



**NEW LEAF**  
ILLINOIS

A PROJECT OF  
ILLINOIS EQUAL  
JUSTICE FOUNDATION

# Cannabis Legalization in Illinois and Opportunities for Expungement



# Equip for Equality

Advancing the Human & Civil Rights of People with Disabilities in Illinois

- **Free Legal Services for People with Disabilities**
- **800-537-2632 or [www.equipforequality.org](http://www.equipforequality.org)**
- **Priority Areas**
  - Abuse/Neglect
  - Community Integration
  - Discrimination
  - Self Determination
  - Special Education
- **EFE Services Relevant to This Presentation**
  - Criminal Record Expungement and Sealing
  - Employment Helpline - **1-844-744-4879 or [employment@equipforequality.org](mailto:employment@equipforequality.org)**
  - Assisting Incarcerated People Upon Re-Entry To Society

The material contained within this Presentation does NOT constitute legal advice!

Please contact a licensed attorney within your state for questions and/or concerns related to any legal inquiry surrounding cannabis laws and the uniqueness of your situation.



clearing cannabis convictions

- Statewide network of 20 legal aid and advocacy organizations.
- Funded by the State of Illinois to assist people seeking to expunge past cannabis convictions from their records – if Illinois no longer considers cannabis a crime, why does your record say otherwise?
- Provides free legal information and legal resources; when income eligible, can also provide free legal representation.

# What is New Leaf Illinois?





**People may be eligible for free legal expungement services – opportunity to consult with an attorney**

- Visit **[newleafillinois.org](https://newleafillinois.org)** to register online.
- Call **855-963-9532** to register over the phone.


## **After today's training**

Take the next steps to see if an Illinois cannabis case is eligible for expungement!





# Topics in this Presentation

- 
- (1) The Cannabis Regulation & Tax Act (CRTA): Cannabis is Legal – What it Does and Does Not Mean?
  - (2) Expungement of Past Cannabis Records
  - (3) How Legalization Impacts Disability Rights, Employment, Immigration and Housing
  - (4) Working in the Cannabis Industry
  - (5) Resources and Next Steps
  - (6) Polling
  - (7) Contact info for Equip for Equality
  - (8) Questions



# The Cannabis Regulation & Tax Act was signed into law on June 26, 2019 and lawful possession and distribution began on January 1, 2020.



## Age Limit

Just like alcohol, you can only possess and use cannabis if you are twenty-one years or older.



## Weight Limit\*

For IL residents, you can possess 30 grams of cannabis flower; 500 milligrams of THC or 5 grams of cannabis concentrate



## Non-IL Residents

If you are not a resident of Illinois, you can possess half the amount of Illinois residents

\*These are cumulative amounts per stop (*i.e.*, if you are stopped with 30 grams of cannabis, 500 milligrams of THC, and 5 grams of cannabis concentrate, you can be charged with possession of more than 35 grams of cannabis)



# The Cannabis Regulation & Tax Act

## Who can legally possess cannabis and how much?

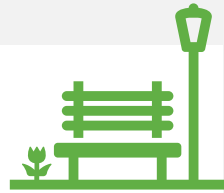
# The Cannabis Regulation & Tax Act:

## Limits on Possession & Use of Cannabis



### Driving

**You can NOT drive under the influence of cannabis. You could be arrested and charged with a DUI!**



### In Public

**You can NOT use in public places!**



### Around Kids

**You can NOT use in the presence of minors – even at home!**



### At Home

**You can NOT use at home if your landlord or condo association prohibits it!**



### In a Vehicle

**You can NOT have it in your car unless in sealed container & “reasonably inaccessible” while car is moving!**

# Personal Cultivation: Limits to Growing Cannabis at Home

## Who Is Allowed to Grow Cannabis?

- Illinois residents (a “resident” has lived in Illinois for at least 30 days)
- At least 21 years old, AND
- Registered qualifying patients that have a medical cannabis card under the Compassionate Use of Medical Cannabis Act



## What are the Limits on Personal Cultivation?

- Must keep plants in an enclosed, locked space and secure from unauthorized access.
- Limited to 5 plants no more than 5 inches tall.
- Cannot store in a location where they can be seen (through “ordinary public view”).
- Cannot give or sell seeds to anyone.



