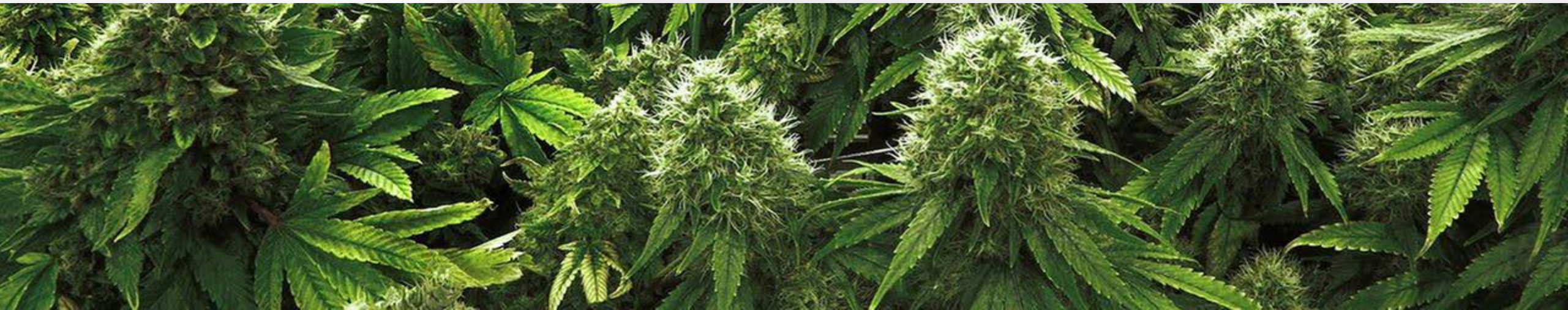


# **In the Weeds: Navigating Legal Marijuana in the Workplace**



Presented by:

