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CANNABIS LABOR PEACE AGREEMENTS: *A PRIMER*

A brief overview of the neutrality process for Cannabis employers as described under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) and the regulations of the California Bureau of Cannabis Control (BCC).

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Cannabis Labor Peace Agreements: A Primer

A brief overview of the neutrality process for cannabis employers as described under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) and the regulations of the California Bureau of Cannabis Control.

A collaborative effort by the California Cannabis Industry Association (CCIA) & organized labor in California. We'd like to extend our gratitude to all the people and organizations that helped shape and inform this paper.

The Future of Organized Cannabis in California

The cannabis industry and organized labor have worked together in California for many years and during that time have consistently learned from one another in an effort to build a more robust and durable industry framework. As legalization and regulation of cannabis continues to increase across the country many at the state and federal level are looking to California to lead the way. This makes the partnership between industry and labor more crucial than ever.

Organized labor strongly supported efforts to legalize cannabis in California, including Proposition 64, and continues to advocate for a larger and stronger legal industry in these uncertain times. From pushing back against the unlicensed market to ensuring lawmakers deem cannabis as essential during the COVID-19 crisis, organized labor has been hard at work on behalf of the industry. CCIA views organized labor as more than just a stakeholder, they are a critical partner that can help create the conditions necessary for a thriving cannabis economy.

CCIA shares many common goals with organized labor, including the desire to develop and grow a robust cannabis industry that provides good jobs with living wages, benefits and exemplary working conditions. Contrary to how the relationship between business and labor has often been historically portrayed, we have the unique opportunity to pioneer a common vision for California's emerging cannabis industry that will shape and guide the broader industry for decades to come. Rooted in the principle of neutrality, it is incumbent upon both cannabis businesses and organized labor to steer clear of confrontation and instead strive to maintain cooperative working relationships to further strengthen the industry as it continues to establish itself in the economy of our state, our country and the world.

Previous White Paper Publication by the CCIA

Early in 2020, CCIA published a document titled “Tips for Cannabis Business Owners Negotiating a Labor Peace Agreement.” This document did not properly reflect the priorities or guiding principles of CCIA when it comes to organized labor or the Labor Peace Agreement (LPA) process. When this was brought to the attention of CCIA and labor organizations like the United Food and Commercial Workers International Union (UFCW) and the International Brotherhood of Teamsters (Teamsters), CCIA immediately rescinded the white paper in question and began working in partnership with organized labor to educate and inform cannabis businesses on labor peace agreements, their legal obligation as employers to enter into labor peace agreements, and how to best approach labor unions to ensure a productive, mutually beneficial partnership going forward.

The Law

The Medicinal and Adult Use Cannabis Regulations and Safety Act (MAUCRSA) requires an applicant for a state cannabis license who currently employs fewer than 20 employees to provide a statement that the applicant will enter into a LPA within 60 days of employing 20 employees and requires applicants already employing 20 or more employees to provide a notarized statement that they will or already have entered into a LPA.

[Division 10 of the Business and Professions Code § 26051.5\(a\)\(5\)\(A\)](#)

Pursuant to the Rules and Regulations of the Bureau of Cannabis Control, requirements for Labor Peace Agreements appear three different times as follows:

§ 5002(c)(23). Annual License Application Requirements

For an applicant with 20 or more employees, the applicant shall attest that the applicant has entered into a labor peace agreement and will abide by the terms of the agreement. The applicant shall submit a copy of the page of the labor peace agreement that contains the signatures of the union representative and the applicant. For applicants who have not yet entered into a labor peace agreement, the applicant shall provide a notarized statement indicating that the applicant will enter into and abide by the terms of a labor peace agreement as soon as reasonably practicable after licensure.

CALIFORNIA CODE OF REGULATIONS
TITLE 16 DIVISION 42.
BUREAU OF CANNABIS CONTROL bcc.ca.gov/law_regs/cannabis_order_of_adoption.pdf.

§ 5023. Business Modifications

(b) If at the time of licensure, a licensee employed less than 20 employees and later employs 20 or more employees, the licensee shall provide to the Bureau a document attesting that the licensee has entered into a labor peace agreement and will abide by the terms of the agreement, as soon as reasonably practicable once employing 20 or more employees. Once the licensee has entered into the labor peace agreement, the licensee shall provide the Bureau with a copy of the page of the labor peace agreement that contains the signatures of the union representative and the applicant.

