



# MANUFACTURE ALABAMA

ALABAMA'S TRADE ASSOCIATION FOR ALABAMA'S MANUFACTURERS

# HR, SAFETY & ENVIRONMENTAL CONFERENCE



## THANK YOU TO OUR SPONSORS

### GOLD SPONSOR



### SILVER SPONSORS



### BRONZE SPONSORS



# Roll Tide! (and a Joint?!?) – Alabama’s New Medical Marijuana Law and a Practical Guide to Handling Workplace Issues

## Presented by:

Carin Burford (Birmingham)

Tae Phillips (Birmingham)

Ogletree, Deakins, Nash,

Smoak & Stewart, P.C.

[carin.burford@ogletree.com](mailto:carin.burford@ogletree.com)

[tae.phillips@ogletree.com](mailto:tae.phillips@ogletree.com)

205-714-4411 (Direct Dial – Carin)

205-714-4409 (Direct Dial – Tae )



Atlanta  
Austin  
Berlin  
Birmingham  
Boston  
Charleston  
Charlotte  
Chicago  
Cleveland  
Columbia  
Dallas  
Denver  
Detroit (Metro)  
Greenville  
Houston  
Indianapolis  
Kansas City  
Las Vegas  
London  
Los Angeles  
Memphis  
Mexico City  
Miami  
Milwaukee  
Minneapolis  
Montréal  
Morristown  
Nashville  
New Orleans  
New York City  
Oklahoma City  
Orange County  
Paris  
Philadelphia  
Phoenix  
Pittsburgh  
Portland (ME)  
Portland (OR)  
Raleigh  
Richmond  
Sacramento  
San Antonio  
San Diego  
San Francisco  
Seattle  
St. Louis  
St. Thomas  
Stamford  
Tampa  
Toronto  
Torrance  
Tucson  
Washington D.C.

