

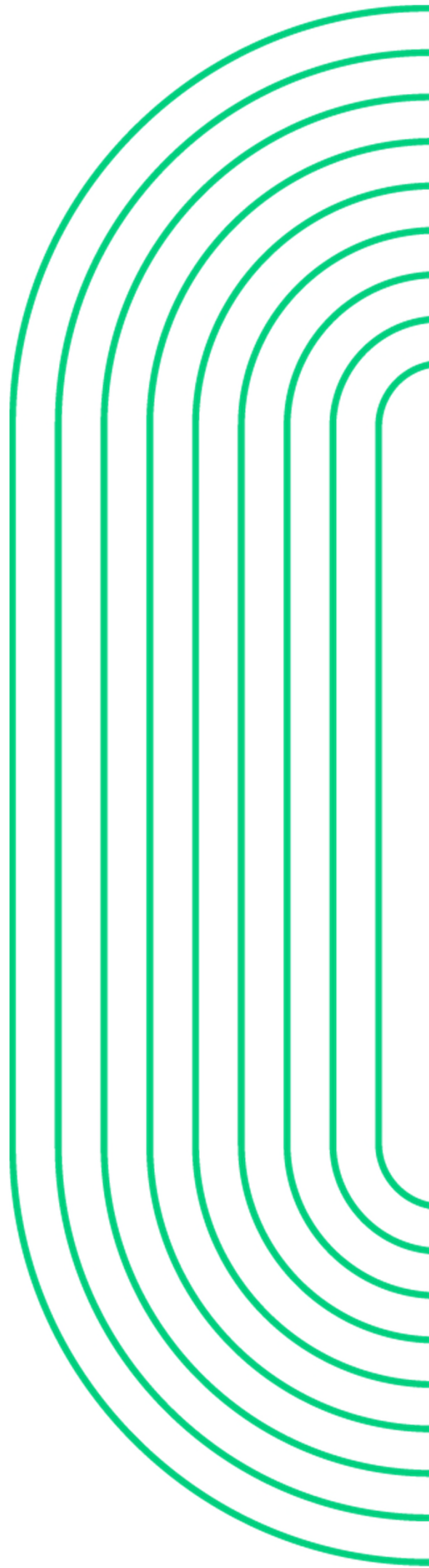
Joint Considerations for Cannabis Industry Employers

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Today's Players

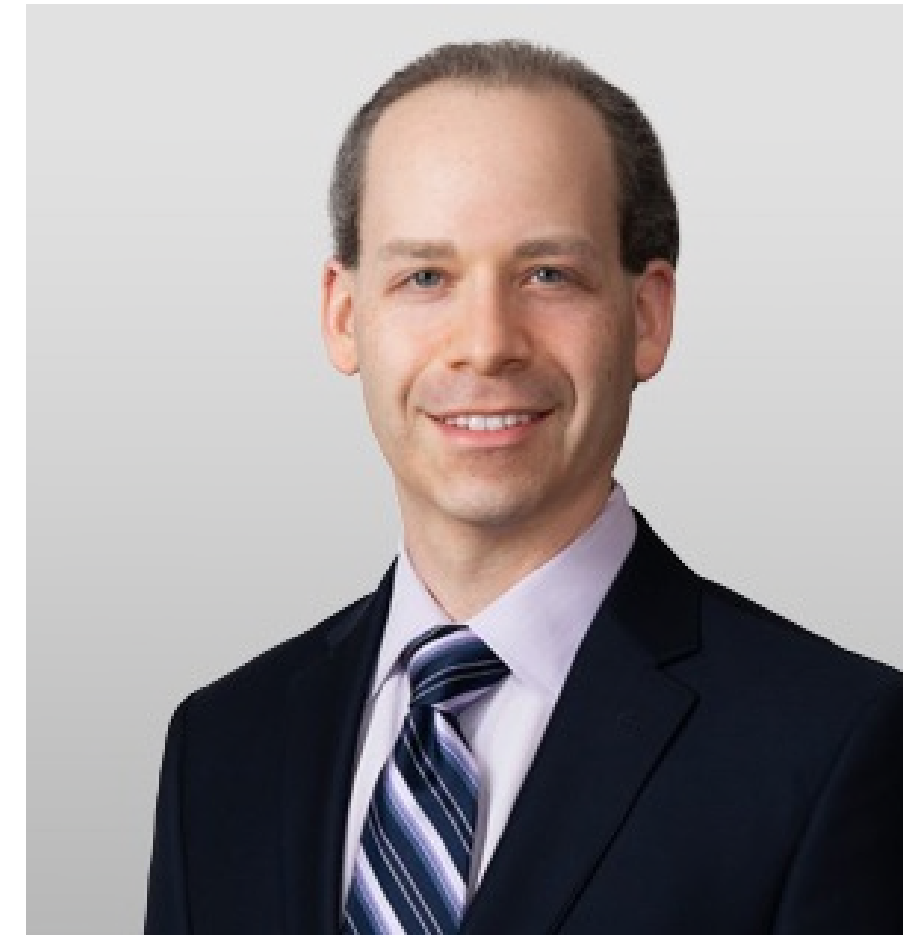
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Introduction

Employers in the cannabis industry have the same legal obligations to their employees as mainstream companies, including anti-discrimination and anti-harassment laws, wage and hour laws, and many others. As a result, they must implement labor-relations strategies to help shield them from employee-related lawsuits.



