

CANNABIS@WORK: EMPLOYEE ASSISTANCE PROFESSIONALS TOOL KIT



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OVERVIEW

Marijuana is no longer just an issue for employers in a few states. As marijuana use, both medicinal and recreational, continues to become legally accepted in the U.S., and it may ultimately be removed as a Schedule I drug under the Controlled Substances Act. This will change how employers approach Cannabis at work. Several major societal trends are converging to make cannabis in the workplace one of the biggest challenges facing employers and employee assistance (EA) professionals. The changes start with widespread increased tolerance of cannabis consumption and a decreased sense of risk.

Cannabis, known as marijuana among other names, is a psychoactive drug from the *Cannabis* plant intended for medical or recreational use. The main psychoactive part of cannabis is tetrahydrocannabinol (THC); one of 483 known compounds in the plant, including at least 65 other cannabinoids. Cannabis (marijuana, hashish, THC, kief and a variety of other forms) can be used by smoking, vaporization, within food, or as an extract.

Over the past two decades cannabis has emerged as a common treatment for chronic pain, insomnia, anxiety and a number of other diseases. The number of employees holding legitimate medical cannabis prescriptions continues to increase. Recreational use of cannabis is legal in an increasing number of states. Cannabis is available in these states through government-regulated outlets, much like alcohol. But employers can't deal with cannabis the same way they deal with alcohol. At issue is how long cannabis stays in a person's system — weeks or more — when compared with alcohol and other drugs, which are typically excreted within hours. It's a very confusing message because presence does not equal impairment. Just because an employee tests positive for cannabis does not necessarily mean the employee is cognitively impaired or poses a safety risk.

As legalization spreads in the states, the U.S. Controlled Substances Act continues to classify marijuana as a prohibited Schedule I drug, with no recognized medical or other lawful use. In addition, while not mandating drug testing, the federal Drug Free Workplace Act requires federal contractors and recipients of federal grants to prohibit use of illegal drugs — including marijuana — in the workplace. The U.S. the Department of Transportation takes the position that, even in states that allow medical and/or recreational cannabis, “it remains unacceptable for any safety-sensitive employee subject to drug testing under the Department of Transportation's drug testing regulations to use cannabis”. Furthermore, the U.S. Americans with Disabilities Act (ADA) specifically excludes an individual "currently engaged in the illegal use of drugs" from the Act's definition of a “qualified individual with a disability”.

Canada has taken a different approach and employers there have the responsibility to accommodate for the use of cannabis as medicine. The Trudeau government is expected to introduce legislation

this year that will legalize recreational cannabis use all across Canada by July 2018. Forty-five % of respondents to a HR member survey of the Human Resources Professionals Association do not believe their current workplace policies address potential issues that could arise due to cannabis legalization.

While no precise figures are available, it seems clear that the cumulative effect of these trends is that more workers are using cannabis. Positive tests for cannabis use continue to climb in both federally mandated, safety-sensitive workplaces, such as transportation and nuclear plants, and general U.S. workforces, according to a study released in May 2017 by Quest Diagnostics Inc. In saliva testing, positive cannabis tests increased nearly 75% to 8.9% of the general U.S. workforce in 2016 from 5.1% in 2013. Positive cannabis tests also increased in both urine testing — 2.5% in 2016 vs. 2.4% in 2015 — and hair testing — 7.3% in 2016 compared to 7% in 2015 — in the same population. States such as Colorado and Washington, where cannabis has been legal for recreational use for several years, saw some of the biggest leaps for workers in safety-sensitive jobs. In that category, Colorado's numbers jumped 27% from 2015 to 2016 and Washington state's rose 19%.

Clearly this poses a challenge for employers who are rightly concerned about cannabis's effect on workplace safety and productivity. Federal law places very few limits on employee drug testing and leaves policy-making largely to the discretion of the states. Under most state law employers are permitted to enact drug-free policies within the workplace. Using the Federal Drug Free Workplace as a model an employer may compel an employee to submit to a drug test. If a drug is found in an employee's system, this gives the employer the right to terminate the employee, and the employee may forfeit his or her eligibility for workers' compensation benefits.