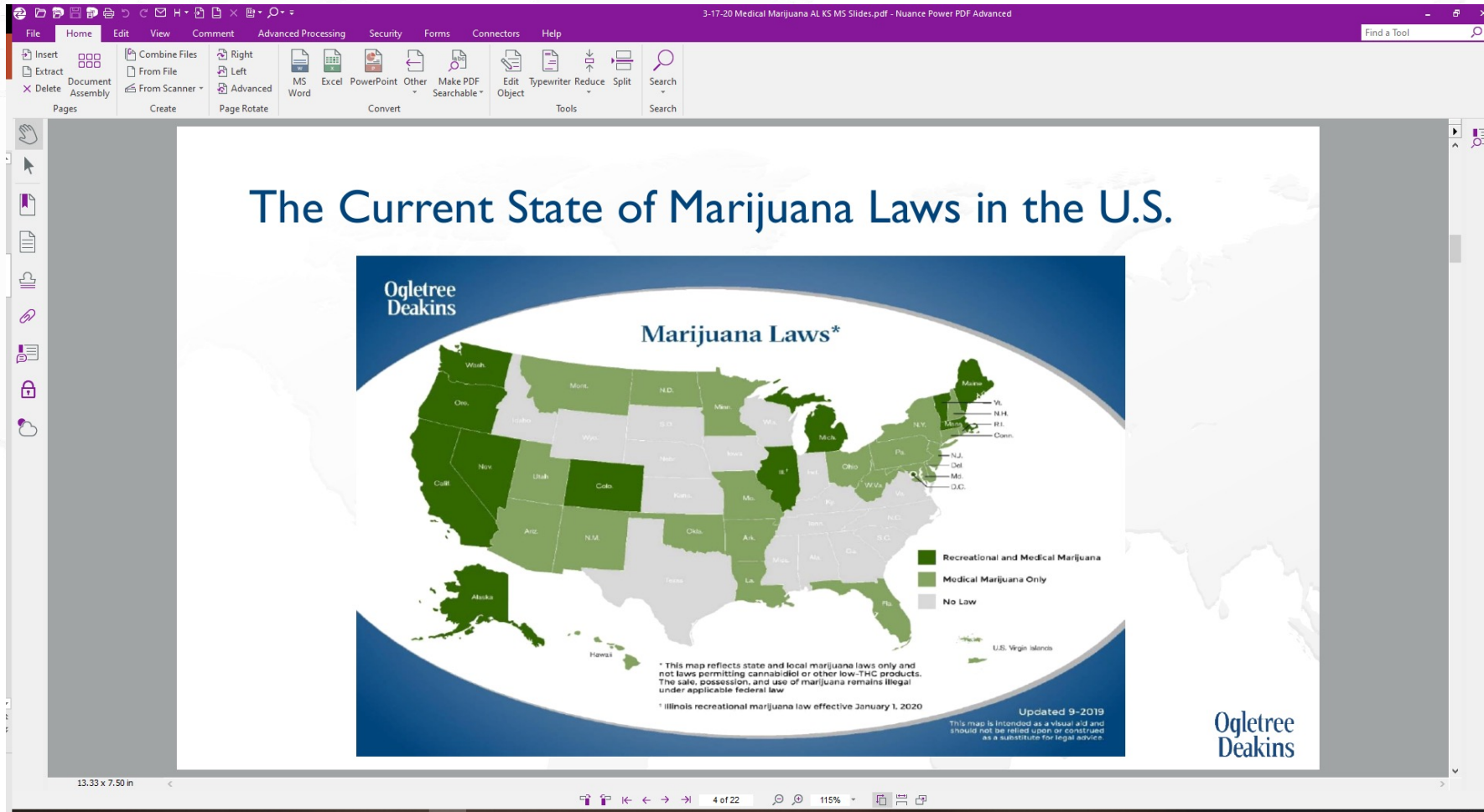
Ogletree  
Deakins

# Agenda

- Where Are We?
- Where Are We Going?
- How Can This Be So Hard?
- What Can We Do?



# I Get High With a Little Help from My Friends



Note: This map was current as of September 2019.

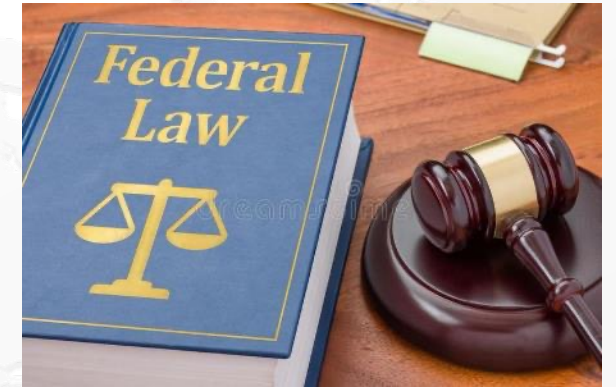


# Foundational FAQs – Marijuana Claims 101

- Medical Marijuana States
  - 1 – “Statutory” Protection Claims.
  - 2 – Disability Claims
- Recreational Marijuana States
  - 1 – “Statutory” Protection Claims
  - 2 – Lawful Off-Duty Conduct Claims
- Drug Testing Laws
  - Prohibitions on Pre-Employment Testing?



# Marijuana 101 - So Complicated (it will make you want to Burn One Down)



# Clearing the Smoke (a/k/a Mythbusting)



- Isn't Marijuana Illegal Under Federal Law?
- If I am a Government Contractor, I'm Shielded by the Drug Free Workplace Act?
- What about Federal Regulations Like DOT Drivers?
- Doesn't OSHA Require Us to Keep the Workplace Safe?
- Marijuana is Impairing, Right?
- "Cardholder" v. Prescribed

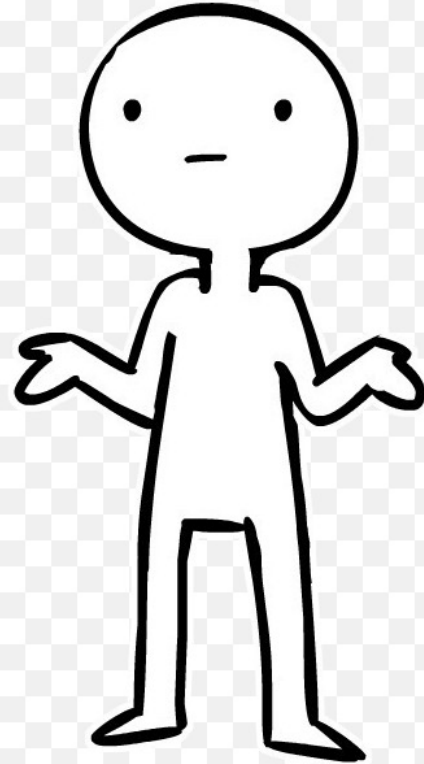


# Wait...What about OSHA?



- “General Duty Clause”
  - Requires that employers provide a work environment “free from recognized hazards that are causing or are likely to cause death or serious physical harm.”
  - Requires that employers “comply with occupational safety and health standards” issued by OSHA.
  - Requires that employees “comply with occupational safety and health standards” issued by OSHA.

