

Don't Get Lost in the Weeds: Marijuana in the Workplace & OSHA Trends

Presented by:

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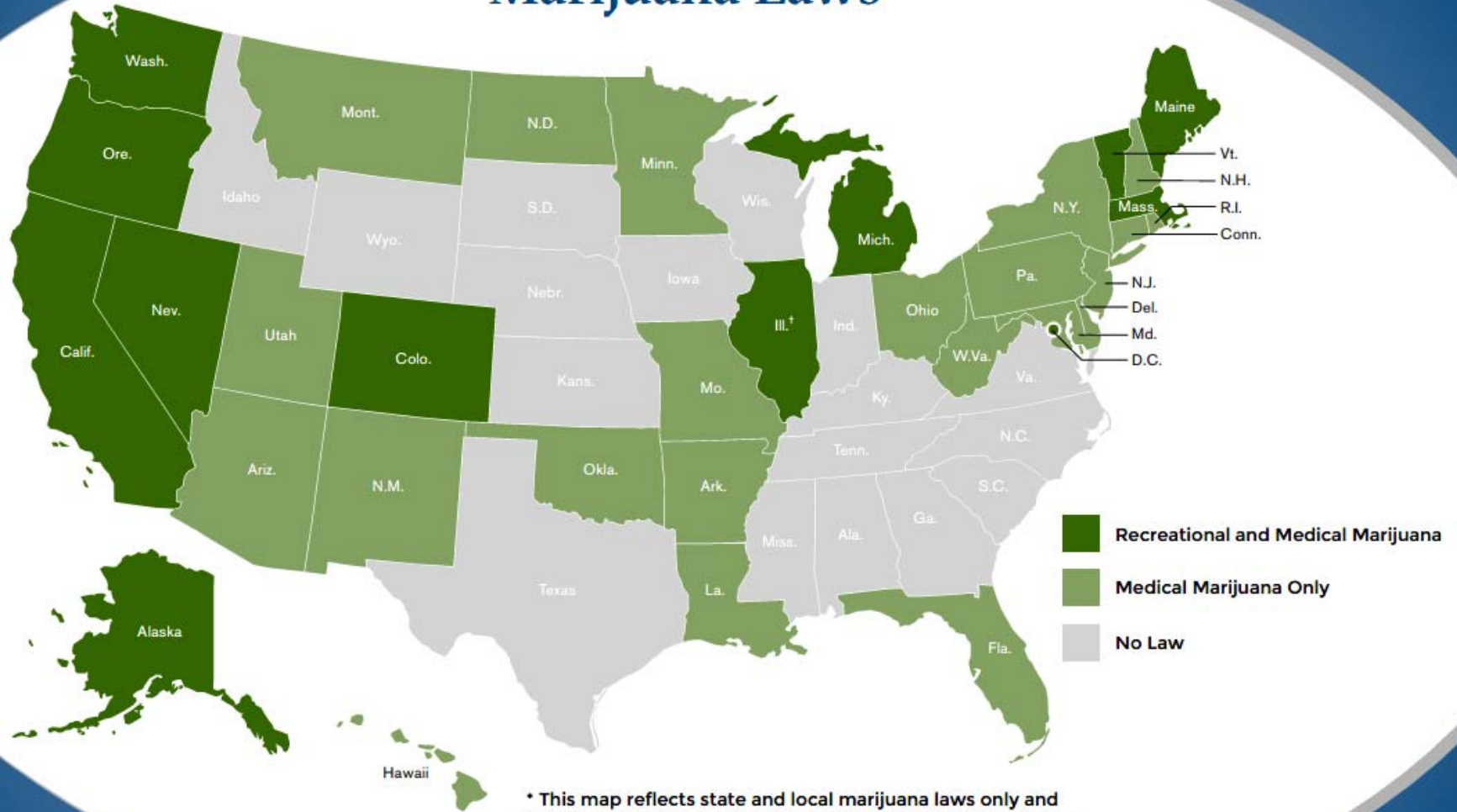
Presentation Overview

- **Federal and State Marijuana Laws**
- **Anti-Discrimination Provisions**
- **Marijuana Types**
- **The Rise of Reasonable Suspicion**
- **ADA/FMLA/Leave Law Concerns**
- **OSHA Enforcement Trends**
- **Top OSHA Citations for the Industry**

Marijuana is a Nationwide Concern

- **Over 70% of Americans live in states permitting at least some marijuana use**
- **33 states have legalized medical marijuana**
- **10 states and Washington, D.C. have legalized recreational use**
- **9 more states close to full legalization**

Marijuana Laws*



* This map reflects state and local marijuana laws only and not laws permitting cannabidiol or other low-THC products. The sale, possession, and use of marijuana remains illegal under applicable federal law

† Illinois recreational marijuana law effective January 1, 2020

Updated 7-2019

This map is intended as a visual aid and should not be relied upon or construed as a substitute for legal advice.

Applicable Federal Laws

- **Controlled Substances Act**
- **Americans with Disabilities Act**
- **Occupational Safety and Health Act**
- **Drug-Free Workplace Act**
 - **Federal contractors and recipients of federal grants must prohibit use of marijuana as a condition of participation**
- **DOT Guidelines prohibit the use of medical marijuana for transportation workers in safety-sensitive jobs**

Anti-Discrimination Laws

- **Most MMLs/court decisions provide that employers are NOT required to accommodate intoxication, use, or possession in the workplace**
- **But...**

Medical Marijuana and Job Protections

12 States with Medical Marijuana Statutes Containing Express Job Protections/Anti-Discrimination Provisions:

1. Arizona
2. Arkansas
3. Connecticut
4. Delaware
5. Illinois
6. Maine

7. Minnesota
8. New York
9. Nevada
10. Pennsylvania
11. Rhode Island
12. Oklahoma

Medical Marijuana and Job Protections (contd.)

