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## Client Alert: Department of Justice Reclassifies Medical Marijuana as Schedule III: What Employers and Businesses Need to Know

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On April 23, 2026, the U.S. Department of Justice (DOJ) issued a final order reclassifying two types of marijuana from Schedule I to Schedule III under federal law: marijuana used under state medical marijuana programs and Food and Drug Administration (FDA)-approved medications that contain marijuana. Schedule I substances are those with a high abuse potential, no accepted medical use, and may not be prescribed, dispensed, or administered under federal law. Schedule III substances are those substances with a currently accepted medical use and a potential for abuse that may lead to moderate or low physical dependence or high psychological dependence. This reclassification places medical marijuana in the same category as certain prescription pain medications (e.g., Tylenol with codeine).

Additionally, the Drug Enforcement Administration (DEA) will hold separate public proceedings on June 29, 2026, to collect evidence on potentially rescheduling recreational marijuana as well as recreational marijuana, which currently remains a Schedule I drug. In the meantime, the order has implications for employers, especially in states where medical marijuana is legal.

## **Implications for Employers**

Because the order reclassifying medical marijuana took effect immediately, employers should review how the change may affect their policies and operations. Employers should focus on two areas: accommodation requests and drug testing for safety-sensitive roles.

### *Accommodation Requests*

Employers in states with medical marijuana programs likely will see more accommodation requests from employees who are prescribed medical marijuana for medical conditions. Employers should review each request under the Americans with Disabilities Act and any applicable state medical marijuana, disability, drug testing, and off-duty conduct laws. Importantly, the DOJ order does not require employers to allow employees to use, possess, or be impaired by marijuana at work, but employers should review state and local laws that may require specific steps prior to taking disciplinary action. However, employers who previously denied medical marijuana accommodations on the basis that it was illegal under federal law likely will no longer be able to do so.

### *Department of Transportation and Other Safety-Sensitive Roles*

The impact on employees in the transportation sector remains uncertain. The Omnibus Transportation Employee Testing Act (OTETA) lists marijuana as a “prohibited drug” and mandates testing. Employers with transportation employees should review the rules that apply to each safety-sensitive role. After the DOJ’s order, the Department of Transportation (DOT) issued guidance stating that marijuana use is not compatible with safety-sensitive positions. The DOT also stated that state-dispensed marijuana is not an FDA-approved drug and therefore cannot be prescribed, nor treated as a “legitimate medical explanation” for a positive drug test under 49 CFR § 40.137(a). As a result, Medical Review Officers will continue to verify marijuana-positive drug test results as positive, even when the employee used a state-licensed marijuana product.

For other regulated transportation employees not subject to independent medical qualifications, medical marijuana use may become permissible under these new changes. Employers should pay close attention to what regulations apply to their employees in safety-sensitive positions and determine whether they are subject to additional, independent medical qualifications. Although the order does not expressly address this issue, it points toward use of medical marijuana potentially being accommodated in some of these positions in the future.

## **Next Steps**

This order may create new questions for employers and medical marijuana businesses, especially while legal challenges and DEA proceedings continue. The order is currently being challenged by the Attorney Generals of Nebraska and Indiana as impermissibly avoiding the rulemaking process. Employers should review workplace drug policies, accommodation procedures, testing practices, and rules for safety-sensitive roles.

Tampa Summer Associate Aidan Browne also contributed to this article.

Please contact a member of Shumaker’s Labor & Employment Team with questions about how this change may affect your organization.