## The Cannabis Regulation & Tax Act also provides 3 ways to expunge past cannabis records -

1

Automatic Expungement Process for Law Enforcement Records of "Minor Cannabis Offenses" NOT Resulting in Conviction

2

Pardon Process for Minor Cannabis Convictions

3

Motion to Vacate and Expunge Process for Other Eligible Cannabis Convictions

## Expungement of Past Cannabis Records

What is Eligible, What is "Automatic," and What Does it Mean?

# 1 Automatic Expungement of Law Enforcement Records

Available for “Minor Cannabis Offenses” that Did Not Result in Conviction

## “Minor Cannabis Offense”

- Section 4 (Possession of 30 Grams or Less) or
- Section 5 (Dealing of 30 Grams or Less) of the Cannabis Control Act
- No Penalty Enhancement
- No Other Charges for a “Violent Crime” within the Same Arrest or Court Filing

## Did Not Result in Conviction

Arrests leading to....

- Released without Being Charged
- Court Case Resulted in Dismissal or Acquittal
- Court Case Resulted in a Sentence of Supervision or Qualified Probation

1

# Automatic Expungement of Law Enforcement Records



Law enforcement – arresting agencies & Illinois State Police – review their records to determine if it is a “minor cannabis offense” and eligible.

Individuals still need to petition the circuit court to expunge the court record through the traditional process – this only addresses the police records.

Notice is not sent, but individuals can request – after the date – for a certificate of disposition to show the record was expunged.

## How the Process Works

### Timetable for Law Enforcement Review

- Arrested on or after 1/1/2013 → by January 21, 2021
- Arrested between 1/1/2000 and 12/31/2012 → by January 1, 2023
- Arrested before 1/1/2000 → by January 1, 2025



