

ASK A... **LEGAL EXPERT**

There's a lot of new legal ground to navigate — both for retailers and consumers — since the legalization of recreational cannabis in New Mexico. To help get a bearing on some aspects of cannabis law, we reached out to Yolanda Gallegos, the founder of Gallegos Legal Group, a local firm that counts cannabis among its core specialties.



What types of cases/issues have you mainly encountered since cannabis became legal in New Mexico?

FOMO (fear of missing out) currently abides among entrepreneurs and investors eager to enter the industry as producers (growers), manufacturers (extraction and infusion), retailers, and transporters. These individuals and businesses need legal guidance on 1) establishing the best form of legal entity to protect assets, 2) meeting the state's stringent regulatory requirements, and 3) navigating financing and banking issues.

How do the number of licenses to sell cannabis and taxes affect the illegal sale of the products in the state?

The state requires dispensaries to charge a 12% excise tax for adult-use cannabis sales. On top of that, consumers have to pony up gross receipts taxes of 7 to 8 percent depending on the county of their purchase. A consumer might have to pay more than \$20 in taxes on a \$100 purchase. Ouch. High cannabis prices could drive consumers to the illicit market. However, it's been reported that there are now over 100 recreational dispensaries in New Mexico as of July of this year and the State does not limit the number of dispensary licenses. As the number of retailers multiply, the possibility of market glut could drive down costs and encourage legitimate sales. However, lower recreational cannabis prices are associated with the increase in consumption by minors. The bottom line is, expensive weed can push otherwise legitimate consumers to the local dealer on Snapchat. But cheap pot makes it more accessible to minors.

Can I take New Mexico cannabis legally to a state where it's illegal, like Texas?

No; that would be "one toke over the line" too many, as the old song goes. The dangers in taking even legally-obtained cannabis from New Mexico over a state line are multifold. First, once you transport cannabis to another state, you've committed a federal crime even if that state has decriminalized marijuana. Second, if the state hasn't decriminalized marijuana, you risk being subject to that state's criminal laws. Third, even if the other state permits recreational use, the legal quantities and forms of cannabis vary in each state and legal possession in New Mexico may not make the cut in another state.

How can you still get in trouble, even though cannabis is legal?

I think it's best to think about New Mexico's decriminalization of cannabis as similar to the repeal of Prohibition in 1933—you can legally buy and consume it now, but there remain plenty of restrictions. Remember, federal law still classifies marijuana as an illegal drug, along with cocaine and heroin. The following are a few things that can cause you problems with the law and your employer:

Driving Under the Influence. Unlike a handful of states, New Mexico has no legal threshold for driving under the influence of cannabis. If you are deemed to be driving in an unsafe manner while under the influence of cannabis, you can be fined, subject to community service, ordered to attend DWI school, and even serve jail time in some case— even for first convictions.

Workplace Use, Impairment, or Possession. While New Mexico prohibits taking an adverse employment action against an employee for the legal use of medical marijuana (with some exceptions), the state permits an employer to fire or fail to hire someone for using, possessing, being impaired by, or testing positive for marijuana on the job site or while on the clock.

Smoking Cannabis in Public. Don't think that lighting up in public carries no risk. New Mexico law makes it clear this is not permitted unless you are in a designated cannabis consumption area.

Consuming Cannabis with a Security Clearance. Recently, the Director of National Intelligence issued guidance noting that prior marijuana use is "relevant, but not determinative" of clearance eligibility. But current use remains forbidden as consumption remains illegal at the federal level. The House passed a bill that would bar federal agencies from using past or present cannabis use as a factor in granting security clearances, but the bill will unlikely become law.

Underage Recreational Consumption of Marijuana. New Mexico decriminalizes recreational use of marijuana only for those 21 and older.