



Disability and the Law in A Contemporary Workplace: Recent Developments

Susan M. Lorenc, Partner

Emma Lapp, Associate

Anthony M. Whalen, Associate

Roadmap

Medical Inquiries in *Nawara v. Cook Cty.*;
Reasonable Accommodations in *Todor v.*
Whitehall Cent. School Dist.; High Heels
in *Lopez Duprey v. MGM*
By Susan Lorenc

Testing Positive for Marijuana, Medical
Marijuana Accommodations; A State Review

By Emma Lapp

ADA & Work From Home:
Courts Revisiting?

By Anthony Whalen

Questions?

Ground Rules of the ADA

- Employers cannot discriminate against qualified individuals on the basis of disability.
- A qualified individual is someone who can perform an essential job function, **with or without** a reasonable accommodation.
- Employers must provide reasonable accommodations for a known physical or mental limitation of a qualified individual with a disability, unless the employer can prove an undue hardship.

The ADA Accommodation Framework

Disability or Condition

- “Substantially limits one or more major life activities”
- Physical and Mental Impairments

Essential Job Function

- See Job Posting!
- Job Descriptions are Key
- Specialized Skills and Knowledge

Reasonable Accommodation

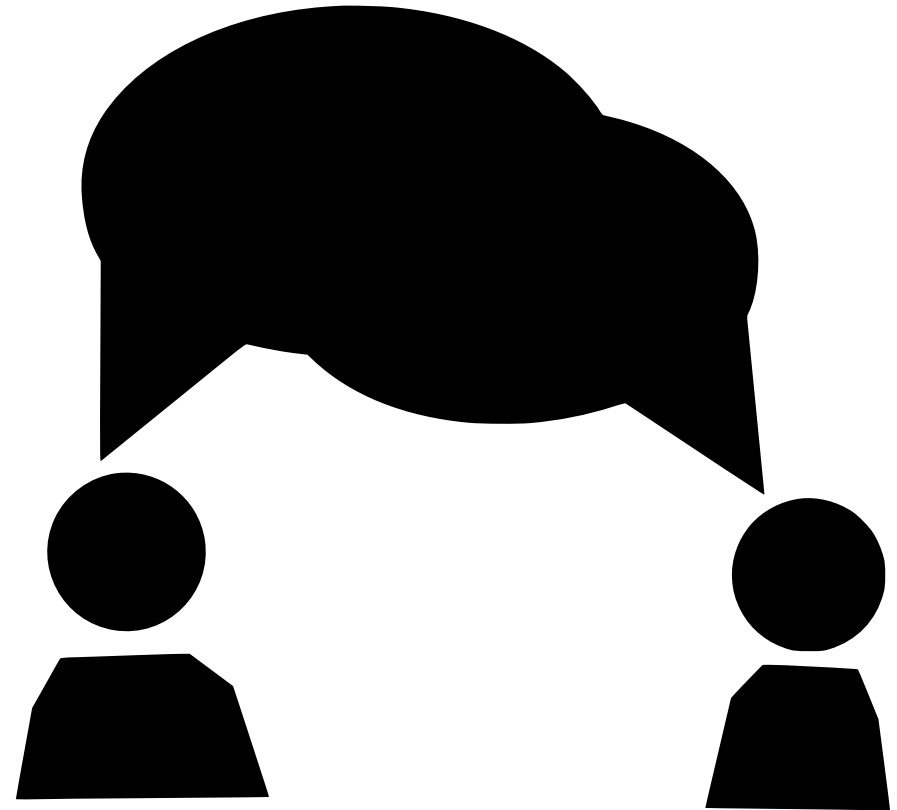
- Enabling the qualified individual
- Some suggestions: work schedules, job reassignment, and workplace tools
- Accessibility to the workplace



ADA Definitions: Interactive Process and Undue Hardship

Interactive Process: An employer-employee dialogue

Undue Hardship: “Significant Difficulty or Expense”



Tudor v. WhiteHall School District, 132 F.4th 242 (2d. Cir. 2025)

The Facts:

- Math teacher of 20 years suffered from PTSD, interfering with tasks and causing a studder.
- Approved accommodation of 15 minute “prep periods” twice a day, away from the workplace.
- A new administration, new policies, and new problems.



District Court Holding

- Summary Judgment in favor of WhiteHall School District.
- Tudor was able to perform her essential job functions “without an accommodation”.
- No chance to determine that she could perform the essential job functions with a reasonable accommodation.

