



ADR SERVICES, INC. PRESENTS



CANNABIS CROSSOVER

HOW CANNABIS ISSUES CAN CROP UP ONTO CIVIL COUNSEL'S CASELOAD

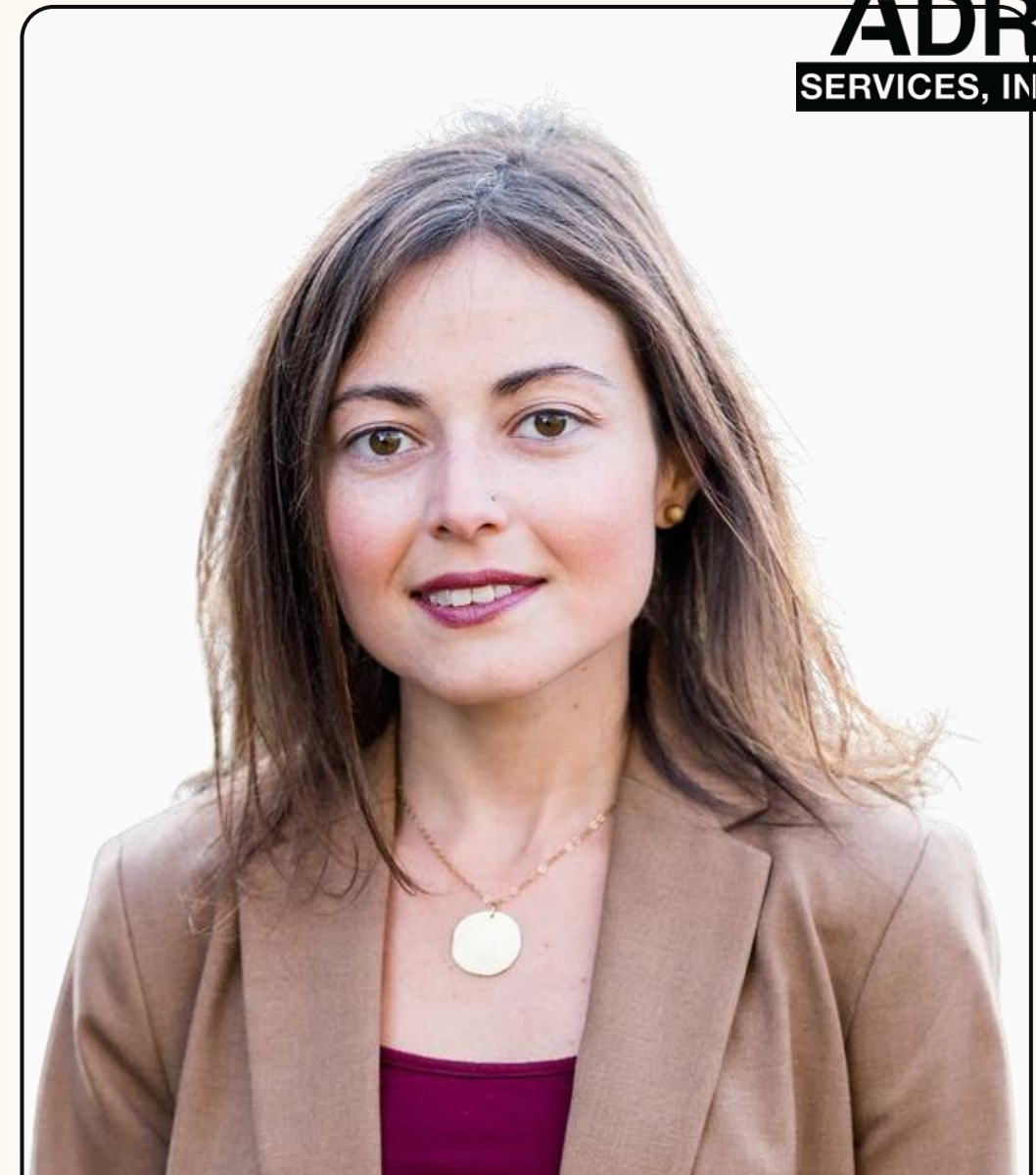
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MAY 22, 2024 | 12 - 1 PM

SPEAKERS



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**LAUREN
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PART I

General update on status of cannabis law and the cannabis industry in the U.S., covering:



FEDERAL CANNABIS LAWS

CALIFORNIA CANNABIS LAWS

VIABILITY OF THE CALIFORNIA
CANNABIS INDUSTRY

PART II

We'll address how cannabis issues can **crop** up for civil counsel in:

EMPLOYMENT LAW

TORTS

REAL PROPERTY

LANDLORD/TENANT

ENVIRONMENTAL LAW

CONTRACTS

CORPORATE LAW



FEDERAL LAW UPDATE

STILL CATEGORIZED UNDER
SCHEDULE I OF THE CONTROLLED
SUBSTANCES ACT (CSA)

Schedule I: "No currently accepted medical use and a high potential for abuse."

