

Dazed and Confused: The CBD Conundrum in the Cornhusker State

by Ashley H. Connell

When it comes to the legality of marijuana in Nebraska, things are a bit *bazier* than you might think. For now, marijuana is still illegal under federal law. However, marijuana use is becoming more widespread and accepted, particularly for medicinal purposes. In fact, a majority of states have said it's "alright, alright, alright," and have passed laws permitting the manufacture, distribution, and use of medicinal and/or recreational cannabis. Even in states, such as Nebraska, that have not legalized marijuana for any purpose, there is an increased interest in and consumption of CBD products for medicinal purposes.

Moreover, common drug testing mechanisms for marijuana do not determine current impairment and may theoretically result in false positives due to CBD use. Consequently, courts are becoming more scrutinous of drug testing for marijuana and its derivatives, particularly when the employee has a disability and has disclosed marijuana or CBD use for medicinal

purposes. Specifically, courts are revisiting the question of whether an employer must provide an accommodation for off-the-job use of CBD products under the Americans with Disabilities Act (ADA), which results in a positive result on a drug screening.

In this article, we explore the legal foundation to this conundrum and how recent case law and proposed reform will add to the complexity surrounding cannabis use and an employer's rights and responsibilities.

Legality of Cannabis: Federal Law

Generally

The federal Controlled Substances Act places all controlled substances into one of five schedules.¹ The schedule placement is based on the substance's medical use, potential for abuse, and safety or dependence liability.² Schedule placement is not based on a controlled substance's perceived or relative danger but is set based on these statutory criteria.³

Under the Controlled Substances Act, marijuana is classified as a Schedule I drug.⁴ The term "marijuana" includes "all parts of the plant *Cannabis sativa*," and covers all cannabis varieties.⁵ However, the Agriculture Improvement Act of 2018 (also known as the 2018 Farm Bill) amended the Controlled Substances Act to exclude "industrial hemp" from the statutory definition of marijuana, thereby decriminalizing and removing industrial hemp from the list of federally controlled substances.⁶ Industrial hemp is defined as containing less than 0.3 percent of delta-9 tetrahydrocannabinol on a dry weight basis.⁷ Delta-9-tetrahydrocannabinol (THC) is the main ingredient in the *Cannabis sativa* plant that produces the psychoactive effect or "high" from marijuana use.

Ashley H. Connell



Ashley Connell is an attorney with Woods Aitken LLP. She represents public and private employers in all areas of labor and employment law, focusing on preventative assistance and counseling. Ashley assists and advises clients in developing HR policies; investigating discrimination, harassment and retaliation claims; and other employment issues. She received her J.D. from the University of

Nebraska College of Law.



THE CBD CONUNDRUM IN THE CORNHUSKER STATE

Cannabidiol (CBD) is a non-psychoactive compound found in the cannabis plant. CBD consumption has rapidly increased since 2018 and is available in many consumer products (e.g., lotions, oils, patches, food, capsules, cosmetics, etc.). The primary issue with CBD products is the lack of regulation and labeling guidelines.⁸ Many CBD products are marketed and sold under the umbrella of industrial hemp (i.e., containing less than 0.3% of THC). However, CBD may contain higher levels of THC and, therefore, still be illegal under federal law.⁹

For example, in April 2021, the Federal Drug Administration (FDA) released its findings from a small marketplace sampling and testing study of CBD.¹⁰ The FDA found that fewer than half (45%) of the products tested contained CBD at concentrations within $\pm 20\%$ of their claimed label amount.¹¹ Nineteen percent of products labeled as “THC-free” or “broad-spectrum extract” (i.e., may contain trace amounts of THC) contained quantifiable amounts of THC.¹² Therefore, while the sale and use of industrial hemp or CBD products that do not contain more than 0.3% THC may be permissible under federal law, consumers cannot currently guarantee the content (i.e., CBD concentration and percentage of THC) of the CBD products that they are purchasing.