CALIFORNIA CODE OF REGULATIONS TITLE 16
DIVISION 42. BUREAU OF CANNABIS CONTROL bcc.ca.gov/law_regs/cannabis_order_of_adoption.pdf.

§ 5600(g)(20) Cannabis Event Organizer License

For an applicant with 20 or more employees, the applicant shall attest that the applicant has entered into a labor peace agreement and will abide by the terms of the agreement. The applicant shall submit a copy of the page of the labor peace agreement that contains signatures of the union representative and the applicant. For applicants who have not yet entered into a labor peace agreement, the applicant shall provide a notarized statement indicating the applicant will enter into and abide by the terms of a labor peace agreement as soon as reasonably practicable after licensure.

CALIFORNIA CODE OF REGULATIONS TITLE 16
DIVISION 42. BUREAU OF CANNABIS CONTROL bcc.ca.gov/law_regs/cannabis_order_of_adoption.pdf.

Where to Begin

Navigating the regulations and understanding the best way to approach entering into a Labor Peace Agreement can be difficult at first. Open communication with organized labor is critical to the whole process.

Have A Friendly Conversation

The best way to get familiar with a union's LPA process is to find out who the local union representative is for your area and have an introductory conversation. It's important to get ahead of the regulatory requirements and begin building the relationship with organized labor as soon as possible.

Each local community is unique and understanding how your local union operates within your business's jurisdiction will be crucial to how your business and the union work together. This is also a good time to begin working with a labor attorney, as they can help educate and guide you through the LPA process.

1. Learn the Lingo

There are a number of commonly used terms when working with labor unions, some of the most frequently referenced are described below:

Access: The act of contacting and communicating with eligible employees at the work site. On-site access is subject to all employer safety and security protocols and should avoid unnecessary business interruptions.

Arbitration: A method of resolving disputes outside of court. Parties refer their disputes to a mutually agreed upon arbitrator who reviews the evidence, listens to the parties, and then makes a decision.

Bargaining Unit: The group of workers that the union does, or seeks to represent under contract.

Bona Fide Labor Organization: Means any organization or any local unit thereof in which employees participate, and exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, hours of employment or conditions of work, which labor organization is not found to be or to have been financed in whole or in part, interfered with, dominated or controlled by the employer or any employer association.

California Agricultural Labor Relations Board: The Agricultural Labor Relations Board (ALRB) is an agency of the California state government that administers the California Agricultural Labor Relations Act, which establishes collective bargaining for farmworkers in the state.

Card Check Authorization: One method in which a majority of workers agree to union representation and demonstrate their desire to enter into negotiations for a Collective Bargaining Agreement.

Collective Bargaining Agreement (CBA): A contract negotiated between the employer and the Bargaining Unit which covers all aspects of the duties, benefits, and requirements of the work site.

Dues: The monthly amount to be paid by each eligible employee in the Bargaining Unit. Dues cannot be covered by the Employer.

Eligible Employee: An employee with non-managerial and non-supervisory functions in their position (those who cannot hire/fire, schedule, or discipline).

Employee Roster: A list of all eligible employees which will likely include contact information such as name, job title/classification, home address, and phone number. This contact information will need to be reasonably maintained and updated as agreed to by the parties. The employees should be informed that their contact information has been provided to the union and all parties should commit to maintaining strict confidence in the use of employees' personal information.

Recognition: The point at which the employer recognizes the union as the bargaining party for the workers it is organizing. Such recognition may be the outcome of an organizing campaign, a verification of card check or after an election or other means of voting. This is sometimes referred to as qualification.

Local: Local union in a designated geographical jurisdiction which corresponds to the location of an employer and their workers.

Neutrality: Mutually agreed non-interference from both the employer and the union during an organizing campaign.

National Labor Relations Board: The National Labor Relations Board (NLRB) is an independent agency of the federal government of the United States with responsibilities for enforcing U.S. labor law in relation to collective bargaining and unfair labor practices.

