June 4, 2021)
- "Washington DC weighs competing recreational cannabis bills" (MJ Biz Daily, March 1, 2021)

Virginia

- "Virginia's Recreational Marijuana Legislation and New Employee Medicinal Use Protections" (Ogletree Deakins, May 25, 2021)
- "The do's and don'ts of weed under Virginia's new laws" (WUSA9, June 29, 2021)
- "Here's how Virginia's new marijuana law will affect drivers and cars" (13News Now, June 24, 2021)
- "Marijuana is legal in Virginia, but concerns over the open container rule remain" (WFXR TV, July 3, 2021)
- "Virginia businesses flourish due to legalization of marijuana" (ABC 13 News, July 5, 2021)
- "Virginia marijuana legalization timetable has many confused" (WTVR, June 18, 2021)
- "Marijuana is now legal in Virginia. Advocates are already pushing for changes to the law." (Virginia Mercury, July 1, 2021)

Proposed Federal Legislation

- Cannabis Administration and Opportunity Act
- MORE Act of 2019
- "Bill that would federally decriminalize marijuana passes House committee" (CBS News, November 21, 2019)
- "US House passes historical bill to legalize marijuana at federal level, but Senate looms" (MJ Biz Daily, December 4, 2020)
- "Long-awaited US Senate marijuana reform bill unveiled, but measure faces long climb" (Mj Biz Daily, July 14, 2021)
- "Senate Democrats Embrace Marijuana Federalism. Will Republicans?" (Reason, July 14, 2021)
- "It's time for Washington to get serious about federal marijuana policy" (MJ Biz Daily, May 26, 2021)
- "Democrats have a new plan to legalize marijuana federally" (The Verge, July 14, 2021)

Proposed Federal Legislation

- "Here Are The Full Details Of The New Federal Marijuana Legalization Bill From Chuck Schumer And Senate Colleagues" (Marijuana Moment, July 14, 2021)
- "U.S. Senate Democrats roll out draft bill to legalize weed" (Reuters, July 14, 2021)
- "Biden Is Too Busy To Decriminalize Marijuana, Harris Says" (Marijuana Moment, April 6, 2021)
- "Did Kamala Harris Flip-Flop On Marijuana Again to Adopt Biden's Anti-Legalization Position?" (Marijuana Moment, March 1, 2021)
- "Big Pot Tries to Stop Patrick Kennedy From Becoming Drug Czar" (Bloomberg, March 1, 2021)

Proposed Federal Legislation

- "US Congress Passes Cannabis SAFE Banking Act" (Cannabis Science and Technology, April 28, 2021)
- "Cory Booker Vows To Block Marijuana Banking Until Senate Passes Comprehensive Legalization" (Marijuana Moment, July 14, 2021)
- "Marijuana Banking Bill Reintroduced In Senate, With Nearly A Third Of The Chamber Signed On" (Marijuana Moment, March 23, 2021)
- "Why Cannabis Firms Are Focused on Banking and Tax Reform" (Robert H. Smith School of Business, May 19, 2021)
- Appellant's Brief to the 9th Circuit in Patients Mutual Assistance
- "High Stakes for Cannabis Industry: The Case Pitting 280E Against the Sixteenth Amendment Could Ease High Tax Burden" (Schiff Hardin, January 29, 2021)
- "South Carolina Republican reveals marijuana legalization bill she'll introduce in Congress" (MJ Biz Daily, November 15, 2021)

Tax Issues

- 280E of the Tax Code
- Repeatedly unsuccessfully challenged in the courts.
- Section 280E passed in 1982 states that businesses selling cannabis cannot deduct any expenses incurred in the production, distribution, and sale of that product.
- "Quick Hit: What Dispensaries Can Deduct According to 280E Tax" (Flowhub, February 4, 2021)
- "Why Cannabis Firms Are Focused on Banking and Tax Reform" (Smith Brain Trust, May 19, 2021)
- *Patients Mutual Assistance Collective Corporation v. Commissioner of Internal Revenue* (9th Cir. 2021), affirming 151 T.C. 176 (tax court 2018)
- "Providing Resources to Help Cannabis Business Owners Successfully Navigate Unique Tax Responsibilities" (IRS, September 27, 2021)
- "IRS Official Offers Tax Advice To Marijuana Businesses And Says Feds Expect Industry To Keep Growing" (Marijuana Moment, September 28, 2021)
- "Marijuana Tax Revenue in States that Regulate Marijuana for Adult Use" (Marijuana Policy Project)
- Marijuana Taxes (Urban Institute)