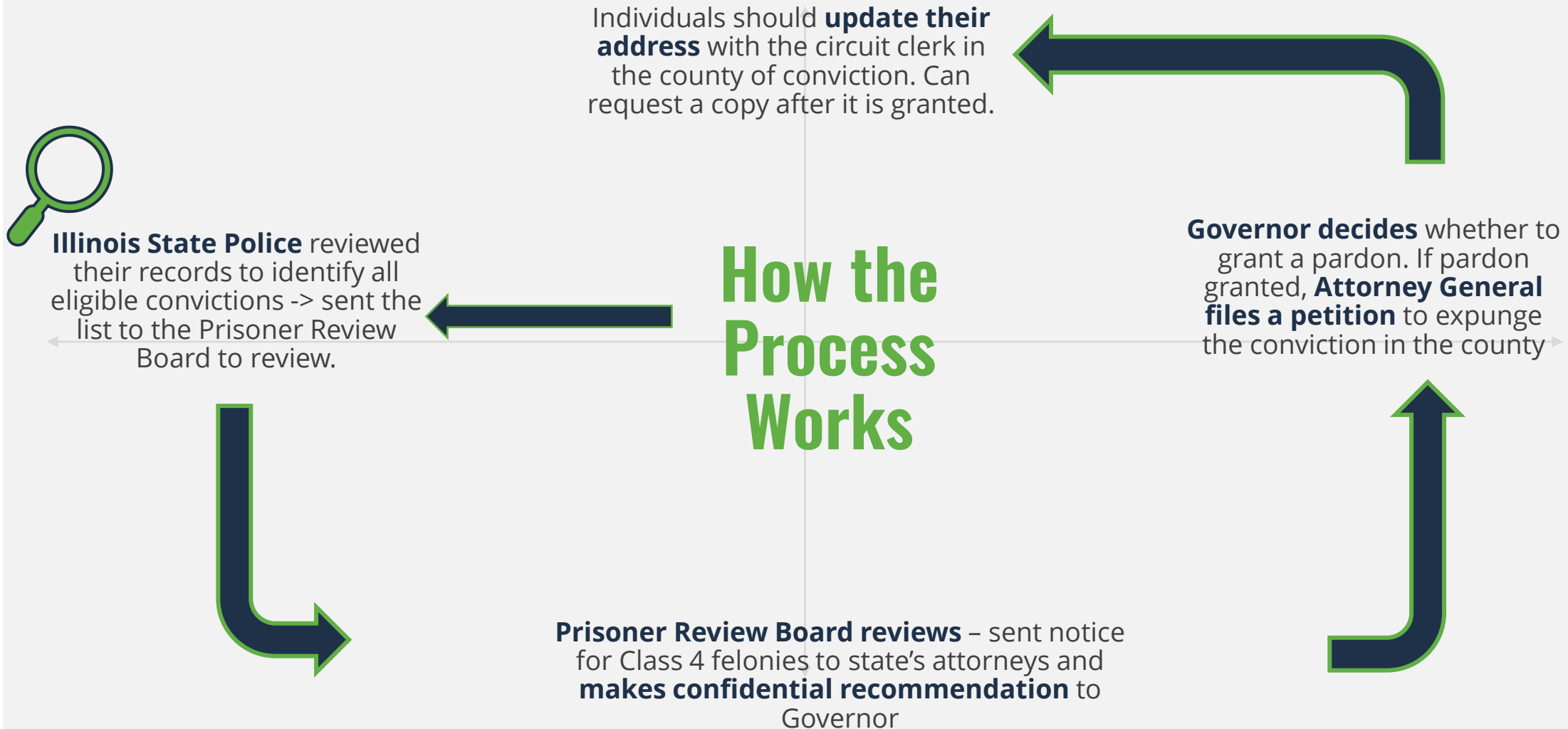
# 2 Pardon & Expungement Process

## Available for “Minor Cannabis” Convictions

### Eligible Minor Cannabis Convictions

- Misdemeanor or Class 4 Felony Conviction for
  - Section 4 (Possession of 30 Grams or Less) or
  - Section 5 (Dealing of 30 Grams or Less) of the Cannabis Control Act
- Conviction did not include a Penalty Enhancement
- No Other **Conviction** for a “Violent Crime” within the Same Arrest or Court Filing