# Wait...What about OSHA?



# What War on Drugs? 2020 >> 2021

- Recreational Marijuana – New Laws
  - Arizona (Ballot Initiative, Nov. 2020)
  - Connecticut (Legislation, June 2021)
  - Montana (Ballot Initiative, Nov. 2020)
  - New Jersey (Ballot Initiative, Nov. 2020)
  - New Mexico (Legislation, April 2021)
  - New York (Legislation, March 2021)
  - South Dakota (Ballot Initiative, Nov. 2020)
  - Virginia (Legislation, April 2021)



# What War on Drugs? 2020 >> 2021

- Medical Marijuana – New Laws
  - Alabama (Legislation, May 2021)
  - Mississippi (Ballot Initiative, Nov. 2020; Overturned by MS Supreme Court, May 2021)
  - South Dakota (Ballot Initiative, Nov. 2020)
- Medical Marijuana – Amended Laws
  - Louisiana (Legislation, June 2021)
  - Minnesota (Legislation, May 2021)
  - Ohio (Legislation, June 2021)
  - Texas (Legislation, June 2021)
  - Virginia (Legislation, March 2021)



# What War on Drugs? 2020 >> 2021

- Other Relevant Developments
  - Montana – Lawful Off-Duty Conduct Protections for Marijuana Users ([Legislation, May 2021](#))
  - New York – Lawful Off-Duty Conduct Protections for Marijuana Users ([Legislation, May 2021](#))
  - Philadelphia – Pre-Employment Testing Prohibition ([City Ordinance, April 2021](#))



# What's Next?

- Recreational Marijuana?
  - Delaware
  - Minnesota
  - Rhode Island
- Medical Marijuana?
  - Kansas
  - Mississippi
  - North Carolina
  - South Carolina
- New Employment Protections?
  - California
  - Hawaii
  - Massachusetts



# Alabama – Roll Tide (and a joint)!



# What Does the AL Medical Marijuana Law Say?

- No Employment Protections for Medical Marijuana Cardholders (within the Medical Marijuana Law Itself)
- Possible Disability Discrimination or Disability Accommodation Issues?
  - Medical Marijuana Cardholder Status = Qualifying Medical Condition = Disability
    - AL does not have a state disability discrimination law and, instead, would be governed solely by the Americans with Disabilities Act of 1990
- Does Not Allow for Smoke-able Forms of Marijuana or Marijuana-Infused Food Products
  - Only oils, creams, patches, pills, lozenges, etc.





# What Does the AL Medical Marijuana Law Say?

- Employer-Friendly Language – The Medical Marijuana Law Does Not:
  - Require employers to permit, accommodate, or allow the use of medical marijuana
  - Require an employer to modify job or work conditions for applicants or employees who use medical marijuana
  - Prohibit employers from establishing and enforcing drug testing, drug-free workplace, etc. policies
  - Prohibit employers from requiring medical marijuana cardholders to notify employers of medical marijuana cardholder status
  - Interfere with federal regulations or restrictions, such as DOT regulations
  - Provide for an express, legal cause of action for an individual to file a claim against an employer for taking adverse employment action due to medical marijuana use



# How Will Courts Interpret the AL Medical Marijuana Law? What Should Employers Be Worried About?



# All Right, All Right, All Right....What's the Solution?

- Action Items:

- What do you want to do about marijuana? Figure that out first, taking into consideration company culture, safety, risk avoidance, recruiting and retention, etc.
- Review your drug (and alcohol) testing / drug-free workplace policy. Does it need to be tweaked?
- Regardless of policy revisions, develop an internal protocol and procedure for dealing with marijuana issues in the workplace.
- Figure out a way to stay on top of the ever-changing marijuana legalization laws, court decisions interpreting those laws, and other legal issues at play (e.g., disability discrimination, lawful off-duty conduct laws).



# All Right, All Right, All Right....What's the Solution?

- Action Items:

- Review your job descriptions and ensure that safety-sensitive jobs are being classified properly.
- Train your supervisors and managers in recognizing impairment and how to document impairment.
- Develop a reasonable suspicion checklist.
- “Learn” the topic of marijuana and the workplace as best you can. (It will help to diagnose issues as they arise).



# A Way to Make Your Concerns Go Up in Smoke?

Compliance Solutions | OD Comply™

## Marijuana

OD Comply: **Marijuana** helps employers stay in compliance with rapidly changing federal, state, and major locality marijuana laws and manage related issues affecting the workplace, including disability accommodation, safety considerations, drug testing, and more.

- ? Frequently asked questions
- ↓ Sample Marijuana materials
- ✉ For more subscription information

**Marijuana subscription includes:**

- Our proprietary State and Major Locality Summaries, which are searchable and customizable, on medical and recreational marijuana legalization laws, disability discrimination laws implicated by the use of
- An explanation of which forms of cannabis (i.e., smokable, edible, topical, cannabidiol (CBD) products, etc.) are legal in each state

- OD Comply: <https://ogletree.com/solutions/compliance-solutions/od-comply/>
- OD Comply: Marijuana: <https://ogletree.com/solutions/compliance-solutions/od-comply/marijuana/>

Dude...I Have a Question (and Where's My Car?)



# Thank you!

---

Carin Burford and Tae Phillips

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

420 20<sup>th</sup> Street North, Suite 1900

Birmingham, Alabama 35203



Ogletree  
Deakins