

LEGAL

4 MORE STATES GIVE GREEN LIGHT TO LEGALIZE RECREATIONAL MARIJUANA



Recreational marijuana has been legalized in Arizona, Montana, New Jersey and South Dakota, as ballot initiatives legalizing marijuana have passed in all four states. This brings the tally up to 15 states plus Washington D.C. that permit recreational marijuana, and legalization efforts are also gaining steam in high-population states such as New York, Pennsylvania, and Connecticut.

With 1/3 of Americans now living in states where recreational marijuana will be legal for anyone 21 years of age or older, marketing for legal recreational marijuana presents a new and interesting opportunity for agencies, but legal risks and restrictions should be taken into account before agreeing to prepare and run marketing materials for recreational marijuana clients.

Marijuana Regulations in the USA

The legality of marijuana is a complicated issue in the United States. Marijuana remains a Schedule 1 controlled substance under the federal Controlled Substance Act, and it is therefore a federal crime to grow, sell or possess marijuana (even where legal under state law). For this reason, major banks typically refuse to deposit cash from legal marijuana sales, and credit card processors have declined to process transactions for marijuana companies. In

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addition, television networks, social media networks, and many major internet publishers have consistently refused to accept advertising for marijuana.

Nonetheless, the marijuana industry has forged forward in light of lax federal enforcement. The Obama administration maintained a formal policy of non-enforcement in states where marijuana was legal, and although the Trump administration reversed this policy on paper, the federal government under President Trump has largely left recreational marijuana alone when sold in accordance with state law. This is unlikely to change under the new Biden administration, especially given efforts in the House of Representatives to legalize marijuana on the federal level.

The legalization of marijuana in New Jersey is particularly noteworthy, as it may be a harbinger of things to come for legalization efforts in the tri-state area and beyond. Marijuana will now be easily accessible (albeit illegally) to residents of New York City, who are just over the bridge from New Jersey, and with ballooning budget deficits due to the COVID-19 pandemic and the tax revenue from marijuana sales a tempting option, the governors of New York, Pennsylvania, and Connecticut have expressed a willingness to legalize recreational marijuana.

What This Means for Agencies

Keep in mind that the marijuana industries will not pop up overnight in the newly legalized states. These ballot initiatives amend each state's constitutions, but their legislatures will need to create a regulatory regime governing the licensing of dispensaries and sale of marijuana before the industry can open up.

Many states that have already legalized marijuana have implemented detailed regulations regarding the marketing and promotion of marijuana. Although these regulations vary from state to state, here are a few illustrative examples:

- There are often restrictions governing health, therapeutic, or similar claims with respect to cannabis, and some states prohibit these claims entirely due to potential negative health effects of marijuana.
- Marijuana marketing materials cannot target or primarily appeal to anyone under 21. Some states require that marketing materials only appear in media where 71.6% of users are 21+ or over, in order to minimize exposure to minors.
- Marijuana manufacturers and retailers must be licensed pursuant to state law, and in some cases must disclose their license numbers in marketing materials.
- Out-of-home advertising is often restricted, including prohibitions on marketing marijuana within 500 or 1,000 feet of schools or churches.
- Giveaways and similar promotions are often prohibited.

In addition, keep in mind that selling recreational marijuana is still illegal in 35 states. Accordingly, digital ads should be precisely geo-targeted to ensure that they are not displayed to users in those states.

For many agencies, the marijuana industry is one that can no longer be ignored, as the opportunities to engage marijuana clients will continue to grow as more states legalize recreational marijuana. However, the risks remain due to the complicated legal framework governing marijuana on the state and federal level, so agencies should consult experienced legal counsel before moving forward with marijuana-related marketing campaigns.