Tudor v. WhiteHall School District, 132 F.4th 242 (2d. Cir. 2025)

- The Second Circuit: “Straightforward” reading of “with *or* without.”
- Following suit and keeping in step with Sister Circuits.
- Even though the accommodation is not *required*, it still must be provided to a qualified individual.
- Vacated and remanded, but not completely out of options.

The ADA and Medical Testing

No Medical Testing allowed *Pre Job Offer*

Post Job Offer, Medical Exams must be uniform to all employees. If the exam reveals a disability, any employment decision must be consistent with a business necessity.

Post Start Date, any exams performed, and subsequent decisions must be consistent with business necessity.

Medical testing is appropriate in only specific circumstances, i.e. returning from leave, performance or safety issues, or voluntary employee health programs.

Nawara v. Cook Cty. Municipality, 132 F.4th 1031 (7th Cir. 2025)



Nawara v. Cook Cty. Municipality, 132 F.4th 1031 (7th Cir. 2025)

- Employees who *are not* disabled may now invoke Section 12112(d)(4)(A). No disability (or perceived disability) required.
- Medical exams as discrimination itself, rather than a means.
- Open questions for remedies without an adverse action?

Lopez-Duprey v. MGM National Harbor, LLC, 2025 WL 1068099 (D. Md. Apr. 9, 2025)



- ADA Accommodations for “shoe standards”
- Summary Judgment denied, as the evidence shows that an ADA request was made and accepted.
- Disputes as to the accommodation scope: will sneakers sneak by?

ADA and Work from Home in A Post-COVID World

“Reasonable” in context

Merriam Webster Dictionary: “not extreme or excessive,” or is “moderate and fair.”

ADA: “enables an individual with a disability who is qualified to perform the essential functions of the position”



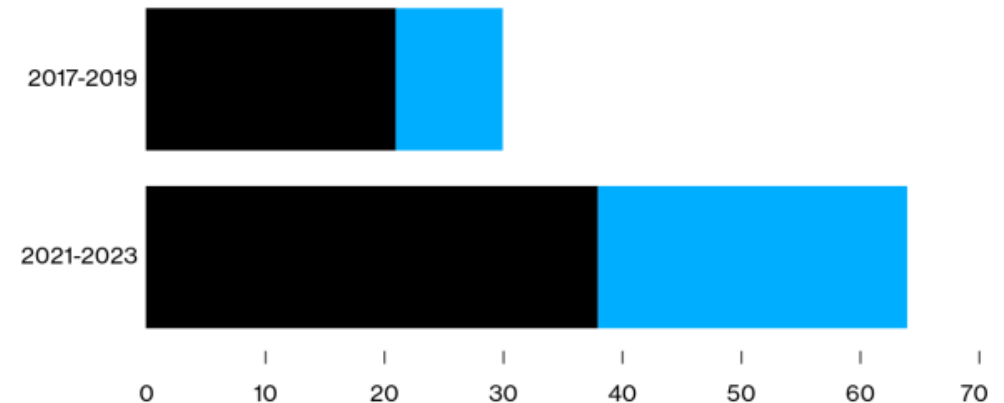
Work from home post-COVID?

- No major shifts, but a slow and steady change
- More requests made, and a higher likelihood of success in court
- For accommodation requests, WFH takes the top spot

Court Rulings on Telework as Disability Accommodation

Rulings from pre- and post-pandemic periods

■ Pro-Employer ■ Pro-Worker



Source: Bloomberg Law

Note: Decisions from February 2017 to February 2019 and June 2021 to June 2023.

Data includes rulings on summary judgment motions from federal magistrate, district, and circuit court judges.

Bloomberg Law

What are the Appellate Courts saying?

The Seventh Circuit

- “Determining whether a specific job has essential functions that require in-person work has become much more of a case-specific inquiry.”

The Fifth Circuit

- Regular work-site attendance is essential, but seeking *partial* work from home can be a reasonable request.

The D.C. Circuit

- “whether proposed by the employer or requested by the employee, the reasonableness of telework cannot be presumed.”

Preparing for WFH Requests Under the ADA: Pre-Request Review

Reviewing the Essential Job Functions

- What are the essential job functions in the description? Are there any?
- Have any functions changed lately?
- Are there any access/safety/confidentiality concerns with WFH?

Looking outside of the Job Description

- What are employers required to do on a given day?
- What WFH policies are already in place?