The Federal Food, Drug, and Cosmetic Act (FD&C) authorizes oversight by the FDA to set standards for food, drugs, medical devices, and cosmetics. The FDA has not promulgated specific regulations on the manufacture, sale, and labeling standards of CBD products. Moreover, despite its general position that many CBD products on the market violate the FD&C Act, the FDA has only issued periodic warning letters and taken minimal enforcement action beyond those warnings.

In January 2023, the FDA released nonbinding recommendations for obtaining FDA approval of drugs containing cannabis and cannabis-derived compounds.¹³ The FDA reiterated the general rule that, “[t]o be legally marketed in interstate commerce, drugs that are not biological products generally must either (1) receive premarket approval by FDA through the new drug application (NDA) or abbreviated new drug application (ANDA) process, or (2) for certain over-the-counter nonprescription drugs, meet the requirements in the FD&C Act for marketing without an approved NDA or ANDA.”¹⁴ The FDA explained that sponsors for NDAs “are expected to show that they can consistently manufacture a quality product . . . and must submit sufficient information to demonstrate the identity, quality, purity, and potency or strength of the investigational drug.”¹⁵

On January 26, 2023, the FDA announced that, with respect to foods and dietary supplements, “a new regulatory pathway for CBD is needed that balances individuals’ desire for access to CBD products with the regulatory oversight needed to manage risks.”¹⁶ The FDA also denied three citizen petitions, asking the agency to conduct rulemaking to per-

mit CBD products to be marketed as dietary supplements.¹⁷ Nevertheless, without additional oversight and enforcement efforts, consumers purchasing CBD products remain vulnerable to mislabeling.

Federal Contractors and Safety Sensitive Positions

Another potential source of conflict for protecting off duty use of marijuana or CBD is the federal Drug-Free Workplace Act (DFWA), which enumerates specific requirements for recipients of federal contracts and federal grants.¹⁸ Under the DFWA, covered employers must agree to provide a drug-free workplace by: (1) providing notice that drug use, possession, and distribution is prohibited; (2) establishing a drug free awareness program; (3) requiring employees to provide notice to the employer and the government agency of any criminal drug conviction occurring in the workplace; (4) imposing sanctions on convicted employees or require participation in a substance abuse or rehabilitation program; and (5) otherwise making a good-faith effort to continue to maintain a drug-free workplace.¹⁹ Notably, the DFWA does not require drug testing to demonstrate compliance.

The U.S. Department of Transportation (DOT) regulates drug and alcohol testing for certain safety-sensitive positions, such as pilots, school bus drivers, truck drivers, train engineers, transit vehicle operators, aircraft maintenance personnel, fire-armed transit security personnel, ship captains, and pipeline emergency response personnel.²⁰ The DOT prohibits the use of Schedule I drugs, including marijuana, for any reason, even if permitted under state law.²¹

On February 18, 2020, the DOT affirmed that use of CBD is not a legitimate medical explanation for a laboratory-confirmed marijuana positive result.²² The DOT also acknowledged the lack of federal oversight from the FDA and inaccuracy of CBD labeling.²³ The DOT verified that, as CBD use could lead to a positive drug test result, DOT-regulated safety-sensitive employees should exercise caution when considering whether to use CBD products.²⁴

Biden Administration’s Plan for Marijuana Reform

The U.S. Drug Enforcement Administration has repeatedly denied petitions to reschedule marijuana under the Controlled Substances Act. However, in October 2022, the Biden Administration formally announced a three-step plan for marijuana reform.²⁵ First, President Biden announced a pardon all prior Federal offenses of simple possession of marijuana. Second, President Biden requested state governors do the same with respect to state offenses. Finally, President Biden directed the Secretary of Health and Human Services and the Attorney General to initiate the administrative pro-

THE CBD CONUNDRUM IN THE CORNHUSKER STATE

cess to review marijuana as a Schedule I controlled substance. Therefore, the issue is not “if” but “when” marijuana will be reclassified at the federal level and criminalization becomes a state-by-state issue.

