



California
LABOR
Federation

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Members of the Democratic Caucus:

It has come to our attention that the California Cannabis Industry Association (CCIA) recently published and distributed a whitepaper to its membership called “Tips for Cannabis Business Owners Negotiating a Labor Peace Agreement.” We view this document as a piece of anti-union literature which undermines and weakens California’s requirement to enshrine labor peace as a condition of licensure in the cannabis industry. Since its adoption into law in 2018, the Medicinal and Adult Use of Cannabis Regulation and Safety Act (“MAUCRSA”) has required applicants for state cannabis licenses with 20 or more employees “to provide a statement that the applicant will enter into, or demonstrate that it has already entered into, and abide by the terms of a labor peace agreement” (Cal. Bus. & Prof. Code § 26015.5(a)(5)(A)).

Put simply, a labor peace agreement (LPA) is a commitment by the union and a cannabis employer to ensure true labor neutrality in the event of an organizing campaign. Under California Law, an LPA only requires that the “employer shall not ‘disrupt’ efforts by the union to ‘communicate with, and attempt to organize and represent’ the employer’s employees.” In turn, the “union and its members shall not engage in picketing, work stoppages, boycotts, and any other economic interference with the employer’s business” (Cal. Lab. & Prof. Code § 26001(x)). Additionally, the employer is required to provide the union with access to meet with their employees to discuss the right to representation. The Legislature codified the LPA requirement in the cannabis industry because it recognized that the State had a vested interest in creating a stable, middle-class workforce, and to head off labor disputes in an emerging industry.

We have attached CCIA’s whitepaper for your review. CCIA suggests that if a union successfully organizes employees, a cannabis employer “will encounter decreased flexibility and increased costs in operating their business and administering the collective bargaining relationship.” In order to avoid organizing efforts, the whitepaper also features tips on how to “limit union activity during organization efforts;” as well as suggesting that by “treating employees well,” an employer can stave off unionization efforts and convince workers that union dues are a wasted resource.

Let us be clear—an LPA *only* ensures true labor neutrality. It does not guarantee a business will be unionized, and while we appreciate the requirement in law, at the end of the day there is no substitute to organizing workers. Contrary to CCIA’s assertion, having access to an excelsior list that features accurate and complete employee contact information is a bedrock of labor peace. Under existing precedent, the NLRB has traditionally held that a union engaged in an organizing campaign is entitled to an excelsior list. The list is normally provided by the employer to the union within ten days after the election date has been set or agreed upon at the NLRB. Our collective experience in organizing workers tells us that employers will deny union access to workers as part of a concerted effort to prevent collective bargaining. Obfuscating information about who is employed at a shop is one very easy way to undermine real labor peace.

Given CCIA’s posturing on how to engage with organized labor, we ask all members of the Democratic caucus to refrain from engaging with the Association for the time being. Our organizations do not recognize CCIA as a legitimate partner in the cannabis industry, but would be more than happy to provide a list of employers and trade associations that have shown a willingness to work collaboratively with labor.

Sincerely,



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Tips for Cannabis Business Owners Negotiating a Labor Peace Agreement

Produced by the CCIA Insurance/HR Committee

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California's Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) and supporting regulations require an applicant for a cannabis business license with 20 or more employees to provide the licensing authority with a notarized statement promising to enter into and adhere to the terms of a labor peace agreement (LPA) or demonstrate it is already a party to such an arrangement. Businesses with fewer than 20 employees must provide a notarized statement indicating they are a party to such an arrangement or will become so within 60 days of employing their twentieth employee. Certain municipalities impose slightly different requirements. For instance, the LPA requirements in Alameda, Los Angeles, and the City and County of San Francisco apply to businesses with 10 or more employees. Setting aside threshold questions about whether MAUCRSA's LPA requirements are lawful, this paper reviews those requirements and provides practical guidance on negotiating the terms of an LPA.

MAUCRSA did not invent the concept of LPAs, and they take different forms in various other commercial settings. Generally speaking, LPAs are agreements between businesses and unions under which one or both sides agree to waive certain rights under federal law with regard to union organizing activity. Under MAUCRSA, an LPA is "an agreement between a licensee and any *bona fide* labor organization ... prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the applicant's business..."