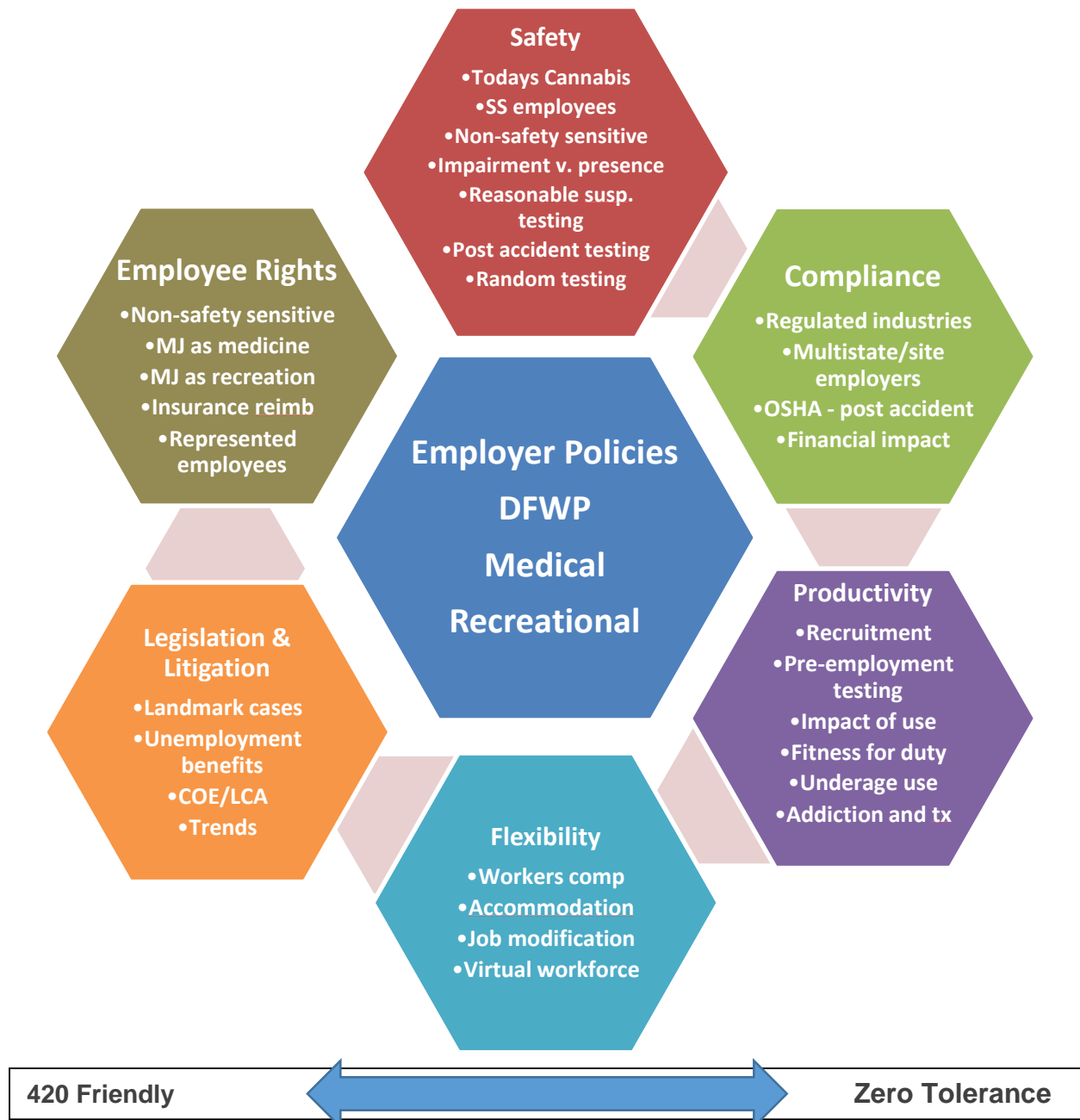
But this picture is changing rapidly. Arizona, Delaware, and Minnesota are the states that have enacted statutes that prohibit an employer from discriminating against an employee for using medical cannabis. In those states, the statutes limit an employer's ability to discipline an employee for a positive drug screen relating to medical cannabis use. Massachusetts' highest court ruled in July 2017 that employers can be held liable for disability discrimination if they fire an individual for using legally prescribed cannabis, an interpretation attorneys say could spread to other states and force employers to consider making exceptions to drug-free policies to accommodate workers' medical needs.

It is inevitable that the intersection of personal rights and public safety will collide when it comes to the use of cannabis. This will be playing out in the courtrooms across the country for quite some time.

Many employers feel caught between a rock and a hard place: Should they tighten policies to exclude users from their payroll or loosen them to prevent alienating otherwise qualified employees? Also at issue are pre-employment drug tests as a way to maintain a safe workplace. You may hear about employers who are no longer doing pre-employment testing or have taken cannabis off the panel because they can't find enough clean candidates in the job pool, while other employers say they will always test and maintain a zero tolerance policy. Every employer will need to decide where they stand and how to approach these issues and EA professionals are being called upon to help.

The Objective

This is the first in a series of publications intended to give EA professionals information to assist their companies and clients. We recognize that this is rapidly shifting territory, so this is a snapshot of the state of cannabis in the workplace in the Fall of 2017. The Tool Kit is organized in sections starting with the foundation of employer policies. Areas addressed are 1) Employer Policy, 2) Safety, 3) Compliance, 4) Productivity, 5) Flexibility, 6) Legislation and Litigation, and 7) Employee Rights. This is the first installment covering policy issues and safety concerns. We encourage all EA professionals to use the info in these first two sections of the Toolkit to help you assist your organizations navigate the complex and challenging area of Cannabis@Work.



Section 1: Policy Development

When it comes to cannabis and workplace safety, the message to employers with workers in states where medical and/or recreational cannabis is legal is: rethink testing and rewrite your policy. Employee assistance (EA) professionals are being asked to help employers find their way through this rapidly shifting challenge.

Cannabis (cannabis) is the most frequently used illicit drug of abuse in the United States and worldwide. Moreover, it is second only to alcohol as the most prevalent psychoactive substance seen in cases of driving under the influence of drugs. It is also by a wide margin, the drug most often detected in workplace drug-testing programs.

Cannabis in the workplace is not a black-and-white issue; thus, it is neither a miracle drug nor a safety nightmare. Rather, its use poses both potential benefits and workplace safety risks, both of which employers must consider when developing their policies and procedures around employee drug use and drug testing.

Employer policies are the foundation for managing the issues around cannabis in the workplace. Policies regarding medical cannabis need to be very clear about expecting responsible medication use and that employees are expected to use a safe alternative where available. Employees should be expected to consult with their physician or pharmacist regarding the side effects of any medication they are using, by explaining job functions. Policies should require that they advise their employer of any modified work they may need due to medication use. Some employers now require medical documentation that cannabis use does not pose a risk.

Other employer policies prohibit all use of cannabis. Those policies should clearly state that the company will not accept a medical cannabis, cannabis extract or recreational cannabis explanation for a positive drug test even where permitted by state law because such use is in violation of Schedule 1 of the federal Controlled Substances Act.

Employers who want to continue to ban all use of cannabis, including medical use made lawful under state law, should provide written notice to employees. In addition, all employers should seek legal advice concerning the current state of the law prior to terminating employees or taking other adverse employment action based on medical or recreational cannabis use now considered lawful under their state's cannabis laws.

For employers and stakeholders, it's not always legalization that's the problem, it's how they are supposed to balance workplace safety versus human rights as well as judge impairment with a drug that is difficult to measure. Employers across North America are looking for guidance that has been slow to arrive such as: 1) state or national cut-off levels similar to the "over .08" offense for alcohol with an acceptable workplace testing protocol; 2) workplace alcohol and drug testing regulations that permit employers to test employees on a pre-employment, post-incident, reasonable cause basis and 3) clear and balanced rules setting out an employer's duty to accommodate employees who use cannabis as medicine, 4) are under the influence of cannabis while at work and 5) who suffer from cannabis use disorder. The employers' policies are the axis upon which all the other issues revolve.

