



GAME CHANGER

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Cannabis in the Workplace

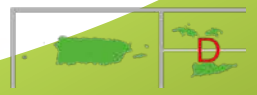
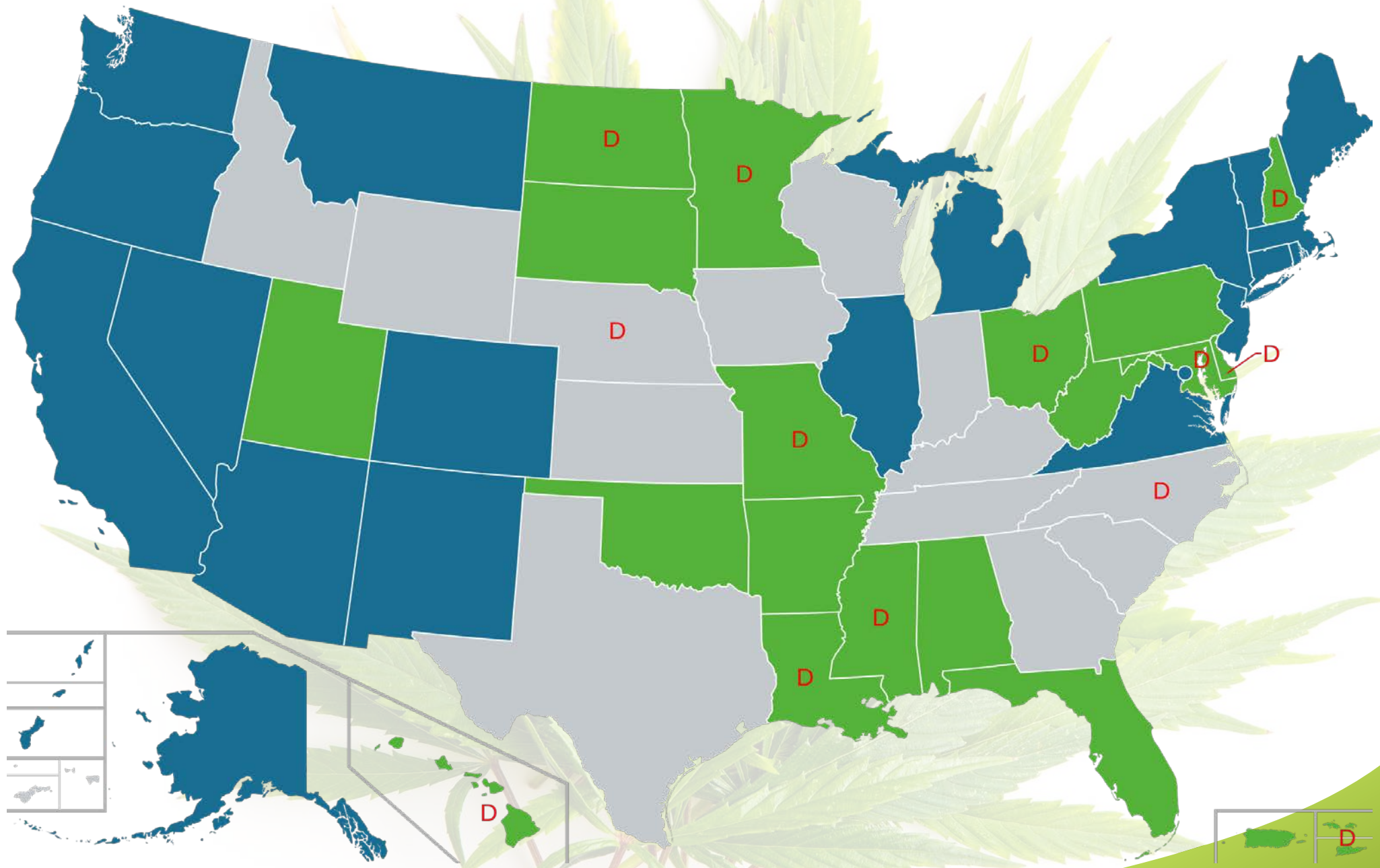
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Now that marijuana is legal for medicinal and recreational purposes in Guam????

