



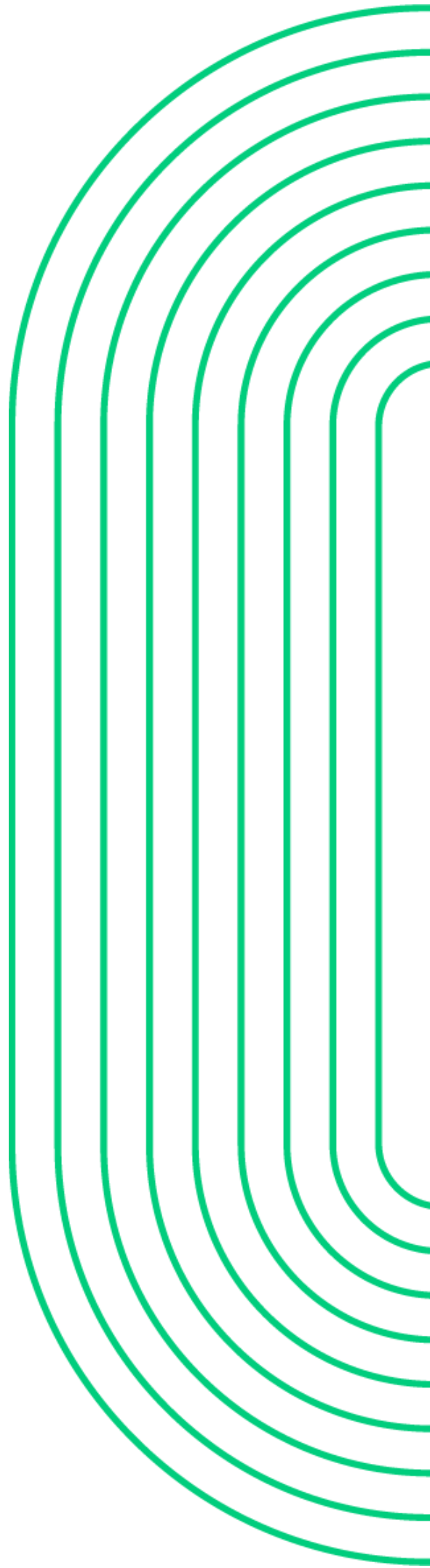
Up In Smoke:

Legal Marijuana & The Workplace

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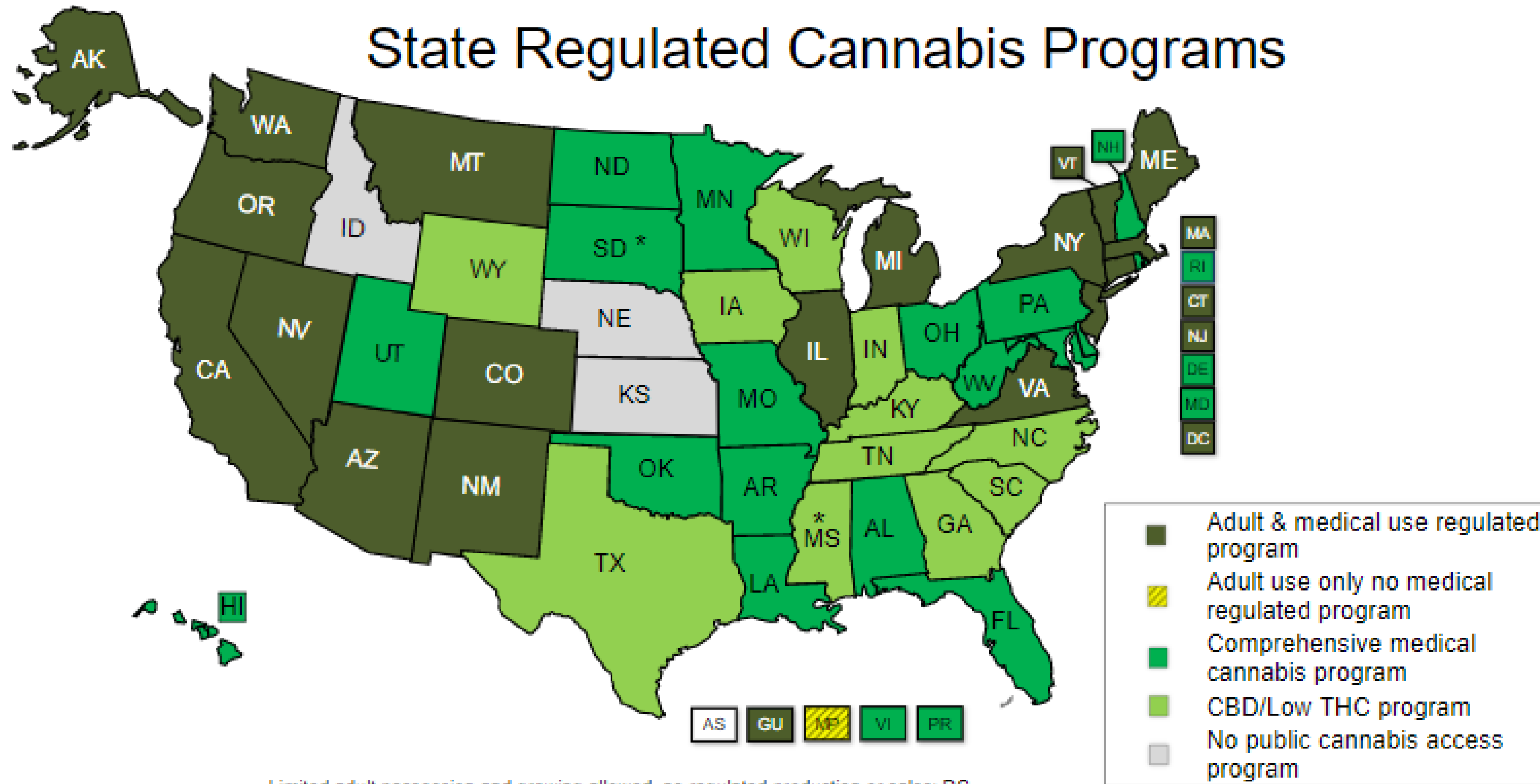