Preparing for WFH Requests Under the ADA: During the Request

The Doctor's Note

- Is there a clear reference to a disability?
- Does the note require, or even request, work from home?
- Does the note connect the disability to the essential job function?

Is the request feasible?

- Is it possible to provide the employee with work from home?
- Is WFH getting rid of an essential job function, or moving it to another employee?

Rebutting employee arguments

- Refer to the EEOC's COVID guidance on ADA
- "Reasonable" under the ADA
- After an interactive process, the employer gets the last (reasonable) word.

Preparing for WFH Requests Under the ADA: Thinking about Alternatives

- Be creative!
- Be aware of how long the accommodation needs to be.
- Be willing to compromise, but only to the point of what's needed.
- Be on top of the employee's performance after an accommodation.


Medical Marijuana & State-Level ADA Counterparts

Marijuana & the ADA

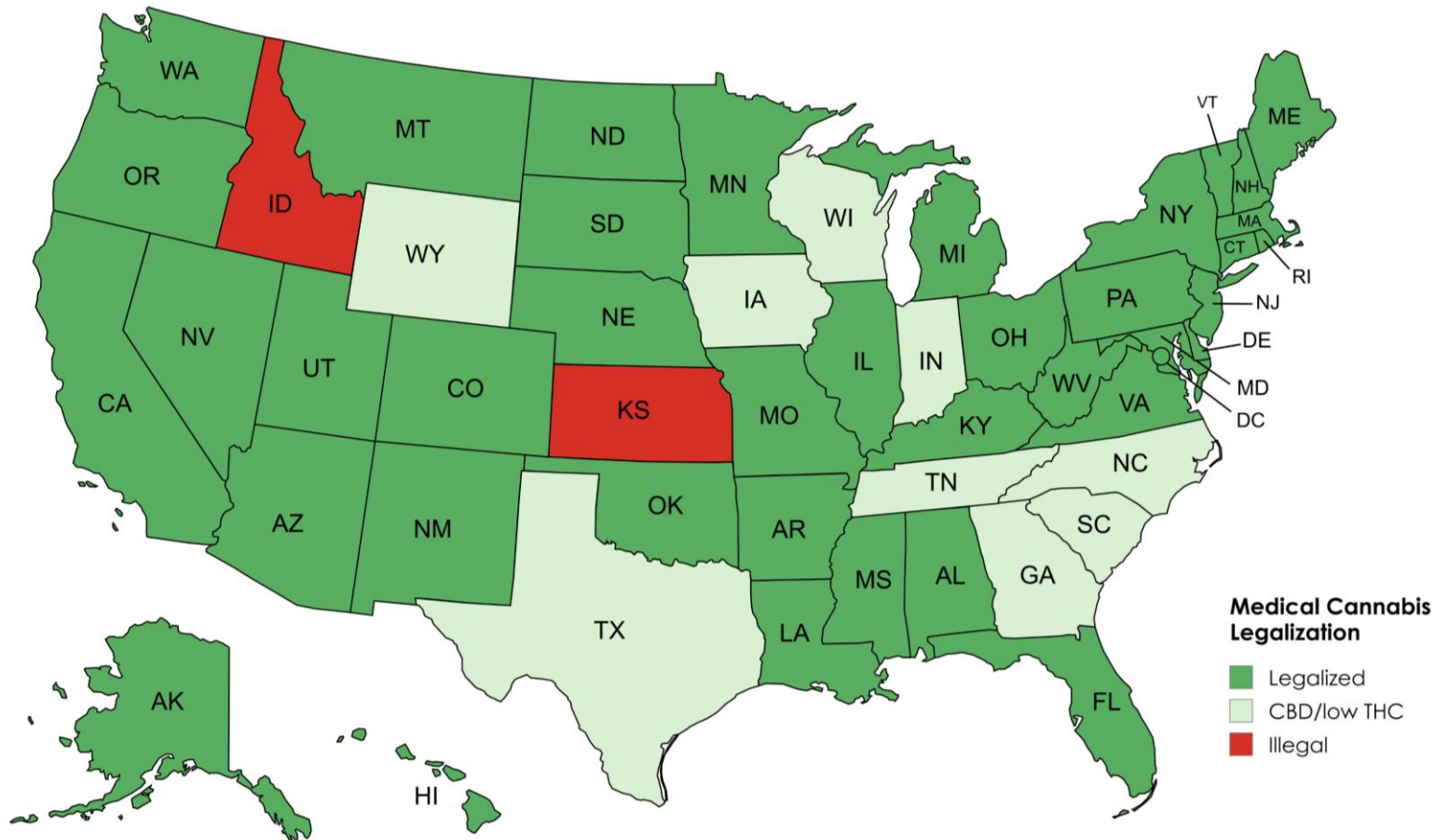
- Marijuana remains illegal under federal law, even for medical use.
- Marijuana users are not entitled to federal ADA protections.
- What about state-level counterparts to the ADA?