- Federal Law
- Guam Law
- Review current employment polices
- Best practices

Recent Developments in Cannabis Law

- Marijuana **illegal** under Federal Law
- Marijuana **legal** under Guam Law
 - Medicinal/Recreational
- Employers must navigate both
 - Multi-jurisdictional employers
 - Discrimination issues
 - Disability issues
 - Safety positions
 - Federal Contractors/Grantees



Federal Law

- Occupational Safety and Health Administration (OSHA)
 - Employers have a duty to provide a safe working environment.
 - Substance Abuse in the workplace is an avoidable workplace hazard.
 - OSHA supports drug-free workplace programs
 - Federal Contractors and Grantees must comply with employee drug testing requirements under the Federal Drug-Free Workplace act of 1988

Federal Law

- Americans with Disabilities Act (ADA)
 - The use and possession of marijuana remains illegal drug under federal law.
 - Excludes from the definition of disability, individuals currently engaging in the illegal use of drugs.
 - Ninth Circuit held that the ADA does not protect medical marijuana use or require accommodation for its use, even when legalized under state law.
 - Employers may discipline or terminate employees for current USE of alcohol, illegal, drugs that impairs the employee's work or violates workplace policies.
- Genetic Information Non-Discrimination Act
 - Prohibits employers from acquiring genetic information about employees
 - Alcohol tests are deemed a medical examination.
 - Follow all rules for keeping information confidential.

Federal Law

- Federal Drug-Free Workplace Act
 - Employers with safety-sensitive positions
 - Federal Contractors/Grantees not allowed
 - US Department of Transportation does not allow marijuana use as a valid medical explanation to negate a positive drug test.

Guam Law

(11 GCA § 8103 (a)&(d))

- Persons over the age of 21 may:
 - Possess, use, display, purchase or transport cannabis accessories, 1 ounce or less of cannabis, 8 grams or less of cannabis concentrate, or any cannabis infused products with 800 mg or less of TCH.
 - CANNOT consume cannabis in public.
 - Section 8105 prohibits consumption openly and in public unless permitted by regulations promulgated by Cannabis Control Board.
 - Fine up to \$100.

Guam Law

(11 GCA § 8112 (a))

- Public and Private employers **have rights and obligations** to maintain a drug and alcohol-free workplace;
- Employers **may prohibit** the use, consumption, possession, transfer, display, transportation, sale, or growth of cannabis in the workplace; and
- Employers **may implement** policies that prohibit the use of marijuana by employees or applicants in the workplace.

Guam Law

(11 GCA § 8112 (b))

- Employers **may implement and enforce policies** that prohibit or restrict employees from using or consuming cannabis in the workplace.

Guam Law

(11 GCA § 8112 (f))

- Employers **may regulate or prohibit** the possession, consumption, use, display, transfer, distribution, sale, transportation, or the growth of cannabis within the property occupied, owned, or controlled by the employer.

Guam Law

(11 GCA § 8115)

- Federal law preempts Guam Law.
- Guam law does not exempt any individual or entity from complying with Federal law.
- Guam law does not preclude federal enforcement of federal law.

Cannabis Use Policy

- Employers still have a right to prohibit and discipline employee for being under the influence of cannabis at work
- Use and possession of cannabis at work (off-duty or not) is still prohibited
- Because recreational use is permitted in Guam, Employers should review and discuss policy to explicitly address cannabis

Testing Applicants and Employees

- Should you test for marijuana use?
 - Company culture
 - Industry
 - Type of Workforce
 - Jurisdiction
 - Does pre-employment testing mean anything
 - Position
 - Labor Pool

To Test or Not to Test?

- Should you hire applicants that test positive?
 - Does the result matter?
 - Will you accommodate a positive applicant
 - Is it worth going through the process to test – does the policy yield best candidates for the job
 - Does hiring applicants affect the business
 - Should you even test for marijuana?

To Test or Not to Test?

- Current Employees
 - Must abide by OSHA safe and healthy workplace
 - Reduce legal liability
 - Maintain productivity
 - Defeat workers compensation claims
 - Current testing protocols not indicator of impairment
 - Urine test not conclusive
 - Oral (saliva) fluid testing – DOT issued proposed rules (use within 24 hours)
 - Train managers and supervisors to determine impairment
 - Documenting possible incidents of impairment

Best Practices

- ADA does not required employers to create or implement drug-free workplace polices or to test employees for drugs or alcohol
- Guam law does not require employers to test employees, except certain industries or safety positions.
- Employer should still consider creating and enforcing a drug-free workplace policy
 - Government strongly encourages private companies to implement drug-free workplace policies.
- Monitor changes to federal local laws



Questions?

G A M E  **C H A N G E R**

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