



# Beyond the Munchies: Cannabis in the Workplace

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# The Basics

- Cannabis (marijuana) products are still illegal on the federal level
- Cannabis vs. Hemp
- Controlled Substances Act
- Cannabidiol (CBD)



*Hemp*

Low THC (<0.3%)  
108-120 days growth cycle  
Non-psychoactive  
Adaptable growing  
Clothing, body care



*Marijuana*

High THC (5-35%)  
60-90 days growth cycle  
Psychoactive  
Carefully growing  
Medical and recreational uses

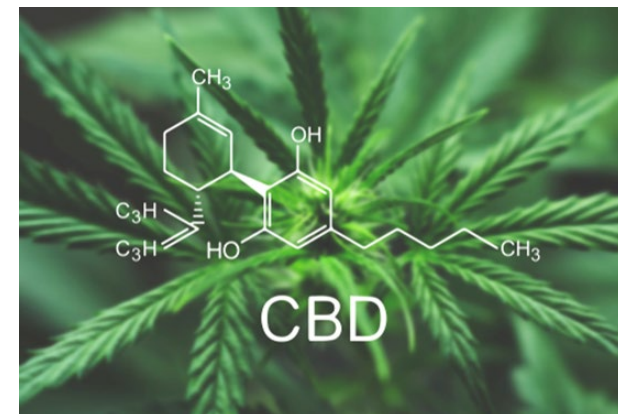
# 2014 Farm Bill

- Section 7606 of the 2014 Farm Bill authorizes states to implement Pilot Programs to research industrial hemp.
- Did not authorize the creation of a commercial market; however many states allow commercial sales under a state pilot program.
- Current regulatory system until regulations under the 2018 Farm Bill are finalized.



# 2018 Farm Bill

- Congress removed hemp (cannabis sativa with less than 0.3% THC) and its derivatives including CBD from the Controlled Substances Act.
- Marijuana-derived products (cannabis sativa with more than 0.3% THC) including CBD are still Schedule 1 controlled substances.
- Authorized USDA to regulate hemp production.
- Authorized FDA to regulate the sale of hemp-derived products.
- States and tribes retain the right to prohibit the production and sale of industrial hemp; however, states and tribes cannot interfere with interstate commerce.



# U.S. Department of Agriculture

- Governing body for hemp production.
- Regulations expected prior to the 2020 planting season (fall 2019).
- Agency-level Policy Updates:
  - States and Tribes not permitted to interfere with interstate commerce of product produced in accordance with 2014 Farm Bill.
- State Plan Requirements (minimum):
  - Maintain records regarding land on which hemp is produced.
  - Develop procedures for testing THC levels of hemp.
  - Develop procedure for effective disposals of plants that are produced in violation of the regulations and products derived from those plants.
  - Develop procedure to comply with the enforcement procedures.
  - Develop procedure for conducting annual inspections, at a minimum, a random sample of hemp producers to verify that hemp is not produced in violation of the regulations.
  - Certify that the State has the resources and personnel to carry out the practices and procedures.



# Hemp, Hemp Products & CBD



Hemp Pancake Mix



Hemp Brownie Mix



Hemp Blondie Mix



Unsweetened  
Original Hemp Milk





# Food and Drug Administration

- 2018 Farm Bill preserved the FDA's ability to regulate products in accordance with Food, Drug and Cosmetics Act.
- FDA's current position is that CBD cannot be added to anything intended to be ingested or absorbed into the human body.
- CBD has been approved as a drug (Epidiolex) so FDA says CBD cannot be sold as a dietary supplement.
- Many companies have been selling hemp-derived CBD products despite FDA position.
- Research & development activities are permitted under current law.



*"[I]t is unlawful under the [FDCA] to introduce food containing added CBD or THC into interstate commerce, or to market CBD or THC products as, or in, dietary supplements, regardless of whether the substances are hemp-derived."*

# FDA Enforcement

- FDA has stated that it will continue to investigate whether CBD may be added to products intended for human consumption and whether those products could be regulated as both pharmaceuticals and dietary supplements.
- Some cease-desist (warning) letters have been sent, but only to a relatively small number of hemp-derived CBD companies; most involve egregious health claims.
- Use of “extract” and “full spectrum” will not eliminate potential FDA enforcement action.
- FDA held its first hearing on the future of CBD regulations on May 31, 2019.