Banking Issues

- "Cannabis Banking: Proceed with Caution" (American Bar Association, February 6, 2020)
- SAFE Banking Act passes the House of Representatives by a vote of 321-101.
- "U.S. Congress Passes Cannabis SAFE Banking Act" (Cannabis Science and Technology, April 28, 2021)
- "This Is What You Need to Know About Cannabis Banking Laws in 2021" (Green Entrepreneur, February 8, 2021)
- Senator Booker opposed to the senate just doing a banking bill. "Marijuana Banking Bill Reintroduced In Senate, With Nearly A Third Of The Chamber Signed On" (Marijuana Moment, March 23, 2021)
- Banks risk charges of aiding and abetting a federal crime.
- "Marijuana banking legislation stripped from federal defense spending bill" (MJ Biz Daily, December 7, 2021)
- "Providing Banking Services to the Legal Marijuana Industry: Mitigating Risks to Maximize Potential Rewards" (JD Supra, May 29, 2018)
- "National Credit Union Administration Encourages Banking Hemp Businesses — With Some Caveats" (Financial Services Perspective, September 10, 2019)

Safety-Sensitive Jobs

- Massachusetts by regulation lists almost 200 positions as being safety sensitive and exempt from its protective statute.
- "New York City Adopts Rules Clarifying the “Safety-Sensitive” Exception for Pre-Employment Marijuana Tests" (Seyfarth, June 29, 2020)
- "No Level of Marijuana is OK for Safety Sensitive Jobs, Safety Council Says" (NJBIA, November 1, 2019)
- "President Trump repeals law allowing OSHA to fine for “Continuing Violations" (Integrated Benefit Solutions, April 5, 2017)
- "Trump administration proposes safety rule on drug testing, incentives" (Business Insurance, May 24, 2019)
- OSHA Simple Risk Analysis (EHS Today), September 23, 1999)
- OSHA Job Hazard Analysis (OSHA)

Safety-Sensitive Jobs

- "NSC Releases Federal Policy Position on Cannabis Use in Safety Sensitive Jobs" (Occupational Health & Safety, October 22, 2019)
- "Considerations for Safety- and Security-sensitive Industries" (SAMHSA)
- "Safety-Sensitive Position" (Workplace Testing, July 30, 2019)
- "Safety-Sensitive Carve-Outs by State" (DISA, May 7, 2019)
- D.C. has a marijuana policy for employees in safety-sensitive positions. See Mayors order regarding marijuana and safety sensitive employees (August 31, 2020). The policy prohibits safety-sensitive employees from using marijuana products. All D.C. job announcements are to indicate whether a position is safety-sensitive. Safety-sensitive employees are subject t drug testing on a randomly selected basis and for other reasons.

Vaping

- "Cannabis Vape Pens: What You Should Know" (Arbors Wellness)
- "Is Vaping Marijuana a Safer Alternative to Smoking?" (Verywell Health, June 23, 2021)
- "Prevalence of Adolescent Cannabis Vaping" (JAMA Pediatrics, October 25, 2021)
- "Marijuana vaping among teens has more than doubled since 2013" (NPR, October 25, 2021)
- "The Stoner's Guide to Vaping Illness" (The Cut, November 21, 2019
- "Marijuana vape users are getting incurable 'cobalt lung'" (Inverse)
- "Heavy Metal Contamination in Cannabis Vaporizers" (Cannabis Tech, June 5, 2019)
- "Metals in Cannabis Vaporizer Aerosols: Sources, Possible Mechanisms, and Exposure Profiles" (ACS Publications, October 27, 2021)
- In 2019 the CDC and the FDA explicitly warned against the use of E-cig or vaporizer products that contain THC.

