

MEDICAL MARIJUANA

Frequently Asked Questions

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Q1: Is Marijuana legal in the State of Georgia?

No. Marijuana is not legal in the state of Georgia. Georgia has not voted to legalize marijuana as a recreational drug.

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Q2. Is Medical Marijuana legal in the state of Georgia?

Medical marijuana is legal in the state of Georgia and only applies to those employees working in non-DOT positions. In order for an employee in a non-DOT position to use medical marijuana as a patient, s/he must have a qualifying medical condition and be certified by a physician who is registered with the Low THC Oil Registry. This Registry is managed by the Georgia Department of Public Health (<https://dph.georgia.gov/low-thc-oil-registry>).

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Q3. Does the US DOT recognize Medical Marijuana as a permissible medication?

Marijuana remains a Schedule I illegal drug for all federally regulated or safety-sensitive positions. For this reason, the federal government does not recognize medical marijuana as a medication. This includes the US Department of Transportation (<https://www.transportation.gov/odapc/medical-marijuana-notice>). Also, medical marijuana is not regulated by the federal Food and Drug Administration.

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Q4. Can an agency terminate an employee who tests positive for marijuana, although s/he is registered with the Public Department and has a Low THC Card?

Yes, an agency may terminate an employee in such an instance. Here are reasons why:

- Agencies that receive federal funding must terminate the employee since the federal government does not recognize medical marijuana as a permissible medication. The federal government labels marijuana as a Schedule 1 drug under the Controlled Substances Act, meaning that it has a high potential for abuse.

This also means that employees working in safety-sensitive positions under US DOT must be terminated.

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- State of Georgia agencies can also terminate non-DOT employees who work in high-risk positions. Many agencies elect to maintain their zero-tolerance policy for a Drug-free workplace.

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Q5. What action should an agency take if it decides not to terminate an employee in a non-DOT position who tests positive for medical marijuana and has a low THC card?

ALWAYS seek the advice of your agency's legal counsel. When contacting your legal counsel, information that you may want to have available includes supporting medical documentation from the employee's certifying physician and a copy of the employee's low THC Oil card.

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Q6. What happens if an employee tests positive for medical marijuana, has a prescription, but the milligrams in the results exceeds 5% THC?

An agency should terminate an employee in such an instance. Here are reasons why:

- The employee did not report that s/he was taking a medication that could alter their behavior ([SPB Rule 21 \(4\)\(c\)](#)).
- Medical marijuana only allows up to 5% THC Oil. Even if the employee is certified to use medical marijuana by a physician, when an employee has an excess of 5% THC in his/her system, it is classified as marijuana. The employee cannot be considered for continued employment with an agency in a non-DOT position. The employee should be terminated.

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Q7. An employee comes to your HR Office after receiving a random notification for drug testing. The employee reveals that s/he has been taking medical marijuana and shows you a copy of their card.

- **Do you send the employee for the random test?**
- **If the employee's drug testing returns positive, can s/he be terminated?**

The answer to both questions is yes. See helpful information below:

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- First, if an employee reveals that they are taking medical marijuana and shows you their Low THC Oil card, do make a copy for documentation purposes

Following this step, know that the employee still has to report for random drug testing, but should not be allowed to drive since they have admitted to taking medical marijuana. The employee should also be removed from the high-risk position. The reason for both actions here is that the employee could be under the influence. Please also be sure to consult with your legal counsel if handling a similar situation.

- Next, review your drug testing policy to see if it permits the employee to continue working or if your agency has a “no exception” policy and must be terminated. Questions to also consider include: Is the position held by the employee federally regulated or does your state agency receive federal funding? If any part of an employee’s position receives federal funding, then the employee must be terminated since the federal government prohibits the use of marijuana in any form.
- Get your legal counsel involved even if the agency wants to move the employee into a non-DOT, non-high-risk position. Your conversation with your legal counsel should also be centered around your agency setting a precedent in maintaining the employment of someone who uses medical marijuana. You’ll also want to discuss the agency’s legal risk with your legal counsel, particularly if the employee remains employed and, more importantly, if the employee drives themselves to work each day. There may be a legal risk.
- The employee can be terminated even if s/he has a medical marijuana card. Keep in mind that you’re setting a precedent if you allow the employee to continue working.

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Q8. If we keep an employee on staff who uses medical marijuana, are we required to allow the employee to use marijuana in the workplace?

No. The employee should **not** be allowed to use marijuana in the workplace or on the campus of the workplace. The workplace includes the parking lot.

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Q9. Can the Medical Review Officer (MRO) document Medical Marijuana as a comment in the results?

Due to HIPAA regulations, the MRO cannot ask a donor whether they are taking medical marijuana. However, the employee can voluntarily share this information with the MRO and send a copy of their Low THC Registry card.

Additionally, the MRO is permitted to record notations of what the employee disclosed. However the MRO cannot probe into whether the employee is using medical marijuana. If the employee reveals the use of medical marijuana, the MRO's notes can be found on the Certification form on the results page.

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Q10. Is an employee covered by ADA if using medical marijuana? Can medical marijuana be considered a type of accommodation?

No. Agencies are not required to provide accommodation to an employee certified to use medical marijuana. See additional information below:

- Agencies are not required to accommodate the employee's ingestion of medical marijuana while the employee is in the workplace.
- Employees do not have ADA protection in the workplace specific to medical marijuana (Low THC Oil).
- Even for agencies that elect not to terminate an employee who is prescribed medical marijuana, there are no accommodation requirements.

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RESOURCES:

- ADA and Medical Marijuana: Employer's Accommodation Obligation

[Article from HR.com](#)

- [Drug - Free and Alcohol- Free Standards - SPB Rule 21 \(4\)\(c\)](#)