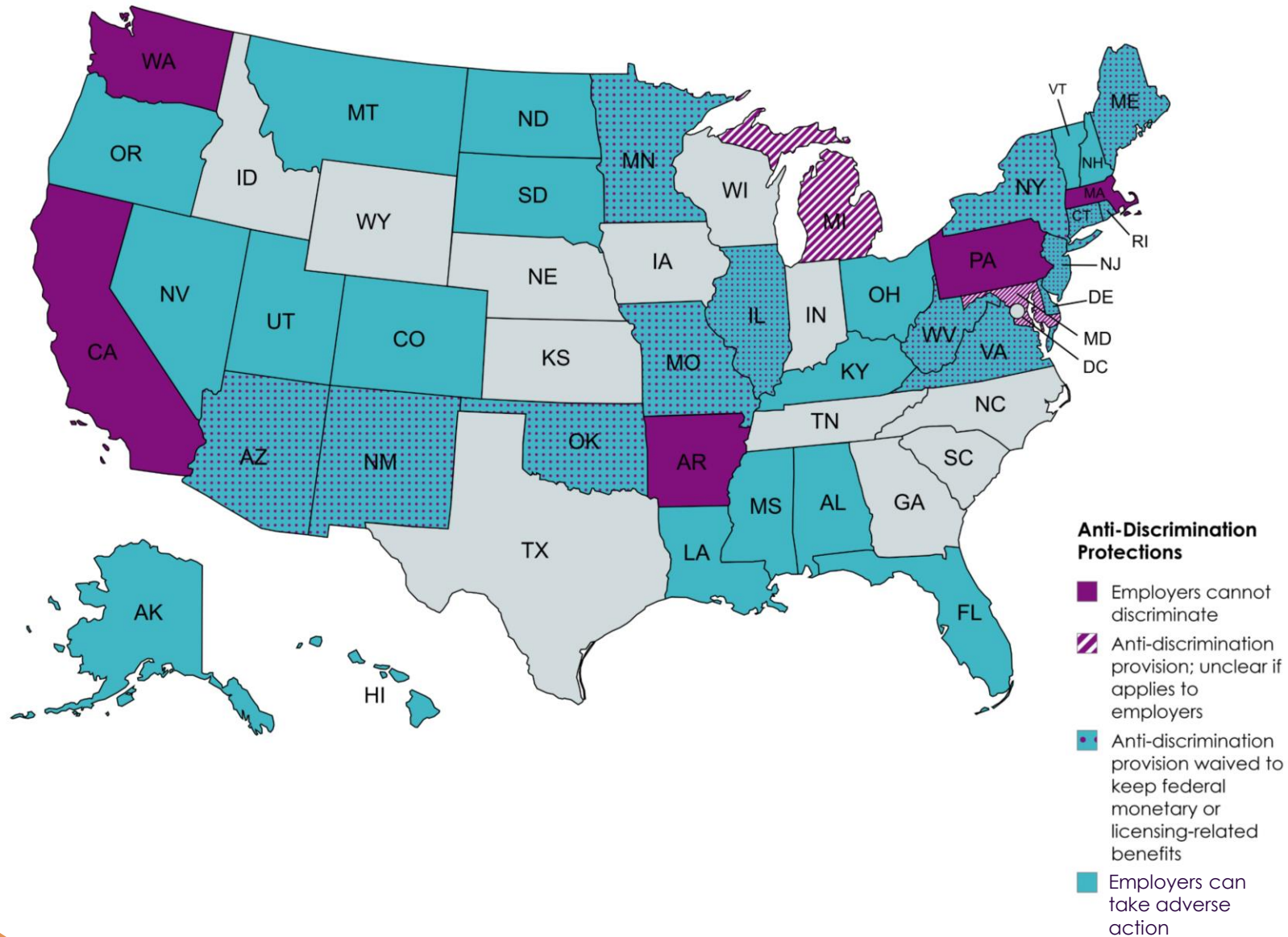
Main Issues

- Which states have legalized medical marijuana?
 - Anti-discrimination provisions and adverse actions
 - Workplace reasonable accommodation requirements for medical marijuana users