Q: What should an employer’s policy that addresses cannabis look like?

A: It depends.....

Thousands of employers have tackled this question in thousands of ways. There is simply no one best “plug and play” policy as employers have a wide variety of needs and because of the patchwork set of laws and regulations addressing this issue in countries, states, industries, and even different bargaining units of the same employer.

1. It depends on the employer’s need for safety. U.S. companies with DOT “safety-sensitive” employees must follow federal regulations to protect the safety of the traveling public. The DOT has established a zero-tolerance set of rules for these employees, deciding clearly that we don’t want our airline pilots, truck drivers, bus drivers, pipeline workers, train engineers, and ship captains to have cannabis in their system.

Some companies don’t care if their employees have used cannabis, as long as they aren’t impaired on the job. Some companies are even active promoters of recreational cannabis laws. Most employers are somewhere in between and often struggle to find the right balance in these policies.

2. In the United States, it depends on whether all employees are in one state or across multiple states, and the various regulations in these states about cannabis, as well as whether these regulations are changing. If any employees are in a state that allows recreational and/or medical use of cannabis, policies should address the employer’s stance on these uses of cannabis. Even if all employees are in one state that does not allow any form of legal cannabis use, employers should consider policy language about employees’ recreational or medical use of cannabis, as their employees may travel and legally use cannabis in other states and return with the presence of cannabis in their system.
3. In union environments, it depends on the bargaining unit agreements in place. Some employers work with a variety of agreements, so someone who uses medical or recreational cannabis will be terminated if they work under one union, and someone working under another union would be sent to their EAP and go through an assessment/treatment process and retain their job.
4. It depends on the corporate culture. Some employers, because of safety or litigation concerns, cannot allow anyone to have any THC in their system because of their concern about the escalated risks if an accident happens and it is proven that an employee has used cannabis. Some employers, especially those who employ creative-type employees, do not mind if employees use cannabis recreationally (if legal in their state) as long as it doesn’t impact their work. Some employers willingly accommodate an employee’s appropriate medical use of high-CBD, low-THC cannabis because they understand this helps them retain a valued employee who is performing well.

The corporate culture has a lot to do with the consequences when an employee tests positive for drugs/alcohol because of a random testing process, a reasonable suspicion test, or a post-accident test. Some Department of Transportation (DOT) and non-DOT employers choose to terminate their employees at that point and not provide any services through the

Employee Assistance Program (EAP). Some employers choose to refer these employees to the EAP or with DOT a Substance Abuse professional (SAP) where the employee can be assessed and a program for their education or treatment can be recommended. The EAP or SAP follows up with the employer, letting them know when the employee has completed their recommendations and is ready to be evaluated by the employer for their return to work. A follow-up testing schedule is also provided so the employee can continue to demonstrate their compliance with the employer's policies. It is important that EA professionals advocate for the most humane approach to dealing with impaired employees or those who make a bad choice, but also understand and respect that some employers choose a zero-tolerance approach for a variety of business reasons.

5. It depends on the changing national culture toward cannabis. Canada will be the second nation to legalize the recreational use of cannabis, following Uruguay. Eight U.S. states plus the District of Columbia have legalized recreational cannabis use. The majority of states now have laws legalizing the medical use of cannabis as well. These changing laws and attitudes are a key part of why employers are finding themselves responding with new policies that clarify their expectations for their employees' use of cannabis.
6. It depends upon an employer's perception of the difficulty it may have finding workers that will pass a clean drug test. There are locations and industries where it may be challenging (or seem challenging) to find enough qualified workers that will pass a drug test to get the job done.

Q: What should be in an employer's cannabis policy?

A: Although every policy must be tailored to meet regulations applicable to the specific workplace, employers could use the following content as a foundation for developing workplace policies for medical cannabis and other chemical substances:

- purpose/intent of the program;
- employees covered by the policy;
- when the policy applies;
- prohibited behavior;
- whether employees are required to inform their supervisor of medical cannabis prescription or drug-related convictions;
- whether the policy covers search and extent of the search allowed;
- observable and measurable behaviors indicative of unsafe job performance;
- referral mechanism for unsafe work performance;
- requirements for drug testing with input from the MRO;
- consequences for policy violation;
- whether return-to-work agreements are needed after an absence related to substance abuse;
- measures to protect employee confidentiality;
- measures for policy enforcement;

- steps to communicate policy to employees, supervisors, occupational health professionals, management, union management when applicable, and contractors and their employees;
- and assistance that is available to treat substance use or abuse.

Q: What factors should an employer take into consideration when updating their policies to address cannabis?

A: Some key considerations in policy development are:

- Differentiate between safety-sensitive and non-safety-sensitive jobs. An employee who occasionally uses cannabis in his or her time off may not pose a problem doing office work, but a more stringent standard should probably be applied to a forklift operator or an employee doing a hazardous confined space entry operation.
- Consider the reasons for employee use of medical cannabis. Should the employer allow its use for any employee with a physician's recommendation or restrict it to particular types of conditions or diagnoses?
- Consider the frequency of use, route of administration, and duration of use. For example, the effects of inhaled cannabis peak in 15 to 30 minutes and taper off after 2 to 3 hours, while the effects of ingested cannabis peak in 2 to 3 hours and taper off in 4 to 12 hours.
- Are there work restrictions or accommodations that should be implemented for employees with a medical cannabis recommendation?
- Consider a policy that requires employees who use medical cannabis to notify the employer of any changes to dosage, frequency of use, or route of administration and provide a physician's statement regarding safety concerns.
- Conduct fitness for duty evaluations, including consultation with an occupational health physician and neuro-cognitive testing if necessary.
- Review the company's written substance abuse policies. If they do not have written policies, hire a specialist in this area to create them. Policy wording must remove confusion. For example, a policy should not make a general reference to "illegal drugs." Rather it should ban drugs considered to be "illegal under federal and state laws." If the employer prohibits all cannabis go the next step and state that it includes cannabis.
- If they have customers, such as the federal government, that require contractors to maintain drug-free workplaces, include that in the policy.
- Specify what a "drug-free" workplace means to employees. Avoid the use of the terms "under the influence or impaired by". It is more helpful to define this to mean having a level above the standard detection limits of drugs, including cannabis, in a worker's system.
- State when employees will be drug tested. Most companies require drug testing of applicants prior to employment. When will drug testing be done after employment begins? Will that be following an on-the-job accident? What will be the consequences?
- How will the employer communicate the company's drug policy, including its treatment of cannabis, to workers and managers?