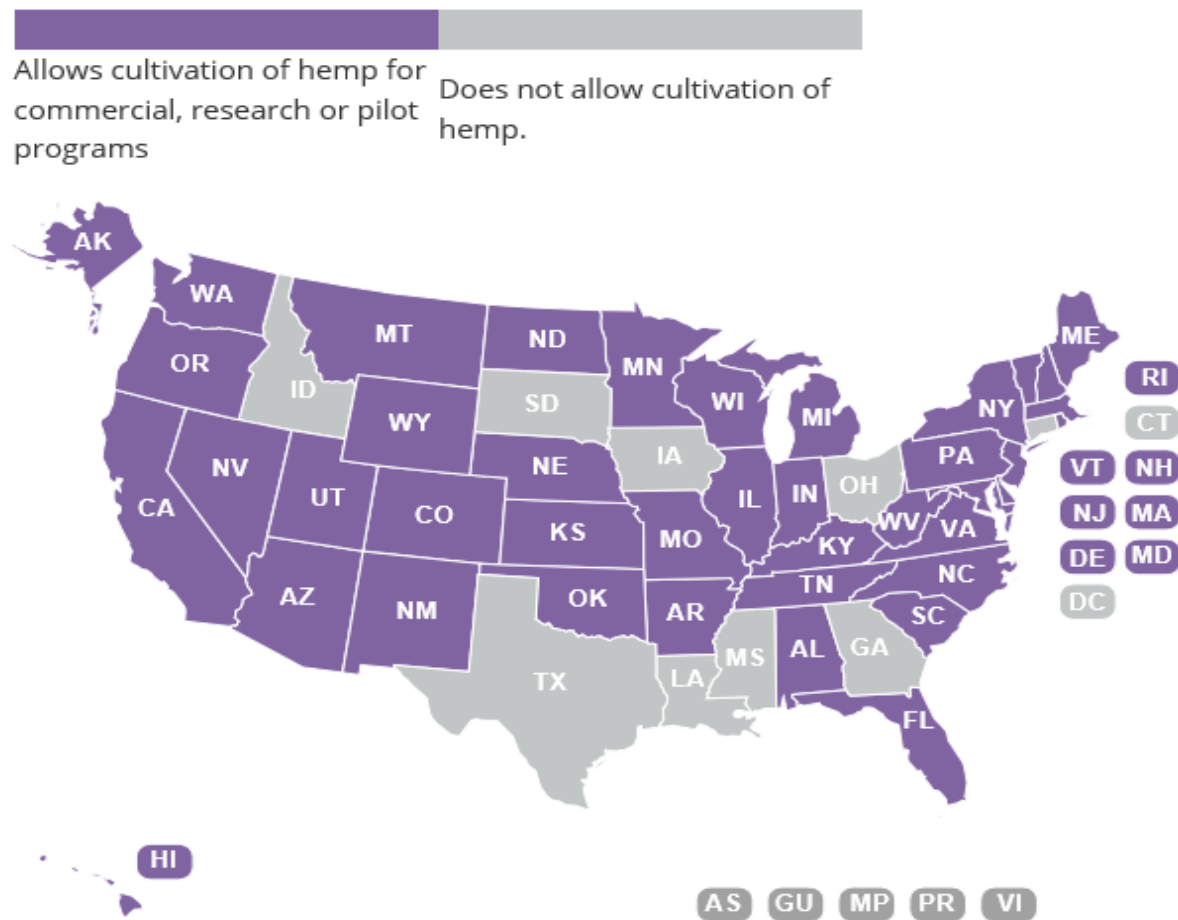


# Alcohol and Tobacco Tax and Trade Bureau

- Currently following FDA guidance and will not authorize CBD-infused alcohol.
- TTB will continue to process formula applications for products that are infused with hemp seeds, hemp seed oil, or another FDA approved ingredient that is generally recognized as safe (GRAS).
- TTB will require a formula for any product containing a hemp-derived product, including use of terpenes. Applies to intrastate commerce as well.
- “Hemp” may only be used if part of the manufacturing process.
- May develop additional independent regulations if FDA approves CBD for food products.



# State Industrial Hemp Programs



Source: National Conference of State Legislatures: State Industrial Hemp Statutes – February 1, 2019

# State Enforcement

- Even states that authorize hemp and marijuana prohibit sale of food products with CBD
  - California (pending legislation)
  - New York
  - Massachusetts
- California does allow hemp-derived CBD to be sold in edibles within the regulated marijuana market.



