



Employment Rights Helpline at Equip for Equality

SELF-ADVOCACY ASSISTANCE ★ LEGAL ADVICE ABOUT EMPLOYMENT RIGHTS ★ SAMPLE LETTERS & FORMS ★ REFERRALS

FACT SHEET: Marijuana/Cannabis in the Workplace

I use marijuana/cannabis to treat the symptoms of my disability. Do I have any legal rights in the workplace?

Yes, although the laws are not as strong or as clear as we would like.

This Fact Sheet will help you understand your rights as a job seeker or employee who uses cannabis in Illinois. It outlines four different laws and gives practical tips.

We use the words marijuana and cannabis interchangeably throughout this Fact Sheet.

Law #1: Americans with Disabilities Act

I use marijuana to treat the symptoms of my disability. Am I protected by the Americans with Disabilities Act (ADA)?

No, unfortunately. The ADA does not protect people who **currently** use **illegal drugs** from being treated differently because of their drug-use.

But marijuana is now legal so why is it considered an illegal drug?

Marijuana is legal in **Illinois**. However, the ADA is a federal law.

Even though marijuana is legal under Illinois state law, the ADA still considers it to be illegal because it looks at another federal law – the Controlled Substances Act – to decide what illegal means.

As a result, the ADA does not protect you from a negative employment action as a result of using marijuana, even if you used marijuana legally under Illinois law.

Law #2: Illinois Human Rights Act

I use marijuana to treat the symptoms of my disability. Am I protected by the Illinois Human Rights Act (IHRA)?

Maybe. The Illinois Human Rights Act is another anti-discrimination law that protects the employment rights of people with disabilities. However, unlike the ADA, the IHRA is an Illinois state law so courts interpreting it will likely look at other state laws when deciding what is legal.

Does the IHRA protect my rights in the workplace?

Maybe. The IHRA *may* protect you if:

- You are treated differently than other job seekers or employees without disabilities. In other words, if others are not fired because they use marijuana, but you are because your marijuana-use is disability-related, you may have a claim under the IHRA.
- It may be a reasonable accommodation to modify your employer's drug-free workplace policy. Whether your request for this accommodation is reasonable depends on many different factors, including the type of job you have and employer you work for.

Caution: This is an area of the law where many courts are looking at these questions for the first time. We do not yet know what courts will think about requests for reasonable accommodations in light of the Compassionate Use of Cannabis Program Act.

Law #3: Compassionate Use of Medical Cannabis Program Act

What is the Compassionate Use of Medical Cannabis Program Act (Compassionate Use Act)?

The Compassionate Use Act is an Illinois state law. It creates a system where people with certain disabilities can get an ID card that allows them to legally purchase and use cannabis.

What medical conditions are covered?

The Compassionate Use Act helps people with a wide-range of medical conditions, including, but not limited to cancer, Multiple Sclerosis, epilepsy, Post-Traumatic Stress Disorder, chronic pain and migraines. The full list of medical conditions can be found [here](#).

Does the Compassionate Use Act protect my rights in the workplace?

Maybe. The Compassionate Use Act has an anti-discrimination provision, but it is limited and has a number of exceptions.

What protections does the Compassionate Use Act offer? What are the limitations and exceptions?

- **Protection:** The Compassionate Use Act says that an employer cannot penalize you *solely* for having a medical marijuana card. This means that your employer cannot fire you, refuse to hire you, or otherwise treat you unfairly for having a medical marijuana card alone.
- **However:** It is not entirely clear if this law protects you if you actually *use* medical marijuana. We think there is a good argument that it does, but the courts have not yet analyzed this issue.
- **Exception:** The Compassionate Use Act's anti-discrimination requirements do not apply if they would cause your employer to lose funding or licenses under federal law or rules.

Does the Compassionate Use Act protect my job if I use medical marijuana to treat the symptoms of my disability?

