

# Banking in the Cannabis Industry: What You Need to Know

When states across the country, including California, began legalizing recreational cannabis, they did so primarily because of the huge financial upside generated by tax revenue from the industry. It was, quite simply, money in the bank. Yet for many commercial cannabis businesses, that term has taken on a darker meaning, because federal illegalization effectively prevents these entities, which are operating legally under state law, from obtaining banking services.

Under federal law, it is illegal to manufacture, distribute or dispense cannabis unless the activity is compliant with the Controlled Substances Act of 1970 (the “CSA”). With respect to banking, however, the question of enforcement depends on federal priorities, specifically the current and future policies of the Department of Justice (“DOJ”) and Treasury. Congress could amend the CSA or the various federal anti-money laundering laws to resolve inconsistencies and effectively legalize banking for the commercial cannabis industry, but it has yet to do so. Hope springs eternal that a federal law change is on the horizon following the 2020 election.



So how do industries outside of the cannabis sphere interface with these potential clients while minimizing their risks? Many cannabis businesses handle large amounts of cash as a result of their banking issues and are left asking vendors to take cash payments for their services. This puts vendors—like yourselves—in the difficult position of determining their potential exposure when depositing cash from cannabis clients in their own bank accounts. Under existing federal laws, any cash received and deposited from a can-

nabis business remains tainted as arising from the trafficking of a federally illegal controlled substance, namely cannabis.

This means that any cash you accept from cannabis clients is, in essence, fruit from the poisonous tree for purposes of anti-money laundering laws. While federal enforcement in this space is virtually nonexistent at present, and what enforcement there is tends to be against the cannabis businesses themselves, there are a few important ways to insulate your business from potential liability.

First, be vigilant about what clients you accept, ensuring that your clients are at a minimum operating legal cannabis businesses. This can be done through a simple search to find the business’ state licensing information—any cannabis business licensed by the state is likely to be operating legally. If you routinely enter service agreements with your clients, it would be a good idea to include a warranty within those agreements that they are operating in full compliance with all state and local laws. Those service agreements should also clearly define the scope of the services you will perform, which should clarify that you are doing work for the cannabis entity that you would do for any other client and will not aid and abet in the laundering of cash from a cannabis business. The agreement should be as clear as possible about the work you are doing and the fees you are paid for it, and those fees should be in line with what you would charge other customers.

Second, note that professional liability insurance coverage likely applies to claims that may arise from your servicing

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## BUSINESS MANAGEMENT

### An Excellent 401(k) Option

If you’ve got a single employer 401(k) plan, you already know that dealing with the compliance issues regarding administering these plans can be quite burdensome. If you are not yet offering a 401(k) plan to your employees, you need to know that there’s a lot more to managing these plans than you might realize.

If you’re in California, you will soon be (or already are) required to offer a retirement plan. This is because a relatively new law requires nearly all companies to offer retirement plans. You can offer either your own 401(k) plan or the state’s CalSavers plan which, needless to say, has its limitations (see [www.calsavers.com](http://www.calsavers.com)). The deadline for compliance with the California law for companies with over 100 employees was September 30, 2020. The deadline for those with 50 to 100 employees is coming up on June 30, 2021, while those with 5 to 49 employees have until June 30, 2022 to comply.

#### Plan sponsors have a lot of responsibility

If you choose to offer your own single employer 401(k) plan then you will have the burden of being the “plan sponsor.” Plan sponsors must provide education, send notices, process loans, determine eligibility for hardship distributions and track vesting. In addition, once a year all plans must do “non-discrimination testing” and file a Form 5500, and larger plans must also pay to have an independent CPA conduct an audit.

If that’s not enough to make your head spin, let’s not forget about the fiduciary liability. If you do not outsource plan administration to a third-party administrator (and most smaller companies do not), then the administrative fiduciary liability falls on your shoulders. If you are the one who selects the funds that are available to plan participants, then you have fiduciary liability for this as well. Get things wrong and you can be facing fines and possibly lawsuits.

#### Avoid the headache: Join PIASC’s Multiple Employer Plan

The good news is you don’t have to sponsor your own plan in order to offer a robust 401(k) for your employees. PIASC has worked with Catalina Capital Group, a well-regarded independent Registered Investment Advisory firm based in Torrance, California, to create a Multiple Employer Plan (MEP).

A MEP is a type of retirement vehicle that is maintained as a single plan while allowing multiple unrelated employers to participate. This achieves economies of scale typically only attained by larger plans.

Participation in the Graphics Communication 401(k) Plan is open to all PIASC member companies. PIASC is the plan sponsor, and we’re using this as the 401(k) we offer to our employees, too. The Association does not profit from this Plan.

The Graphics Communication 401(k) Plan operates like a traditional



single employer plan, but with most administrative and fiduciary duties outsourced to the plan provider. Our association’s MEP therefore acts like an umbrella. It creates an overarching Plan with one plan sponsor, one third-party administrator, one set of funds from which participants can choose, etc. Within that umbrella each participating employer has the flexibility to customize things to best meet their needs.