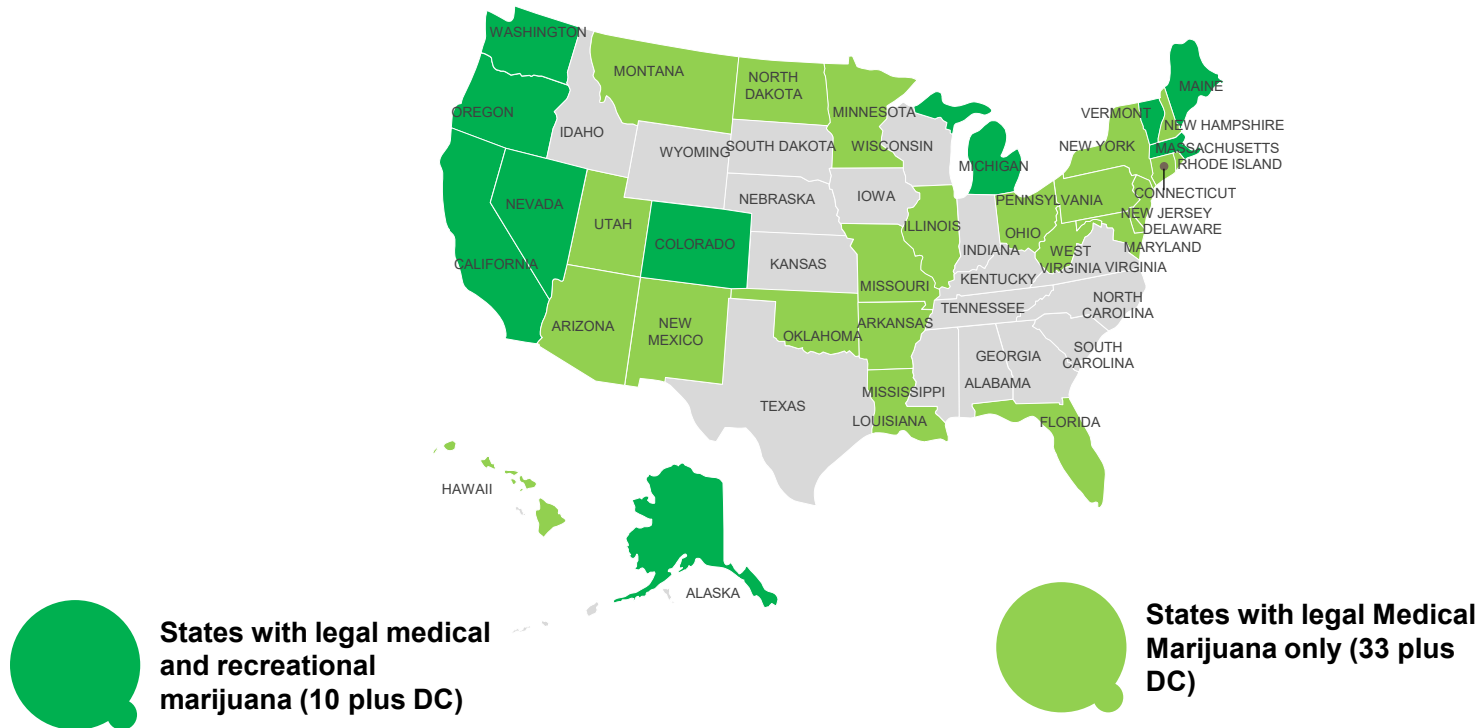
# Hurdles for CBD-Infused Product Retailers

- CBD safe for human consumption?
- Is it traceable to hemp, not marijuana?
- Quality of suppliers?
- What is the right balance of risk?
- Insurance considerations
- Payment processors?
- Is additional legislation required?

# Drug Testing / Medical and Recreational Marijuana

## 33 Legal Medical Marijuana States + DC

# 10 Legal Recreational Marijuana States + DC



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# How does cannabis intersect with the workplace? Workplace safety



# How does cannabis intersect with the workplace? Drug Free Workplaces

- **Federal Law (DOT)**
- **State statutes (workers' comp)**
- **NYC – banned pre-employment testing in April 2019**
- **Nevada – first statewide ban from rejecting job applicant for failed marijuana test**





# Can CBD Show Up On A Drug Test?

- **Testing methods for THC levels**
- **Factors**
  - Consumed vs. Topical
  - Amount consumed
  - Frequency
  - Body composition



# How does cannabis intersect with the workplace? Disabilities and Accommodation And Effect of State Marijuana Laws

- It's a nuanced question, but in California the answer is, "none yet."
- In 2008, *Ross v. RagingWire Telecommunications*, California Supreme Court ruled no requirement under FEHA to accommodate use of medicinal marijuana, remains good law today
- In 2018, proposed bill (AB 2096) would have required FEHA protection for medicinal marijuana, but stalled
- Employers still need to be careful with respect to obtaining potential disability-related information and should engage in the interactive process to determine if there is an accommodation such as later start time or unpaid leave that would accommodate legitimate use of medical marijuana.