**Scott Mahoney**

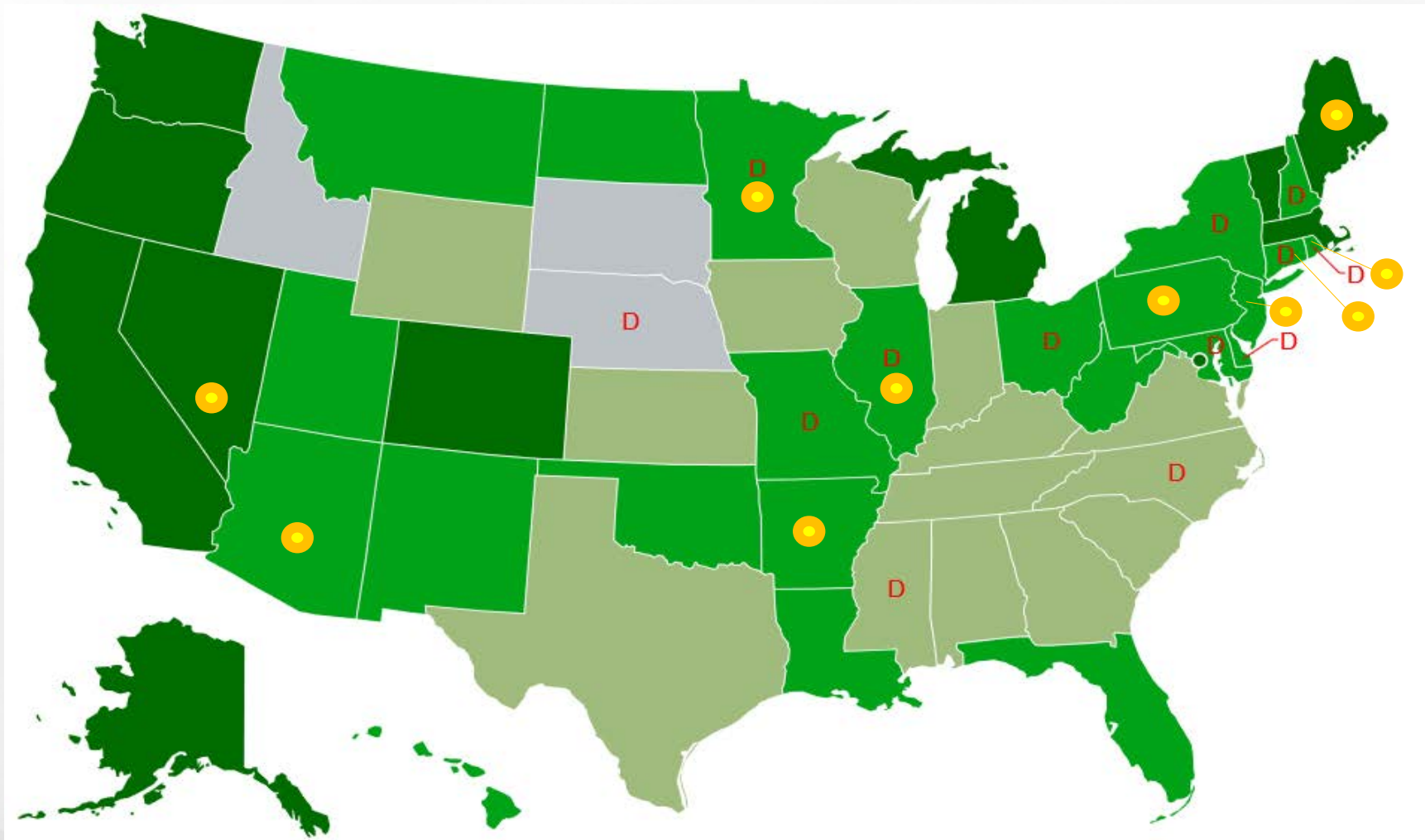
Phone: (702) 862-3815

Email: [smahoney@fisherphillips.com](mailto:smahoney@fisherphillips.com)

# Marijuana in the Workplace

- The analysis always starts with recognizing that marijuana use of any kind is still a Federal Crime.
- No state law can compel an employer to commit a crime or become an accessory to a crime.
  - Employers CAN prohibit **possession** and sale of marijuana in any form on company property.
  - Employers CAN prohibit **use** of marijuana in any form (regardless of prescription) on company property, during work hours and/or while performing work for the company.
  - Employers CANNOT be required to **pay** for employee's marijuana even if the employer would normally have to pay for other workplace accommodations and worker's compensation treatments.





# NRS § 453A.800 – Medical Use of Marijuana

## Employer Implications:

The provisions of this chapter do not:

\*\*\*

2. Require any employer to allow the medical use of marijuana in the workplace.
3. Require an employer to modify the job or working conditions of a person who engages in the medical use of marijuana that are based upon the reasonable business purposes of the employer **but the employer must attempt to make reasonable accommodations for the medical needs of an employee who engages in the medical use of marijuana if the employee holds a valid registry identification card,** provided that such reasonable accommodation not:
  - (a) Pose a threat of harm or danger to persons or property or impose an undue hardship on the employer; or
  - (b) Prohibit the employee from fulfilling any and all of his or her job responsibilities.

# Accommodating Medical Marijuana

*Barbuto v. Advantage Sales & Marketing, LLC* (Mass. July 17, 2017)