 - Adverse actions for positive drug tests
 - Employer liability
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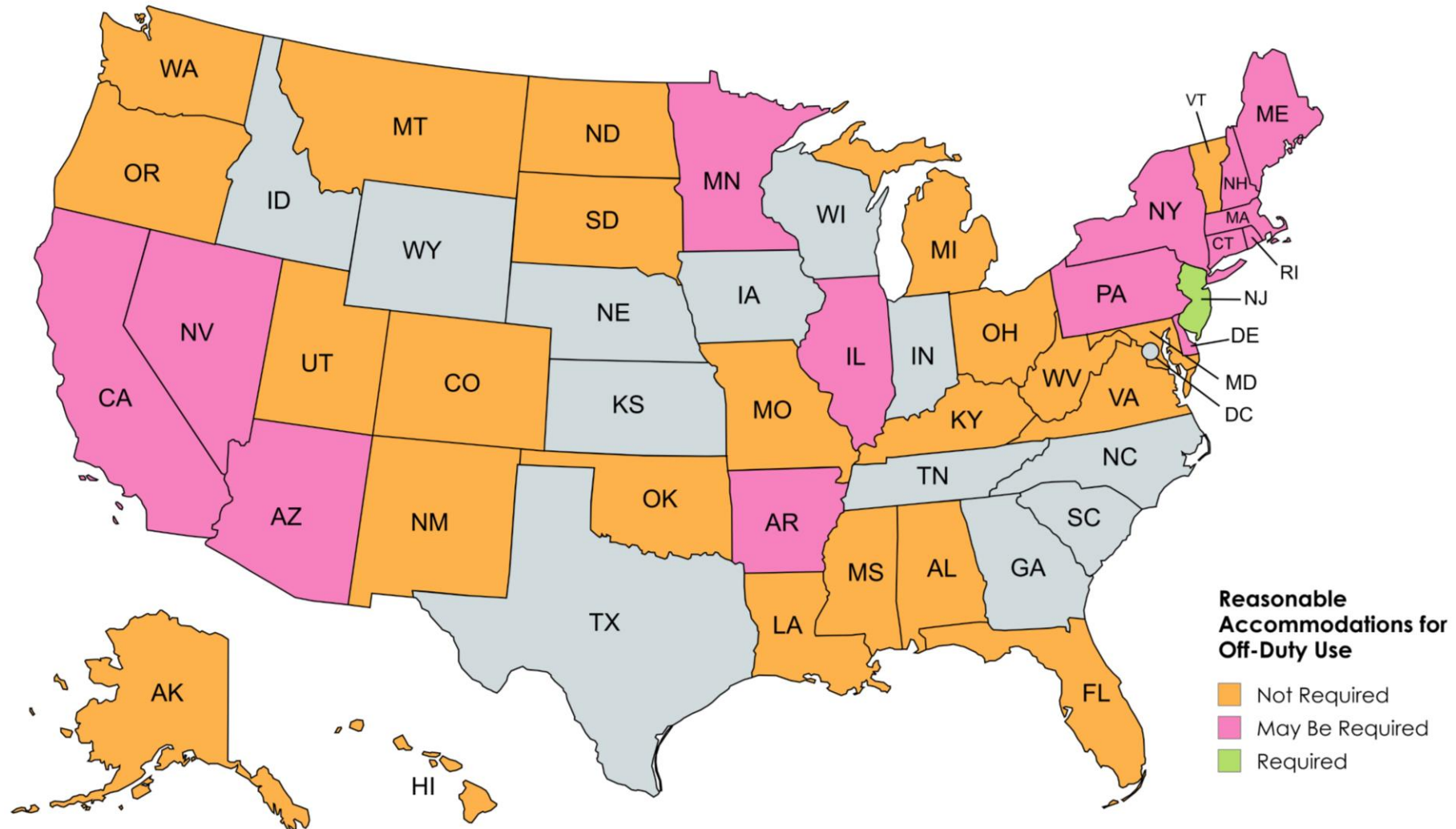
Which states have legalized medical marijuana?



