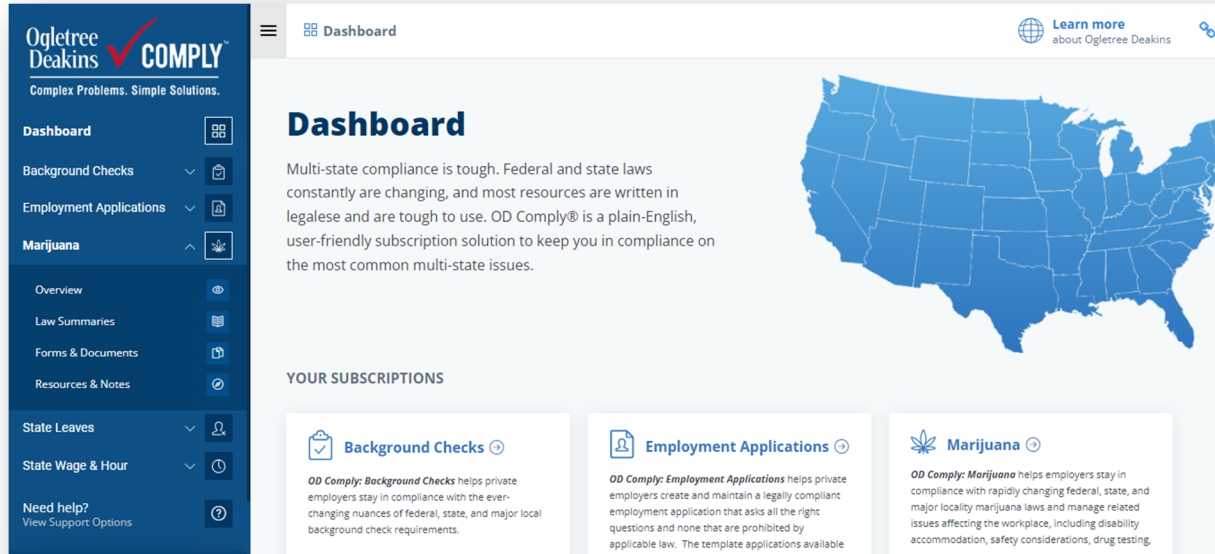


OD Comply: Marijuana



The screenshot shows the OD Comply Marijuana dashboard. On the left is a dark blue sidebar with the Ogletree Deakins COMPLY logo and the tagline "Complex Problems. Simple Solutions." Below the logo is a "Dashboard" button. The sidebar menu includes: "Background Checks", "Employment Applications", "Marijuana" (selected), "Overview", "Law Summaries", "Forms & Documents", "Resources & Notes", "State Leaves", "State Wage & Hour", and "Need help? View Support Options". The main content area has a "Dashboard" header with a hamburger menu and a "Learn more about Ogletree Deakins" link. Below the header is a "Dashboard" section with a paragraph: "Multi-state compliance is tough. Federal and state laws constantly are changing, and most resources are written in legalese and are tough to use. OD Comply® is a plain-English, user-friendly subscription solution to keep you in compliance on the most common multi-state issues." To the right of this text is a map of the United States. Below the text is a "YOUR SUBSCRIPTIONS" section with three cards: "Background Checks", "Employment Applications", and "Marijuana". Each card has a brief description of the service.

Dashboard

Multi-state compliance is tough. Federal and state laws constantly are changing, and most resources are written in legalese and are tough to use. OD Comply® is a plain-English, user-friendly subscription solution to keep you in compliance on the most common multi-state issues.

YOUR SUBSCRIPTIONS

- Background Checks**
OD Comply: Background Checks helps private employers stay in compliance with the ever-changing nuances of federal, state, and major local background check requirements.
- Employment Applications**
OD Comply: Employment Applications helps private employers create and maintain a legally compliant employment application that asks all the right questions and none that are prohibited by applicable law. The template applications available
- Marijuana**
OD Comply: Marijuana helps employers stay in compliance with rapidly changing federal, state, and major locality marijuana laws and manage related issues affecting the workplace, including disability accommodation, safety considerations, drug testing.

