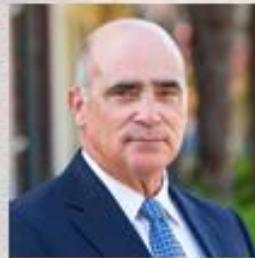




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# Amendment 2 and the workplace



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**On November 8, 2016 over 70%  
of Florida voters approved  
Amendment 2**



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**Amendment 2 added Section 29 to Article X of the Florida Constitution ARTICLE X, SECTION 29.– Medical marijuana production, possession and use.**



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- **Amendment 2 became effective January 3, 2017**
- **The Department of Health has 6 months after the effective date to promulgate regulations concerning:**
  - **Procedures for the issuance and annual renewal of qualifying patient identification cards to people with physician certifications**
  - **Standards for renewal of identification cards**



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**The Department of Health has 9 months after the effective date to begin issuing identification cards to qualifying patients.**



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### **Who is a qualifying patient?**

- **A permanent resident of Florida**
- **Must have been a patient of a qualified physician for at least 3 months, had a physical examination by the physician and a full assessment of his or her medical history**
- **Must be diagnosed with a qualifying medical condition**
- **The person must have tried other treatments without success**
- **A qualified physician must determine if the risks of use are reasonable in light of the benefit to the patient**
- **A qualified physician must register the person into the Compassionate Use Registry set up by the Florida Department of Health**



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## **Who is a qualified physician?**

- **a medical doctor who is licensed to practice medicine in Florida pursuant to Chapter 458**
- **an osteopathic physician licensed to practice in Florida pursuant to Chapter 459**
- **Who has completed the required 8 hour training once every 2 years**
- **There are already approximately 750 qualified physicians**
- **And approximately 20 physicians between Pensacola and Panama city**



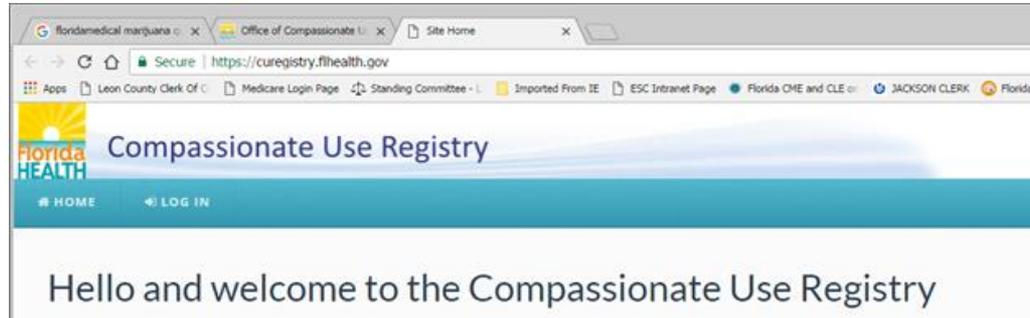
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## What is a qualified medical condition?

- cancer
- epilepsy
- glaucoma
- positive status for human immunodeficiency virus (HIV)
- acquired immune deficiency syndrome (AIDS)
- post-traumatic stress disorder (PTSD)
- amyotrophic lateral sclerosis (ALS)
- Crohn's disease
- Parkinson's disease
- multiple sclerosis
- or other debilitating medical conditions of the same kind or class as or comparable to those enumerated





**After the qualified physician registers the individual into the Compassionate Use Registry set up by the Florida Department of Health, the individual can apply for a one year, renewable Compassionate Use Registration Card with the Office of Compassionate Use and which is necessary to make purchases from a Licensed Dispensing Organization**

**There are 7 dispensing organizations authorized to cultivate, process and dispense medical marijuana in Florida**

**One is Trulieve on N. Davis Highway in Pensacola**



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**There are two types of marijuana that can be prescribed:**

- **low-THC cannabis**
- **medical cannabis**

**Prescriptions cannot exceed a 45 day supply of marijuana**



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**There are a number of limitations set forth in the Amendment, including 3 that are relevant to the workplace**

**They include:**

- 1. Nothing in the Amendment authorizes use of marijuana by anyone other than a qualifying patient**
- 2. Nothing in the Amendment shall permit the operation of any**
  - vehicle**
  - aircraft**
  - train**
  - Boat****while under the influence of medical marijuana**
- 3. Nothing in the Amendment requires violation of federal law or purports to give immunity under federal law**
- 4. Nothing in the Amendment shall require any accommodation of any on-site medical use of marijuana in any place of employment**



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# ADA

Americans with  
Disabilities Act

## Amendment 2 and the Americans with Disability Act (“ADA”)

- **Duty to accommodate**
- **An employer is required to make a reasonable accommodation to a qualified individual with a disability unless it would cause undue hardship on the employer**
- **However, the ADA (42 U.S.C. 12114(a)) does not apply to individuals who are engaged in the illegal use of drugs**
- **Federal law (the Controlled Substances Act) still makes the possession or distribution of marijuana illegal**
- **Accordingly, no duty to accommodate by allowing the use of marijuana in the workplace under the ADA**
- **May still have to provide other accommodations for the underlying condition**
- **Employee could still argue adverse employment action based on use of medical marijuana is a pretext for discrimination**



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# ADA

Americans with  
Disabilities Act

**Federal case law supports this conclusion**

***Bailey v. Real Time Staffing Service, Inc.*, 543 F.Appx 520, 524 (6th Cir. 2013)**

***Casais v. Wal-Mart Stores, Inc.*, 695 F.3d 428, 435 (6th Cir. 2012)**

***James v. City of Costa Mesa*, 700 F.3d 394, 398-404 (9th Cir. 2012)**

***Harris v. Lake County*, 2016 WL 107488 (N.D. Cal. Jan 11, 2016)**

***EEOC v. Pines of Clarkston*, 2015 WL 1951945 (E.D. Mi. April 29, 2015)**

***Wild v. City of San Diego*, 2014 WL 6388500 (S.D.Cal. Nov. 13, 2014)**

***Purple Heart Patient Ctr., Inc. v. Military Order of the Purple Heart of the United States of Am., Inc.*, 2014 WL 572366 (N.D.Cal. Feb. 11, 2014)**



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## **Amendment 2 and the Florida Civil Rights Act**

- **The FCRA does not have similar language to the ADA regarding illegal drug use**
- **However, the FCRA is interpreted using federal law**
- **In addition, Amendment 2 specifically states nothing in the Amendment shall require any accommodation of any on-site medical use of marijuana in any place of employment**



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## **Amendment 2 and the Family Medical Leave Act (FMLA)**

**The FMLA is not impacted by Amendment 2**



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## **Amendment 2 and Drug Testing**

- **Employers may still discipline employees for failing a drug test due to medical marijuana use.**
- **Accordingly, zero-tolerance drug policies and Workers' Compensation drug-free workplace policies and programs are currently valid**
- **Should an employer modify its drug testing policies to take into consideration medical marijuana usage**



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## **Amendment 2 and safety issues in the workplace**

- **Occupational Safety and Health administration Act (OSHA)**
- **Safety-sensitive jobs**
- **Drug-Free Workplace Act (for federal contractors)**



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