



NGCOA

Advocating on behalf of golf course owners and operators across the United States

Marijuana Laws Creates Challenges for Golf Course Owners and Operators

Marijuana laws are changing at a rapid pace across the country. Couple this with actions and words from the federal government calling for enforcement of federal regulations that still prohibit marijuana use, and golf course owners and operators are unsure how to navigate the landscape.

As reported in a recent paper published by [Governing](#) (Jan 2018), "State Marijuana Laws in 2018 Map," twenty states and the District of Columbia have decriminalized possession of marijuana for medical use. Eight states have approved recreational use with five others are adding the issue on their next ballot for public vote. The recent action by the Department of Justice to rescind an Obama memo that deprioritized federal marijuana enforcement creates a challenge for businesses, do they follow the laws of the state knowingly against federal law?

The most pressing questions business owners and operators in the service industry include; how they are to manage employee rights and if they have medical prescription for using marijuana, are they permitted to use on business property, and are customers allowed to use marijuana while on the golf course?

Each state that has passed marijuana use laws, whether for medical or recreational use, has identified prohibited activities surrounding its use and distribution. Many of these states have added laws prohibiting businesses from discriminating against workers based solely based on their status as medical marijuana patient. They also permit employers to prohibit use of marijuana by employees while on duty as part of their drug-free workplace policy. Still, many questions remain.

What can an employer do if they suspect an employee of being under the influence or impaired from the use of marijuana? Unfortunately unlike alcohol, determining if an employee is under the influence from marijuana use is difficult to assess. Standard drug testing is the simplest method to determine if the employee is impaired. Employers should treat this the same as they would if they suspect an employee to be under the influence of alcohol or other illegal drugs, even if they are approved for medicinal marijuana use. State labor laws provide different courses of action, so we recommend you refer to your state department of labor for appropriate guidance. Under federal laws employees are prohibited from working while impaired by the use of alcohol or controlled substances including marijuana. Confused?

How can an employer determine whether an employee is under the influence of medicinal marijuana? In their paper "*Marijuana and Weapons: Challenges Based on New Laws*" authors Mark A. Lies II and Kerry M Mohan, published in [AJG's "Risk Management Insights"](#) (undated white paper), reported *medicinal marijuana use is easy to spot when an employee smokes or ingests marijuana in front of a supervisor, which is certainly not the typical scenario. However, determining whether an employee is under the influence or "impaired" by the marijuana, may be difficult to do under the circumstances, and may be even more difficult for untrained staff.*

Thus, employers must train supervisors, managers, and foremen on how to identify behavior that demonstrates potential impairment and the proper procedures for responding to and investigating alleged instances of impairment.

Further, employers should develop a written definition and understanding as to what constitutes an “impaired” employee. For instance, Illinois’ recent medicinal marijuana statute provides a comprehensive definition of when an employee is considered “impaired” when (s)he: manifests specific, articulable symptoms while working that decrease or lessen his or her performance of the duties or tasks of the employee’s job position, including symptoms of the employee’s speech, physical dexterity, agility, coordination, demeanor, irrational or unusual behavior, negligence or carelessness in operating equipment or machinery, disregard for the safety of the employee or others, or involvement in an accident that results in serious damage to equipment or property, disruption of a production or manufacturing process, or carelessness that results in any injury to the employee or others.²

Can golf course owners prohibit the use or possession of marijuana by individuals who have been approved for medicinal use? Yes, since federal law prohibit the use or possession, private businesses are permitted to designate their property as a “drug-free workplace.” Employees who are approved for medicinal use, may still use prior to and after scheduled work hours, but must do so off the property. This policy must be incorporated in your employee handbook and addressed in pre-employment processing. The drug-free policy will also apply to patrons. It is recommended that appropriate signage be displayed informing the public of your policy.

While the number of states with approved recreational use laws are currently limited, many states have legislative proposals on the books to either expand current medicinal use or allow recreational use. Here is a list of states that currently have approved laws legalizing marijuana use either for recreational and/or recreational use.

