

Illinois
Cannabis
Regulation &
Tax Act

DuPage County
Chairman's Breakfast

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Presented By:

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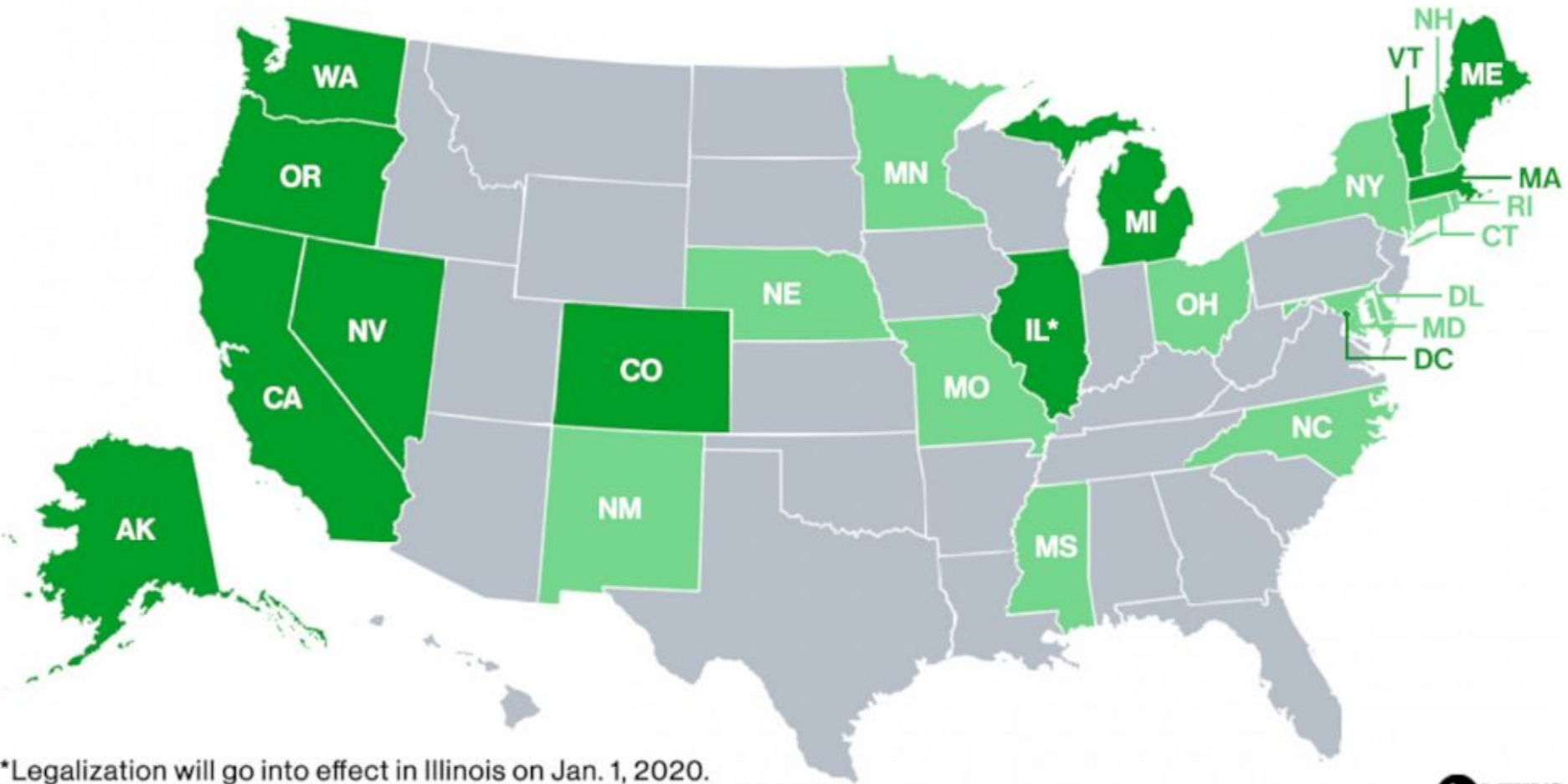
The Act