Union Relations

- As unions take an interest in the industry's workers . . .
 - Unionization can be a big threat to a growing business
 - National Labor Relations Act may apply (employers with 50 + employees)
 - Right to unionize, organize, voice concerns, discuss wage and employment issues and take action thereon
 - Some states have laws preventing employers from attempting to dissuade workers from joining a union
 - Collective Bargaining Agreements
- The United Food and Commercial Workers (UFCW) union has been aggressively looking to organize cannabis workers

California –Labor Peace Agreements

- What are the “Labor Peace Agreements?”
- When are Cannabis Employers required to enter into “Labor Peace Agreements?”
- What are the required components?
- When do you need to enter into a Labor Peace Agreement?
- Does this mean a unionization with a collective bargaining agreement is required in California?



California – Unionization – Recent Decisions

- Recent unionization
- Recent California Cannabis Industry litigation related to unionization

Employee Classifications

- The way an individual worker is classified directly impacts their pay, employer and employee taxes, employee benefits, and employee rights in certain contracted areas.
- Improper classification can lead to lawsuits for unpaid wages or benefits.
- Things to consider when classifying employees:
 - Contract worker or regular employee
 - Hourly or salaried
 - Benefits or no benefits
- Employers are subject to the Family and Medical Leave Act and the Fair Labor Standards Act when they have 50 or more employees.
 - Minimum wage, overtime, recordkeeping, and child labor
 - 12 weeks of leave for qualifying employees and events
- State laws on leave and wage and hour standards



Employee Wage and Hour - California

- California class actions settlements
 - 2020: \$1.58 billion
 - 2021: \$ 3.62 billion
- Which Wage Order?
- How to classify workers? California AB5 Law



Employee Leave Laws - California

- California Paid Sick Leave
- CFRA (California's FMLA state equivalent)
 - 5 or more employees
 - Broader than FMLA



Anti-Discrimination, Anti-Harassment, and Accommodations Laws

- Title VII
 - Anti-discrimination based on protected classes – hiring, termination, benefits, conditions, and privileges of employment
 - Anti-harassment provisions – these often arise in employment in the context of sexual harassment
 - Religious accommodations
- Americans with Disabilities Act
 - Reasonable accommodations for those with disabilities
- State laws
 - For example, “Ban-the-box” states add an additional protection in anti-discrimination
 - COVID-19 regulations and guidance – anti-discrimination, leave, and/or accommodations



COVID-19

- The federal government previously had the Families First Coronavirus Response Act mandating time off for employees for specified reasons, but this has since expired.
- However, in its wake, some states have or may choose to implement something similar.
- Some states require paid leave for a period of time for employees who get vaccinated.
- COVID-19 may qualify as a disability in some instance.
- Employee-employer litigation on this issue has commenced and is likely to increase so long as COVID-19 remains prevalent.
- It is possible for private employers to mandate employees to be vaccinated, with some exceptions for individuals (for example, religious, disability, or medical).
- If requiring proof of vaccination, security in maintaining these medical records.



COVID-19 – California

- Last year California had required Supplemental Covid Paid Sick Leave
 - Expired in September 2021
- In January, Newsom announced the return of California Covid Paid Leave
 - Retroactive to January 1, 2022
 - Up to 80 hours of leave
 - Interactions with Cal-OSHA Exclusion Pay



Deferred Compensation

- Deferred compensation can be a huge benefit to key employees and management. It is very well received and can be done in simple, understandable ways.
- With the likelihood of legalization increasing, deferring compensation could make compensation that is currently nondeductible deductible when it is paid.
- Deferred compensation can take many forms:
 - Cash
 - Ownership
 - Equity-oriented
- Deferred compensation needs to be in writing and there are some limits and requirements.
- For those looking to go public, get funding or to be acquired, deferred compensation can be a benefit when done right and a hindrance if you get it wrong.



Retirement Plans: Cannabis v. Hemp

- Hemp can have a retirement plan, cannabis may be subject to penalties, depending on the structure of your business.
- Finding the right service provider is key.
- This does provide those who can maintain the retirement plans with ways to substantially reduce costs in a way that benefits employees.
- As your company grows, retirement benefits will be expected. Getting good advice in advance of starting a plan can streamline the process and reduce costs.
- Even for cannabis-only companies, there are still some options for those who are interested.



Common Benefits

- Welfare benefits can be provided by any business and can help attract, retain and motivate employees and potential employees.
- Health, dental and vision can be provided by small companies, sometimes at no cost for you as the employer.
- Life and ancillary insurance, almost always free to the business and normally appreciated.
- Pet insurance – a quickly growing, high demand, low cost benefit.
- Discounts of products and services – get it right from the beginning and you can increase effectiveness and help your culture develop as you grow.
- Appreciation programs make a massive difference and is often given as the reason employees stay at a business and why they get others to work for the business.
- As you grow, consider asking your employees.



Benefits as a “Must”

- As your business grows, benefits will swiftly go from nice to offer to must offer.
- Health benefits must be offered once you have 50 full-time equivalent employees.
- For those offering health benefits, COBRA will apply at 20 employees.
- For those with retirement benefits, those over 1,000 hours need to be eligible to participate (fewer hours if averaged over several years).



Service Providers

- Service providers can make or break your benefits and other services.
- Service providers have often leverage their position to the cannabis industry's detriment.
- The rise of strength in the industry has reversed the positions and reminded us that you are the recipient and they are, as the name suggests, service providers.
- Learning tips on how to negotiate with the service providers can make a major difference.
- Working with counsel or other advisers to find the right fit can make a major difference in quality, ease for you, reduced cost and more.





Thank You

Legal Disclaimer

This document is not intended to give legal advice. It is comprised of general information. Employers facing specific issues should seek the assistance of an attorney.