

# HR COMPLIANCE BULLETIN

## Five States Legalize Marijuana

On Nov. 3, 2020, citizens in several states voted on legalizing marijuana. Voters in **Arizona, Montana, New Jersey** and **South Dakota** approved measures that legalize recreational marijuana. Voters in **Mississippi** and South Dakota also approved measures that legalize medical marijuana.

The four states that newly approved recreational marijuana join the 11 other states that already allow individuals who are age 21 or older to possess, purchase and use marijuana for recreational purposes.

Mississippi's new medical marijuana law brings the total number of states that allow medical marijuana use only (as opposed to both medical and recreational marijuana use) to 23.

This Compliance Bulletin provides a high-level overview of each of the new state marijuana laws.

### Action Steps

Employers may still ban marijuana from their workplaces and prohibit employees from working under the influence of marijuana. However, depending on the applicable state law, employers may not be able to take adverse employment action against employees solely based on a positive drug test.

Employers in Arizona, New Jersey, Montana, Mississippi and South Dakota should become familiar with applicable new marijuana laws and review their existing drug testing policies and procedures to ensure compliance. These employers may also need to review other applicable laws relating to workplace drug testing, discrimination and similar employment issues.

### Highlights

#### New Recreational Laws

Arizona, Montana, New Jersey and South Dakota voted to legalize recreational marijuana.

#### New Medical Laws

Mississippi and South Dakota voted to legalize medical marijuana.

#### Federal Law

All marijuana use is still illegal under federal law.

#### Employer Impact

Employers may be restricted from discriminating against an individual based solely on a positive drug test or his or her status as an authorized medical marijuana user.

### Important Dates

#### Nov. 3, 2020

Citizens in five states approved marijuana legalization proposals.



## New Recreational Marijuana Laws

Arizona, New Jersey, Montana and South Dakota join 11 other states and the District of Columbia in legalizing **recreational** marijuana use.

### Arizona Recreational Marijuana

The table below provides an overview of Arizona’s [Proposition 207](#), which was approved by nearly 60% of the state’s voters on Nov. 3, 2020.

Smart and Safe Arizona Act (Proposition 207)		
Summary	Impact on Employers	Implementation
<p>Allows individuals age 21 and older to:</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Possess, use, purchase, process, manufacture or transport <b>up to 1 ounce</b> of marijuana (up to 5 grams of which may be in concentrate form); and</li> <li><input checked="" type="checkbox"/> Cultivate <b>up to 12 marijuana plants</b> in a single residence as long they are kept in an enclosed and locked area.</li> </ul>	<p>Specifies that Arizona employers are <b>not</b> prevented or restricted from:</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Maintaining drug and alcohol-free workplaces;</li> <li><input checked="" type="checkbox"/> Having workplace policies that restrict the use of marijuana by employees or job applicants; or</li> <li><input checked="" type="checkbox"/> Prohibiting or regulating conduct otherwise allowed under the law, when that conduct occurs on or in their properties.</li> </ul>	<p>The Arizona Department of Health Services must adopt rules necessary to implement the law by June 1, 2021.</p>

### New Jersey Recreational Marijuana

The table below provides an overview of New Jersey’s [Public Question Number 1](#), which was approved by nearly 67% of the state’s voters on Nov. 3, 2020.

New Jersey Constitutional Amendment to Legalize Marijuana (Public Question Number 1)		
Summary	Impact on Employers	Implementation
<p>Allows individuals age 21 and older to use “a controlled form of marijuana.”</p>	<p>The amendment does not specifically address employment but indicates that this would be determined by enabling legislation and regulations.</p>	<p>The amendment goes into effect on Jan. 1, 2021. The state legislature and the New Jersey Cannabis Regulatory Commission, which already oversees the state’s medical marijuana program, must adopt legislation and rules necessary to implement the law.</p>

### Montana Recreational Marijuana

The table below provides an overview of Montana’s [Ballot Issue I-190](#), which was approved by nearly 57% of the state’s voters on Nov. 3, 2020.