2. Separate Myth from Reality

Myth	Reality
A cannabis employer will encounter decreased flexibility and increased costs in operating their business and administering the collective bargaining relationship.	To suggest that employer costs will increase, and flexibility will decrease upon entering into a collective bargaining agreement is misleading. Many negotiations result in beneficial outcomes for the employer, employees and union alike.
Cannabis employers should limit union activity during organization efforts.	An LPA outlines non-interference terms for both the union and the employer. In other words, an LPA seeks to guide how both the employer and union approach organizing efforts.
Treating an employee well preemptively can stave off unionization efforts and convince workers that union dues are a wasted resource.	An LPA is intended to outline the parameters by which the employer and union may discuss unionization with their employees. Changing behavior as a means to discourage unionization or the payment of dues may be considered a breach of the neutrality agreement, as outlined in the LPA.
An LPA is only required for employers with 20 or more non-supervisory workers.	Certain municipalities impose slightly different prerequisites. For instance, the LPA threshold for local cities or counties can range anywhere between 2 to 10 employees. An applicant or employer should be aware of the local requirements and be sure they are in compliance with both state and local law.
Cannabis employers should watch for and limit language expanding the union's ability to enter company property and engage in organizing activities.	Impeding union access once an LPA is signed may be considered a breach of the agreement. Employers are advised to carefully review the terms of the LPA and avoid any behavior that may be deemed non-compliant.
LPAs may seek to extend coverage to employees of affiliated businesses or entities.	Cannabis LPAs only cover specific workers from cultivation to retail depending on the licensed activity of the business entity. Employees of affiliated businesses or entities are not necessarily included in an LPA.

Myth	Reality
<p>When confronted by a union demanding terms beyond those contemplated by MAUCRSA’s mandates, cannabis businesses may do well to reach out to other, competing labor organizations to satisfy their LPA requirements.</p>	<p>Inviting multiple unions to compete against one another may create an adversarial environment and prolong the LPA process. Such interference may also violate existing labor peace agreements that are in force.</p>
<p>Cannabis employers should watch for terms requiring them to disclose to a union employee rosters, job titles, and locations of work.</p>	<p>Having access to an up-to-date and accurate Employee Roster with contact information and job titles is often an agreed upon term that is allowed under MAUCRSA. Confidentiality of personal information should be strictly maintained, and employers should be aware that disclosure of employee information may be subject to other laws and regulations.</p>
<p>LPAs need not cover all employees at once.</p>	<p>LPAs explicitly outline which employees are included in the bargaining unit. For instance, those employees who may be outside the jurisdiction of the local union or those employees who have the ability to hire/fire, set schedules, and discipline workers may be left out of the bargaining unit.</p>

3. Know What to Expect

The MAUCRSA defines a labor peace agreement as an agreement between a licensee and a bona fide labor organization that protects the state's proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the applicant's business. In the agreement, the applicant pledges not to disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the applicant's employees. The agreement also must provide a labor organization access at reasonable times to areas in which the applicant's employees work, for the purpose of meeting with employees to discuss their right to representation, employment rights under state law, and terms and conditions of employment.

[Division 10 of the Business and Profession Code § 26001\(x\)](#)

Possible Terms in a Labor Peace Agreement

Neutrality and Non-Disparagement: An agreement for complete neutrality between the employer and the labor union that includes refraining from union-busting activity by the employer against the union and refraining from picketing, strikes, hand billing, or other economic activities by the union against the employer.

Bargaining Unit: Covers who the union defines as members of a bargaining unit (Eligible Employees.) Again, this is only for non-supervisory staff.

Access: An agreed upon term for the union to access workers on the company premises to converse with them individually.

Meeting: One or more scheduled meetings on mutually agreed upon date(s) and time(s) with ALL of the bargaining unit employees.

Contact information: An agreed upon term for the employer to provide a complete and accurate list of all bargaining unit employees with information that may include names, job classifications, phone numbers and addresses. This list is reasonably updated by the employer to account for new hires or changes in information.

Recognition: Once a majority of bargaining unit employees designate the union as their exclusive representative in accordance with all election and certification procedures as needed, the employer will recognize the union and begin good faith bargaining toward a collective bargaining agreement. A neutral third party may confirm majority authorization.