THIS MEANS IT IS STILL ILLEGAL UNDER FEDERAL LAW TO USE, POSSESS AND SELL MARIJUANA.

BUT CONGRESSIONAL LEGISLATION PROHIBITS PROSECUTION OF INDIVIDUALS AND BUSINESSES IF THERE IS COMPLIANCE WITH STATE MEDICAL CANNABIS LAWS (FOR THE MOST PART).

RECENTLY, DEA & DOJ ANNOUNCED INTENT TO RECLASSIFY CANNABIS TO SCHEDULE III

Schedule III: “A drug, substance, or chemical that has less potential for abuse than a schedule I or II substance; that has a currently accepted medical use; and that has low or moderate risk of dependence if abused.”

- **The change will require many months to go through rulemaking process**
- **Reclassification will lower some potential criminal penalties but would not alter marijuana-specific mandatory minimums**
- **Biggest impact on cannabis industry = Section 280E the IRS code**

**FEDERAL ILLEGALITY
NEVERTHELESS STILL HAS
SIGNIFICANT IMPACTS ON
THE CANNABIS INDUSTRY,
INCLUDING:**

**NO
INTERSTATE
SALES**

**BANKING
CHALLENGES**

**REGULATORY
LIMITATIONS
ON RESEARCH
AND
DEVELOPMENT**

**NO
BANKRUPTCY
PROTECTIONS**

CALIFORNIA LAW UPDATE

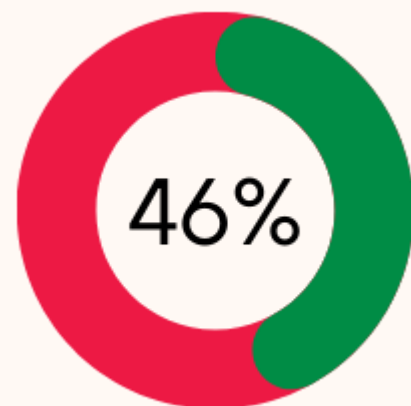
MAUCRSA (B&P Code § 26000 *et seq.*) provides statutory framework for licensing, oversight and enforcement of cannabis businesses

Health and Safety Code §§ 11357-11362.9 provides statutory framework for individual use of marijuana, with § 11362.5 (the Compassionate Use Act) governs medical marijuana

Department of Cannabis Control (DCC) is CA's regulating agency for commercial cannabis

CALIFORNIA LAW UPDATE

- **Local municipalities to decide if, where, how many, and what types of cannabis operations they will allow**
- **Businesses have to be licensed at both the state and local level**



Only 46% of cities and counties in California allow at least one type of cannabis business



CURRENT MARKET CHALLENGES

Heavy regulation, tax burdens and the illicit market threaten viability

California directing a lot of resources to enforcement:

1. UCETF (Unified Cannabis Enforcement Task Force)
2. EPIC (Eradication and Prevention of Illicit Cannabis) Task Force
3. CAPP (Cannabis Administrative Prosecutor Program)



PART II

CROSSOVER

ISSUES

EMPLOYMENT LAW

NEW 2024 FEHA RULES REGARDING EMPLOYEE USE AND TESTING

- **Cannot discriminate for marijuana use outside of work**
- **Cannot screen for consumption with urine or hair tests**
- **Cannot inquire about prior use, including criminal history**
- **Exemptions**

HYPOTHETICAL:

An employer suspects an employee is actively high on marijuana and demands that the employee provide a urine sample for drug testing.

Aware of the new FEHA regulations just discussed, the employee refuses to test and an adverse employment action ensues.

TAKE THE POLL:



Has FEHA been violated by the employer?