Montana Marijuana Regulation and Taxation Act (Ballot Issue I-190)		
Summary	Impact on Employers	Implementation
<p>Allows individuals age 21 and older to:</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Possess, purchase, obtain, use, ingest, inhale and transport <b>up to 1 ounce</b> of marijuana (up to <b>8 grams</b> of which may be in concentrate form); and</li> <li><input checked="" type="checkbox"/> Cultivate up to <b>4 mature marijuana plants</b> and 4 seedlings (up to twice this amount in a single household).</li> </ul>	<p>Specifies that Montana employers are <b>not</b>:</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Required to permit or accommodate marijuana use or possession in any workplace or on the employer’s property;</li> <li><input checked="" type="checkbox"/> Prohibited from disciplining an employee for violation of a workplace drug policy or for working while intoxicated by marijuana; or</li> <li><input checked="" type="checkbox"/> Prevented from declining to hire, discharging, disciplining or otherwise taking an adverse employment action against an individual because of his or her violation of a workplace drug policy or intoxication by marijuana while working.</li> </ul>	<p>The law goes into effect on Jan. 1, 2021. The Montana Department of Revenue must adopt rules to administer and enforce the law and begin issuing dispensary licenses by Oct. 1, 2021.</p>

## South Dakota Recreational Marijuana

The table below provides an overview of South Dakota’s [Amendment A](#), which was approved by nearly 54% of the state’s voters on Nov. 3, 2020.

South Dakota Amendment A		
Summary	Impact on Employers	Implementation
<p>Allows individuals age 21 and older to:</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Possess, use or transport <b>up to 1 ounce</b> of marijuana (up to 8 grams of which may be in concentrate form); and</li> <li><input checked="" type="checkbox"/> Cultivate <b>up to 3 marijuana plants</b> within an enclosed space of a private residence, but only in localities with no retail sales outlets.</li> </ul>	<p>Specifies that South Dakota employers are <b>not</b>:</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Required to permit or accommodate any conduct that is otherwise allowed under the law; nor</li> <li><input checked="" type="checkbox"/> Prevented from restricting marijuana use by employees.</li> </ul>	<p>The South Dakota Department of Revenue must adopt rules necessary to implement the law by April 1, 2022.</p>

## New Medical Marijuana Laws

In addition to legalizing recreational marijuana, South Dakota voters passed a measure that requires the state to establish a medical marijuana program. Citizens in Mississippi also approved a medical marijuana law.

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## South Dakota Medical Marijuana

Nearly 70% of South Dakota voters approved [Initiated Measure 26](#), which is summarized in the table below.

South Dakota Initiative Measure 26		
Summary	Impact on Employers	Implementation
<p>Allows individuals with qualifying conditions to obtain a medical marijuana card that permits them to:</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Purchase <b>up to 3 ounces</b> of marijuana; and</li> <li><input checked="" type="checkbox"/> Cultivate <b>3 marijuana plants or more</b>, as prescribed by a physician.</li> </ul>	<p>Specifies that South Dakota employers are <b>not</b> prohibited from disciplining an employee for ingesting marijuana in the workplace or for working while under the influence of marijuana. However, a medical marijuana cardholder:</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> May not be considered to be under the influence of marijuana solely because a drug test shows the presence of metabolites or components of marijuana that appear in insufficient concentration to cause impairment;</li> <li><input checked="" type="checkbox"/> Is not subject to “penalty of any kind” or “denial of any right or privilege” for the medical use of marijuana in accordance with the law; and</li> <li><input checked="" type="checkbox"/> May not be denied any rights under state or local law that the individual would be afforded if he or she were solely prescribed a pharmaceutical medication, as it pertains to any interaction with or drug testing by the cardholder’s employer.</li> </ul>	<p>The South Dakota Department of Health must enact rules to implement the state’s medical marijuana program by Oct. 29, 2021.</p>

## Mississippi Medical Marijuana

The table below provides an overview of Mississippi’s [Initiative 65](#), which was approved by over 74% of the state’s voters on Nov. 3, 2020. Voters rejected an alternative, more restrictive measure ([House Resolution 39](#)) submitted by the state’s legislature.

Mississippi Initiative 65		
Summary	Impact on Employers	Implementation
<p>Allows qualified individuals with debilitating medical conditions, as certified by state-licensed physicians, to:</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Purchase <b>up to 2.5 ounces</b> of marijuana during any 14-day period;</li> <li><input checked="" type="checkbox"/> Possess at least a 60-day supply of dried marijuana or its equivalent; and</li> <li><input checked="" type="checkbox"/> Cultivate <b>6 (or more as medically prescribed) marijuana plants</b> (18 for primary caregivers) within their homes.</li> </ul>	<p>Specifies that Mississippi employers are <b>not</b> required to:</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Accommodate for the use of medical marijuana; nor</li> <li><input checked="" type="checkbox"/> Permit any use of medical marijuana in any workplace.</li> </ul>	<p>The Mississippi State Department of Health must adopt rules and regulations by July 1, 2021, and must begin issuing ID cards and treatment center licenses by Aug. 15, 2021.</p>