Legality of Cannabis: State Law

National Landscape

To date, 21 states and the District of Columbia have legalized recreational use of marijuana.²⁶ The weight of recreational marijuana that a person may legally possess varies by state. Importantly, however, no state law forces employers to tolerate on-the-job use or permit employees to work while impaired by marijuana.

Many states’ unfair employment practices laws generally find it unlawful to prohibit legal, off-duty activities as a condition of employment. Several states—including Maine, Nevada, New Jersey, New York, Rhode Island, and Virginia—specifically provide employment protections for off-duty use of recreational marijuana.²⁷ However, since marijuana is illegal under federal law, some jurisdictions—even those that permit marijuana use on a state level—have found that off-duty marijuana use can be prohibited by an employer.²⁸

The medical use of cannabis is legalized in some form by 38 states and the District of Columbia.²⁹ State laws on medicinal marijuana vary greatly, particularly with respect to the protections afforded to medical cannabis users in the workplace. For example, many states prohibit employers from taking adverse employment action against an individual based solely on their medical cardholder status. Others, such as New Jersey, require employers to demonstrate physical signs or other evidence of impairment, in addition to a positive drug test.³⁰ Conversely, most states provide exceptions for safety sensitive positions, allow employers to establish and

enforce a drug testing policy (without exception for medicinal marijuana), and do not permit on-the-job use of medical marijuana or impairment.

Get the representation you can trust to protect your career.

NEBRASKA
State Bar Association

The ONLY Lawyers Professional Liability Insurance endorsed by NSBA

You’ve probably witnessed both good and not so good legal representation throughout your career as a lawyer.

So wouldn’t you want the best representing you to protect your career, reputation and assets against a professional liability lawsuit?

You can trust the only NSBA-endorsed Professional Liability Insurance Program to understand your needs! Advantages include:

- Risk Management resources exclusively for lawyers
- Flexible benefit amounts and deductibles tailored to your firm
- Covers a wide range of professional services
- Applying is easy! Use our application or provide yours*

It’s easy to sign up today:



NEBarinsurance.com/lpl



1-800-328-4671

*Call us at 1-800-328-4671 to ask about our quick quote option. Providing another insurance company’s application, along with some additional information we may request, will typically provide enough information to receive a formal proposal with a quote.

Program Administered by AMBA Administrators, Inc.
In CA d/b/a Association Member Benefits & Insurance Agency
CA Insurance License #0196562
AR Insurance License #100114462



THE CBD CONUNDRUM IN THE CORNHUSKER STATE

Nebraska State Law

Under Nebraska law, the possession of marijuana remains illegal.³¹ Similar to the 2018 Farm Bill, the Nebraska Hemp Farming Act removed hemp (i.e., containing less than 0.3% THC) from the definition of marijuana under Nebraska's controlled substances laws and recognized the cannabis plant as a viable agricultural commodity.³² Businesses must also comply with licensing, manufacturing, testing, and delivery requirements.³³

In 2023, lawmakers have introduced several cannabis-related bills. Notably, Legislative Bill 22 aims to decriminalize the use and possession of marijuana.³⁴ Legislative Bill 588, referred to as the Medicinal Cannabis Act, seeks to legalize the use of cannabis for qualifying medical conditions.³⁵ As introduced, LB588 would not affect an employer's right to restrict the use of cannabis by employees or require an employer to accommodate the medicinal use of cannabis. Neither bill has been voted out of the Judiciary Committee to the House Floor.