## 2 Pardon & Expungement Process



# **3 Motion to Vacate & Expunge Process**

**Available for Misdemeanor & Class 4 Felony Cannabis Convictions**

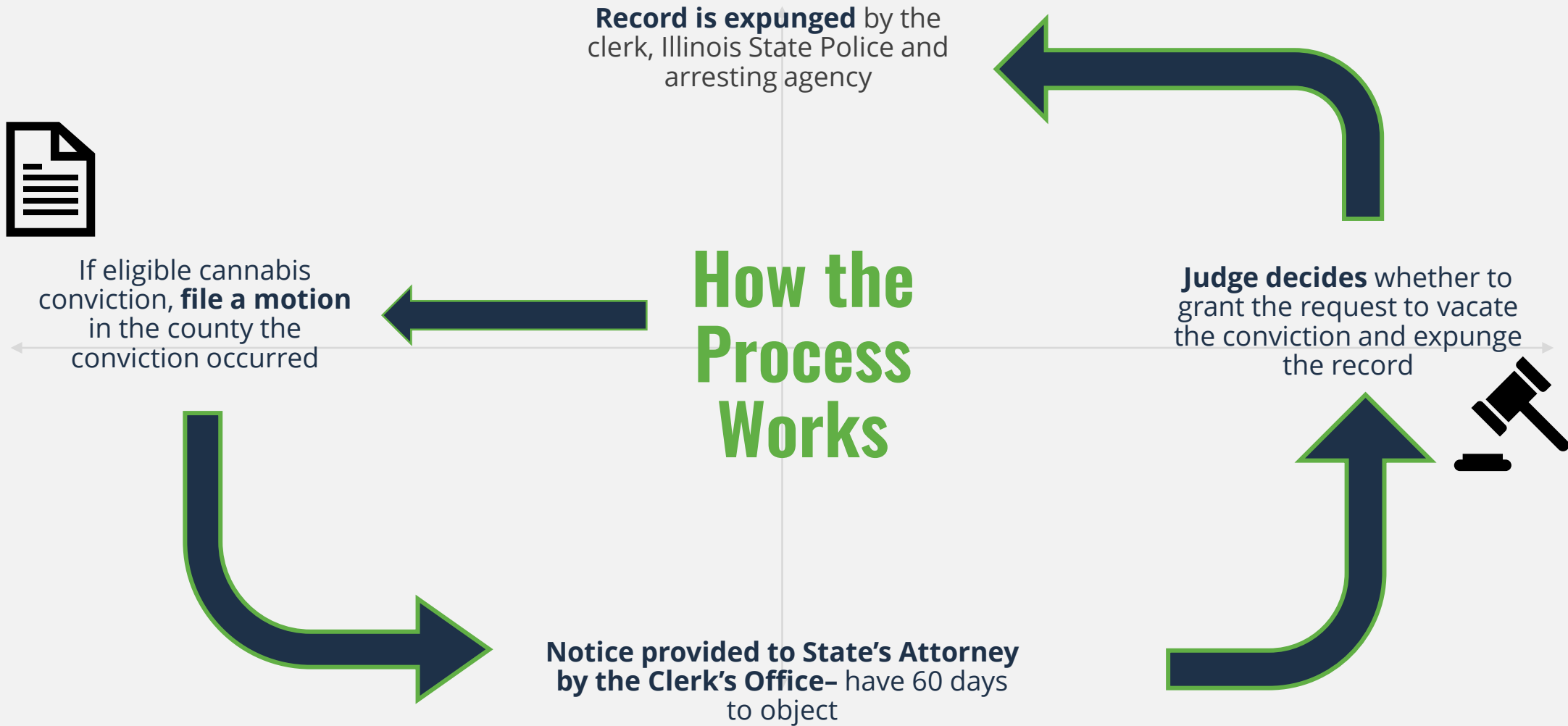
## **Eligible Misdemeanor & Class 4 Felony Convictions**

- Section 4 (Possession) of the Cannabis Control Act up to 500 grams
- Section 5 (Dealing) of the Cannabis Control Act up to 30 grams
- No limitation based on other charges or enhancements



3

# Motion to Vacate and Expunge Process





# **Cannabis Legalization & DISABILITY LAWS**

# Cannabis and Disability Laws

## How do federal laws protect the rights of people with disabilities?

### Americans with Disabilities Act (ADA)

#### Definition of Disability – Three Prongs:

- **Actual Disability** – an individual who has a physical or mental impairment that substantially limits a major life activity
- **Record Of** – record of or history of an actual disability
- **Regarded As** – Perceived to have an impairment

#### Association

**Discrimination:** The ADA also provides protections for people who don't have a disability themselves but are treated differently because of their association/relationship with a person with a disability, like a family member.



# Cannabis and Disability Laws

## How do federal laws protect the rights of people with disabilities?

### The ADA and Cannabis

**Actual Disability:** Generally, the ADA **does not** apply to people who are **currently engaged** in cannabis use, because it is still considered an “illegal drug” under federal law.

**Record of Disability:** the ADA **does** apply to people who were addicted and are no longer engaging in the use of illegal drugs and who went through treatment or have been “rehabilitated successfully.”

**Regarded As:** The ADA **may** apply when a person is incorrectly perceived as being addicted to drugs.

**Association:** If someone is treated differently because they have a family member who is a former drug addict who has been through rehab, ADA **may** provide protections.

# Cannabis and Disability Laws

## How do federal laws protect the rights of people with disabilities?

### The ADA and Medical Exams and Inquiries

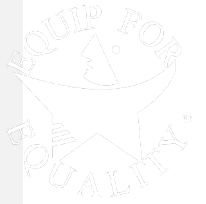
**General Rule:** ADA **prohibits** employers from conducting a medical exam prior to a conditional offer of employment.