SAMPLES FROM THE ONLINE PORTAL



Overview of Subscription



Forms and Documents (excerpts)



Resources and Notes (excerpts)



Law Summaries (excerpts)



OVERVIEW OF SUBSCRIPTION

The *OD Comply: Marijuana* subscription includes (all available via an online Portal):

FORMS AND DOCUMENTS

OD Comply: Marijuana provides these easy-to-use and customizable forms and letters:

- Disability Accommodation – Initial Letter to Applicant or Employee
- Disability Accommodation – Medical Certification Form
- Disability Accommodation – Accommodation Determination Letter – Denial of Request
- Disability Accommodation – Accommodation Determination Letter – Grant of Request
- Reasonable Suspicion Drug Test Observation Form
- New Jersey – Required Pre-Adverse Action Letter

RESOURCES AND NOTES

OD Comply: Marijuana includes an Introduction, Overview and Scope Guide with information that will help you make the most of your *OD Comply: Marijuana* subscription. Other resources help you to quickly identify and analyze employment issues raised by legalized marijuana. Resources include:

- Marijuana Laws Cheat Sheet
- Employment Decision Tree and Flow Chart
- State Marijuana Laws Map
- Workplace Marijuana Issues – Key Takeaways and Best Practices (A comprehensive, practical, and conversational guide that addresses various frequently-raised topics, issues, and questions, with business-centric legal analysis and advisement.).

LAW SUMMARIES

The Law Summaries provide a comprehensive overview of state and major locality marijuana laws, disability discrimination and accommodation laws implicated by the use of medical marijuana, and drug testing laws impacting marijuana testing such as drug testing laws that restrict and/or limit marijuana testing.

E-Alerts

Subscribers receive frequent e-alerts that provide notification and guidance on issues such as the passage of new marijuana-centric laws, important court decisions and case law developments, and administrative guidance—in a practical and conversational tone.

Complimentary Consultation Call

Subscribers receive an initial, complimentary consultation call with the Shareholder-Author of *OD Comply: Marijuana*, to discuss any issues that the client would like to cover during the call.

FORMS AND DOCUMENTS—Sample Excerpts

Reasonable Suspicion Drug Test Observation Form

Published: 09/30/21

[Download](#)

Subscriber Note: This form is intended to be completed by managers or supervisors to support reasonable suspicion drug testing and to document observations of employee impairment in the workplace or during work hours. Note that this form may be used for any impairing substance (e.g., alcohol, other drugs), and is not exclusive to marijuana. This form is intended to be used after review of the state law summaries, and in compliance with relevant state law at issue.

Yellow Highlighting = Items you should complete

Before finalizing this form, please do the following (as applicable): Complete and insert requested information as necessary, and remove the header and all highlighting.

Reasonable Suspicion Observation Form

General Information

Employee's Name:

Observation Date: _____ Time: _____ a.m. / p.m.

Location:

Supervisor's Name:

How long has the employee worked at the Company?

Disability Accommodation - Initial Letter to Applicant or Employee

Published: 05/24/21

[Download](#)

Disability Accommodation – Initial Letter to Applicant or Employee

Subscriber Note: This template letter can be used as part of an employer's state or federal disability law reasonable accommodation analysis for medical marijuana cardholders. This form is intended to be used after review of the state law summaries, and in compliance with relevant state law at issue.

Yellow Highlighting = Items you should complete

Green Highlighting and "****" Designations = Commentary from the author of this form, which should be considered on an as-needed basis

Bold use of "OR" = Items that you may need to modify, depending on the circumstances

Bracketed [] language = Items that represent different language options, depending on the circumstances

Before finalizing this form, please do the following (as applicable): Complete and insert requested information as necessary, remove the header, remove all highlighting, remove brackets, remove green highlighted commentary, and remove "OR" designations and modify as needed.