Adding Chaos to the Confusion

Testing for Marijuana

One of the major challenges for employers is that, unlike testing for alcohol, the most common drug testing methods for marijuana do not determine current impairment. Drug testing methods do not determine whether an employee is under the influence of marijuana, duration since last use, nor the frequency or quantity of use. Testing for marijuana may detect use within the last 30 days and depends on a variety of factors such as usage duration, frequency, potency/dosage, rate of metabolism, body fat, sex, and more. Recognizing this limitation with testing, states have begun to prohibit employers from taking adverse action against an employee solely because they have tested positive for THC metabolites.³⁶

Generally, industrial hemp or CBD with low concentrations of THC should not result in a positive drug test. However, there is still a risk that CBD products contain higher levels of THC than advertised during sale. Likewise, as THC is a lipid-soluble chemical that binds to fat in the body, prolonged, frequent, and substantial use of CBD products could build up THC-levels in the body.

Providing Accommodations

The ADA prohibits discrimination against qualified individuals with disabilities and requires employers to provide reasonable accommodations to enable qualified individuals to perform the essential functions of their jobs, unless to do so would impose an undue hardship.³⁷ However, "for the purposes of [the ADA], a qualified individual with a disability shall not include any employee or applicant who is currently engaging in the illegal use of drugs."³⁸ As marijuana is still a Schedule I

controlled substance, courts had long held that the ADA does not require an accommodation of its use.³⁹

However, in light of the increased scientific research into cannabis's medicinal utility, a better understanding that testing "positive" is not the equivalent of being "impaired," and removal of industrial hemp from the classification as a controlled substance, many courts are calling this standard into question. For example, in *Huber v. Blue Cross & Blue Shield of Florida, Inc.*,⁴⁰ an employee reported hemiplegic migraines that caused one-sided weakness and total impairment for the duration of the migraine attack, which typically lasted three days. After other medication failed, the employee's doctor recommended hemp-based CBD oil to help manage her migraines.⁴¹ While using the CBD oil, the employee's work performance improved. For example, she received a perfect score on her performance evaluation, improved her attendance, and received a promotion. After nearly three years of using the CBD oil without issue, her employer, Blue Cross & Blue Shield of Florida (BCBS), notified the employee's department that, due to federal contract requirements, they would be required to take drug tests but that no one would lose their jobs because of the results. Notably, due to her promotion, the employee was not accessing programs or performing work related to the federal contract.⁴²

Shortly thereafter, the employee's manager notified her that she had to take a drug test. The employee reminded her manager of her disability and the medications that she took, including the CBD oil. The employee's supervisor told her to "play along," that she would not lose her job based on the results of the drug screen, and that her doctor's recommendation to use CBD oil for her disability would alleviate any concerns with a positive drug test. The employee complied with the request and submitted to the drug test.⁴³

After the employee's drug screen came back positive, BCBS's Employee Relations Consultant notified the employee that her job was at risk. The employee immediately sent a copy of her doctor's recommendation for the CBD oil and a letter from her doctor regarding the effectiveness that CBD oil has had in managing her disability. The Employee Relations Consultant said the information provided was very thorough and ensured her that her job was safe. A few weeks later, BCBS terminated the employee due to the positive drug test.⁴⁴

On motion for summary judgment, the federal district court first determined that a fact issue existed regarding whether the employee was qualified for the job within the meaning of the ADA.⁴⁵ While BCBS contended the employee was working pursuant to a government contract which required her to pass a drug test, the employee presented evidence that (i) she did not access programs nor performed work related to the government contract, (ii) BCBS's initial assurances that her job was safe suggested that they were also under the impression that


THE CBD CONUNDRUM IN THE CORNHUSKER STATE

passing the drug test was not a requirement of the position, and (iii) her work performance improved since she started using the CBD.⁴⁶ The court highlighted that BCBS failed to provide a job description or the specific government contract upon which it relied.⁴⁷ While BCBS provided a policy that prohibited “us[ing] or be[ing] under the influence of illegal drugs or non-prescribed controlled substances when working,” in the court’s assessment, the policy did not establish that passing a drug test was a requirement of being “qualified” for the position.⁴⁸ Finally, the court also emphasized that, although the employee had a positive drug test result, this did not mean she had been under the influence at work as prohibited by the policy.⁴⁹