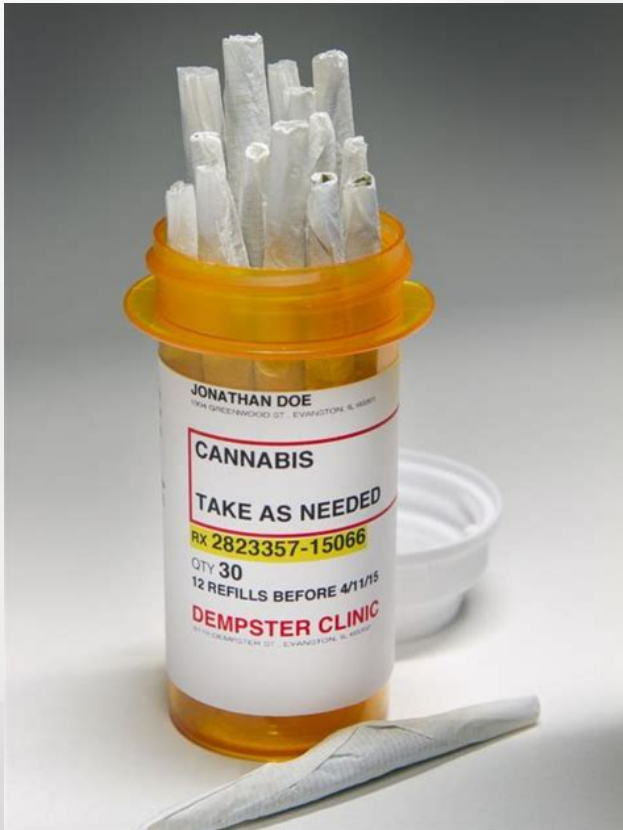
- The Court held that a sales and marketing firm discriminated against an employee of its Massachusetts operation who used medical marijuana to treat Crohn's disease when it fired her for failing a drug test.
- “Employers can’t use blanket anti-marijuana policies to dismiss workers whose doctors have prescribed the drug to treat their illnesses.”
- The burden shifts to the employer to show that employee’s “***use of medical marijuana is not a reasonable accommodation*** because it would cause an undue hardship to the employer’s business.”
- An employer may still refuse to accommodate, but employer **must prove the undue hardship**.





# Accommodating Medical Marijuana

*Noffsinger v. SSC Niantic Operating Co.*, No. 3:16-cv-01938 (D.Conn. Aug. 8, 2017)



- Applicant specifically informed the company that she was using medical marijuana to treat PTSD when she applied for job and took drug test.
- Complaint alleged that the company made representations to applicant throughout the application process to make her believe she had a secure job offer and then waited to rescind her job offer until one day before she was scheduled to begin work (and after she had already left her prior job), causing plaintiff to experience severe emotional distress, including anxiety, sleeplessness, and loss of appetite.
- Court found that applicant had viable claim for negligent infliction of emotional distress and possibility to collect damages for emotional distress.

# Accommodating Medical Marijuana

*Callaghan v. Darlington Fabrics Corp.*, No. PC-2014-5680 (R.I Super. Ct. Providence County, May 23, 2017)

- The Court held that Section 21-28.6-4(d) prohibited employers from refusing to employ “a person solely for his or her status as a cardholder.”
- Plaintiff informed Defendants that she would comply with all state medical marijuana laws and was a registered cardholder.
- Defendants did not contest that they denied employment based on the fact that she could not pass the drug screen.
- Court **granted summary judgment** to Plaintiff finding company violated law by refusing to accommodate medical marijuana cardholder status.



# DOT Stands Its Ground

- DOT regulations cover “safety-sensitive” airport employees.
- Pilots, air traffic controllers, aircraft maintenance personnel, flight crews, and aircraft dispatchers, among others.
- Subject to pre-employment drug testing and testing if transfer to a safety-sensitive position.



# DOT Stands Its Ground

- No employee may report for or remain on safety-sensitive duty while using a prohibited drug.
- No employee shall report for or remain on safety-sensitive duty after testing positive for a prohibited drug.
- Marijuana is still a prohibited drug.
- DOT regs do not authorize 'medical marijuana' under state law to be a valid medical explanation for a positive drug test result.
- Medical Review Officers will not verify a drug test as negative based upon information that a physician recommended that the employee use 'medical marijuana.'
- Same with recreational marijuana.

# Final Questions?



Presented by:  
**Scott Mahoney**  
Phone: (702) 862-3815  
Email: [smahoney@fisherphillips.com](mailto:smahoney@fisherphillips.com)

# Thank You



Presented by:  
**Scott Mahoney**  
Phone: (702) 862-3815  
Email: [smahoney@fisherphillips.com](mailto:smahoney@fisherphillips.com)