Maybe. While the Compassionate Use Act says that an employer cannot penalize you for having a medical marijuana card, it also says employers can:

- Enforce a policy concerning drug testing, zero-tolerance, or a drug free workplace if the policy is applied equally to everyone
- Discipline you for violating a workplace drug policy
- Discipline you for failing a drug test if failing to discipline you would result in the employer violating federal law or cause it to lose a federal contract or funding
- Adopt reasonable regulations concerning the consumption, storage, or timekeeping requirements for qualifying patients related to the use of medical cannabis

The Compassionate Use Act is a relatively new law, and the courts are still in the process of interpreting what these limitations mean.

Does the Compassionate Use Act allow me to use marijuana in the workplace?

No. The Compassionate Use Act says employers can discipline you if they have a good faith belief that you:

- Used or had cannabis at work or during work hours
- Were impaired while at work or during work hours

Law #4: Illinois Cannabis Regulation and Tax Act

What is the Illinois Cannabis Regulation and Tax Act (the Cannabis Act)?

The Cannabis Act is an Illinois state law. It makes marijuana legal for recreational use by anyone over the age of 21 as of January 1, 2020.

What protections does the Cannabis Act offer? What are the limitations and exceptions?

- **Protection:** The Cannabis Act says employers cannot discriminate against you for using **lawful products** off-site, as well as outside of your work and on-call hours. It defines “lawful products” to include cannabis.
- **Exception:** These protections do not apply if they would cause your employer to lose a monetary or licensing-related benefit under federal law or rules.

Does the Cannabis Act protect my job if I use marijuana?

Maybe. Even though the Cannabis Act says that an employer cannot penalize you for using cannabis outside of work, it also says employers can:

- Adopt reasonable zero tolerance or drug free workplace policies, including requiring employees or applicants to have reasonable drug testing

- Adopt employment policies concerning drug testing, smoking, consumption, storage, or use of cannabis in the workplace or while on call
- Discipline or fire you for violating an employment policy or workplace drug policy

The Cannabis Act is a new law, and the courts have not yet interpreted these limitations.

Does the Cannabis Act allow me to use marijuana in the workplace?

No. The Cannabis Act allows employers to discipline or fire you if they believe you are impaired or under the influence of marijuana in the workplace. However, before an employer disciplines an employee for being under the influence of cannabis, your employer must give you an opportunity to respond.

Practical Tips

- There is no reason to disclose that you use marijuana unless you know that you will be given a drug test.
- If you are given a drug test, see if there is a way to contact the lab doing the testing directly to tell them that you use marijuana lawfully under state law.
- As marijuana becomes legal in Illinois, employers will most likely be updating their drug free workplace policies. Be sure to review the policies so that you know what to expect.
- Remember that employers who have federal contracts are less likely going to be able accommodate your marijuana use; if you are able to do so, try to find employers that do not have ties to the federal government.

I lost a job because I use marijuana for my disability. What should I do?

Contact a lawyer as soon as possible, as there are certain deadlines you don't want to miss.

- **Illinois Human Rights Act:** To pursue a claim under the IHRA, your first step is to file a charge of discrimination with the Illinois Department of Human Rights. You have 300 days from the date of the negative employment action to file.
 - Learn more in our Fact Sheet about [Filing a Charge of Discrimination](#). You should not file with the EEOC because the EEOC will look at the ADA.
- **Compassionate Use Act:** It is not yet settled whether you can go directly to court. Be sure to contact a lawyer as soon as possible to discuss your rights.
- **Cannabis Act:** To pursue a claim under the Cannabis Act, your first step is to file a complaint with the Illinois Department of Labor (IDOL). You have 180 days from the date of the negative employment action to file.
 - Learn more about the IDOL process [here](#). Find a copy of the IDOL complaint form [here](#).



DO YOU HAVE A QUESTION?

CONTACT THE HELPLINE FOR FREE LEGAL ADVICE

Contact Equip for Equality's Employment Rights Helpline

1-844-RIGHTS-9 (1-844-744-4879) (toll free - voice)

800-610-2779 (tty)

employment@equipforequality.org

www.equipforequality.org

This resource material is intended as a guide for people with disabilities. Nothing written here shall be understood to be legal advice. For specific legal advice, an attorney should be consulted.

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