Q: How should an employer's policy define the legality or illegality of cannabis in the workplace?

A: The federal government regulates drugs through the controlled Substances Act, the statute under which the manufacture, importation, possession, use and distribution of certain substances are controlled. Cannabis is classified as a Schedule 1 drug, along with other narcotics including heroin, LSD and ecstasy. According to the U.S. Drug Enforcement Agency (DEA), Schedule 1 drugs have the following characteristics: a high potential for abuse; no currently accepted medical treatment use in the U.S.; a lack of accepted safety for use of the substance under medical supervision. Though many states have legalized cannabis for medical use, the DEA still considers cannabis and its active ingredient—tetrahydrocannabinol, or THC—illegal.

Q: Can an employer policy still insist on a drug free workplace?

A: The safety of workers and the public must be central to all workplace policies and employers must clearly articulate that legalization of cannabis for recreational or medical use does not negate workplace policies for safe job performance. The changing environment surrounding cannabis use requires close collaboration between employers, occupational health professionals, and legal experts to ensure that workplace safety is not compromised.

Despite statutes and requirements in some states regulating the use of medical cannabis and its relation to the workplace, most states have preserved the employer’s right to establish a drug-free work environment. Although no federal laws prohibit testing, several states have passed laws that limit random drug testing for workers in non-safety-sensitive positions. Drug testing is also prohibited in some situations unless there is reasonable suspicion the worker is impaired and unable to perform job duties safely. Therefore, workplace policies that rely on the observation of specific individual behaviors indicating chemical influence or impairment, rather than a specific drug test result in isolation, may provide an employer with greater liability protection.

Q: If an employer decides to test for cannabis what type of testing should an employer use?

A: There are four ways to test for cannabis – urine tests, oral fluid tests, blood tests and hair tests. Each one looks for the parent drug (THC) or the drug metabolites (substances that prove the drug was present). All four test methods are used in employee and pre-employment testing and are permitted as court evidence. DOT permits only urine testing

- Urine tests can detect the length of time since someone has used cannabis between a few days and several weeks. It takes two to eight hours after consumption of cannabis before it can be detected using urine testing. The test looks for drug metabolites.
- Oral Fluid Tests – Also called saliva tests, oral fluid tests detect usage right to after the most recent usage and up to three days later. They show the parent drug.
- Blood Tests – Like oral tests, blood tests also detect usage immediately and determine whether consumption took place within a few hours or a couple of days. Blood tests expose both the parent drug and metabolites.
- Hair Tests – A hair sample is collected from the donor and sent to a lab for testing. Drug use can be detected after five to seven days and up to approximately 90 days. Hair tests show the presence of drug metabolites.

Q: How should an employer’s policy address determining the presence of the metabolite THC versus determining impairment?

A: The employers' policy will need to address the distinction between the “presence” of the THC metabolite and impairment. There are presently no definitive tests to determine “impairment”. Many employer policies prohibit using or being under the influence in the workplace. Standard urine tests that are universally used by employers do not establish that an individual is ‘impaired’ by or ‘under the influence’ of tetrahydrocannabinol (THC), the psychoactive chemical in marijuana. A urine test measures, in nanograms, the amount of THC metabolites in the body, which are byproducts produced by the chemical changes in the body to THC after marijuana is smoked or ingested. It does not measure the amount of THC that is in the body. Even if a urine test could identify a level of THC in an individual’s body at the time the test was taken, there is not a universal agreement on what level would constitute impairment.

There is language in some state laws that require employers to demonstrate impairment, rather than the presence of cannabis in one’s system, before taking action against the employee. No scientifically acceptable test is available to determine when an employee is impaired by cannabis and there is no agreement on what level of THC in the blood denotes impairment. A key issue for employers is that there’s no scientifically proven way to determine **when** someone who tests positive for THC, cannabis’s psychoactive element, actually consumed the substance. THC enters a person’s system quickly after they consume the drug but can stay in the body for days or weeks, long after the effects of the drug have worn off. That means an employer would have no way of knowing, based solely on a standard workplace urine test, when a worker smoked cannabis or whether he or she was impaired at work.

Complicating the matter even further is that the THC metabolites are unlike most drug metabolites, which are water-soluble and can be excreted rapidly from the body. THC metabolites are fat-soluble and exit the body slowly, which can result in a positive test on one day and a negative on the next. Such a situation makes it difficult, if not impossible, to determine through a urinalysis when an employee last smoked or ingested marijuana. Until scientists determine what level of THC in the brain and body denotes impairment and invent a test to detect it, the solution for employers remains a positive drug test which detects the presence of the metabolite but cannot determine impairment. It does ensure abstinence from a prohibited drug defined by policy.

Sample policy language: *Under the Influence - For purposes of this policy, under the influence means presence of alcohol or prohibited drugs in their body above the established detection limits. Employees will be deemed under the influence of alcohol where the alcohol level is at or above the limit set by the specific state law where employee works. The symptoms of influence of drugs, including cannabis, are not confined to those consistent with misbehavior nor to obvious impairment of physical and mental ability such as slurred speech or difficulty in maintaining balance. A determination of influence can be established by a professional opinion, a scientific valid test, and where a professional determination is not reasonably available, a layperson's opinion.*

Q: Can employers still include testing for cannabis in their policies, even in states where medical and/or recreational cannabis is legal?

A: There are a growing number of states permitting the use of cannabis for prescribed medicinal purposes, as well as states approving recreational use. All state laws to "legalize" cannabis use squarely conflict with federal law, which still considers cannabis to be a Schedule 1 substance under the Controlled Substances Act with no legitimate medical uses.

