

CANNABIS INSIDER

The next phase of cannabis equity: focusing on employment in New York

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By Chris Peraino | NY Cannabis Insider

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More than any other state, New York emphasizes social equity in its cannabis legalization policy. This emphasis so far has been placed on cannabis ownership. CAURD licensees, the state's marquee equity initiative that allocates adult-use retail licenses to people previously convicted of a marijuana-related offense, or a member of their family, are proving difficult to translate into actual businesses.

Just 21 storefronts have opened since the state began fielding applications last August. Complications in securing capital for a disadvantaged group, navigating an industry that remains illegal federally, and competing against New York City's roughly 1500 unlicensed stores, have consumed the attention of policymakers and media.

Now that licensed stores are opening, however, equity efforts are beginning for the other, larger, side of the industry: cannabis *employment*.

RWDSU Local 338, the union that represents all ten of New York's medical retailers, plans to begin organizing workers of adult-use businesses this fall, said Saul Guerrero, director of cannabis services at Local 338.

Its efforts will set a precedent for how workers are compensated in a new industry and will be the first test of whether New York's attempt at establishing a unionized cannabis workforce will succeed.

"Whenever I'm on a panel, I ask to speak last. That way I can set it up so that everyone talks about equity with owners, and I can say, that's great, but equity will impact most New Yorkers who work in the business," Guerrero said. "Equity for owners shouldn't come at the expense of workers. These business models should reflect building an actual career."

New York's legalization law mandates that all cannabis businesses enter into a labor peace agreement (LPA) with a union. An LPA is an agreement of neutrality between an employer and a union under which an employer agrees not to interfere with or dissuade unionizing efforts.

In return, the union agrees not to coordinate a strike or boycott while it attempts to organize workers. Workers can choose to join any union, though Local 338 is poised to represent the most workers of adult-use cannabis businesses in New York given that it represents the most medical cannabis workers in the state.

An LPA does not guarantee that workers in a business unionize. That decision remains up to the workers. Nor does it prohibit workers from striking in the future if they do decide to unionize.

Rather, the purpose of an LPA is to prevent businesses from so-called union avoidance tactics, like retaliating against pro-union workers, instructing employees to vote against unionizing, or delaying the vote to unionize, that companies like Amazon and Starbucks have dominated headlines for deploying in attempts to quash unionizing efforts.

“An LPA, very simply, is a contract between a prospective employer and a union where the prospective licensee agrees not to engage in any activity to fight workers if they decide to organize,” said Esta Bigler, the director of Cornell University ILR’s [Labor and Employment Law Program](#) and co-chair of the [Cannabis Workforce Initiative](#), a nonprofit funded by the state legislature that provides workforce development for the cannabis industry.

“What we know from surveys done of employees is that they are overwhelmingly pro-union. They have a right to choose without being scared. LPAs level the playing field,” Bigler said.

The particulars of each LPA will differ. But beyond an agreement of neutrality, every cannabis business in New York must grant what is called allowed access, meaning that each business is required to give the union with which it signed an LPA time and space to privately talk with workers.

“Guaranteed access is key,” Guerrero said. Businesses “might give us a hard time, but ultimately they have to let us get in there and talk to workers.”

The theory behind mandating LPAs for all cannabis businesses is that doing so will build an industry that is highly unionized. And that subsequently provides secure, middle-class jobs to the tens of thousands of estimated workers the industry will come to employ.

A significant number of those workers are likely to be from communities the state aims to advantage with its legalization policy; New York prioritizes licenses for businesses or nonprofits that employ people from communities that cannabis prohibition disproportionately impacted, and people of color, who largely comprise those communities, are often overrepresented in working-class industries.

Evidence from the state's medical industry suggests that this theory could become reality. New York became the first state to require LPAs in its cannabis industry in 2016 when it established the requirement for its medical retailers. All ten medical retailers currently operating in the state are unionized with Local 338.

Yet the adult-use industry is a different world.

For one, the average adult-use business is likely to have less capital than the average medical business. While medical retailers may be large, vertically integrated, multi-state corporations, New York disallows adult-use licensees from owning more than one cannabis-related business and from vertically integrating to preserve the industry for mom-and-pop operations. The adult-use industry is also composed of CAURD licensees who are selected, in part, for their lack of access to capital.

Secondly, the adult-use market will be much larger and competitive. Hundreds of adult-use licenses have already been allocated. More will come in the future.

And while New York only offers one type of medical license, adult-use licenses span the entire cannabis supply chain: retailers, cultivators, processors, distributors.

It remains to be seen how less capital, stiffer competition, and different business types will affect unionization. Or whether businesses that do unionize are able to secure gains, like reliable healthcare or automatic yearly raises, that amount to a middle-class career.

"Every factor matters. There is no cookie-cutter negotiating situation," Bigler said. "Even geography. Negotiating in Plattsburgh will be different than in New York City."

LPAs are not novel. They have existed since the '80s, mostly in California, and are usually applied to hospitality and airport businesses, according to a [2016 U.S. Chamber of Commerce report](#).

But New York – along with other states like Connecticut and New Jersey that have since followed New York's lead and now likewise mandate LPAs for their cannabis businesses – is one of the first states to require LPAs across an entire private sector industry.

For a government to mandate that a business enters an LPA, it needs to assert a proprietary interest. This can take a number of forms. Typical examples include the government owning the property where a business operates or granting a loan for a project. Los Angeles County, for example, requires an LPA for all hospitality businesses located on county property.

New York can obligate that all cannabis businesses enter an LPA by asserting the licenses that it allocates as proprietary interest. Since cannabis is a heavily regulated industry, all businesses require a license to operate. The state subsequently is able to impose an LPA mandate on every business. It also has broad leeway to revoke a license, effectively shutting a business down, if it finds it in violation of its LPA.

“I hope that in five years we can talk and look back at a cannabis industry that is unionized,” Guerrero said. “I don’t know exactly how it’s going to turn out, but I’m hopeful.”

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