Anti-Discrimination Protections



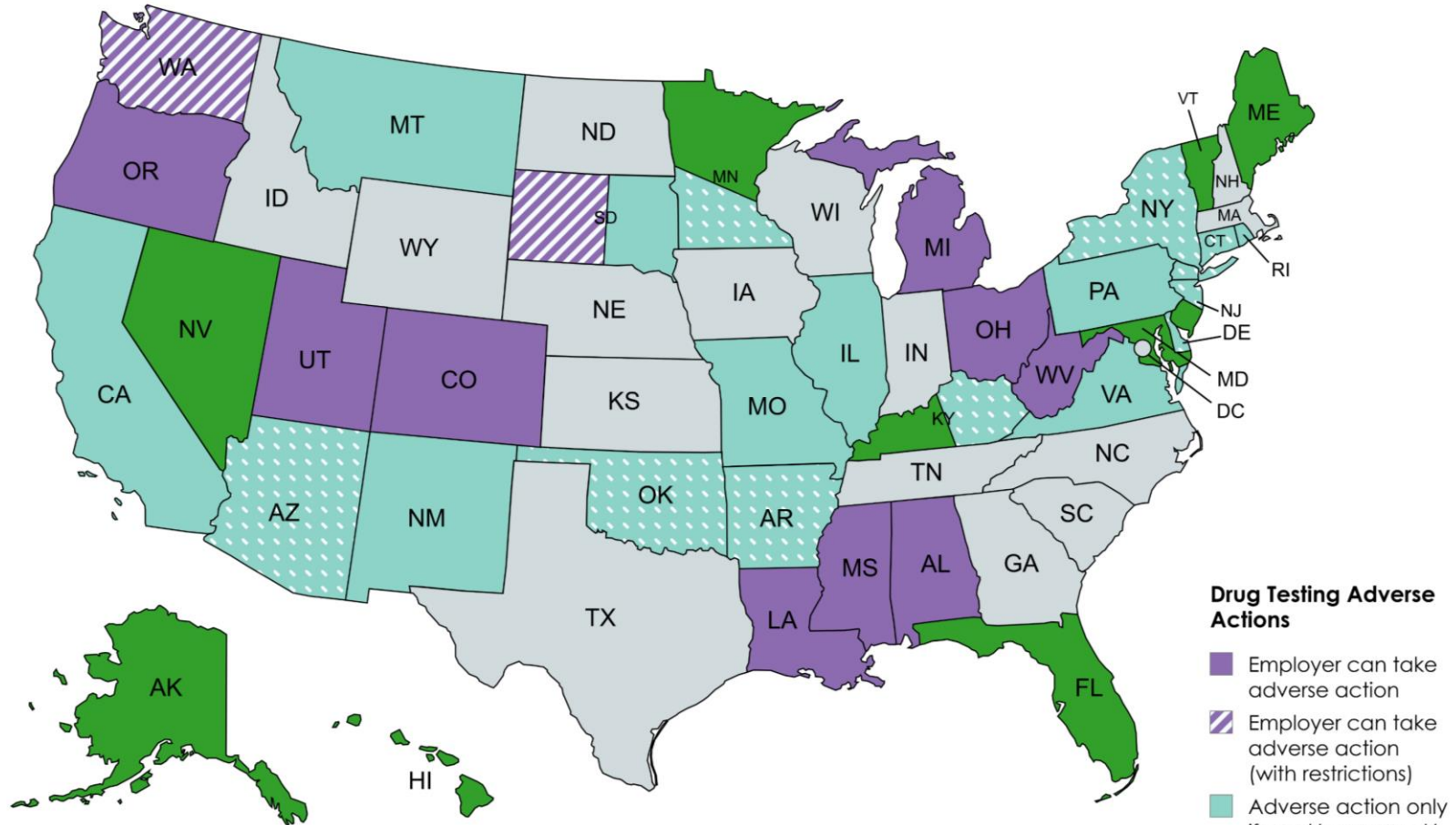
Reasonable Accommodations



Reasonable Accommodations – State Laws

- **Massachusetts:** *Barbuto v. Advantage Sales & Mktg., LLC*, 78 N.E.3d 37 (Mass. 2017)
- **Nevada:** Nev. Rev. Stat. § 678C.850
- **New Hampshire:** *Paine v. Ride-Away, Inc.*, 274 A.3d 554 (N.H. 2022); N.H. Rev. Stat. ch. 354
- **New Jersey:** *Wild v. Carriage Funeral Holdings, Inc.*, 227 A.3d 1206 (N.J. 2020)
- **New York:** N.Y. Cannabis Law § 42

