**What is the status of adult use cannabis in Ohio?**

Adult use cannabis (commonly referred to recreational marijuana) was legalized on December 7, 2023, and sales at the State’s 98 licensed dispensaries began on August 6, 2024.

Individuals must be 21 or over to use, purchase, or possess cannabis, and they may possess up to 2.5 ounces and generally may home-grow up to 6 plants (12 plants per household) at their primary residence.

**What is the status of rescheduling marijuana under federal law?**

Marijuana remains illegal under federal law.

In August 2023, the U.S. Department of Health and Human Services recommended rescheduling marijuana from Schedule I to Schedule III in the Controlled Substances Act. In May 2024, the Department of Justice submitted a notice of proposed rulemaking to initiate the formal rulemaking process. By July 2024, the Department of Justice had received more than 42,000 comments on the proposed rule, with 69% supporting descheduling, decriminalizing, or legalizing marijuana federally. The Department of Justice’s Drug Enforcement Agency has scheduled a hearing to listen to expert testimony on December 2, 2024.

Rescheduling marijuana will affect only medical marijuana. It will have no effect on adult use/recreational cannabis, which will remain illegal under federal law.

**Employment-Related Issues**

**Does an employer have to permit or accommodate cannabis use?**

No. An employer is not required to permit or accommodate an employee’s use, possession, or distribution of cannabis.

**Can an employer refuse to hire a job applicant who is a cannabis user? Can an employer fire or otherwise discipline an employee who is a cannabis user?**

Yes. An employer may refuse to hire, discharge, discipline, or otherwise take an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment because of that person’s use, possession, or distribution of cannabis.

**Can an employer fire or otherwise discipline an employee who uses cannabis off-duty?**

Yes. An employer may refuse to hire, discharge, discipline, or otherwise take an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment because of that person’s use, possession, or distribution of cannabis.

**Can an employer have a drug testing policy that tests job applicants and/or employees for cannabis?**

Yes. An employer may still establish and enforce a drug testing policy, drug-free workplace policy, or zero-tolerance drug policy. In addition, the Ohio Bureau of Workers’ Compensation may continue to grant rebates or discounts on premium rates to employers that participate in the Bureau’s drug-free workplace program.

**Does legalizing adult use cannabis affect an employer’s ability or responsibility to drug test employees who are drivers?**

No. Job applicants and employees who are covered by federal restrictions on employment, such as the U.S. Department of Transportation regulations for commercial drivers, are governed by those regulations. This means that applicants and employees who hold a commercial driver’s license must be tested for marijuana in accordance with the Department of Transportation’s regulations.

An employer has discretion as to whether to subject other types of drivers (or other employees in safety-sensitive positions) to drug testing for cannabis.

**If an employee is terminated for cannabis use, will that affect their eligibility for unemployment compensation benefits?**

Yes. A person who is terminated because they used cannabis is considered to have been discharged for “just cause” under the Unemployment Compensation Law if that use violated their employer’s drug-free workplace policy, zero-tolerance policy, or other formal program or policy regulating cannabis use.  The person is ineligible to serve a waiting week or receive unemployment benefits for the duration of unemployment.

**Can an employer test employees for cannabis use that are in different job categories/classifications/positions differently?**

Yes. An employer can implement different drug testing requirements, including having different drugs included on the drug panels, based on position or classification. An employer is not required to test all applicants or all employees. For example, an employer may decide to use pre-employment testing for cannabis (and/or for other drugs) only for employees who are drivers, who may be operating machinery or power tools, or who are working in safety sensitive positions as defined by the employer.

**Can an employer hold employees to its workplace drug and alcohol policies when the employee performs services or works outside of Ohio?**

Yes. Regardless of another state’s laws concerning cannabis use and possession, the employee can be held to the employer’s drug and alcohol policy during working time. In addition, the employee can be held to the consequences of their actions for using cannabis in another state outside of working time depending on how the employer’s drug and alcohol policy is written.

**PROVIDER LANDLORD-TENANT ISSUES**

**Does Ohio permit adults to home-grow cannabis?**

Yes. An adult may group up to 6 plants (12 plants per household) at their primary residence.

**Can a person who uses cannabis be rejected as a tenant because of such use?**

No. An individual's status as an adult use consumer may not be used as the sole or primary basis for rejecting the individual as a tenant unless the rejection is required by federal law.

**Can a provider restrict its residents from using, possessing, or growing cannabis?**

Yes. A landlord may prohibit cannabis cultivation, growth, and possession so long as such prohibition is included in the applicable lease agreement.

In addition, a landlord may prohibit the consumption of cannabis by combustion so long as such prohibition is included in the applicable lease agreement.

**PROVIDER SERVICE ISSUES**

**What should providers do when the people they serve want to use, possess, or grow cannabis?**

The Ohio Department of Developmental Disabilities’ (DODD) stance is that marijuana/cannabis remains illegal under federal law, and therefore providers should not be involved with anyone’s use, possession, or growth of cannabis. According to DODD, they will not be issuing any further guidance with respect to adult use cannabis, and it stands by the guidance DODD issued a few years ago regarding medical marijuana. See <https://files.constantcontact.com/141902ea301/5b530f1c-0556-4cad-8913-7f39a3cf6e21.pdf>.

**What policies can providers implement to limit or restrict use/possession/growth by people served in the various settings (licensed waiver home, ICF, shared living)?**

Because marijuana use, possession, and growth remain illegal under federal law, providers can continue to implement any policies for adult use cannabis that they have currently in effect for medical marijuana. Even if marijuana is eventually rescheduled (which would not occur until sometime in 2025 at the earliest), rescheduling would affect only medical marijuana. It will have no effect on adult use/recreational cannabis, which will remain illegal under federal law. According to DODD, they recommend that providers follow the federal law as it currently exists and do not become involved in any way with individual’s use, possession, or growth of cannabis.

**If and how does this answer change in licensed waiver settings and ICFs? What about in shared living?**

It does not change. For ICFs and licensed waiver settings, providers can address individual cannabis use in their policies, if desired. In licensed settings, providers can consider adding a provision to their leases prohibiting cannabis use, growth, and possession on the premises, similar to a non-smoking policy. For shared living, this could be more difficult to control, but providers can consider also adding a no-cannabis provision into their shared living agreements.

**What are provider obligations when families want to give their loved ones medical marijuana or adult use cannabis?**

Providers have no obligations to families that want to give their loved ones medical marijuana or adult use cannabis. As already noted, marijuana remains illegal under federal law, and providers should not be involved in any way with the administration of medical or adult use marijuana/cannabis.

**What can providers require of shared living providers who are independent contractors with agencies in terms of limiting their use/growing of marijuana in the home where a person with DD is receiving the shared living service?**

As noted above, the use, growth, and possession of cannabis can be more difficult to control in a shared living setting where an individual is living in a family member’s home. However, providers can consider adding a no-cannabis provision into their shared living agreements.

**What limits can these contractors put on the people they are serving?**

Contractors should attempt to follow federal law regarding adult use marijuana/cannabis; however, we understand that may be difficult for providers to control or assess. As noted above, providers can consider adding provisions to their shared living agreements addressing these issues.

**If a provider provides services on the state’s border and do activities (community outings, employment services/job placements, etc.), what do providers need to consider since now staff are crossing state lines (especially in the border states that do not have comprehensive use laws in place)?**

Since marijuana remains illegal at federal law, the above responses remain applicable to these types of situations. Providers will be expected to comply with federal law and not be involved with individual marijuana use in or out of state.