EXCEPTION – Tests for the current use of illegal drugs are **NOT** medical exams and can be conducted at any stage of employment. (Remember “illegal” for ADA purposes is federal law – fact that state law makes cannabis legal is irrelevant for

Although drug tests are permissible, the ADA does **prohibit** employers from asking questions about past drug use, treatment/counseling that would show a history or record of drug use.

# Does the ADA apply?

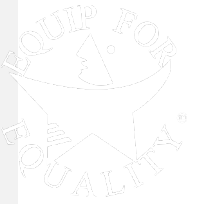
- ▶ **John** has a history of drug addiction, including cannabis. He participated in a drug rehabilitation program and has not used cannabis in nine months. He is not hired for a job because of concerns that he will begin using cannabis again.





# Does the ADA apply?

- **Cynthia** lives in Illinois. She has a medical marijuana card and uses marijuana in the evenings to treat her PTSD. She is given a job offer, but then fails a drug test based on her marijuana use.



# Does the ADA apply?

- ▶ **Natalie's** son had successful treatment for substance abuse addiction in the past. Natalie is applying for a new job and after her prospective employer learns about her son, Natalie is not hired.



# Cannabis and Disability Laws

## How do Illinois laws protect the rights of people with disabilities?

### Illinois Human Rights Act (IHRA)

The IHRA may protect a person with a disability who uses cannabis if:

(1) They are treated differently as a result of their cannabis use; or

(2) Are denied a reasonable accommodation to an employer's drug-free workplace policy

\*It is still unclear how the courts will apply the IHRA to people who use cannabis\*

# Cannabis and Disability Laws

## How do Illinois laws protect the rights of people with disabilities?

### Compassionate Use of Medical Cannabis Act

State law that creates a system where people with certain disabilities can get a medical card to legally purchase cannabis

It prohibits employers from penalizing an employee with a medical cannabis card, but DOES allow employers to enforce drug-testing, zero-tolerance, or other drug-free workplace policies.

\*Advocates are waiting to see how the courts interpret this law\*





# **Cannabis Legalization & EMPLOYMENT LAWS**

# Cannabis and the Workplace

## How does cannabis impact my ability to get or keep a job?

**Q. Do I have to tell my employer about my off-duty cannabis use?**

**No.** The Illinois Right to Privacy in the Workplace Act prohibits employers from taking action against employees because they lawfully used cannabis **off the premises during nonworking hours.**

**Q. Can I be fired or disciplined for using or possessing cannabis at work?**

**Yes.** Employers can still have “**reasonable zero tolerance or drug free workplace policies** on drug testing, smoking, storage, or use of cannabis in the workplace,” as long as it’s used in a nondiscriminatory manner.

# Cannabis and the Workplace

## How does cannabis impact my ability to get or keep a job?

**Q. Can employers still drug test and fire me for a positive cannabis test?**

**Yes!** Employers can still conduct drug tests, including random drug testing, under a “reasonable” drug free workplace policy. **But you cannot be fired for a positive cannabis drug test ALONE.** The employer would also have to consider a person to be “impaired” or “under the influence,” and allow an employee to contest it.

**Q. Does my employer have to give me an accommodation for medical cannabis use?**

**Potentially** under Illinois law, but **federal law has no protection** since cannabis is still considered illegal on the federal level.

# Cannabis and the Workplace

## How does cannabis impact my ability to get or keep a job?

**Q. Do I have to tell an employer about past cannabis arrests or convictions if they have been expunged or sealed?**

- **Not for most jobs with private or public employers.**
- The Illinois Human Rights Act prohibits certain employers from using or inquiring about records of arrests not leading to convictions, juvenile offenses and any expunged or sealed arrest and conviction records.
- There are some employer exceptions, such as law enforcement.