Vaping

- "US Postal Service enacts cannabis vape product restrictions" (MJ Biz Daily, October 21, 2021)
- "Pennsylvania's review of vaporized medical cannabis products heats up" (MJ Biz Daily, December 3, 2021)

Residency

- Increasingly, state cannabis laws that restrict the ownership of licensed cannbis businesses, for example dispensaries, to in-state residents have been struck down by the courts as violative of the dormant commerce clause.
- "State Residency Requirements For Legal Marijuana Markets Are Unconstitutional" (Reason Foundation, July 13, 2021)
- Matthew Warner of Preti Flaherty Beliveau & Pachios LLP challenged the medical marijuana residency requirements across the country
- *Toigo v. Department of Health and Senior Services*, (W.d. Missouri 2021)
- *Lowe v. City of Detroit*, (E.D. Michigan, June 17, 2021)
- *Original Investments, LLC v. Oklahoma*, (Oklahoma, March 17, 2021)
- *Northeast Patients Group v. Maine Department of Administrative and Financial Services*, (No. 1:20-cv-00468, March 23, 2021) (Pending before the first circuit)
- "State Residency Requirements are Being Challenged" (Maine Cannabis, January 19, 2021)
- "State residency rules up in smoke as cannabis industry grows" (Reuters, November 5, 2021)

Unemployment Compensation

- *Beinor v. Industrial Claim Appeals Office of the State of Colorado and Service Group, Inc.*, 262 P 3d. 970 (Colorado Ct. App. 2011) (held that a medical marijuana user was not entitled to unemployment benefits after he was terminated for failing a drug test)
- *Braska v. Challenge Manufacturing Company*, (Michigan Ct. App. October 23, 2014) (the court of appeals held that an employee who possess a medical marijuana registration identification card under the Michigan Medical marijuana Act is disqualified from receiving unemployment benefits after the employee has been terminated after failing a drug test)
- *Eastham v. The Housing Authority of Jefferson County and the Board of Review of the Department of Employment Security*, (Illinois App. Ct. 5th District December 2, 2014) (the court held that it was not "misconduct" triggering denial of unemployment benefits where the employee had been fired after admitting to smoking marijuana off-duty and for non-medicinal purposes)

Testing for Impairment: Work in Progress

- A Northern California company contended in October 2019 that it had developed a screen that could detect cannabis use in the past three hours.
- "Detect THC Use with New Breathalyzer" (Lobdock Impairment Detection, August 11, 2020)
- Arizona, Delaware, and Minnesota by statute provide that a positive drug test is not evidence of impairment.

Impaired Driving

- "Marijuana-Impaired Driving: A Report to Congress" (NHTSA, July 2017)
- "Background on: Marijuana and impaired driving" (Insurance Information Institute, June 24, 2021)
- "A rocky road so far: Recreational marijuana and impaired driving" (Insurance Information Institute, March 12, 2019)
- "Field Sobriety Tests and THC Levels Unreliable Indicators of Marijuana Intoxication" (NIJ, April 5, 2021)
- "When is someone too stoned to drive? The question is trickier than you'd think for courts to answer" (ABA Journal, April 1, 2017)
- "The D.R.E.: Drug Recognition Expert or Experiment?" (Scott Brown)
- "A whiff of pot alone no longer airtight probable cause for police to search cars in several states" (The Washington Post)
- "Maryland court rules smell of marijuana doesn’t justify police stops" (Delmarva Now, May 3, 2021)

Testing for Impairment

- "Drug Testing of Medical Marijuana Users in the Workplace: An Inaccurate Test of Impairment" (Hofstra Labor and Employment Law Journal, 2012)
- A positive drug test does not provide any definitive information as to whether an employee consumed marijuana at work or whether the employee was under the drugs' influence during working hours.
- Arizona, Minnesota, and Delaware bar adverse action against employees unless they are impaired in the workplace.
- *State of Arizona v. Harris* (Arizona Sup. Ct. 2014) (driving while impaired)
- Studies have shown a significant increase in the risks of an accident if there is any measurable THC in the bloodstream.
- Infrastructure Investment and Jobs Act in Section 25026 directs the secretary of the Department of Transportation to submit a report to Congress in two years identifying any barriers preventing research that can lead to developing a method of identifying when one is impaired by cannabis.
- Several states have enacted laws that establish a baseline for impaired driving but, as there is little evidence correlating a specific THC level with impaired driving, prosecution of per se laws is difficult. THC levels in bio fluid has been found not to be a reliable indicator of cannabis intoxication or impairment.