Most state cannabis laws offer protection from criminal prosecution not employment protection. In fact, most legislation states something similar to “Nothing in this act shall require an employer to make any accommodation of the use of medical cannabis on the property or premises of any place of employment. This act shall in no way limit an employer's ability to discipline an employee for being under the influence of medical cannabis in the workplace or for working while under the influence of medical cannabis when the employee's conduct falls below the standard of care normally accepted for that position.” There are conflicting reports on the trends in drug testing policies. In states where the use of medical cannabis is legal, drug testing is trending upward.

While all employers should consult with legal counsel to make sure they adhere to any pertinent state and local laws, the U.S. Department of Labor sites a few general parameters:

- Under the American with Disabilities Act (ADA) and the Rehabilitation Act of 1973, employers may prohibit the illegal use of drugs and alcohol in the workplace.
- The ADA is not violated by testing for illegal use of drugs.
- Drug testing is not required under the Drug-Free Workplace Act of 1988.
- Most private employers have the right to test for a variety of substances.
- Current laws in the private sector generally allows non-union companies to require applicants and employees to take drug tests

At the time of this writing only eight states (Arizona, Connecticut, Delaware, Illinois, Maine, Nevada, New York, and Minnesota) prohibit discrimination in employment based on an employee’s lawful use of medical cannabis. However, such laws do not necessarily preclude adverse employment action based on results of a drug test. Many state laws expressly prohibit the use of cannabis at work, and employers in the US are generally not required to accommodate the use of cannabis in the workplace. Unless federal regulations require their use, workplace policies on drug testing must be negotiated in union contracts, and even if federally mandated, certain aspects of the policy must be determined through collective bargaining.

Q: Can employer policies prohibit off-duty use?

A: Prohibiting on-the-job cannabis use may seem like a no-brainer, but questions arise with off-duty cannabis use and workplace drug testing. The most common method, urinalysis, can show whether the employee has ingested cannabis, sometimes up to a month or more after the fact. It doesn’t necessarily indicate the subject is impaired or under the influence of cannabis.

Employers residing in or near states that allow the use of recreational cannabis may decide to establish a policy regarding off-work use of cannabis. Employers must adhere to their state’s off-duty conduct laws: Twenty-nine states and the District of Columbia have statutes that protect employees from adverse employment actions based on their off-duty activities. Some company drug and alcohol policy extends to employees’ off-duty conduct if they are wearing work apparel with a company logo. Generally, an employer’s anti-cannabis policy should explain why the restriction promotes the legitimate business interests of the company.

The question of whether employer policies can prohibit off-duty use of cannabis is complicated by the differences among state laws regarding both medical and recreational use of cannabis and the scarcity of legal precedent at this time. The general legal consensus is that employers do not have

to “tolerate” off duty cannabis use, thereby implying that employer policies may allow for the prohibition. The justification for this conclusion is that under federal law, using and possessing the drug is illegal, therefore, any employer policy which allows for termination for engaging in an illegal behavior is reasonable.

In the private sector, state laws requiring drug testing for employees’ post offer or after hire may differ from union companies versus nonunion companies. But practically speaking, the difference between the federal prohibition and state laws which sanction medical and/or recreational likely create confusion for employees and employers as well. Eventually a court could rule that an employer has a duty to accommodate a disabled employee’s off-duty medical cannabis use. For example, some forms of medicinal cannabis (such as strains used to treat children with epilepsy), contain very little of the psychoactive chemical “THC” found in most cannabis plants. It would be difficult to argue that this type of off-duty use would negatively impact performance or safety. Complicating the matter further, a positive test for cannabis does not necessarily mean an employee is impaired. Urine tests—the most popular form of drug testing—measure not THC itself, but a non-psychoactive byproduct of THC created in the liver that can linger for weeks.

The state of Maine’s Act to Legalize Cannabis will be the first law of its kind in the United States establishing *express* recreational cannabis anti-discrimination protections. Specifically, the Act prohibits employers from refusing to employ or otherwise penalizing any person 21 years of age or older based on that person’s “consuming cannabis outside the . . . employer’s . . . property.

For now, courts and legislatures in almost all states have spared employers from the potential dilemma of having to accommodate a positive drug test for cannabis, allowing employers to enforce far less hazy “zero tolerance” policies. However, employers in New Jersey, Pennsylvania, and as seen recently in Massachusetts, this can change with already proposed legislation.

Q: How can employers with employees in different states write a policy that complies with differing state laws?

A: This gets complicated when state laws differ on employee protections. In Connecticut, Maine, Rhode Island, and Illinois, for example, employers cannot terminate an employee simply for being a medical cannabis patient. So there is a potential scenario where one employee of a multi-state business would be allowed to work while holding a medical cannabis card while another employee of that same business in a different state would not be allowed to do so. And if the protected employee tests positive for cannabis, even more complications arise.

Some states prohibit termination based on a failed drug test alone, instead requiring proof of impairment, when, unlike alcohol, no scientific measure of impairment has been established. Arizona, Connecticut, Delaware, Maine and Rhode Island employers cannot refuse to hire or penalize an individual based on his or her status as a cannabis patient. In Arizona and Delaware, particularly, a positive drug test alone will not provide an employer with sufficient grounds for discharge, unless the employee was in possession of the drug or was impaired while on the employer’s premises or during work hours. Employers are expected to produce additional evidence of an employee being under the influence at work.

Q: How does the legalization of medical and/or recreational cannabis impact pre-employment, random testing and reasonable suspicion testing?

A: Many states have implemented state-specific requirements for drug testing and screening. For example, Connecticut and Minnesota limit random drug testing to those employees in safety-sensitive positions. Other states, such as Arizona, Arkansas, Connecticut, Louisiana, and Maryland (among others) require some form of confirmatory testing after an employee receives a positive test. Some states have even more specific requirements. For example, in Rhode Island, an employer must refer the employee to a substance abuse professional after a first failed test, and can only terminate the individual for continued use despite treatment.

A recent Superior Court decision in the US state of Rhode Island calls into question employers' rights to enforce workplace drug tests for cannabis – something which has been taken for granted across the country for years. In the summer of 2014, in the Rhode Island town of Westerly, Christine Callaghan disclosed to her prospective employers that she possessed a medical cannabis card, and legally used the drug for medical purposes. Despite her clarifying that she “would not use or possess cannabis in the workplace”, her prospective employers – the Darlington Fabrics Corporation – rescinded her paid internship position because her admitted cannabis use would prevent her from passing the mandatory pre-employment drug test. On May 23, 2017, the state's Supreme Court ruled in favor of Callaghan, finding that an individual cannot be denied employment on the basis of testing positive for cannabis if the employee is licensed by the state to possess and consume the drug.