- **In states with anti-discrimination provisions, merely possessing a medical marijuana card, or testing positive for marijuana on a random or pre-employment drug screen generally not sufficient cause for automatic adverse action against employee**
- **In most cases, employer must demonstrate that the employee used, possessed, or was impaired by the drug at work**

Marijuana Types

- Joints

- Bongs

- Edibles

- Beverages

- CBD products

- Hemp-based products



Testing/ Detection Issues

- **Pre-Employment**
- **Random**
- **Post-Accident**
- **Reasonable Suspicion**
 - **State-specific laws may apply**
 - **Training is paramount**
 - **Sample checklist as handout**

ADA/FMLA/Leave Laws

- **No duty to accommodate illegal drug use**
- **Recovering addict provisions**
- **May have a duty to engage in the interactive process if there is a reason to believe the employee is disabled**
- **May have to consider whether FMLA or other leave is appropriate for underlying medical condition**

Workplace Safety Considerations



- **Duty To Provide Safe Workplace Paramount.**
- **Medical marijuana may have positive medical benefits, but there are potential negative effects, particularly in an inherently hazardous work environment.**
- **Currently, there is no reliable metric for determining when a particular level of THC from marijuana usage impairs the user and for how long the user remains impaired.**

Workplace Safety Standards



OSHA General Duty Clause

Section 5(a): “Each employer (1) shall furnish to each of his employees employment and a place of employment which are *free from recognized hazards* that are causing or are likely to cause death or serious physical harm to his employees.”

Tragic Case -- 05/29/2018



- Employee worked for a machinery installation contractor that installed, relocated, rebuilt, serviced, and repaired web printing machinery, machine tool systems.
- He was moving a printing press and checking to ensure all hoses and cables had been disconnected. The press fell from the rigging.
- He sustained crushing injuries to his torso, legs, and head. He was killed.

Tragic Case -- 05/29/2018



- Section 5(a)(1) violation: “Employees moving a Goss Metroliner newspaper press used swivel bolts that were not correctly rated, sized, and torqued, to suspend the press from a crane.” Employee training and new procedures recommended for abatement.

Violation Items

#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$
1.	01001	Serious	5A0001	11/16/2018	12/31/2018	\$7,113	\$12,934
2.	01002	Serious	19100028 B01 I	11/16/2018		\$3,696	\$3,696
3.	01003	Serious	19100243 C04	11/16/2018	12/31/2018	\$2,217	\$2,217
4.	01004	Serious	19100305 G02 II	11/16/2018		\$2,217	\$2,217
5.	01005A	Serious	19101200 G01	11/16/2018	12/06/2018	\$2,217	\$2,217
6.	01005B	Serious	19101200 H01	11/16/2018	12/06/2018	\$0	\$0

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Enforcement Trends



Table 1: Maximum and Minimum Amounts for Civil Penalties

Type of Violation	Penalty Minimum	Penalty Maximum
Serious	[\$947] per violation	\$13,260 per violation
Other-Than-Serious	\$0 per violation	\$13,260 per violation
Willful or Repeated	\$9,472 per violation	\$132,598 per violation
Posting Requirements	\$0 per violation	\$13,260 per violation
Failure to Abate	N/A	\$13,260 per day unabated beyond the abatement date [generally limited to 30 days maximum]

Citation Trends



NAICS Code: 5111 *Newspaper, Periodical, Book, and Directory Publishers*

Listed below are the standards which were cited by **Federal OSHA** for the specified NAICS Code during the period October 2017 through September 2018. Penalties shown reflect current rather than initial amounts. For more information, see definitions.

Standard	Citations	Inspections	Penalty	Description
Total	25	7	\$75,684	<i>All Standards cited for Newspaper, Periodical, Book, and Directory Publishers</i>
19100147	6	3	\$19,809	The control of hazardous energy (lockout/tagout).
19100219	5	2	\$7,760	Mechanical power-transmission apparatus.
19100212	4	4	\$24,540	General requirements for all machines.
19100132	2	1	\$4,650	General requirements.
19101200	2	1	\$4,650	Hazard Communication.

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Citation Trends



NAICS Code: 32212 *Paper Mills*

Listed below are the standards which were cited by **Federal OSHA** for the specified NAICS Code during the period October 2017 through September 2018. Penalties shown reflect current rather than initial amounts. For more information, see definitions.

Standard	Citations	Inspections	Penalty	Description
Total	38	19	\$173,844	<i>All Standards cited for Paper Mills</i>
19100212	8	8	\$79,773	General requirements for all machines.
19100147	7	5	\$21,906	The control of hazardous energy (lockout/tagout).
19100178	5	4	\$14,233	Powered industrial trucks.
19100022	4	2	\$20,103	General requirements.
19100095	2	1	\$934	Occupational noise exposure.
19100261	2	2	\$16,167	Pulp, paper, and paperboard mills.
19100305	2	2	\$2,846	Wiring methods, components, and equipment for general use.
19101200	2	2	\$2,700	Hazard Communication.

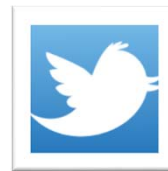
Legal Updates: Don't Get Lost in the Weeds

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