STATES WITH APPROVED RECREATIONAL USE LAW

[Colorado](#)
[Washington](#)
[Oregon](#)
[District of Columbia](#)
[Alaska](#)
[California](#)
[Massachusetts](#)
[Maine](#)
[Nevada](#)

STATES WITH MEDICAL MARIJUANA USE LAWS

[Arkansas](#)
[Connecticut](#)
[Delaware](#)
[Florida](#)
[Hawaii](#)
[Illinois](#)
[Louisiana](#)
[Maryland](#)
[Michigan](#)
[Minnesota](#)
[Montana](#)
[New Hampshire](#)
[New Jersey](#)
[New Mexico](#)
[New York](#)
[North Dakota](#)
[Ohio](#)
[Pennsylvania](#)
[Rhode Island](#)
[Vermont](#)
[West Virginia](#)

With the growing demand for the product and facilities to support production increases, can golf course owners benefit? It is important to remember that marijuana remains a Schedule 1 Drug and its production, distribution, and sales is prohibited by the federal government. There have been a number of reported cases where the Department of Justice confiscated product and facilities that were producing marijuana in states where it was legal, so anyone with plans to enter this industry must be aware of the risk.

In an article published in [GOLFNEWS](#) (Apr 2015) “*BEYOND THE COURSE - Marijuana in the Rough*” they addressed this issue by forecasting a *future where golf courses would become more diversified in their land use and forecast we would see golf courses owners blending golf with marijuana manufacturing*. Currently this may seem far fetched, but should the federal government join many states and make use and manufacturing of marijuana legal we will see another industry boom.

Currently there are a number of manufacturing operators and facilities. Companies like [Triq Systems](#) and [Growlife Inc.](#) are among the major producers and distributors. Much of the production today remains for medical use and requires certification by organizations like the [American Herbal Products Association \(AHPA\)](#). For those interested in becoming certified contact the [American for Safe Access \(ASA\)](#) and the [Cannabis Training Institute \(CTI\)](#).

While risk of federal intervention and penalties exist there continues to be a growth in the number of licensed growers and manufacturers. If you are interested in joining this industry, each state has its own regulations and licensing authorities managing this program. There are standard requirements that are common with all states. They include environmental permitting (same as required for golf course operation), land-use regulation (zoning) compliance, building codes (for indoor facilities), solid waste handling permits, and hazardous waste permits (pesticides, mercury containing bulbs, etc).

Another option golf course owners may choose is leasing land to an operator. While this could lessen your exposure, should the federal government choose to shut down the operation, you may still be perceived a participant of the illegal business activity. It is important to seek legal advice from your attorney or financial advisor before entering into such lease agreement. Remember even if you choose to enter into a lease and your contract does separate you from the business of the lessee, you could be held responsible for violation of local and state regulations.

Another matter to consider is if your land is currently secured by a loan from a financial institution like a bank, the loan agreement may not permit a federally prohibited activity being performed on the property. Currently financial institutions are prohibited from taking deposits or payments from businesses in the production, distribution and sales of marijuana products. Should you elect to proceed leasing you will need to find an alternate financial investor, not federally insured, and pay off existing bank loans.

NGCOA would also caution those considering entering the market. Should the federal government pass legislation permitting and supporting states rights to allow the productions, distribution and sales, the small operators will be pressured by the entry of larger corporately supported providers entering the industry. We will continue to follow this emerging industry and how the changing landscape will affect your business and labor issues.

ADDITIONAL RESOURCES

1. [Governing](#) (Jan 2018), “*State Marijuana Laws in 2018 Map*”,
2. [AJG's “Risk Management Insights”](#) “*Marijuana and Weapons: Challenges Based on New Laws*” authors Mark A. Lies II and Kerry M Mohan, published in (undated white paper)
3. [GOLFNEWS](#) (Apr 2015) “*BEYOND THE COURSE - Marijuana in the Rough*”