This case is a departure from the norm in the US, where workplace drug testing is widespread. The Colorado Supreme Court has held that although Colorado law allowed for the use of medical cannabis, that law did not prevent an employer from terminating a medical cannabis user who had tested positive for cannabis in violation of the company's zero-tolerance drug policy. Reaching a similar conclusion, a federal district court in Washington dismissed an employee's discrimination complaint and found that the law in Washington does not require employers to accommodate the use of medical cannabis where they have a drug-free workplace policy. The court pointed to an earlier 2011 decision from the Washington Supreme Court, which held that Washington's medical cannabis law “does not regulate the conduct of a private employer or protect an employee from being discharged because of authorized medical cannabis use.”

Q: Should there be a separate Cannabis policy?

A: It is recommended that employers develop a specific policy involving medical cannabis users and recreational cannabis. If the employer is federally funded or have federal contracts, the policy must be in compliance with the Drug-Free Workplace Act of 1988. If not, the policy must still meet the standards of state law.

Sample Cannabis Policy Language:

Sample 1: [Employer Name] has a zero tolerance drug use policy. Employees will be subject to termination if any illegal drugs or illegal drug metabolites are found in the employee's body. Illegal drugs are drugs that are classified by the state or federal law as unlawful. This includes federally controlled substance schedule drugs. **Sample 2:** [Employer Name] recognizes that some employees may use cannabis as medicine. Employees are required to notify the employer that they have legal status under state law and must obtain a signed statement from their physician that their use will not impair their ability to perform their job functions. [Incorporate or cross refer to any substance abuse policy.]

Sample Language for Statement Required by Some Employers for the Use of Cannabis as Medicine:

I, Dr. _____, M.D. certify that _____, to whom I provided a Physician's Recommendation on _____ (date), may use medical cannabis. I am aware of the scope of job duties required by his/her position as a _____. Duties may include but not limited to _____.

With this knowledge I agree that the individual listed above may have cannabis metabolites in his or her system while performing duties previously listed and poses no threat to safety either to the employee, coworkers, or to the public.

Furthermore, I hereby acknowledge full responsibility and liability for any claims, damages, injury to persons or property should any accident occur due in whole or in part to the member's use of medicinal cannabis.

Signed _____ DATE _____

Please fax back to _____ or mail to the address listed. If we do not receive this back within 5 business days of receipt we will assume you are unable to sign. If you have any questions, please contact our office as soon as possible.

Q: How should an employer's policy address self-identification by an employee struggling with a cannabis use disorder?

A: Many employers choose to invite employees to self-identify their issues with substance abuse before the employee's work performance becomes impaired, with the understanding that the employer will not take adverse action upon self-admission.

This is an ideal job for an Employee Assistance Program. An employee assistance program (EAP) is a work-based intervention program designed to identify and assist employees in resolving personal problems (e.g., marital, financial or emotional problems; family issues; substance/alcohol abuse) that may be adversely affecting the employee's performance. The EAP is a voluntary, work-based program that offers free and confidential assessments, short-term counseling, referrals, and follow-up services to employees. EAP counselors also work in a consultative role with managers and supervisors to address employee and organizational challenges and needs. EAPs can help reduce health care and disability claims, increase productivity and morale and lower absenteeism.

With federally regulated employees, especially those under FMCSA the employer will offer promise of continued employment to the employee pending his/her successful completion of alcohol and drug education and/or treatment based on the employee's level of need. According to the Department of Transportation, a qualified self-identification policy must contain the following elements:

- It must prohibit the employer from taking adverse action against an employee making a voluntary admission of alcohol misuse or controlled substances use within the parameters of the program or policy.
- It must allow the employee sufficient opportunity to seek evaluation, education or treatment through the employee assistance program.
- It must permit the employee to return to safety sensitive duties only upon successful completion of an educational or treatment program, as determined by a drug and alcohol abuse evaluation expert, i.e., employee assistance professional or qualified drug and alcohol counselor.

- It must ensure that prior to the employee participating in a safety sensitive function, the employee shall undergo a return to duty controlled substance test with a verified negative test result for controlled substances use; and
- It may incorporate employee monitoring and include follow-up testing

With non-regulated employees, the employer should offer assistance to the employee who self-identifies as struggling with a cannabis misuse disorder and provide appropriate clinical referral the employee assistance program. Self-identification policies for **non-regulated employees** should contain the following elements:

- Confidentiality is the hallmark of EAP and it is essential to its success. When employees discuss their issues with EAP counselors, that information is not revealed. The worker has to give written consent. No one besides the person accessing the services know they are using the EAP. No reports are made to management other than aggregate reports that do not identify individuals.
- It should prohibit the employer from taking adverse action against an employee making a voluntary admission of cannabis misuse during off-work hours pending the absence of work performance difficulties or a violation of organizational policies by the employee.
- It should permit a non-regulated employee to return to work duties following their involvement with and successful completion of an educational and/or treatment program.
- It should ensure that the employee undergo a return to duty controlled substance test with a verified negative test result and may include additional follow-up testing, as determined by the employer depending upon the CBA, job duties, specific safety or at risk functions.
- It should provide protections that are consistent with other organizational policies including short and long term disability, ADA protections, etc.
- It should encourage continued involvement with the EAP for abstinence support.



Section 1 - Policy - Recommendations for EA Professionals

When companies seek input from their EA professional about their drug/alcohol policy, it is important for EAPs to serve as a resource and help them see the variety of options that are available. Especially important is to give input about how companies may deal humanely with employees that self-disclose that they have a problem with cannabis as well as those that violate these policies and the range of options available to employers from their EAP. Whatever policy a company decides upon, EAPs also have an opportunity to help roll out this new policy. As behavioral health experts and with much expertise on drug and alcohol use and abuse, EAPs have a unique perspective on how companies may best communicate their expectations to employees. This should include drug and alcohol trainings and promotional materials that inform employees of company expectations as well as educating employees about the resources available through their EAP.