In turn, the licensed cannabis business agrees "...not to disrupt efforts by the *bona fide* labor organization to communicate with, and attempt to organize and represent, the applicant's employees..." and must provide the labor organization "access at reasonable times to areas in which ... 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." An LPA need not mandate a method for electing the union to represent the employees.

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The common belief is LPAs make it substantially more likely a union will successfully organize employees and represent them in negotiating a collective bargaining agreement. If that happens, a cannabis employer will encounter decreased flexibility and increased costs in operating their business and administering the collective bargaining relationship. As such, it is critically important that cannabis businesses develop a strong company culture and carefully negotiate the substantive terms of an LPA when the situation arises.

Here are a few tips to keep in mind:

- **LPAs Should Clearly Limit Union Activity During Organization Efforts.** MAUCRSA's LPA requirements specifically require unions to avoid picketing, work stoppages, boycotts and other economic interference with a cannabis business. These prohibitions should be stated clearly in any LPA. Without providing much detail, MAUCRSA's provisions require employers to provide unions access "at reasonable times" to areas in which employees work to meet with employees. Cannabis businesses should watch for and limit language expanding the union's ability to enter company property and engage in organizing activities.
- **LPAs Need Not Include Terms Disclosing Employee Information.** MAUCRSA's LPA requirements do not require employers to provide information to labor organizations. Cannabis operators should watch for terms requiring them to disclose to a union employee rosters, job titles and locations of work.
- **LPAs Should Not Dictate Election Methods.** MAUCRSA's terms specifically state LPAs "shall not" mandate a particular method of union election. Cannabis operators can point to this language in refusing LPAs containing terms outlining how a union might gain recognition and be entitled to engage in collective bargaining on behalf of

employees. For example, cannabis businesses should watch for provisions stating the union will be elected upon a “card check” – a process where the union gains recognition after simply presenting authorization cards signed by employees – instead of a supervised secret ballot election.

- **LPAs Need Not Cover All Employees at Once.** In any organization campaign, a “bargaining unit” must be defined. This is the group of employees with a community of interests seeking to be represented by a union in collective bargaining with the employer. Bargaining units often include a core group of workers engaged in similar job duties and, in some contexts, different bargaining units represented by different unions working within the same company. For a cannabis cultivator, a bargaining unit might be its harvesters/processors. For a cannabis manufacturer, it might be its extractors/processors. For a cannabis distributor, it might be its fulfillers/pickers or drivers. Supervisors – those with the authority to direct work or manage, hire, fire or discipline employees – should never be included. Salaried, exempt employees, administrative or clerical staff, or sales and customer service representatives may not have a sufficient community of interest to be included in a bargaining unit with other employees. When drafting an LPA, cannabis operators should define its scope to cover only those employees who would constitute the eventual bargaining unit.
- **Only Cannabis Employees Are Covered.** MAUCRSA’s LPA requirements only apply to cannabis businesses. Cannabis operators should avoid language seeking to extend coverage to employees of affiliated businesses or entities.
- **Understand There Are Options.** 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



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requirements. Presently, there are several labor organizations, including locals of the United Food and Commercial Workers (UFCW), Teamsters and Professional Technical Union engaged in the industry.

- **Treat Employees Well.** Well before entering an LPA or facing a potential election, cannabis businesses should be building a strong culture within their organizations. This includes ensuring employees are paid correctly, adhering to workplace safety regulations and addressing workplace disputes or complaints as they arise. Happy employees are less likely to respond to the call of a union or to view paying dues as a necessary or advantageous use of their resources.

Cannabis operators should look carefully at the terms of LPAs presented by labor organizations. If those terms seek to exceed the scope of what is required under MAUCRSA, the employer should either push back on those terms or, at a minimum, seek reciprocal concessions from the union before agreeing to include the additional terms in the LPA.

For more information, please reach out to Dean (dean.rocco@wilsonelser.com; 213-443-5100) or Nicole (nicole.aaronson@wilsonelser.com) or visit www.wilsonelser.com/cannabis.