# Medical Marijuana Cases

## Other States

- ***Coats v. Dish Networking, LLC (CO)***

Medical marijuana use permitted by state law but unlawful under federal law are not protected

- ***Washburn v. Columbia Forest Products, Inc. (OR)***

Not disabled because could counter his medical issues with prescription medication

- ***Roe v. Teletech Customer Care Management (WA)***

Employers are not required to accommodate medical marijuana

- ***Johnson v. Columbia Falls Aluminum (MT)***

Employers are not required to accommodate medical marijuana

- ***Cotto v. Ardagh Glass Packing, Inc. (NJ)***

Forklift driver's medical cannabis use did not have to be accommodated

## Medical Marijuana Cases Other States

### BUT SEE:

- ***Barbuto v. Advantage Sales & Marketing, LLC* (MA)**

Medical marijuana to treat Crohn's disease must be accommodated.

- ***Wild v. Carriage Funeral Holdings, Inc.* (NJ)**

Even though New Jersey law does not require an employer to accommodate medical marijuana *in any workplace*, Plaintiff's claim that his employer discriminated against him by refusing to accommodate medical marijuana off duty could proceed.

And statutes in AZ, AR, CT, DE, IL, ME, MN, NY, PA, and WV prohibiting discrimination against off duty use or requiring accommodation.

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# Food, Agribusiness & Beverage

Our group has more than 25 years of experience working with major national agribusinesses, regional agricultural cooperatives, rural electric cooperatives, purchasing cooperatives and start-up organizations across the nation.

Dorsey's attorneys work with agribusinesses and cooperatives in industries such as agriculture, energy and utilities, purchasing, housing, professional services and healthcare. We also represent other agriculture-related organizations such as commodity promotion groups, cooperative banks and cooperative trade associations.

Dorsey provides the following services to our food and agribusiness clients:

- General Corporate
- Mergers and Acquisitions
- Labor & Employment
- Regulatory
- Securities
- Joint Ventures
- Real Estate
- Audit/Tax Compliance
- Licensing Agreements
- Benefits & Compensation
- Contract Disputes
- Environmental Litigation
- Product Liability
- Intellectual Property
- Immigration
- Bankruptcy/Creditor Representation

# Labor and Employment

Dorsey's Labor & Employment group dedicates the majority of its practice to dispute resolution through litigation, arbitration, mediation or negotiation. Whether the dispute is administrative, single plaintiff or class based, we are known for delivering successful results to employers in FLSA, discrimination, wrongful termination, trade secret and most other claims brought by employees. We are respected, efficient and cost-effective litigators.

The most successful lawsuit, though, is the one that is never filed. So, we spend the rest of our time helping employers develop workplace strategies to manage employment-related risk and implement effective policies and procedures to protect valuable assets and trade secrets. We also support merger and acquisition transactions for buyers and sellers and help companies secure talented foreign nationals through our comprehensive business immigration services. For employers with a unionized workforce or facing union organizing, we help resolve labor law issues.



# Cannabis

Dorsey is a recognized leader for providing services to the legal cannabis industry.

We were one of the first AMLAW 100 law firms providing services to the industry and have worked with investors, lenders, grow companies, edible and oil manufacturers, as well as companies providing ancillary services.

Our lawyers in this space are well versed in transactions in Colorado, California, Washington and other states where state laws permit medical or recreational cannabis operations.

Our services and representative transactions include:

- Company-side formation, angel investment and venture capital financing (debt and equity)
- Canadian Capital Markets going public transactions
- Investor-side equity and debt investments
- Secured transactions
- Efficient capital structure planning
- Tax driven structuring
- Protection and licensing of intellectual property
- State and Federal tax counseling
- Regulatory compliance
- Mergers and acquisitions
- Real estate transactions
- Corporate governance
- Complex commercial licenses