Agenda

- Overview of the Laws
- Interplay between State and Federal Laws
- Accommodations Issues
- Practical Considerations



State Regulated Cannabis Programs



Limited adult possession and growing allowed, no regulated production or sales: DC

June 2021

What is a “medical-marijuana” law

- Protection from criminal penalties for using marijuana for a medical purpose;
- Access to marijuana through home cultivation, dispensaries or other system;
- Allows a variety of strains or products, including those with more than "low THC;"
- Allows either smoking or vaporization of some kind of marijuana products, plant material, or extract; and
- Is not a limited trial program.

Federal vs. State Laws

- Federal Preemption



Federal vs. State Laws—CSA

- Controlled Substances Act (“CSA”) 1970
- U.S. Department of Justice
 - 2009
 - 2013 (Cole Memorandum)
 - 2018 (Sessions Memorandum)



Federal vs. State Laws—DFWA

- Drug-Free Workplace Act (“DFWA”)
- Applies to
 - any federal grant recipient
 - Any federal contract (\$100k+)
- Requires
 - Covered employers must enact a drug-free workplace program
- Does not require
 - Drug screening; or
 - Automatic termination of employee with positive drug panel



Federal vs. State Laws—DOT Part 40

- Federal Omnibus Transportation Employee Testing Act (“Part 40”)
- Applies to all DOT-covered agencies
- Drug testing is required for certain employees
- Each industry has specific requirements
- No “free passes”



Federal vs. State Laws—Case Law

- Federal Cases in at least 4 states addressing preemption
 - Connecticut
 - Arizona
 - Delaware
 - Rhode Island

Anti-Discrimination Laws

- Arizona
- Arkansas
- Connecticut
- Delaware
- D.C.
- Illinois
- Main
- Minnesota
- Nevada
- New York
- Oklahoma
- Pennsylvania
- Rhode Island



Duty to Accommodate

- Garcia v. Tractor Supply (D.N.M. 2016)
- Barbuto v. Adv. Sales & Mktg. (Mass. 2017)



Practical Implications: Drug Testing

- Pre-Employment Testing
- Reasonable Suspicion Testing
- Random Testing
- Post Accident



Practical Implications: Testing & CBD

- Will CBD cause an employee to test positive for THC? Only if:
 - The employee also used marijuana (which contains THC)
 - The employee consumed an abnormally large quantity of CBD oil with less than 0.3% THC, enough to suffer impairment from THC; or
 - The employee consumed CBD oil that contains illegally high levels of THC that would cause impairment.



Practical Considerations

Things to consider

- Testing policy
- Drug-free workplace policy
- Internal process for accommodations



Questions?



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Thank You

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