Dear **Employee Name**:

On **Insert Date**, you notified the Company that you **[were considering the utilization of medicinal marijuana to treat an underlying medical condition OR were an approved [insert state] medical marijuana cardholder and provided the Company with a copy of your card] OR [the Company learned that you are a medical marijuana cardholder]**.

RESOURCES AND NOTES—Sample Excerpts



Complex Problems. Simple Solutions.

OD Comply: Marijuana **Overview and Scope**

Attorney-Client Privileged

Welcome to ***OD Comply: Marijuana***!

I. Introduction

Thank you for subscribing to ***OD Comply: Marijuana***. This Introduction and Scope Guide (“Guide”) will help you understand the ***OD Comply: Marijuana*** materials and provide you with additional insight on the ever-evolving nature of marijuana issues impacting the workplace.

OD Comply: Marijuana is designed to assist employers in understanding the complicated and state-specific nature of marijuana legalization laws. ***OD Comply: Marijuana*** also provides you with an overview of the countless ways that marijuana legalization has affected the workplace. While “marijuana laws” may be a general descriptive term, there are many different topics that fall under the umbrella of “marijuana laws” that may arise for employers in handling workplace marijuana issues. This list includes, but is not limited to: (1) compliance with the marijuana laws themselves, (2) pre-employment drug testing, (3) post-employment drug testing, (4) disability discrimination, (5) disability accommodation, (6) workplace safety, (7) government contractor issues, (8) compliance with federally-





RESOURCES AND NOTES—Sample Excerpts cont'd.

Subscriber Note: This document outlines certain considerations and best practices for employers in handling workplace marijuana issues. This document also addresses certain frequently-raised issues on certain topics that do not fall within the scope of the State and Major Locality Summaries. This document is intended to be used in conjunction with the other materials included with the **OD Comply: Marijuana** subscription, including the State and Major Locality Summaries.

This document provides a general overview of certain issues, and is not intended to be a comprehensive document that addresses any and all situations.

Updated: June 15, 2021

WORKPLACE MARIJUANA ISSUES – KEY TAKEAWAYS, BEST PRACTICES, AND FREQUENTLY-RAISED ISSUES

ATTORNEY-CLIENT PRIVILEGED

General Best Practices and Considerations

- While it may seem elementary, it is important that any workplace medical or recreational marijuana issue be elevated to the legal department. If a company does not have a legal department, the issue should be elevated to upper-level Human Resources professionals. Evaluation and analysis of a marijuana issue may be very different depending on the jurisdiction and facts in any specific situation, and based on business or operational considerations. If needed, employers should also consider consulting with outside counsel.
- Employers should remain mindful that on-the-job use or possession of marijuana is not allowed in any jurisdiction, nor is impairment or working under the influence of marijuana. This includes use, possession, or impairment in the workplace, during work hours, or while performing work on behalf of an employer.
- Unlike alcohol, a positive marijuana test does not equate to impairment. While science is advancing, a positive test also does not provide a definitive answer as to when an individual used marijuana. Thus, it is important to be able to establish other grounds to support a "conclusion" or "belief" that someone is

Marijuana Recent Email Updates

*The following contains a compilation and archive (going back several years) of our **OD Comply: Marijuana** email alerts to subscribers on various topics – easy to reference and all in one place.*

February 7, 2022 - Mississippi Governor Signs Medical Marijuana Bill into Law

Last week, Mississippi Governor Tate Reeves signed [Senate Bill 2095](#) into law. For ease of reference, copied and pasted below is the full email notification sent on January 26 when the MS medical marijuana bill was approved by the state legislature.

Note that the law goes into effect immediately. However, from a practical standpoint, it will be several months before MS medical marijuana cards begin to be approved. In the meantime, MS employers should begin to



LAW SUMMARIES—Sample Excerpts

State Law [sample = New Mexico]

Medical Marijuana

General

New Mexico

Summary

New Mexico has legalized marijuana for medicinal purposes. New Mexico's medical marijuana law is called the Lynn and Erin Compassionate Use Act (the "**Medical Act**"). *New Mexico Statutes § 26-2B-1* through *New Mexico Statutes § 26-2B-10*. The Medical Act allows individuals with certain qualifying medical conditions and physician authorization to apply for an approved state medical marijuana patient identification card.