Next, the federal district court found that the employee’s accommodation request to be allowed to use CBD oil to manage her migraines as recommended by her doctor, “necessarily implic[ed] that a false positive caused by the CBD oil would not be held against her.”⁵⁰ Thus, the court denied BCBS’s motion for summary judgment and held that a factual issue existed as to whether it would have been reasonable for BCBS to account for and excuse a false positive drug screening.⁵¹

Conclusion

As demonstrated by *Huber*, the legalization of industrial hemp and increased acceptance of CBD products for medicinal purposes will make defending terminations for positive drug screenings more difficult. Employers need to prepare for how to address a possible false-positive test due to CBD use, particularly when the employee has a documented disability and has been recommended CBD by their physician.⁵²

With conflicting state and federal laws, largely unregulated product distribution, and ineffective testing mechanisms, it’s no wonder employers are left feeling dazed and confused. While there is not a foreseeable solution to the CBD Conundrum in the Cornhusker State, “it’d be a lot cooler if [we] did.”⁵³ 

Endnotes

- ¹ 21 U.S.C. §§ 801-971.
- ² 21 U.S.C. § 812. Paradoxically, marijuana is classified as a Schedule I drug under the Controlled Substances Act, indicating that it has no currently accepted medical use, a lack of accepted safety for use under medical supervision, and a high potential for abuse. Yet, the Federal Drug Administration has approved the following drugs: Marinol (THC), Syndros (THC), Cesamet (nabilone), and Epidiolex (cannabidiol).
- ³ 21 U.S.C. § 812(b).
- ⁴ 21 U.S.C. § 812(b)(1)(A)-(C).
- ⁵ 21 U.S.C. § 802(16).
- ⁶ Agriculture Improvement Act of 2018, Pub. L. No. 115-334, 132 Stat. 4490. The Agriculture Improvement Act of 2018 legalized industrial hemp as an agricultural commodity and authorizes hemp production according to a state plan approved by the United States Department of Agriculture (USDA).
- ⁷ Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 10113, 132 Stat. 4490, 4500 (codified at 7 U.S.C. § 1639o(1)).
- ⁸ See U.S. FOOD & DRUG ADMIN., WHAT YOU NEED TO

KNOW (AND WHAT WE’RE WORKING TO FIND OUT) ABOUT PRODUCTS CONTAINING CANNABIS OR CANNABIS-DERIVED COMPOUNDS, INCLUDING CBD (last updated Mar. 22, 2021), <https://www.fda.gov/consumers/consumer-updates/what-you-need-know-and-what-were-working-find-out-about-products-containing-cannabis-or-cannabis>.

- ⁹ U.S. FOOD & DRUG ADMIN., BETTER DATA FOR A BETTER UNDERSTANDING OF THE USE AND SAFETY PROFILE ON CANNABIDIOL (CBD) PRODUCTS (last updated January 8, 2021), <https://www.fda.gov/news-events/fda-voices/better-data-better-understanding-use-and-safety-profile-cannabidiol-cbd-products>.
- ¹⁰ Geoffrey A. Dubrow et al., *A Survey of Cannabinoids and Toxic Elements in Hemp-Derived Products from the United States Marketplace*, 97 J. FOOD COMPOSITION & ANALYSIS 103800 (2021).
- ¹¹ *Id.*
- ¹² *Id.*
- ¹³ U.S. FOOD & DRUG ADMIN., CANNABIS AND CANNABIS-DERIVED COMPOUNDS: QUALITY CONSIDERATIONS FOR CLINICAL RESEARCH GUIDANCE FOR INDUSTRY (last updated January 24, 2023), <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/cannabis-and-cannabis-derived-compounds-quality-considerations-clinical-research-guidance-industry>.
- ¹⁴ *Id.*
- ¹⁵ In addition, on January 19, 2021, the USDA published a final rule regarding establishment of a domestic hemp production program. 7 C.F.R. Pt. 990. The final rule required all hemp testing laboratories to be registered with the DEA in accordance with the Controlled Substances Act. 21 U.S.C. § 823(f). However, the USDA has delayed this requirement until December 31, 2023.