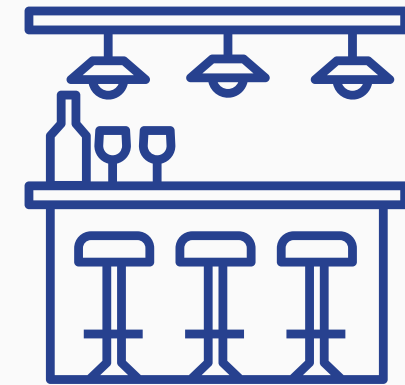
WORKPLACE SAFETY ISSUES RELATED TO CANNABIS BUSINESSES



**Need Cal OSHA
training**

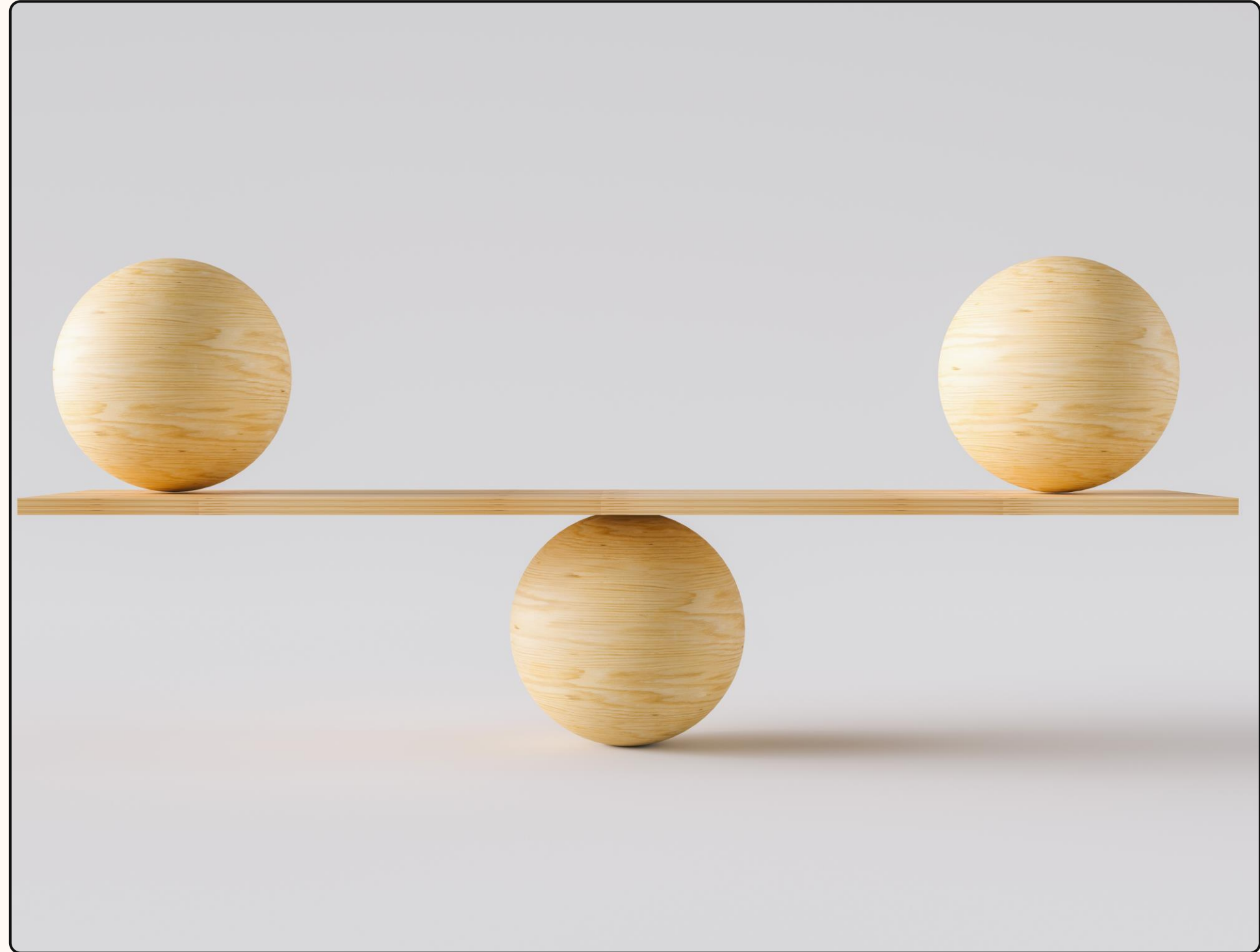


**Different risks
depending on
license type**



**Consumption
lounges have
unique safety
concerns**

TORT LAW



PRODUCT LIABILITY

- **Defective products**
- **Contaminated products**
- **Label and advertising misrepresentation**
- **Mixed-up labels**

HYPOTHETICAL:

A truck driver gets fired after testing positive for THC that he claims came from a CBD/Hemp oil he had been using that was marketed as being THC-free. He sues the maker of the oil for the loss of his employment/financial injury under RICO laws.