Testing for Impairment

- "Marijuana-Impaired Driving: A Report to Congress" (NHTSA, July 2017)
- *Whitmire v. Wal-Mart Stores, Inc.*, 2019 WL 479842 (D. Ariz. February 7, 2019) (positive post-accident urine drug test for cannabis by employer did not establish impairment, and the court held impairment is a scientific matter that required expert testimony)
- "Can Your Phone Tell If You Are High? The Future of Mobile Sobriety Testing" (Cannabis Tech, May 29, 2018)
- "Differences in Cannabis Impairment and its Measurement Due to Route of Administration" (NCJRS, March 2020)
- Impossible currently to assess any users level of impairment.
- Oral fluid testing allegedly can detect current cannabis use.
- Understanding the science of cannabis, limitations of drug testing, and difficulty of trying to determine impairment.
- Arizona, Delaware, and Minnesota by statute provide that a positive drug test is not evidence of impairment.

Expungement

- "As more state legalize marijuana, people with drug convictions want their records cleared" (PBS NewsHour, May 5, 2021)
- "Legalizing marijuana and expunging records across the country" (Collateral Consequences Resource Center, March 12, 2020)
- "Criminal Records Expungement and the Marijuana Opportunity Reinvestment and Expungement (MORE) Act of 2019" (Congressional Research Service, September 18, 2020)
- In the first year since Illinois enacted recreational marijuana, the Illinois state police have expunged 492,192 non-felony cannabis arrest records.
- "State Officials: Nearly 500,000 Marijuana Arrest Records Have Been Expunged" (WTTW, December 31, 2020)
- "What NY's cannabis legislation means for New Yorkers with old marijuana arrests" (Pix 11, April 5, 2021)
- "The Collateral Consequences of Arrests and Convictions under D.C., Maryland, and Virginia Law" (Washington Lawyers' Committee, October 22, 2014)
- "High Time for Change: Cannabis Expungement Statutes" (ABA, January 15, 2021)
- "With legalization of marijuana, New York will expunge prior convictions" (The Verge, March 31, 2021)
- "Up in Smoke: How Expungement of Cannabis Crimes Will Work Under the MRTA" (New York State Bar Association, April 22, 2021)
- "Black Americans Need Marijuana Expungement NOW" (Lawyers' Committee For Civil Rights Under Law)

Expungement

- "Cannabis (Marihuana) and Expungement Under New York State Law" (NYcourts.gov)
- "NY Cannabis Law Is National Blueprint For Pot Expungement" (Law360, June 18, 2021
- "Legalized marijuana in Virginia: What happens to prior drug charges?" (13News Now, June 29, 2021)
- "How to Get Your Weed Record Expunged" (Complex, May 7, 2021)
- "Does the 'MRTA' help me?" (Rosenbaum and Taylor P.C.)
- Record Sealing for Decriminalized and Legalized Offenses Amendment Act
- Marijuana Opportunity Reinvestment and Expungement Act of 2019
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Native American Tribal Lands

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- "St Regis Mohawk Tribe adopts adult-use cannabis ordinance" (North Country Public Radio, June 29, 2021)
- "New York's St. Regis Mohawk Tribe To Start Adult-Use Cannabis Sales Way Ahead Of The Rest Of The State" (Yahoo Finance, July 9, 2021)
- "Native American reservations now free to legalize marijuana" (The Washington Post, December 12, 2014)
- "Justice Department memo not likely to change pot laws on tribal land soon, officials say" (Tulsa World, December 13, 2014)
- "American Indian tribes free to grow and sell pot - as long as they follow federal laws" (The Guardian, December 12, 2014)
- "Marijuana growers find cover on tribal lands" (The Seattle Times, August 23, 2011)