- ✓ 410 ILCS 705/1 *et seq.*
- ✓ Effective January 1, 2020
- ✓ Recreational Possession & Use
- ✓ Age 21+
- ✓ Amounts Limited
 - ✓ Medical Use: 2.5 oz or 5 g /day
 - ✓ IL Residents: 30 g flower; 500 mg THC; 5 g Concentrate
 - ✓ Non-IL Residents: Half (cannot transport)
- ✓ Private Residences (Possibly Dispensaries)

MARIJUANA LAWS

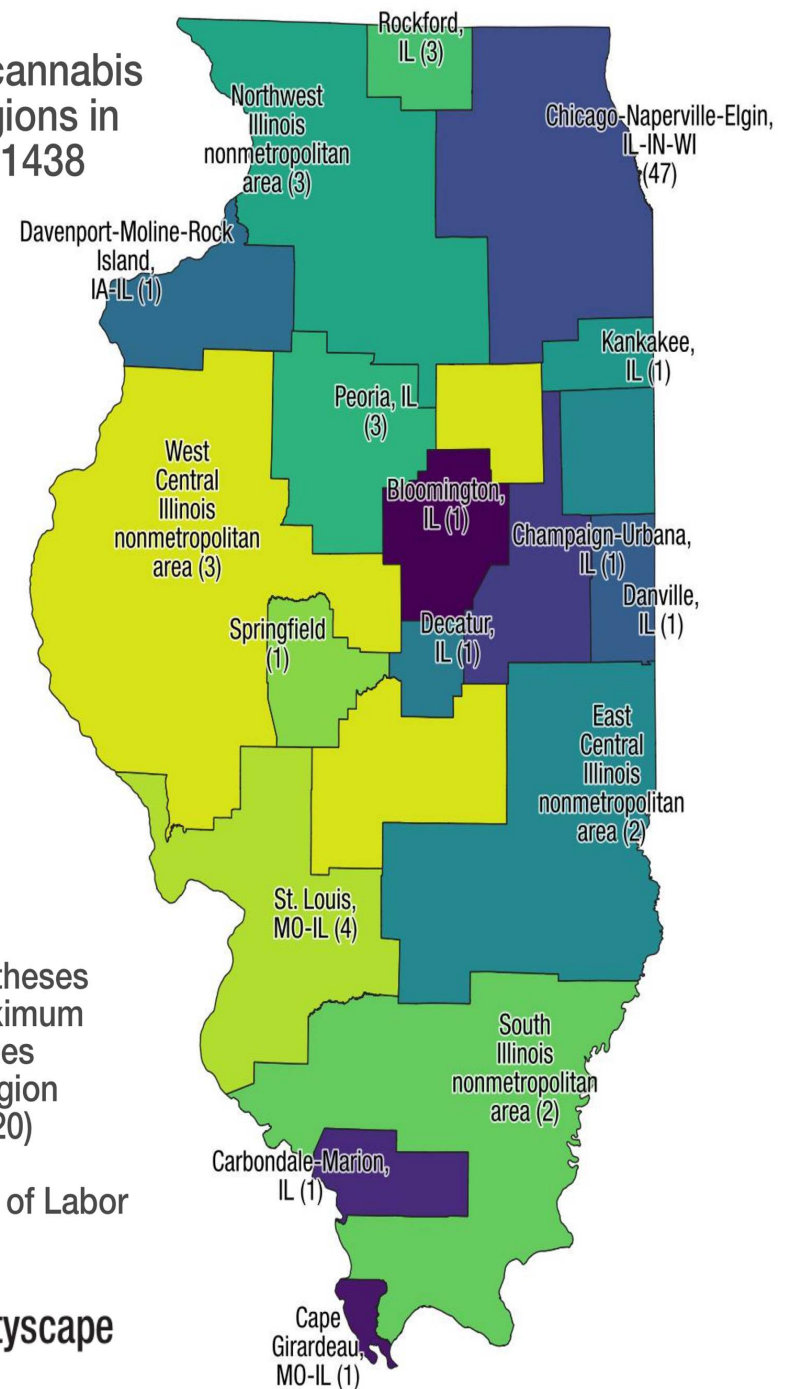
■ MARIJUANA LEGALIZED ■ MARIJUANA DECRIMINALIZED



SOURCE: NATIONAL CONFERENCE OF STATE LEGISLATURES, ABC NEWS, AS OF JUNE 25, 2019.