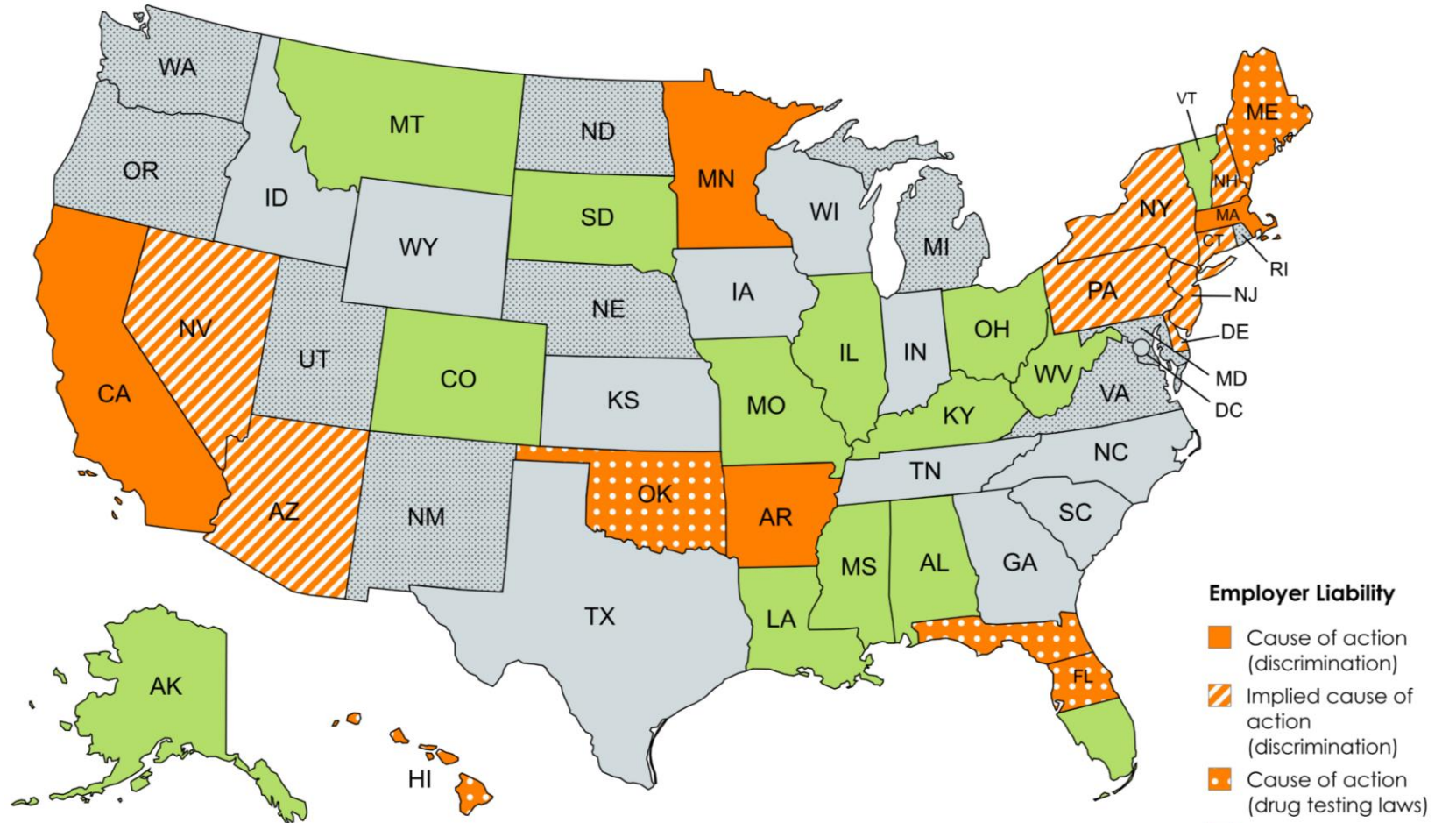
Adverse Actions for Positive Drug Tests



Drug Testing Adverse Actions

- Employer can take adverse action
- Employer can take adverse action (with restrictions)
- Adverse action only if used/ possessed/ impaired at work
- Positive test can't be sole basis for impairment
- Must take steps before adverse action

Employer Liability





QUESTIONS?