#### This 401(k) plan offers many benefits

Here are the top reasons why PIASC members are excited about the Graphics Communication 401(k) MEP:

- **Lower costs** – Because we are aggregating investments under one Plan, we were able to secure beneficial pricing from Transamerica. Lower costs mean improved returns for your employees.
- **High-performing investment options** – Catalina Capital has selected a lineup of about 25 funds, which they monitor on a quarterly basis. If a fund underperforms for

two consecutive quarters, then Catalina Capital will research and select a suitable replacement.

- **Comprehensive administrative services** – Plan participants enjoy comprehensive third-party administrator services. Instead of struggling to manage things yourself, you enjoy the benefits of outsourcing nearly all aspects of Plan administration. This includes the 5500 filing and annual Plan audit, each of which only needs to be done once for the entire Plan.

From the administrative standpoint, the main things you still must do yourself are to upload your payroll data in a timely fashion (and make sure this data is correct) and provide a census for the “non-discrimination testing” at the end of the year.

- **Outsourced fiduciary liability** – Our MEP outsources both the fund selection and the administrative tasks to experts in these fields who are also fiduciaries (which is not the case

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## GOVERNMENT & LEGISLATIVE

### EEO-1 Reporting Deadline Announced

The Equal Employment Opportunity Commission (EEOC) has announced that it will collect employers’ EEO-1 “Component 1” workforce demographic data for 2019 and 2020 between April 26 and July 19, 2021.

Under normal circumstances employers with 100 or more employees must submit this data annually. However, last year’s data collection activity was suspended due to the COVID-19 pandemic.

For more information see <https://eeocdata.org/eeo1>.

## On Our Radar

#### Recently added to the list of proposed regulations and other issues that we’re following:

- **Protecting the Right to Organize Act of 2021** – On March 9 H.R. 842, known as the PRO Act, passed in the U.S. House of Representatives. If passed by the Senate, this pro-union legislation would make sweeping changes to federal labor laws.
- **Expansion of paid sick leave** – AB 995 would expand the number of paid sick days that employers are required to provide, from three days to five.
- **Expansion of protected categories and duties to accommodate employees** – AB 1119 would expand the list of personal characteristics that are protected against discrimination by the Fair Employment and Housing Act (FEHA) to include “the obligations of an employee to provide direct and ongoing care for a minor child” or other family member (as defined in the bill). AB 1119 would also require employers to make reasonable accommodations when these employees must provide care because the school or place of care is closed or otherwise unavailable.

## HUMAN RESOURCES

### Workplace Discrimination: Don’t Do It!

The U.S. Equal Employment Opportunity Commission (EEOC) has released statistics for its fiscal year 2020 enforcement and litigation efforts. During this time period the EEOC received 67,448 charges of workplace discrimination and secured \$439.2 million for victims of this discrimination through both voluntary resolutions and litigation. If you do the math, you’ll see that this works out to an average of \$6,511 per charge.

Once again, retaliation was the most frequently cited claim, accounting for over half of all charges filed. As the following chart of the “top 5” types of discrimination shows, though, other types of discrimination are quite common as well.

Type of Discrimination Claim	% of Charges Filed
Retaliation	55.8%
Disability	36.1%
Race	32.7%
Sex	31.7%
Age	21.0%

The big take-away message: Be sure that all of your supervisors and managers understand what constitutes discriminatory behavior and how to avoid it.

### Are Your Criminal Record Screening Policies in Compliance?

Since the Fair Chance Act went into effect on January 1, 2018, California employers with five or more employees have generally been prohibiting from asking job applicants about their conviction history before making a job offer. While you are permitted to conduct a criminal history check after making a conditional job offer, after you conduct a criminal history check there is a specific process

you must go through before rescinding the offer.

Recently the California Fair Employment and Housing Act (FEHA) has been ramping up its efforts to enforce these rules. If you are not certain that you are in compliance with this Act, now’s the time to double-check your protocols.

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cannabis business clients. Because the services you will perform for commercial cannabis entities are no different from those you would perform for other clients, these services are likely to be covered by your insurance. Note, however, that your insurance is unlikely to cover the costs of responding to any criminal investigation or defending any criminal charges filed against you as an entity. In other words, your insurance will cover you for routine work with cannabis clients, but there will likely be holes in your policy for if you are ever accused of wrongdoing or cooperating with a federal investigation of a client accused of wrongdoing.

Third, it is important that you report any cash exceeding \$10,000 that you receive from a cannabis business on IRS Form 8300 within 15 days of receipt.

Finally, keep in mind that regulatory compliance liability is generally placed on the commercial cannabis entity itself, not on broader service providers who may interface with those entities. This means you are not required to be an expert in cannabis regulations in order to do work with cannabis clients. Instead, you should remain an expert in the services you provide, and rely on your clients—through a warranty when possible—to ensure their own compliance to avoid any enforcement against themselves. Such enforcement actions are generally unlikely to involve your business unless you have separately taken actions in violation of local, state or federal law. Taking money from a cannabis business for your service alone is unlikely

to place you under risk of federal criminal charges, but you do run the risk of account closure at any time by your financial institution.

