

Practice Update

# AG Sessions Rescinds Memo on State Marijuana Laws

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U.S. Attorney General Jeff Sessions formally rescinded multiple prior U.S. Department of Justice memoranda and guidelines, including the “Cole Memo,” that address federal enforcement priorities impacting the legal cannabis industry. The Cole Memorandum set forth the Obama administration’s priorities regarding the cultivation, processing and sale of cannabis and effectively stated that the federal government would not interfere with those operating under state law, as long as those priorities, including among others, preventing organized crime, sales to minors, and money laundering were not implicated. While the Cole Memo did not legalize cannabis, it did provide a sense of comfort to those in the industry that they should not fear federal prosecution, as long as they strictly complied with state law. Federal law continues to classify marijuana as a Schedule I drug under the Controlled Substances Act.

Mr. Sessions’ Memo ([here](#)) does not change federal law with respect to marijuana; however, it does signal a policy shift that will likely have a chilling effect on the industry as a whole and will most certainly limit operators’ access to investment capital and banking. Although the move is disappointing and widely viewed as out of step with the public attitude toward legalization (Gallup reports 64% approval among Americans), it does not

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come as a surprise to those involved in the legal cannabis industry who have anticipated such a move from Mr. Sessions since his nomination by President Trump.

It is important to recognize that Mr. Sessions' rescission of the Cole Memo removes the list of federal enforcement priorities, but it does not change the fact U.S. Attorneys continue to have prosecutorial discretion. The Sessions Memo does not direct U.S. Attorneys to prosecute state-compliant cannabis businesses nor did it create a new set of priorities that targets state-compliant businesses. In response to Mr. Sessions' rescission, the U.S. Attorney for Colorado said:

“Today the Attorney General rescinded the Cole Memo on marijuana prosecutions, and directed that federal marijuana prosecution decisions be governed by the same principles that have long governed all of our prosecution decisions. The United States Attorney's Office in Colorado has already been guided by these principles in marijuana prosecutions -- focusing in particular on identifying and prosecuting those who create the greatest safety threats to our communities around the state. We will, consistent with the Attorney General's latest guidance, continue to take this approach in all of our work with our law enforcement partners throughout Colorado.”

In other words, until further action is taken by Mr. Sessions, the rescission of the Cole Memo may be more symbolic of Mr. Sessions' long-held anti-marijuana stance than substantive. The negative response from politicians among both parties and across the country has been swift and strong, raising new hopes that a strong backlash to the move by Mr. Sessions will prompt bipartisan action in Congress to protect state-compliant cannabis businesses from unnecessary federal enforcement.

## **Disclaimer**

Possessing, using, distributing, and/or selling

marijuana or marijuana-based products is illegal under federal law, regardless of any state law that may decriminalize such activity under certain circumstances. Although federal enforcement policy may at times defer to states' laws and not enforce conflicting federal laws, interested businesses and individuals should be aware that compliance with state law in no way assures compliance with federal law, and there is a risk that conflicting federal laws may be enforced in the future. No legal advice we give is intended to provide any guidance or assistance in violating federal law.

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