Illinois Dispensaries

17 adult use
(recreational) cannabis
dispensary regions in
Illinois per HB 1438



(number in parentheses
indicates the maximum
conditional licenses
allowed in that region
before May 1, 2020)

Based on Bureau of Labor
Statistics regions



Chicago Cityscape



“Cannabis”

Means

- ✓ Marijuana
- ✓ Hashish
- ✓ Nearly all parts of plant *Cannabis sativa*
- ✓ Cannabis-Infused Products
- ✓ Hemp Excluded
- ✓ CBD Oil
 - ✓ Legal under federal law if made from Hemp
 - ✓ Illegal under federal law if made from Cannabis

Chemical that causes hallucinogenic, euphoric or “high” feeling

1970s – THC potency of
approx. 1%

1990s – THC potency of
approx. 3 – 4%

Present

- Street level THC potency of nearly 13%
- Flower potencies can be greater than 30%
- Concentrates (Shatter, Wax, Oil) can be greater than 90%

New Products



Food Products/Edibles



Drinks



Pills, lotions, sprays, tinctures
and oils



Waxes/Liquid to be put into
Vaporizers/E-Cigs

Effects Vary Based On Delivery

Smoking:

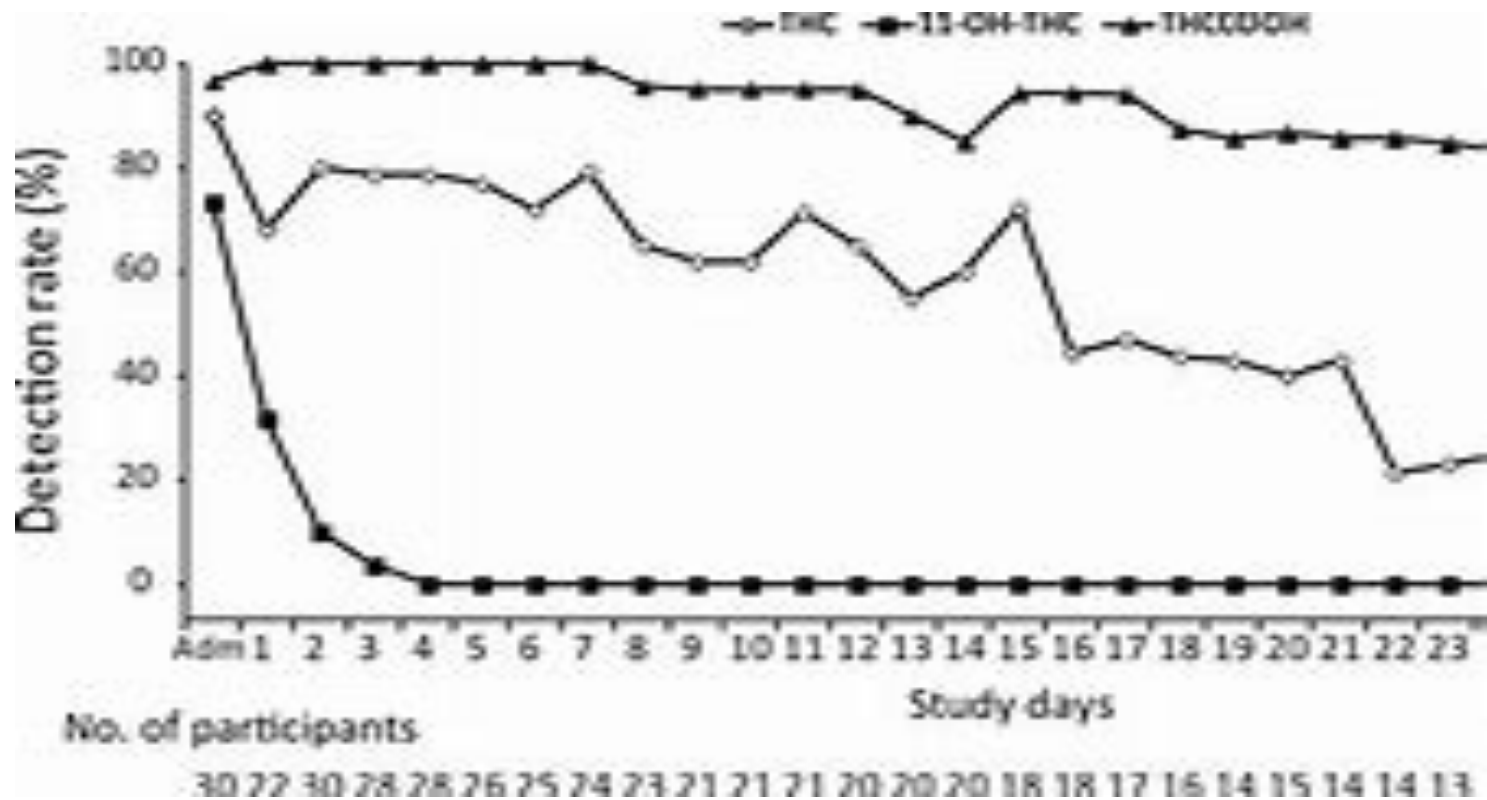
- Immediate absorption; can last 2–3+ hours
- Most effects return to baseline within 4 – 6 hours
- Residual effects can be seen up to 24 – 48+ hours