Section 2: Safety

The use of medical and/or recreational cannabis in the workplace raises safety concerns for employers. The Occupational Safety and Health Administration requires employers to maintain a work environment "free of recognized hazards." The prospect of employees under the influence of cannabis raises concerns about absenteeism, productivity and workplace safety. Yet employers are wary of legal challenges to drug-free workplace rules in jurisdictions where cannabis is legal. Companies are conflicted on what to do. The potential consequences of cannabis use in the workplace include the risk and associated cost of adverse events and the loss of productivity. Just like policies regarding the use of alcohol and legally prescribed drugs impaired workers pose a danger to themselves, their colleagues and often the public.

The obligation of employers to ensure safety at workplaces has not changed despite increased use of medical cannabis and its possible legalization of recreational cannabis. The California Society of Addiction Medicine website reports studies have shown that cannabis slows reaction time and causes dizziness and other psychological effects that may prevent working safely, including safe operation of equipment and tools. The Occupational Safety and Health Act's "general duty clause" requires employers to maintain safe workplaces. In the course of investigating workplace accidents, OSHA frequently has issued citations to employers who had workers with illegal drugs in their systems.

Many employers in both the US and Canada feel unprepared for cannabis legalization and urge the government to step in to clear the smoke about workplace policies, according to a report by Canada's largest human resources professionals group. Survey respondents' major concern was workplace safety, but they also said they are concerned about issues such as attendance, decreased work performance and increased insurance claims. Employers are concerned that legalization will result in increased impairment in the workplace and a resulting increase in accidents. They feel ill-equipped to detect and enforce cannabis use, the report said. One of the main problems HR professionals identified is the lack of a clear-cut definition for, or way to test for, impairment. Unlike alcohol, there is no scientific consensus on what constitutes "impairment."

For the moment, the practical challenge for employers is proving an employee is impaired by cannabis. To date, there is no quick, easy-to-use and reliable test for current impairment from cannabis. Urine testing will give positive results long after an employee is no longer impaired. Newer testing technology for saliva and breath is getting close to being a reliable test for current impairment but is not yet recognized as being as reliable as tests for alcohol impairment. At best, such tests can confirm recent use, which may or may not be consistent with impairment. The situation is further complicated by evidence that the degree of impairment resulting from consumption of a given amount of THC, the impairing ingredient of cannabis, may vary across individuals.

The difference between being "impaired" and an employee showing up for work with the presence of cannabis in his or her system -- residual amounts from medical treatments, or in some states, recreational use -- will be increasingly vulnerable to future court challenges.

Q: How is cannabis different today?

A: Traditionally, government data about THC content was from analysis of cannabis seized by law enforcement. In the 60s and 70s THC content hovered around 1-2%. But at some point in the '70s, growers began to experiment with enhanced varieties with the goal of increasing THC content. That was driven by competition in the marketplace, but also by the need to satisfy regular users, who were developing tolerance. By 1982, THC content averaged 3%, and by 1995, 4%. Twenty years later, in 2014, THC content averaged 12%.

Hybridization has led to regional differences as well. In Colorado THC content is routinely 19%, and can extend in some instances as high as 30% depending on how it is prepared – plant material, oil, wax, etc. Butane hash oil is a cannabis concentrate that is over 10 times more potent than herbal cannabis. The use of butane hash oil was associated with high levels of depression, anxiety disorder and other illicit substance use.

Paradoxically, as THC rises, the concentration of cannabidiol, or CBD-- the part of the plant with proven medicinal value-- dramatically decreased. In 2001, the ratio of THC to CBD in cannabis was about 14 to 1. By 2014, it could be as much as 80 to 1. On the other hand several states have limited use to low THC products. For example in 2014, a Florida law was passed legalizing the use of a low THC, non-euphoric cannabis oil called cannabidiol, or CBD, to qualified patients with cancer, muscle spasms and intractable seizures.

Q: Does cannabis with higher THC levels impair people for a longer period of time?

A: By definition cannabis is a psychoactive substance which means it can change people's perceptions, mood, and behavior. Higher potency cannabis contains more of the psychoactive component, so it makes sense that higher potency cannabis could increase the risk of temporary or longer-term (adverse) problems with perceptions, mood, and behavior.

The strength or potency of cannabis is determined by the amount of 'THC' it contains. THC produces the 'high' associated with cannabis, and another major component 'CBD' produces the sedative and anti-anxiety effects. As well as potency, the relative amounts of THC and CBD are important for understanding the effects of cannabis. The researchers compared two different types of cannabis: the first had high levels of THC (approx. 13%) but virtually no CBD; and the second had a lower level of THC (approx. 6.5%) and substantial amounts of CBD (approx. 8%). They found that CBD had a moderating or protective effect on some of the negative effects of THC, and that "many of the effects that people enjoy are still present in low-potency varieties without some of the harms associated with the high-potency varieties".

State laws vary widely concerning the forms of cannabis permitted. Some allow employees to grow their own and smoking the plant material. Some allow only low THC/high CBD strains with limited psychoactive effects. Others limit use to tinctures and oils and prohibit the smoking of plant material. Newly popular methods of vaporizing or eating THC-rich hash oil extracted from the cannabis plant (a practice called *dabbing*) may deliver very high levels of THC to the person. The average cannabis extract contains more than 50 percent THC, with some samples exceeding 80 percent. These trends raise concerns that the consequences of cannabis use could be worse than in the past, particularly among those who are new to cannabis use or in young people, whose brains are still developing.

Most research on effects has been done using cannabis with low THC levels, from two to four or five percent. But average THC levels in today’s cannabis range from 12 to 15 percent, a strength that the Netherlands regards as a “hard” drug and may ban from the coffee shops where the country allows people to consume cannabis. A study using cannabis that contained 13 percent THC levels found users’ executive functioning and motor functioning were seriously impaired for many hours after smoking.

