

Effective 5/3/2023

Effective until 5/1/2024

26B-4-207 Nondiscrimination for medical care or government employment -- Notice to prospective and current public employees -- No effect on private employers.

- (1) For purposes of medical care, including an organ or tissue transplant, a patient's use, in accordance with this part, of cannabis in a medicinal dosage form or a cannabis product in a medicinal dosage form:
 - (a) is considered the equivalent of the authorized use of any other medication used at the discretion of a physician; and
 - (b) does not constitute the use of an illicit substance or otherwise disqualify an individual from needed medical care.
- (2)
 - (a) Notwithstanding any other provision of law and except as provided in Subsection (2)(b), the state or any political subdivision shall treat:
 - (i) an employee's use of medical cannabis in accordance with this part or Section 58-37-3.7 in the same way the state or political subdivision treats employee use of any prescribed controlled substance; and
 - (ii) an employee's status as a medical cannabis cardholder or an employee's medical cannabis recommendation from a qualified medical provider or limited provider in the same way the state or political subdivision treats an employee's prescriptions for any prescribed controlled substance.
 - (b) A state or political subdivision employee who has a valid medical cannabis card is not subject to retaliatory action, as that term is defined in Section 67-19a-101, for failing a drug test due to marijuana or tetrahydrocannabinol without evidence that the employee was impaired or otherwise adversely affected in the employee's job performance due to the use of medical cannabis.
 - (c) Subsections (2)(a) and (b) do not apply:
 - (i) where the application of Subsection (2)(a) or (b) would jeopardize federal funding, a federal security clearance, or any other federal background determination required for the employee's position;
 - (ii) if the employee's position is dependent on a license or peace officer certification that is subject to federal regulations, including 18 U.S.C. Sec. 922(g)(3); or
 - (iii) if an employee described in Subsections 34A-2-102(1)(h)(ii) through (vi) uses medical cannabis during the 12 hours immediately preceding the employee's shift or during the employee's shift.
- (3)
 - (a)
 - (i) A state employer or a political subdivision employer shall take the action described in Subsection (3)(a)(ii) before:
 - (A) giving to a current employee an assignment or duty that arises from or directly relates to an obligation under this part; or
 - (B) hiring a prospective employee whose assignments or duties would include an assignment or duty that arises from or directly relates to an obligation under this part.
 - (ii) The employer described in Subsection (3)(a)(i) shall give the employee or prospective employee described in Subsection (3)(a)(i) a written notice that notifies the employee or prospective employee:

- (A) that the employee's or prospective employee's job duties may require the employee or prospective employee to engage in conduct which is in violation of the criminal laws of the United States; and
 - (B) that in accepting a job or undertaking a duty described in Subsection (3)(a)(i), although the employee or prospective employee is entitled to the protections of Title 67, Chapter 21, Utah Protection of Public Employees Act, the employee may not object or refuse to carry out an assignment or duty that may be a violation of the criminal laws of the United States with respect to the manufacture, sale, or distribution of cannabis.
- (b) The Division of Human Resource Management shall create, revise, and publish the form of the notice described in Subsection (3)(a).
- (c) Notwithstanding Subsection 67-21-3(3), an employee who has signed the notice described in Subsection (3)(a) may not:
- (i) claim in good faith that the employee's actions violate or potentially violate the laws of the United States with respect to the manufacture, sale, or distribution of cannabis; or
 - (ii) refuse to carry out a directive that the employee reasonably believes violates the criminal laws of the United States with respect to the manufacture, sale, or distribution of cannabis.
- (d) An employer may not take retaliatory action as defined in Section 67-19a-101 against a current employee who refuses to sign the notice described in Subsection (3)(a).
- (4) Nothing in this section requires a private employer to accommodate the use of medical cannabis or affects the ability of a private employer to have policies restricting the use of medical cannabis by applicants or employees.