Elections: If an election is scheduled for the bargaining unit to certify the union, the employer agrees to refrain from inviting interference in the election by another labor organization.

Bargaining: Proposed terms for initial negotiations in order to commence good faith bargaining within a reasonable time. This is agreed upon by both parties and may vary from employer to employer and from local union to local union.

Arbitration: The parties agree that final and binding arbitration (by a mutually agreed upon arbitrator) will be the exclusive remedy for any alleged violations of the LPA regarding interpretation or application of any provision of the agreement.

Successorship, affiliated companies, and subcontractors: An agreed upon term that details the binding nature of the LPA and any notification process in the event of a business merger, transaction, or purchase of a cannabis asset by the employer.

Severability: In the instance that any provision of the LPA is voided under any applicable law, the parties will meet and confer to amend any and all provisions to conform with updated legal compliance.

Term of Agreement: States the agreed upon duration of the LPA. Length of term often ranges from 1 to 4 years.

Confidentiality: Both parties agree that all terms and conditions of the agreement are confidential or proprietary except as needed to carry out the LPA, as required by law or court order, or as mutually agreed through prior written consent.

Ready to Start?

Now that you know the basics of the LPA process and what to expect, it's time to get started. The following pages contain contact information for labor unions throughout California so you can start the LPA conversation.

If you still have questions, don't worry, we're here to help.

Send a quick email to Eddie@cacannabisindustry.org and we'll gladly point you in the right direction or even make an introduction if that makes sense.

Local UFCW Affiliates

In California, the following are the UFCW locals and contacts spread across the entire state.

UFCW States Council contact – Amber Baur (a.baur@ufcwstatescouncil.org)

UFCW Locals

- UFCW Local 135 – Marcelo Ramirez (mramirez@ufcw135.com)
- UFCW Local 1167 – Yesenia Gonzalez (yesenia@ufcw1167.org)
- UFCW Local 324 – Matt Bell (mbell@ufcw324.org)
- UFCW Local 1428 – Mark Ramos (mramos@ufcw1428.org)
- UFCW Local 770 – Ed Gutierrez (ed.gutierrez@ufcw770.org)
- UFCW Local 5 – Jim Araby (jaraby@ufcw5.org)
- UFCW Local 8GS – Nichole Trujillo Rice (nrice@ufcw8.org)

Multistate operators based outside of California with operations in-state contact UFCW International's Cannabis Workers Rising Campaign. Jeff Ferro (jferro@ufcw.org)

International Brotherhood of Teamsters

Similar to the UFCW, the Teamsters also have local unions covering all of California, but communications related to cannabis employers are centralized through one office:

- Teamsters Cannabis Division - Kristin Heidelbach (kheidelbach@teamster.org)

Thank You!

Thank you for taking the time to learn about organized labor and the critical role it plays in the California cannabis industry and thank you for supporting the work of CCIA. We are committed to working with labor organizations like the UFCW and Teamsters to develop a responsible and legitimate cannabis industry in the State of California. Collaborative efforts such as this paper are a key part of a broader strategy to engage stakeholders and educate our members on the benefits and resources both CCIA and labor unions have to offer. Your engagement and participation in our industry and the policies that shape it make all the difference. Together we can build a thriving and inclusive cannabis economy.

DISCLAIMER

The information provided in this White Paper is **not** intended to constitute legal advice and therefore should not be relied upon as such. Instead, this White Paper is exclusively intended for general informational | educational purposes. Given the dynamic nature of the industry, this White Paper may not constitute the most up-to-date legal or other information. Use of this document does not create an attorney-client relationship between the reader and any individual at CCIA or CCIA as a whole. Operators should contact their attorney to obtain advice with respect to any particular legal matter. No reader of this White Paper should act or refrain from acting on the basis of information without first seeking legal advice from counsel in the relevant jurisdiction. Only a retained attorney can provide assurances that the information contained herein – and your interpretation of it – is applicable or appropriate to your particular situation. For specific legal needs please contact an attorney. Should you need an attorney recommendation CCIA has several resources, please contact eddie@cacannabisindustry.org for more information.