**Cannabis Packaging and Labeling: The Basics**

The cannabis industry has very particular packaging and labeling regulations, which any PIASC member should be familiar with before agreeing to print any packages for commercial cannabis entities. To begin with, California cannabis regulations permit certain types of license-holders—manufacturers may package and label manufactured cannabis products such as vape cartridges or edibles, while distributors can package and label cannabis flower—to handle the packaging and labeling. Retailers who run cannabis storefront dispensaries or delivery services are not permitted to do any labeling, unless they also have a manufacturing or distribution license.

All cannabis products must be packaged in child-resistant packaging. This means that the packaging for the product must contain security elements which would make it difficult for children to access the product, which is often edibles that may be mistaken for candy by a child. If product containers are separable from the outermost packaging (i.e., a product container is inside a separate box), then the container itself must also contain certain key information which is required on the outermost layer—this means you may be labeling products multiple times,

or providing manufacturers with a series of differently sized and specified labels. All cannabis goods must provide certain information, including the universal symbol and government warnings, and must identify the cultivator of the flower.

The liability for compliance with these packaging and labeling regulations falls specifically on the commercial cannabis business, not on vendors serving those businesses. This means you are not required to be an expert in cannabis regulations in order to do work with cannabis clients. However, you should familiarize yourself with the regulations surrounding the products you contract to provide any packaging and labeling services for, in order to ensure good client service in the final product you produce, as well as to assist your clients in ensuring regulatory compliance.

Source: Matthew A. Portnoff and Jordan E. Ferguson, Venable LLP, <https://www.venable.com>

BUSINESS MANAGEMENT

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with all third-party administrators or investment advisory firms). This relieves participating employers of the associated fiduciary liability for these tasks as well.

- **Bilingual educational support** – Educational support includes live webinars when your company first joins the Plan, live or recorded webinars as new employees join your team, and the option to have employees call an 800 number to have someone get them enrolled over the phone. All of these options are available in both English and Spanish.
- **Plan flexibility** – You choose whether your company will offer matching funds (and if these will be discretionary or safe harbor), have plan vesting and more.

**Contact us for more information**

To learn more, California PIASC members should contact Kristy Villanueva at 323-728-9500 ext. 215 or [kristy@piasc.org](mailto:kristy@piasc.org). Members outside of California should contact Cathy Skoglund at 323-728-9500 ext. 221 or [cathy@piasc.org](mailto:cathy@piasc.org).

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Upcoming Events

**WEBINAR: The Special HR Issues Surrounding Your Sales Force**



**Date:** Thursday, May 20, 2021  
**Time:** 10:00 am PDT  
**Cost:** Free for PIASC members

Amongst the long list of human resources rules and regulations that you need to follow, if it seems like salespeople form a special category unto themselves it's because in many ways they do. Of course, as with all governmental regulations that impact HR, getting it wrong can be costly.

- Join us for this informational webinar to learn:
- How do you determine if a salesperson is a contractor or an employee?
  - From the standpoint of California labor laws, what makes a person an “inside salesperson” versus and “outside salesperson”?
  - How does the “inside salesperson” versus “outside salesperson” designation impact wage and hour considerations?
  - When is a salesperson’s commission earned and when must it be paid?
  - What needs to be in your contract and commission agreements?

Register at <http://bit.ly/SalesForce-HR>.

**WEBINAR: Why Leadership Matters! Are You Ready for the New World of Leadership & Sales Management?**



**Date:** Thursday, May 25, 2021  
**Time:** 11:00 am PDT

**Cost:** Free for PIASC members

The world is constantly changing and you need to constantly change with it. The “new normal” will require us to manage client relationships in new and creative ways, and find new prospects using different, customized approaches.

What are the best management practices today for effectively leading your company and sales team to attain the success you want? How can you lead with conviction and still stay focused on the top line? Join us for this webinar to find out!

Topics to be covered include:

- Creating prospecting strategies that will connect you to new customers
- Understanding the “new normal” sales cycle
- New ways to connect with clients—both virtually and in person
- Creative ways to stand out for engagement with prospects

In addition, you'll also have an opportunity to ask your questions live during the Q&A session.

Register at <http://bit.ly/Leadership-Matters-1>.

PIASC Events Calendar

MAY 10

**WEBINAR: Cal OSHA Basics - What You Need to Know Before They Show, presented by OSTS**  
Monday, May 10 at 11:00 am PT  
Online  
[www.piasc.org/events](http://www.piasc.org/events)

MAY 25

**WEBINAR: Why Leadership Matters! Are You Ready for the New World of Leadership & Sales Management?**  
Tuesday, May 25 at 11:00 am PT  
Online  
[www.piasc.org/events](http://www.piasc.org/events)

MAY 20

**WEBINAR: The Special HR Issues Surrounding Your Sales Force**  
Thursday, May 20 at 10:00 am PT  
Online  
[www.piasc.org/events](http://www.piasc.org/events)

For full list of workshops and virtual classes, please visit [www.piasc.org/events](http://www.piasc.org/events)