



The Current State of 401(k) Plans for Cannabis Workers



Retirement service providers want to offer 401(k) plans to the cannabis industry, but their hands are tied. Nothing short of a federal bill will make this a reality for cannabis workers in every state.

Considering the rapid growth of this industry, it is almost incredulous that its workers do not have access to a 401(k) plan. For the past five years, job growth has exceeded 27%, according to Leafly Jobs Report, an annual analysis of cannabis sector employment. With 428,059 jobs reported in January, there are now more cannabis workers than firefighters, machinists, and other professions combined. As the industry continues to mature, Leafly predicts a future with 1.5 million to 1.75 million cannabis workers in the U.S. So why is this growing industry underserved in the area of 401(k) plans? It is not for lack of desire or effort on the part of financial institutions.

The issue retirement service providers face

Many cannabis companies sell products that contain Tetrahydrocannabinol (THC). This cannabinoid is legal under many state laws but is illegal under current federal law. Because of this, 401(k) plan providers are hesitant to work with companies in the cannabis industry. To do so would put providers at risk of violating the Bank Secrecy Act and other federal laws that govern financial institutions. Taking money from workers involved in a business that is illegal at the federal level then reformatting that money into equities in a mutual fund (or stock) could be considered money laundering.

This issue is further compounded by areas of the Bank Secrecy Act that require record keepers to file suspicious activities reports with the Department of Treasury's Financial Crimes Enforcement Network. This is required whenever a financial institution suspects crimes relating to fraud or funds are derived from illegal activities. Financial institutions that fail to comply with this reporting could face civil and criminal penalties such as fines and regulatory restrictions.

A solution for some cannabis companies

State-run retirement savings programs can possibly offer 401(k) plans to cannabis company employees. In California and Oregon, cannabis companies are not exempt from mandates requiring workers to provide an employer-sponsored plan or

participate in the state-facilitated one. For example, at least 86 cannabis-related companies in California are participating in the CalSavers program. In Oregon, at least 60 of these businesses participate in the OregonSaves program.

Currently, at least 13 states have passed some form of 401(k) legislation, and more states are considering similar legislation. Meanwhile, 19 states plus Washington, D.C. and Guam have made recreational marijuana use legal, while 37 states and four U.S. territories allow for medical marijuana use. This could make it possible for cannabis workers to have access to 401(k) programs in localities where these respective legislations intersect.

A possible solution for all cannabis industry workers

Many cannabis industry professionals hope that the possible passage of the SAFE Banking Act provides an industry-wide solution to this issue. This proposed legislation would exempt financial institutions from being liable under federal law or regulations solely for providing financial services to cannabis companies. This means that regulators would be prohibited from penalizing, discouraging, or restricting these financial institutions from providing banking and/or reinvestment services to legitimate cannabis businesses.

After passing in the House in April 2021, the SAFE Banking Act is now in the Senate. Experts expect the bill will be packaged with another bill known as the Cannabis Administration and Opportunity Act. This legislation, if passed, would legalize and regulate cannabis at the federal level. The Cannabis Administration and Opportunity Act is expected to be introduced sometime during the summer of 2022. It is sponsored by Senators Chuck Schumer (D-N.Y.), Ron Wyden, (D-Ore.), and Cory Booker (D-N.J.).

The cannabis industry is an emerging market

It is also an industry that requires careful examination of accounting practices, certifications, licenses, and federal, state and local tax information. UHY has a dedicated team of professionals with [cannabis industry experience](#) to help companies navigate this heavily regulated and ever-changing landscape. If you have questions, please [call](#) or fill out the form and send it to us. Someone will be in touch to discuss cannabis accounting, taxes, and more.

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