Extraction

- “New problem for legal weed: Exploding pot factories” (Politico, February 18, 2019)

Cannabis Research

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- "Medical Marijuana and the Workplace: What Employers Need to Know Now" (Forbes, December 2, 2014)
- "Workplaces to deal with medical marijuana issues" (Democrat & Chronicle, August 25, 2014)
- "Accommodations for Medical Marijuana Usage in the Workplace" (Zeff Law Firm)
- "Managing Medical Marijuana at Workplace Amid Evolving State and Local Law" (Arent Fox, December 1, 2020)
- "I was gonna get a job, but then I got high: an examination of cannabis and employment in the post-Barbuto regime" (Boston University Law Review, 2019)
- *Paine v. Ride-Away, Inc.*, (New Hampshire Supreme Ct.)
- "Washington Supreme Court Blunt in Ruling: No Claim for Wrongful Discharge Under State's Medical Use of Marijuana Act" (Littler, June 13, 2011)
- "Legalization of marijuana expected to have little impact on workplace" (The Roanoke Times, June 26, 2021)
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Medical Marijuana and the Workplace

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- "Marijuana at Work: What Employers Need to Know" (American Heritage Insurance Group, January 8, 2020)
- "Marijuana Laws Affecting the Workplace: Tools Employers Can Use to Stay Ahead During High Times" (The National Law Review, May 1, 2021)
- "Weed and the workplace: how legalization changes workers' rights" (WKBW Buffalo, April 23, 2021)
- "Navigating Marijuana Use In The Workplace" (Law in the Workplace, November 20, 2020)
- "Marijuana and the Workplace: It's Complicated" (Hr Magazine, August 28, 2019)
- "Cannabis at Work: How Employers Are Reacting to the Legalization of Marijuana" (Business News Daily, June 10, 2020)

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- "An Employer's Sophie's Choice: Whether to Accommodate Marijuana Use Under the FMLA and ADA" (Greensfelder)
- "Working Through The Weeds Of Cannabis Laws: Prop 64, FMLA, And ADA" (McManis and Faulkner, June 6, 2019)
- "As Cannabis Businesses Grow, So Do Applicable Employment Laws: Part 2" (Harris Bricken, May 23, 2018)
- "Leaves of Absence: Navigating the FMLA & ADA" (Thread Insight, January 22, 2020)

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- "NLRB's Division of Advice Determines Certain Workers in the Cannabis Industry Are Exempt From Federal Labor Law" (The National Law Review, January 29, 2021)
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- "Union Organizing In The Cannabis Industry: What Every Cannabis Employer Should Know About Labor Peace Agreements" (Fisher Phillips, May 29, 2020
- "Can't it be about Cannabis? Connecticut Seeds the Path to Unionization" (Littler Insight, September 21, 2021)

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- A Primer on Recent Cases Impacting Workers' Compensation Defense (See VI)
- In the weeds on marijuana and workers' compensation
- A Budding Star: Medical Marijuana in Workers' Compensation (See page 31)
- Can You Still Receive Workers' Comp If You Fail the Drug Test?
- *Quigley v. Village of East Aurora*, 193 A.D.3d 207 (January 12, 2021)
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- "Worker's Comp Off Limits for Medical Marijuana, Court Rules" (Courthouse News Service, October 27, 2020)
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Workers Compensation