Eating:

- Slower absorption rate; can last 2 – 8+ hours
- Most effects return to baseline within 9 – 11+ hours
- Residual effects can be seen up to 24 – 48+ hours



Metabolism: Not Linear



Employment Issues





“Employer” not defined



“Employee” not defined



“Discipline” not defined



Law focuses on
“impairment” at work
while current drug
testing methods focus
on “use”

ILLINOIS LAW

- A. Employer not defined – What about out-of-state employers?
- B. Employee not defined – Does it apply to independent contractor?
- C. Discipline not defined – Verbal, suspension, termination?

But, if an Employee is disciplined for being impaired by cannabis, Employer must afford Employee a reasonable opportunity to contest basis for the determination. Changes “At-Will” status for cannabis users?



Law permits employers to:

- Enforce drug testing policies in a nondiscriminatory manner
- Enforce drug free workplace
- Prohibit employees from using/possessing/impairment while working or on call
- Discipline/Terminate employees who violate policies

Right to Privacy in Workplace Act (820 ILCS 55/5)



(Except as provided in Section 10-50 of Cannabis Act) It is unlawful for Employers to refuse to hire, terminate or treat an individual differently based on their use of lawful products off the premises of the employer during nonworking and non-call hours.

Workplace – Includes any building, real property, and parking area under the control of the employer or area used by an employee while in performance of the employee's job duties, and vehicles, whether leased, rented, or owned.

Employee may have claim against Employer if adverse employment action was not based on a “*good faith belief*” of (1) **actual impairment (not just a failed drug test)**; or (2) **use/possession while in the “workplace”, performing job or on call.**

Third parties may have claims against Employers for damages/injuries caused by employee if the Employer knew or had reason to know the Employee was impaired





Potential Liability for Third Party Claims:

- Damages/Injuries caused by Impaired Employee
- Employer had reason to know of impairment

Illinois Law



Law's focus is on
Impairment . . .

while current drug testing is
focused on **Use**.