Landex Research, Inc.

PROBATE RESEARCH



**Missing and Unknown Heirs
Located
with No Expense to the Estate**

Domestic and International Service for:
Courts
Lawyers
Trust Officers
Administrators/Executors

1345 Wiley Road, Suite 121, Schaumburg, Illinois 60173
Telephone: 847-519-3600 Fax: 800-946-6990
Toll-Free: 800-844-6778
www.landexresearch.com

THE CBD CONUNDRUM IN THE CORNHUSKER STATE

- ¹⁶ U.S. FOOD & DRUG ADMIN., FDA CONCLUDES THAT EXISTING REGULATORY FRAMEWORKS FOR FOODS AND SUPPLEMENTS ARE NOT APPROPRIATE FOR CANNABIDIOL, WILL WORK WITH CONGRESS ON A NEW WAY FORWARD (last updated January 26, 2023), <https://www.fda.gov/news-events/press-announcements/fda-concludes-existing-regulatory-frameworks-foods-and-supplements-are-not-appropriate-cannabidiol>.
- ¹⁷ *Id.*
- ¹⁸ 41 U.S.C. § 8101-8106.
- ¹⁹ See *Curry v. MillerCoors, Inc.*, 2013 WL 4494307, *3 (D. Colo. Aug. 21, 2013) (finding employer may rely on a drug free workplace policy to terminate employee based on a positive drug test due to medicinal marijuana use as non-discriminatory reason for termination); *Carlson v. Charter Communications, LLC*, 2017 WL 3473316, *2-*3 (D. Mont. Aug. 11, 2017) (finding actual conflict between Montana state law and federal law and recognizing employer “could not simultaneously permit marijuana use consistent with the [state statute] and at the same time ensure a drug-free workplace as defined under the DFWA and as required by law in order to maintain its federal contracts.”), *aff’d*, 742 F. App’x 344 (9th Cir. 2018). But see *Noffsinger v. SSC Nanticoke Operating Company, LLC*, 338 F. Supp. 3d 78 (D. Conn. 2018) (finding DFWA did not require drug testing and did not prohibit federal contractors from employing someone who used illegal drugs outside of the workplace or used medical marijuana outside the workplace in accordance with a program approved by state law); see also *Ross v. RagingWire Telecommunications, Inc.*, 174 P.3d 200, 213 (Cal. 2008) (Kennard, J., concurring and dissenting).
- ²⁰ U.S. DEP’T OF TRANSP., DOT OFFICE OF DRUG AND ALCOHOL POLICY AND COMPLIANCE NOTICE (last updated February 18, 2020), <https://www.transportation.gov/odapc/cbd-notice>.
- ²¹ *Id.*
- ²² *Id.*
- ²³ *Id.*
- ²⁴ *Id.*
- ²⁵ *Statement from President Biden on Marijuana Reform*, WHITE HOUSE (October 6, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/10/06/statement-from-president-biden-on-marijuana-reform/>.
- ²⁶ The following states have legalized recreational marijuana: Alaska, Arizona, California, Colorado, Connecticut, Illinois, Maine, Massachusetts, Maryland, Michigan, Missouri, Montana, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, and Washington.
- ²⁷ In 2022, California passed Assembly Bill 2188 to prohibit discriminating against any person based upon their use of cannabis off-the-job and away from the workplace or upon an employer-required drug screening test that has found the person to have nonpsychoactive cannabis metabolites in their urine, hair, or bodily fluids. AB2188 amends the California Fair Employment and Housing Act and goes into effect January 1, 2024.