# **Cannabis Legalization & IMMIGRATION LAWS**

# Cannabis and Immigration

## What are the consequences of cannabis for non-citizens?

**Cannabis is still considered an illegal drug under federal law!**

People who are not citizens of the United States – **who admit to using or who benefit financially from the cannabis industry** – *even in states where cannabis is legal* – can be:

- ☐ **Denied entry** to the United States
- ☐ **Denied applications** for naturalization or permanent residency
- ☐ **Subjected to detention** without the possibility for a bond
- ☐ **Possibly deported**

# Cannabis and Immigration

## What are the consequences of cannabis for non-citizens?

**What to never do without consulting with a trusted immigration attorney.**

- ☐ **Do not obtain** a medical cannabis card.
- ☐ **Do not carry or travel** with cannabis or a medical cannabis card.
- ☐ **Do not admit** to an immigration officer or consular official that you have ever possessed or used cannabis – even for medical purposes.
- ☐ **Do not travel outside the country** if you have used or worked in the cannabis industry, as you may be denied entry upon return.



# **Cannabis Legalization & HOUSING LAWS**



# Cannabis & Federally Subsidized Housing

## Can I use or possess cannabis?

**Cannabis is still considered an illegal drug under federal law.**

You **cannot** use or possess cannabis in federally subsidized housing (such as public housing or Section 8) – it could lead to **eviction or subsidy termination** if you violate those rules.

**Even guests can't use or possess** on the property – it could risk eviction or subsidy termination!

# Cannabis & Private Housing

## Can I use or possess cannabis?

Private leases can limit the possession or use of cannabis inside a unit.

Breaking the lease could **lead to eviction!**

Renters cannot possess or use cannabis in their residence if licensed childcare, foster care, or similar social services are **conducted on the premises.**

Renters with a medical cannabis card **can be limited from smoking cannabis but cannot be prohibited from using** cannabis in other ways.

## There are many different opportunities in the cannabis industry -



### Types of Jobs in the Industry

- Craft Grower
- Cultivation Center
- Infuser, Processing, Transporting or Dispensing Organizations



### Licensed by State Agency

All employees and agents (must be 21) have to be licensed by either (1) the Department of Agriculture, or (2) the Department of Financial & Professional Regulation



### Careers in Cannabis Certificate

Work with, study, and grow live cannabis plants; learn best business practices, professional responsibility & legal compliance in the cannabis industry (must be at least 18)

## Working in the Cannabis Industry

From Illegal to Profit Generating – How to Take Part in the New Market

# Working in the Cannabis Industry:

## How Past Conviction Records Impact Licensing



### License Applications Require Fingerprint-Based Background Checks

- Felony or misdemeanor convictions are not automatically disqualifying
- The Department of Agriculture or Department of Financial & Professional Regulation will consider mitigating factors or evidence of rehabilitation.
- Agencies can NOT consider any of the following:
  - Arrests that did not result in charges or cases that were dismissed
  - Arrests or convictions ordered expunged or sealed
  - Juvenile records (or adjudications)



# Working in the Cannabis Industry:

## How Past Conviction Records Impact Licensing



### Examples of mitigating factors used in licensing decisions

- Length of time since conviction (5 years from felony, 3 years since release from prison)
- Age at the time of the criminal offense
- Present fitness and professional character
- Whether sentence was completed satisfactorily or received a Certificate of Good Conduct

# People may be eligible for free legal expungement services – opportunity to consult with an attorney

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- Call **855-963-9532** to register over the phone.

## After today's training

Take the next steps to see if an Illinois cannabis case is eligible for expungement!

## **Post-Training Polls**

**1. Did today's training increase your knowledge about cannabis expungement?**

**2. Did today's training make you more aware of legal resources for cannabis expungement?**

## Contact Equip for Equality if you have questions or need assistance on disability issues:

- **Expungement – Sophia Lau** – [sophia@equipforequality.org](mailto:sophia@equipforequality.org)
- **Re-entry – Kelsey Burgess** – [kelsey@equipforequality.org](mailto:kelsey@equipforequality.org)
- **All other issues and future trainings – Barry Taylor** – [barryt@equipforequality.org](mailto:barryt@equipforequality.org)

## Assistance from Equip for Equality

# QUESTIONS?