

# Medical Marijuana

## What Employees Need to Know



Ohio law allows for the medical use of marijuana – even though it is still a federally illegal substance.<sup>1</sup> House Bill 523 (HB 523), which established Ohio’s Medical Marijuana Program in 2016, is a 30-chapter bill that includes a chapter on the rights of employers and a chapter on the rights of registered patients.

So, whose rights come first, employers or patients? According to the law, medical marijuana patients have explicit protections, including the ability to obtain, use, and possess medical marijuana under the guidelines. However, these patient protections do not supersede federal law – or employer rights.

### Employer Rights

Here’s a brief overview of HB 523 (*Section 3796.28 Rights of employer*), which states that employers:<sup>2,3</sup>

- Do not have to accommodate employee use of medical marijuana
- Can refuse to hire, terminate, and discipline employees due to medical marijuana use
- May exclude employees from working while under the influence of medical marijuana
- Can choose to maintain a drug-free workplace, but should be clear in the substance abuse policy about medical marijuana use, both on and off the job

### Clear Workplace Policies

Because employee vs. employer rights is a complex and confusing issue, one way to simplify it – and protect both employee and employer – is for employers to:

**“Establish a drug-free workplace, a zero-tolerance policy, or some other policy or program that accommodates and regulates the use of medical marijuana.”<sup>4</sup>**

### 5 Things Employees Should Do

1. **ASK** for a copy of your employer’s policy on medical marijuana and other substances, then read and study it until you’re sure you understand it. Bottom line: Employers are permitted to maintain drug-free workplaces under the law.
2. **GET** the facts about the Ohio Medical Marijuana Control Program at [medicalmarijuana.ohio.gov](http://medicalmarijuana.ohio.gov).
3. **REMEMBER** that your employer can prohibit you and other employees from working while impaired or under the influence of medical marijuana or any substance whose status is legal or quasi-legal.
4. **KNOW** that under Ohio law, you and other employees cannot operate a vehicle, streetcar, trackless trolley, watercraft, or aircraft under the influence of medical marijuana.
5. **KEEP** in mind that medical marijuana will not be accommodated if an employer is regulated by, or part of, the federal government.

## Just-Cause Discipline & Termination

Under the law, there are several reasons an employee may be disciplined or terminated because of their use of medical marijuana. These reasons, outlined in HB 523 (*Section 3796.7-2-08 Grounds for discipline*) include:<sup>5,6</sup>

- Driving under the influence of medical marijuana; specifically operating a vehicle, streetcar, trackless trolley, watercraft, or aircraft
- Violating the employer's drugfree workplace policy, zero-tolerance, policy, or other program or policy with the use of medical marijuana
- Possessing or administering medical marijuana on federal property or in a federal building
- Possessing or administering medical marijuana at a public or private place where medical marijuana is prohibited

## Workers' Compensation

Injury on the job can mean a potential Ohio Bureau of Workers' Compensation (BWC) claim.

Ohio's medical marijuana law, however, clearly states that marijuana is covered under something called "rebuttable presumption." In simple language, this means an employee under the influence of physician-recommended medical marijuana and is hurt on the job will be denied medical and compensation benefits in Ohio.

Here are some other things employees should know about medical marijuana and Worker's Compensation in the Buckeye state:<sup>7</sup>

- If an employee is terminated for the use of medical marijuana, the discharge is considered for "just cause."
- Medical marijuana is not covered as a medical prescription medication under BWC claims since it is not on the BWC's approved pharmaceutical formulary list.
- A medical marijuana patient may not bring an employment cause of action against an employer.

## About This Campaign

Because much of the public conversation surrounding marijuana has been based on anecdotes rather than science, Prevention Action Alliance and the Ohio Department of Mental Health and Addiction Services created this campaign to help people better understand the facts about marijuana and its effects.

If you found this article helpful, we encourage you to share it with others. You can also find other fact sheets about marijuana at: [preventionactionalliance.org/marijuana](http://preventionactionalliance.org/marijuana)

If you have concerns about your own use of marijuana or a loved one's, and wish to seek help, go to: [findtreatment.samhsa.gov/](http://findtreatment.samhsa.gov/)

## Contact Us

For more information on marijuana, please contact us at:  
Prevention Action Alliance  
(614) 540-9985  
[preventionactionalliance.org](http://preventionactionalliance.org)

## About Us

Prevention  
Action Alliance



Prevention Action Alliance is a 501(c)3 nonprofit located in Columbus, Ohio. We're dedicated to leading healthy communities in the prevention of substance misuse and the promotion of mental health wellness. Learn more at [preventionactionalliance.org](http://preventionactionalliance.org).

The mission of the Ohio Department of Mental Health and Addiction Services (OhioMHAS) is to provide statewide leadership on the topics of mental health and addiction prevention, treatment, and recovery. Learn more about OhioMHAS at [mha.ohio.gov](http://mha.ohio.gov).

1. [ncsl.org/research/health/state-medical-marijuana-laws.aspx](http://ncsl.org/research/health/state-medical-marijuana-laws.aspx)

2. [codes.ohio.gov/orc/3796.28](http://codes.ohio.gov/orc/3796.28)

3. [bizjournals.com/columbus/news/2020/01/30/medical-marijuana-laws-are-complicated-here-s-what.html](http://bizjournals.com/columbus/news/2020/01/30/medical-marijuana-laws-are-complicated-here-s-what.html)

4. <http://codes.ohio.gov/orc/3796.28v1>

5. [codes.ohio.gov/oac/3796:7-2-08v1](http://codes.ohio.gov/oac/3796:7-2-08v1)

6. [codes.ohio.gov/oac/3796:7-2-05v1](http://codes.ohio.gov/oac/3796:7-2-05v1)

7. [bwc.ohio.gov/downloads/blankpdf/MedMarijuanaImpact.pdf](http://bwc.ohio.gov/downloads/blankpdf/MedMarijuanaImpact.pdf)