

Ballot Initiatives Lead to Cannabis Legalization Across the Country

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Continuing the nationwide trend towards marijuana legalization, five states on Election Day (Arizona, Mississippi, Montana, New Jersey, and South Dakota) passed cannabis ballot initiatives which either legalized or expanded the legality of marijuana use in certain circumstances in those states. Specifically, New Jersey's Public Question 1, Arizona's Proposition 207, and Montana's I-190 ballot initiatives passed to legalize *recreational* marijuana use, as medical marijuana was already legalized to some extent in each of those states. Mississippi's Initiative 65 approved of marijuana use in the treatment of certain medical conditions. Finally, between Constitutional Amendment A and Initiated Measure 26, South Dakota became the first state to simultaneously legalize the medical and recreational use of cannabis.

Notably, the initiatives in these five states were the only marijuana measures on the ballot on Election Day, meaning that not a single marijuana initiative was rejected by voters at the ballot box on November 3, 2020. With these most recent ballot measures, only a handful of states have yet to decriminalize marijuana or legalize it for either medical or recreational use under any circumstances.

Employers Need to Adapt to a Shifting Legal Framework

While marijuana is still listed and treated as a Schedule I drug under the federal Controlled Substance Act, the shifting legal landscape across states makes ensuring compliance with federal and applicable state law more difficult. This is particularly true for employers, whose authority to conduct pre-employment screening and to discipline an employee's off-the-clock possession or use of marijuana will likely turn, under most circumstances, on the specific mandates espoused under state law. President Trump's administration rescinded the Obama-era position that enforcement of federal laws relating to use and possession of marijuana would be relaxed for adults otherwise complying with state law. However, a presumptive President-Elect Biden's administration is likely to return to the relaxed, Obama-era position and potentially move the needle even further and declassify marijuana as a Schedule I drug. Employers also should be sure to carefully review the current mandates of governing state and local statutes to ensure that they are not running afoul of marijuana laws when taking adverse action against an actual or prospective employee, and should ensure that their employee handbooks are consistent with existing laws.

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