



have to know your customers and understand their receptivity to these items. Is it appropriate for your brand?"

Gordon points out three conditions that would create the ideal situation for a chain to experiment with using cannabis:

1. Young guests
2. A blue-state location
3. Late night drive-thru customers



The cannabis crowd overlaps largely with the customers Dunkin' and other major brands are trying to woo into their tent: Gen Z'ers. That bumper crop of customers in their mid-20s grew up with more available sources for food and drinks than any time before. They can buy local grub from food trucks; they can choose a brew that comes from responsibly-sourced coffee beans; and they can imbibe new varieties of whiskeys and IPAs.

"Now they have options for cannabis and alcohol," Crecca says, pausing to ask the critical follow-up question: "How do you connect with them and get their attention where there is so much available to them?"

The answer may be found at places like the Coffee Joint and the Barbary Coast, a cannabis dispensary that features a speakeasy type bar with red wallpaper and "budtenders," who help customers get stirred with a shake of flower or a dab of cannabis extract. There is no question cannabis is now part of the culture. Industry watchers believe it won't be long before the major chains decide it's time to partake. 🍓

Marijuana *in* the Workplace

BY JUSTIN M. KLEIN, ESQ.

The workplace is supposed to be a safe environment to better allow employees to maximize their productivity and their work experience. Surely, one thing that helps motivate employees is how comfortable they are in the workplace or in their working environment. To that end, many employers implement policies to address drug and alcohol use, which, naturally can interfere with those ideals. Indeed, many companies also require mandatory drug testing as a condition of employment with the goal of curbing any potential issues that can arise from employees using drugs or alcohol during work hours. For many years this practice has been generally accepted in jurisdictions across the United States. However, what was once a settled landscape now faces some turmoil as a result of new laws legalizing marijuana not just for medical use, but also for recreational use.

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Marijuana in the Workplace CONT. FROM PG 19

Marijuana is a drug derived from the cannabis plant and remains classified as an illegal drug under United States federal law. But, already more than 30 states and the District of Columbia allow legal use of medical marijuana; 10 states and D.C. have passed laws making it legal for adult use as well.

As a result of the changing legal landscape, employers are now increasingly faced with new issues relating to employee use of marijuana. Can a medical patient use the drug at work? What happens if a prospective employee fails a drug test? Some guidance can be found in the way employers approach alcohol use in the workplace; just because drinking is legal, it doesn't mean it's legal to use it at work. That point, however, fails to accommodate workers who use marijuana to remedy anxiety or nausea or arthritis.

Franchise owners need to understand the laws of the state in which they operate as it relates to marijuana use, and have a policy in place to avoid any potential conflicts with employees. What's more, Dunkin' franchisees need to be in compliance with the language in the Dunkin' form franchise agreement, which includes (some version) of the following provision:

Obey All Laws. You agree to comply with all civil and criminal laws, ordinances, rules, regulations and orders of public authorities pertaining to the occupancy, operation and maintenance of the Store and Premises, including those relating to health, safety, sanitation, employment, environmental regulation, public access and taxation.

As such, franchisees need to be sure any policy that is implemented is done so in accordance with the law, in order to avoid any potential violation of the franchise agreement.

Because federal, state and local laws can be in conflict with respect to marijuana use in the workplace, understanding the impact of these laws on the operation of your store is

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more critical than ever. What's more, franchisees must understand the employee's rights regarding the use of medical marijuana in the workplace in order to avoid any potential litigation over a policy that an employee can claim is discriminatory. As franchisors take a hands-off approach to providing guidance over the treatment of franchisees' employees – to avoid issues related to perceived joint employment – the operators are largely on their own to navigate what can be a very tricky situation.

One common question reverberating through the franchise world is: Can I still drug test my employees and, if they test positive for marijuana, can I terminate them? The answers require some careful thought and may vary depending on where your stores are located.

Generally, there is nothing that prohibits a franchise owner from drug testing employees in accordance with the law; or for terminating an employee for violation of a defined drug policy. That is why it is helpful to have a clearly defined policy in place to protect franchisees from claims made by employees who are terminated for using marijuana, even for medical reasons.

But, while a clearly defined policy can help, there is still confusion around the issue because the laws are still evolving. For example, the Americans with Disabilities Act, or the ADA (a federal law), prohibits employers from terminating employees on the grounds of a disability. However, the law now says the ADA does not protect employees from termination for an illegal act, which would include the usage of marijuana under the federal law.

Moreover, state anti-discrimination laws may apply even in cases where the

federal ADA does not. There are several recent cases in various locales that have permitted cases to proceed under state or local law against employers for discrimination on the grounds that an employee was terminated for testing positive for marijuana because he used the drug for medicinal purposes. Courts are tending to look closely at the employer's workplace policies and whether terminations are consistent with those policies. In certain states, employers may face liability if an employee is fired simply because they have been found to be using marijuana while at work, rather than proving the use of marijuana – even for medical purposes – causes impairment or the inability to perform jobs tasks safely. In other words, an employee that is potentially impaired by the use of their medication could face a safety hazard while using machinery such as ovens, or other baking equipment.

"One thing is certain, the law is going to continue to evolve. It will be incumbent on employers to stay current with the legal developments to ensure they have the most up to date information," advises Dr. Malik Burnett, a physician and leading national expert on marijuana and drug policy reform. "It is also advisable to have qualified professionals help guide you through decisions you may make in creating policies relating to marijuana or dealing with your employees' use of marijuana on the job."

We would add, it is critical to not only be aware of the laws that affect marijuana in the workplace, but also to appreciate how they interplay with your franchise agreement. ●

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