The Medical Act does not contain any express employment protections for medical marijuana cardholders or caregivers. New Mexico employers can continue to prohibit the on-site use, possession, and distribution of marijuana in the workplace, regardless of marijuana's legal status for medicinal purposes. Aside from the Medical Act, there are also New Mexico court decisions discussing disability discrimination within the medical marijuana context and the applicability of disability discrimination laws to medical marijuana cardholders.

Qualifying Medical Conditions

(1) Cancer; (2) Glaucoma; (3) Multiple sclerosis; (4) Damage to the spinal nervous tissue of the spinal cord, with objective neurological indication of intractable spasticity; (5) Seizure disorder; (6) Epilepsy; (7) Positive HIV status; (8) AIDS; (9) Amyotrophic lateral sclerosis (Lou Gehrig's disease); (10) Crohn's disease; (11) Hepatitis C; (12) Huntington's disease; (13) Inclusion body myositis; (14) Inflammatory autoimmune-mediated arthritis; (15) Intractable vomiting or nausea; (16) Obstructive sleep apnea; (17) Painful peripheral neuropathy; (18) Parkinson's disease; (19) Post-traumatic stress disorder; (20) Severe chronic pain; (21) Severe anorexia or cachexia; (22) Spasmodic torticollis; (23) Ulcerative colitis; (24) Any other medical condition, treatment, or disease approved by the state department of health. *New Mexico Statutes § 26-2B-3(j)*.

Restrictions on Types of Medical Marijuana

There are no restrictions on the types (e.g., smokable form, plants, edibles, oils, lotions, patches, etc.) of medical marijuana allowed under the Medical Act.

Caregivers

The Medical Act allows for caregivers (to individuals authorized for medical marijuana use) to register for approved state medical marijuana identification cards.

Reciprocity

New Mexico will recognize out-of-state medical marijuana cardholders. *New Mexico Statutes § 26-2B-3(W)*.

Unemployment Compensation Benefits

The Medical Act does not address the impact that an adverse employment action taken against a medical marijuana cardholder or caregiver may have on an individual's eligibility for unemployment compensation benefits.

Workers' Compensation Benefits

The Medical Act does not address whether workers' compensation insurance carriers and self-insured employers are required to provide workers' compensation benefits, or to pay or reimburse for costs associated with the medical use of marijuana related to workplace injuries. However, the



LAW SUMMARIES—Sample Excerpts cont'd.

Locality Law [sample = Boulder, CO]

Drug Testing Laws Marijuana

Colorado

Summary

Employers are prohibited from conducting post-employment (i.e., reasonable suspicion, random, or post-accident) drug testing for any substance, including marijuana, for employees who work in Boulder, Colorado. *Boulder Municipal Code § 12-3-2*.

Outside of Boulder, there are no Colorado state drug testing laws that prohibit or restrict testing for marijuana.

Exceptions

The Boulder post-employment testing prohibition is not applicable in certain reasonable suspicion circumstances (or, post-accident to the extent that the circumstances also support reasonable suspicion testing), where an employer can establish reasonable suspicion, based on specific, objective, and clearly expressed facts, (1) to believe that an employee is impaired in the workplace or during work hours, (2) to believe that an employee's job performance is currently adversely affected by the use of drugs or alcohol, or (3) the employee has agreed to a test as part of an employee assistance program. *Boulder Municipal Code § 12-3-2(a)*. Boulder employers must also comply with other procedural and documentation requirements. *Boulder Municipal Code § 12-3-2(b)-(j)*.

While not expressly addressed in the Boulder drug testing law, the Boulder post-employment testing prohibition would not be applicable to job positions where drug testing is mandated by federal law or regulation (e.g., Department of Transportation drivers).

[show less](#) ^

Thanks for reviewing samples from the online Portal. For questions, additional details, or subscription information, please contact ODComply@Ogletree.com or the Ogletree Deakins Marijuana Advice team at Marijuana@Ogletree.com.