- ²⁸ See, e.g., *Coats v. Dish Network*, 350 P.3d 849 (Colo. 2015) (interpreting the Colorado Unfair Employment Practices Act, the Colorado Supreme Court held that, since marijuana is illegal on the federal level, an employer may fire an employee for off-the-clock use of medicinal marijuana use, even when its use was legal under state law); *Swaw v. Safeway, Inc.*, 2015 WL 7431106, *1 (W.D. Wash. Nov. 20, 2015) (“Washington law does not require employers to accommodate the use of medical marijuana where they have a drug-free workplace, even if medical marijuana is being used off site to treat an employee’s disability, and the use of marijuana for medical purposes remains unlawful under federal law.”).
- ²⁹ The following states have legalized medical marijuana: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Utah, Vermont, Virginia, Washington, and West Virginia.
- ³⁰ N.J. STAT. ANN. § 24:61-52. New Jersey requires that, to demonstrate physical signs or other evidence of cannabis impairment, employers should: (1) designate and train someone to make determinations of suspected cannabis use; and (2) utilize a uniform Reasonable Suspicion Observation Report that documents the behavior, physical signs, and evidence that supports an employer’s reasonable suspicion determination. *Id.*
- ³¹ NEB. REV. STAT. §§ 28-405, 28-416.
- ³² NEB. REV. STAT. §§ 2-501 to 2-519; NEB. REV. STAT. § 28-401(13), (14)(c). “Hemp means the plant *Cannabis sativa* L. and any part of such plant, including the viable seeds of such plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.” NEB. REV. STAT. § 2-503(13).
- ³³ NEB. REV. STAT. §§ 2-501 to 2-519.
- ³⁴ 2023 Neb. Laws. LB22.
- ³⁵ 2023 Neb. Laws. LB588.
- ³⁶ See *supra* notes 24 and 27.
- ³⁷ 42 U.S.C. § 12112.
- ³⁸ 42 U.S.C. § 12114(a).
- ³⁹ See, e.g., *Steele v. Stallion Rockies Ltd.*, 106 F. Supp. 3d 1205 (D. Colo. 2015) (medicinal marijuana use not protected under federal or state anti-discrimination laws protecting disabled individuals); *Lambdin v. Marriott Resorts Hosp. Corp.*, No. CV 16-00004 HG-KJM, 2017 WL 4079718, at *10 (D. Haw. Sept. 14, 2017) (“Defendant may prohibit the use of illegal drugs by its employees.”); see also *James v. City of Costa Mesa*, 700 F.3d 394, 398-404 (9th Cir. 2012) (interpreting another section of the statute but concluding that doctor-recommended marijuana use permitted by California state law, but prohibited by federal law, is an illegal use of drugs for purposes of the ADA).
- ⁴⁰ *Huber v. Blue Cross & Blue Shield of Florida, Inc.*, CV No: 20-3059, 2022 WL 1528564, at *1 (E.D. La. May 13, 2022).
- ⁴¹ *Id.* Notably, the court described the product as “non-psychoactive hemp-based CBD oil,” but it did not describe the percentage of THC. *Id.*
- ⁴² *Id.*
- ⁴³ *Id.*
- ⁴⁴ *Id.*
- ⁴⁵ *Id.* at *3.
- ⁴⁶ *Id.*
- ⁴⁷ *Id.*
- ⁴⁸ *Id.*
- ⁴⁹ *Id.*
- ⁵⁰ *Id.* at *5.
- ⁵¹ *Id.*
- ⁵² Compare *Huber v. Blue Cross & Blue Shield of Florida, Inc.*, CV No: 20-3059, 2022 WL 1528564, at *1 (E.D. La. May 13, 2022), with *Anderson v. Diamondback Inv. Grp., LLC*, No. 1:21CV778, 2023 WL 2503308, at *1 (M.D. N.C. March 14, 2023) (finding plaintiff failed to establish that she was an individual with a disability), appeal filed.
- ⁵³ *Dazed and Confused* (Richard Linklater dir., 1993).