TAKE THE POLL:

Can the case proceed?



POLL

MORE BASES FOR TORT LIABILITY



**Second-hand
smoke injury**



**Failure to warn/
Prop. 65**



**Sales/
advertising to
minors**

And again, consumption lounges present unique tort risks....

HYPOTHETICAL:

**A 17-year old manages to purchase a THC product from a dispensary.
After ingesting the product, the minor is at-fault in a car accident
that injures a third party.**

TAKE THE POLL:

Is the dispensary liable?



POLL

REAL PROPERTY/ LANDLORD-TENANT



NUISANCE CLAIMS/RIGHT TO FARM LAW

**Hemp is protected
under Right to Farm law
(Civ. Code s. 3482.5)**

**Cannabis is not
considered a crop and,
therefore, not
protected**

HYPOTHETICAL:

The farm next door to your client's property is growing what your client believes to be cannabis, and they find the odor bothersome. However, your research reveals that the farm has valid hemp cultivation licenses from the county and state.

TAKE THE POLL:

POLL

Is your client likely to prevail on a nuisance claim?



BE CAREFUL!

**THERE ARE MANY CONSIDERATIONS AND
POTENTIAL PITFALLS FOR A LANDOWNER WHO
WISHES TO LEASE THEIR PROPERTY TO A
CANNABIS BUSINESS.**

BUT...THERE IS AN INNOCENT LANDOWNER DEFENSE!

Gov. Code §53069.4(a)(2)(E)

[A local] ordinance adopted pursuant to subparagraph (B) shall provide for a reasonable period of time for the correction or remedy of the violation prior to the imposition of administrative fines or penalties as required in subparagraph (A) if all of the following are true:

- (i) A tenant is in possession of the property that is the subject of the administrative action.
- (ii) The rental property owner or agent can provide evidence that the rental or lease agreement prohibits the commercial cannabis activity.
- (iii) The rental property owner or agent did not know the tenant was engaging in unlicensed commercial cannabis activity for which a license was required and no complaint, property inspection, or other information caused the rental property owner or agent to have actual notice of the unlicensed commercial cannabis activity.

ENVIRONMENTAL LAW

CEQA CONCERNS

- **Environmental review needed for state licensing; often for local permitting too**
- **Getting a cannabis license is a “project”**
- **Some projects may be eligible for an exemption**

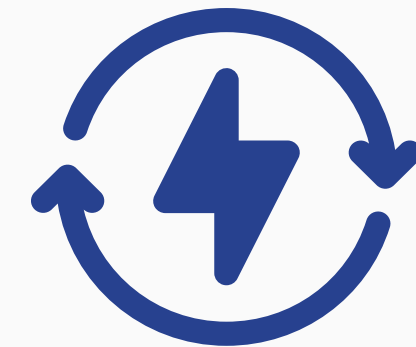
MISCELLANEOUS ENVIRONMENTAL CONSIDERATIONS



**Environmental
damage = felony**



**Water Board and
Fish & Wildlife
departments
involved**



**Regulations cover
water use,
renewable energy
and generator/
sound prohibitions**

CONTRACTS

COMMON CONTRACT/ BREACH ISSUES:

- **Product purchase & service agreements**
 - Failure to properly store or handle products
 - Failure to manufacture according to terms
 - Late or missing payments
- **Premises/land leasing agreements**
 - Failure to comply with lease terms
 - Failure to comply with local or state laws/regulations
- **Brand and IP licensing agreements**
- **Business formation/investment agreements**

CONTRACTS

UNIQUE CONSIDERATIONS

Due to federal illegality, important to pay special attention to:

- The need for confidentiality
- Contract clauses addressing ADR, forum selection and choice of law
- Having a mediator or arbitrator familiar with cannabis law issues
- Added insolvency concerns

CORPORATE/ BUSINESS LAW



BE AWARE OF...



SPECIAL LICENSING RESTRICTIONS

AND

SPECIAL DISCLOSURES REQUIREMENTS

HYPOTHETICAL:

Your client was recently appointed to the Board of Directors for his cousin's licensed cannabis company. However, he was not given any equity in the company and is not involved in the day-to-day operations of the business.

TAKE THE POLL:



POLL

Does your client need to be disclosed as an Owner to the Department of Cannabis Control?



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**QUESTIONS?
THANK YOU!**