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- "Medical marijuana and workers' compensation" (Workcomp Advisory, February 2013)
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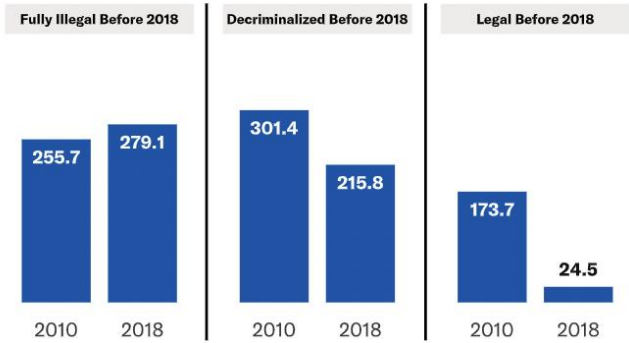
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- "UPDATE: State Judge Holds Use of Race in Ohio Medical Marijuana Licensing Unconstitutional" (Vanderbilt University, November 20, 2018)
- "'We don't have the generational wealth.' Black farmers left behind in Florida's medical marijuana boom" (Orlando Sentinel, November 5, 2021)
- "Florida official calls for probe into Black farmer cannabis license" (MJ Biz Daily, October 22, 2021)
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- "Cannabis is projected to be a $70 billion market by 2028—yet those hurt most by the war on drugs lack access" (CNBC, July 1, 2021)
- EEOC's enforcement guidance on the consideration of arrest and conviction records.
- "Female cannabis execs discuss how to achieve gender equity" (MJ Biz Daily, October 15, 2021)
- Ban the Box Laws.

By the Numbers

FIGURE 6

Marijuana Possession Arrest Rates Per 100k People by Legal Status (2010–2018)



Source: FBI/Uniform Crime Reporting Program Data and U.S. Census Data

By the Numbers

FIGURE 11

Black-to-White Rate Ratios for Marijuana Possession Arrests by State (2018)
Darker red states have higher rate ratios of arrest between Black and white individuals than lighter red states



Source: FBI/Uniform Crime Reporting Program Data and U.S. Census Data
Note: Florida and Washington, D.C. did not provide data.

Drug Testing

- Omnibus Transportation Employee Testing Act of 1991 requires drug and alcohol testing for safety-sensitive transportation employees in aviation, trucking, railroads, mass transit, pipelines, and other transportation industries.
- Law and Legal Definition
- Overview of Drug and Alcohol Rules (FMCSA)
- "What You Need to Know About DOT Drug Testing" (Concentra, February 23, 2018)
- "What you need to know about DOT Drug & Alcohol Testing" (Nationwide Testing Association, Inc.)
- Section 11(c) of the OSHA Act.
- 29 C.F.R. 1904.35 and 1904.36
- Clarification of OSHA's Position on Workplace Safety Incentive Programs and Post-Incident Drug Testing Under 29 C.F.R. § 1904.35(b)(1)(iv)

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- "FLSA Applies to Cannabis Industry Workers" (Roetzel, October 1, 2019)
- *Kenney v. Helix TCS, Inc.*, (10th Cir. September 20, 2019), Petition for cert.

RICO

- "RICO and Prohibition Walk Into a Bar — The Ironic Application of Racketeering Law to Legal Cannabis" (Schiff Hardin, October 20, 2020)
- "Cannabis businesses starting to use RICO lawsuits instead of being targets in such cases" (MJ Biz Daily, August 30, 2021)
- "Please Don't Be My Neighbor: Potential RICO Liability for Marijuana Producer" (Tannenbaum Helpern Syracuse & Hirschtritt, February 19, 2020)

Cross Pollination

- “Preventing Cross-pollination Between Cannabis & Hemp” (Cannabis Tech, March 16, 2021)

Hemp

- South Carolina attorney general regarding Delta-8 stated it is not legal under the South Carolina Hemp Farming Act and the 2018 Farm Bill.
- The Farm Bill removed all hemp-derived products, including, CBD, from the Controlled Substances Act.
- *Gaddis v. Just Brands USA Inc.*, Civil action 19-cv-62067 (S.D. Florida) (the CBD hemp oil class action)
- *McCarthy v. Charlotte's Web Holdings*, (C.D. California) (challenge to marketing CBD as a dietary supplement)
- Fifteen warning letters have been sent CBD companies.
- Senator Mitch McConnell's home state of Kentucky is rapidly developing as a hemp cultivation site.
- In a 2017 study in the journal of the American medical association, it was stated that 70% of 84 CBD products tested were inaccurately labeled.
- The FDA has warned pregnant and breastfeeding women to avoid CBD.
- The New York Department of Agriculture and Markets by regulation has not allowed CBD in foods or beverages.
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- "State lawmakers weigh options as hemp-derived delta-8 THC disrupts marijuana market" (MJ Biz Daily, June 30, 2021)
- "DEA Interim Final Rule on Hemp Draws Fire; Public Comment Period Ends 10/20/20" (Cannabis Law Journal)