****But see “influence”
presumption in Chemical
and Other Tests,**

Section 11-501.2 (b-5)

**If you suspect someone of being impaired
or “high” –**

- Fill out “Reasonable Suspicion” checklist.
- Follow drug testing procedures (collection, chain of custody, lab procedures).
- The law **may require** an employer to provide employees a reasonable opportunity to contest the basis of the Employer’s determination that the individual was impaired.

IL Cannabis Law provides that

an employer may discipline and terminate any employee under the following condition: “**good faith belief**” if “employee manifests **specific, articulable symptoms while working** that decrease or lessen the employee’s performance.

MEDICAL CANNABIS

During Application & Interview Stage:

- The law places strict limits on employers when it comes to asking job applicants to answer medical questions, take a medical exam, or identify a disability (including whether they are under a valid prescription).

After a Job Offer for Employment:

- After a job is offered to an applicant, the law allows an employer to condition the job offer on the applicant answering certain medical questions or successfully passing a medical exam, but only if all new employees in the same type of job have to answer the same questions or take the same exam. Testing for “safety sensitive” jobs.

MEDICAL CANNABIS

Testing after Hiring -

- After the employee has been hired and has started working, if the employer needs medical documentation to support an employee's request for an accommodation, or if the employer believes that an employee is not able to perform a job successfully or safely because of a medical condition.
- Treat like any legal prescription drug or narcotic vis-à-vis safety sensitive position .
- DEFINE: Employer must demonstrate that impaired ability to perform job will be a **DIRECT SAFETY THREAT IN THE WORKPLACE, SAFETY SENSITIVE POSITIONS**

MAJOR Areas of Potential Legal Challenges

- REASONABLE SUSPICION TESTING BASED ON ASSESSMENT MADE AND CONDUCTED BY UNTRAINED PERSONNEL AND FAILURE TO DOCUMENT REASONABLE SUSPICION.
- AMBIGUOUS POLICY LANGUAGE THAT FAILS TO PROPERLY DEFINE AND ADDRESS WHEN, WHERE, AND WHAT TESTED.
- NO FORMS OR BAD FORMS.
- PRE-EMPLOYMENT AND RANDOM TESTING (particularly in NON-safety positions).
- INCONSISTENT POLICY IMPLEMENTATION – UNEQUAL TREATMENT.
- FAILURE TO OBTAIN INPUT FROM MEDICAL COMMUNITY AND KEY 3RD PARTY VENDORS (i.e., collection site, lab).
- FAILURE TO ADHERE TO ANY COLLECTIVE BARGAINING OBLIGATIONS.

Best Employment Practices



If impairment suspected, fill out Reasonable Suspicion Checklist



Follow Drug Testing Procedures



Employee *may* be entitled to reasonable opportunity to contest impairment determination



Where use is related to disability, be aware of ADA/Disability implications



Train employees responsible for assessing impairments



Consider updating policy with respect to identifying poor performance, safety risks/issues and/or attendance issues.



Be familiar with Illinois Cannabis Laws



Adhere to Collective Bargaining Obligations, if any



No Discrimination

Marijuana and IDES Opinion on Misconduct:

Effective 1/1/2020, provisions of the Unemployment Insurance Act which specifically disqualify an individual for consuming illegal drugs at the workplace or reporting to work under the influence of illegal drugs, will no longer apply to cannabis

Under certain circumstances, an individual's cannabis use may still disqualify him/her from unemployment benefits, under Section 602's general definition of "**misconduct**" – the violation of a "reasonable" employer rule governing work performance or zero tolerance drug free workplace policy.

"reasonable" – there is a nexus between the rule and the workplace or violated a federal regulation

Municipalities







Colleges & Universities

New Opportunities

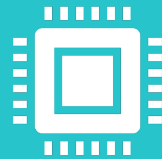
New Requirements

New Challenges

Opportunities



New research
avenues



New programming
avenues

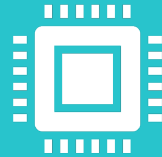


New funding sources

Responsibilities



Compliance



Education



Training



DISCUSSION

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