# Navigating Workers' Compensation and Medical Marijuana

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# About the Academy



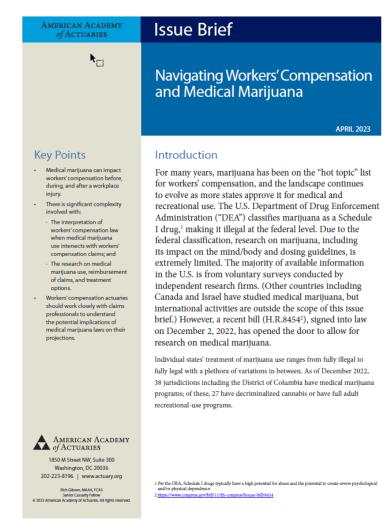
- The American Academy of Actuaries is a 19,500 mber professional association whose mission is to serve the public and the U.S. actuarial profession. For more than 50 years, the Academy has assisted public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues.
- The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

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www.actuary.org

## American Academy of Actuaries – Issue Brief

- Published in April 2023
- Interviewed third-party administrators (TPAs), lawyers, claims professionals, loss control specialists, and actuaries
- https://www.actuary.org/sit es/default/files/2023-04/IB.MMJ .4.26.23.pdf



## Key Points of the Issue Brief

- Medical marijuana can impact workers' compensation before, during, and after a workplace injury.
- There is significant complexity involved with:
  - The interpretation of workers' compensation law when medical marijuana use intersects with workers' compensation claims.
  - The research on medical marijuana use, reimbursement of claims, and treatment options.
- Workers' compensation actuaries should work closely with claims professionals to understand the potential implications of medical marijuana laws on their projections.

## Court Cases Reflect Three Overarching Themes

Who has jurisdiction, and is it a crime?

Proximate cause?

Is it the right treatment?

## Court Cases – Who Has Jurisdiction, and Is It a Crime?

#### **ISSUES PRESENTED:**

Do federal drug laws like the Controlled Substances Act (CSA), 21 U.S.C.S. supersede state laws that compel insurers and employers to reimburse an employee for the cost of medical marijuana used in response to pain arising from a work-related injury?

Is an employer that pays for medical marijuana aiding and abetting a crime?

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New Hampshire, March 2021	Appeal of Andrew Panaggio
New Jersey, April 2021	Vincent Hager v. M&K Construction
Minnesota, October 2021	Bierbach v. Digger's Polaris and Musta v. Mendota Heights Dental Center
U.S. Supreme Court, June 2022	The Supreme Court denied reimbursement for medical marijuana in workers' compensation cases.

## Court Cases – Proximate Cause?

#### **ISSUE PRESENTED:**

Was medical or recreational marijuana use the proximate cause for an employee injury?

#### **Notable Cases**

Florida, June 2018	Brinson v. Hospital Housekeeping Services
Kentucky, July 2018	New Workers' Compensation Intoxication Rebuttable Presumption

## Court Cases – Is It The Right Treatment?

#### **ISSUES PRESENTED:**

Did the attending physician use other treatments before prescribing medical marijuana to treat the claimant?

Was medical marijuana a reasonable and necessary medical treatment for the injuries sustained?

#### **Notable Case**

Maine, June 2018

Gaetan H. Bourgoin v. Twin Rivers Paper Company, LLC, et al.

## Employment Issues

Impact on employment

- Societal views on the use of marijuana
- Drug testing policies
- Type of job/industry
- Recruiting and retaining employees
- State laws protections afforded to employees

## Reimbursement Issues

Managing medical marijuana reimbursement for workers' compensation claims

- TPAs
- Employer views (cost savings, drug-free workplace policies)
- State laws

## Opioid Issues

Medical marijuana versus opioids

- Efficiency of treatment
- Differences in costs

## Updates and Other Resources

- Cannabis vs. Opioids
  - <a href="https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8237244/">https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8237244/</a>
  - The link above also provides resources to other studies that can be referenced.
- H.R. 8454 (117th): Medical Marijuana and Cannabidiol Research Expansion Act
  - <u>Medical Marijuana and Cannabidiol Research Expansion Act (2022; 117th Congress H.R. 8454) GovTrack.us</u>
  - H.R.8454 117th Congress (2021-2022): Medical Marijuana and Cannabidiol Research Expansion Act | Congress.gov | Library of Congress
- Additional Court Case Information
  - <a href="https://www.ncci.com/articles/pages/Court-Case-Insights.aspx">https://www.ncci.com/articles/pages/Court-Case-Insights.aspx</a>
  - https://www.ncci.com/Articles/Pages/Insights-Regulatory-Legislative-Trends2023.aspx
- Marijuana Legalization Map
  - <a href="https://disa.com/marijuana-legality-by-state">https://disa.com/marijuana-legality-by-state</a>

## Contact

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