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- "USDA Issues Long-Awaited Hemp Rule to Implement Farm Bill" (JD Supra, November 5, 2019)
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- "Hemp Poised for Resurgence Following Farm Bill's Package" (JD Supra, February 25, 2019)

CBD

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- "Oregon county officials seek National Guard help versus illicit cannabis grows" (MJ Biz Daily, October 19, 2021)

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- "Current Trends in Bankruptcy for Cannabis Companies" (Canna Law Blog, April 19, 2021)
- "Why Marijuana Assets May Not Be Administered in Bankruptcy" (American Bankruptcy Institute, December 1, 2017)
- "Cannabis, Hemp and the Evergreen Promise of Bankruptcy" (Zuber Lawler, January 7, 2021)

Price of Marijuana

- Alaska: $9,000 for a pound
- Colorado: $1,471 for a pound
- Black market.
- “The Average Cost of Marijuana by State” (Oxford Treatment Center, September 15, 2020)
- “What Does Weed Cost? The Complete Weed Price Breakdown” (Honest Marijuana)

Trademarks

- "Yes, You CAN Trademark Cannabis Products and Services in Maryland" (Goodell DeVries Blog, August 13, 2020)
- "Does Your Cannabis Business Qualify for Trademark Protection? The Answer is Most Certainly 'Yes!'" (Canna Law Blog, January 21, 2020)
- "Challenges for Cannabis-Related Trademarks at the USPTO" (Green Light Law Group, July 9, 2021)

Job Opportunities in Cannabis Industry

- "Matriculating in Marijuana: The 9 Best Cannabis Degrees" (The Best Schools, December 7, 2021)
- "Higher education: The top universities with cannabis programs" (Leafly, August 27, 2019)

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- "The Environmental Implications of Energy Consumption in Cannabis Cultivation" (Cannabis Science and Technology, April 15, 2021)
- "Indoor Cannabis Grow Centers Draining Electricity" (WBUR News, June 1, 2021)
- "The greenhouse gas emissions of indoor cannabis production in the United States" (Nature Sustainability, March 8, 2021)

DOT

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- DOT Office of Drug and Alcohol Policy and Compliance Notice issued a medical marijuana notice on December 3, 2012.

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- Cargo insurance
- Tracking-block chain technology
- Interstate shipment

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- "The Environmental Downside of Cannabis Cultivation" (JSTOR Daily, June 18, 2019)
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- "Pot-Linked Poisoning Cases Rise as Edibles' Popularity Booms" (WebMD, May 25, 2021)

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- "Ethical Implications of Marijuana for Lawyers" (Fucile & Reising LLP)
- "Ethics Counsel's Message: Navigating the Ethical Potholes on Cannabis Road" (Virginia State Bar)
- "NYSBA Ethics Opinion Gives Green Light To Lawyers' Involvement With Marijuana Businesses" (Professional Responsibility Law Blog, July 10, 2021)
- "Opinion 1225: 07/08/2021" (New York State Bar Association's Committee on Professional Ethics)
- "Marijuana Legalization and You: Avoiding Pitfalls" (Washington Lawyer, February 2015)
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- "Ethics opinion gives NY attorneys green light to advise on, partake in cannabis" (ABA Journal, July 12, 2021)
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- "Researchers identify more than 100 toxic chemicals in cannabis smoke" (Medical Press, June 25, 2020)
- "Cannabis Policy: Public Health and Safety Issues and Recommendations" (U.S. Senate Caucus on International Narcotics Control, March 3, 2021)

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- "Maryland marijuana panel approves ban on cannabis advertising on billboards, radio, TV and other media" (The Baltimore Sun, December 6, 2018)
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Appendix

- Cannabis Overview
- Drugs and the Workplace Appendix by Barbara L. Johnson: https://drive.google.com/file/d/1qCj6iCC1EB4sgXUn5tqqDEe-qTdWCnoY/view?usp=sharing