THC levels in cultivated cannabis and cannabis products, such as THC-infused cookies and candies contain a higher level of THC. Whether such high levels of THC further extend the length of time a person is impaired after using cannabis remains an open question requiring more research. If future research shows that high THC levels increase the time a person is impaired, more problems will occur for employers if courts ultimately decide they must accommodate cannabis use.

Q: How does cannabis use impact a worker?

A: Cannabis is associated with a range of side effects. These include panic attacks, seizures, hallucinations, psychosis, sedation, dry mouth, heart palpitations and arrhythmias, and—potentially most worrisome for workplace safety—cognitive impairment and slower reaction times. Current cannabis use is associated with impaired verbal memory and slower cognitive processing speed.

Research into the cognitive impairment caused by cannabis use and its effects on safety has shown a variety of results. A 2013 study concluded that cannabis use has a negative effect on learning memory, attention, reasoning, and concentration. In a flight simulator study, pilots showed impaired abilities at 1 hour, 4 hours, and even 24 hours after cannabis consumption. And a 2016 meta-analysis of 21 studies in 13 countries, which incorporated results from over 200,000 participants, found that cannabis use (either self-reported or found in blood, urine, or saliva tests) was associated with at 20 to 30 percent greater risk of a motor vehicle crash.

Although studies that assess impairment in the workplace due to cannabis are now beginning to emerge, numerous studies using driving simulator, road, and psychometric tests assessing impairment of the skills necessary for safe operation of a motor vehicle caused by cannabis use have been performed. Because much of the knowledge regarding impairment and accident risk in the workplace due to alcohol intoxication has been gleaned from studies of driving impairment and crash risk, these same types of studies can be used to assess impairment in the workplace from cannabis. However, the research is not unanimous in its conclusions. A 1994 survey of 9,000 employees found no association between recent or remote use of cannabis and the risk of work-related accidents. The bottom line is that many questions remain about the effects of cannabis on cognition, behavior, and safety, and employers will need to take all of these potential risks and benefits into consideration.

Q: Are employees who use cannabis off the clock impaired when they come to work?

A: Cannabis acutely impairs a variety of neuropsychological functions in a dose-dependent manner, especially attention, concentration, episodic memory, and associative learning. However, evidence of an association between cannabis use and long-term neurocognitive deficits is mixed.

While meta-analyses and systematic reviews of studies on cannabis-associated neuropsychological function in cannabis users generally show impairment, a meta-analysis of 13 studies including cannabis users with at least one month of abstinence found no differences from nonusers on neuropsychological test performance. This finding suggests that cannabis-associated impairment resolves over the time period needed to eliminate body stores of lipid-soluble cannabinoids.

Q: How can employers ensure safety if they must show impairment rather than presence of THC in the body?

A: Lawmakers in New Jersey have introduced legislation that would prohibit employers from taking any adverse employment action against an employee based on either the employee's status as a registry identification cardholder or the employee's positive drug test for cannabis, unless the employer could establish that the lawful use of medical cannabis impaired the employee's ability to perform his or her job responsibilities. As previously noted, drug testing alone does not indicate impairment. Therefore, workplace policies that rely on the observation of specific individual behaviors indicating chemical influence or impairment, rather than a specific drug test result in isolation, may provide an employer with greater liability protection.

Q: What are the rules around post-accident testing?

A: Many employers have policies and procedures that mandate drug and alcohol testing in the wake of a workplace accident, regardless of whether there is any suspicion that the employee involved was impaired. However, effective August 10, 2016, OSHA's final rules on electronic reporting of workplace injuries require employers to implement "a reasonable procedure" for employees to report workplace injuries and that procedure cannot deter or discourage employees from reporting a workplace injury. OSHA believes that "**blanket post-injury drug testing policies deter proper reporting.**" That means, if an employer has a policy in place that automatically mandates drug testing after every accident, injury or illness, they are in violation of the law.

The OSHA rule makes automatic drug testing illegal because it has been shown to discourage employees from properly reporting injuries. OSHA's commentary with regard to drug testing notes that, "Although drug testing of employees may be a reasonable workplace policy in some situations, it is often perceived as an invasion of privacy, so if an injury or illness is very unlikely to have been caused by employee drug use, or if the method of drug testing does not identify impairment but only use at some time in the recent past, requiring the employee to be drug tested may inappropriately deter reporting." To eliminate that deterrent effect, OSHA maintains that drug testing policies should *limit post-incident testing to situations in which employee drug use is likely to have contributed to the incident, and for which the drug test can accurately identify impairment caused by drug use.*

Employers need not specifically suspect drug or alcohol use or impairment before testing, but there should be a reasonable possibility that use by the reporting employee was a contributing factor to

the reported injury or illness in order for an employer to require drug testing. Here are some things to take into consideration if the employer has a post-accident testing policy:

- a) Review the Drug-Free Workplace Policy: Make sure the Written Substance Abuse Policy or the Workplace Drug & Alcohol Testing Policy distinctly defines the circumstances under which the post-accident testing will be conducted. Replace general testing provisions with a list of specific criteria. All post-accident policies should be reviewed and updated to ensure that the language is not retaliatory and does not deter or discourage the reporting of illnesses or injuries.
- b) Review the Policy Based on the State Laws: State laws need to be adhered to when an employer drafts his/her company's policies, especially those related to enforcement of post-accident or post-injury drug testing. Laws for a drug-free workplace and worker's compensation will remain unchanged. Further, companies won't be accused of violating OSHA rules if post-accident testing is conducted after reasonable suspicion.
- c) Re-Train Staff: Supervisors need to be inducted into the revised rules announced by the OSHA. These training programs need to include aspects like building reasonable suspicion drug testing post workplace accidents.

Q: What is included in a policy for reasonable suspicion testing?

A: Reasonable suspicion testing is important in monitoring employees' compliance with requirements regarding drug and alcohol use. Employees who engage in illegal drug use or alcohol misuse put themselves, their co-workers and the public at risk. Supervisory personnel have a responsibility to monitor employee performance, behavior and conduct to ensure that they are able to perform safely their duties. Reasonable suspicion testing isn't "blowing the whistle" on or "harassing" employees; it is a tool to deter substance abuse, to protect workplace safety, and to identify employees who need help in resolving problems associated with drug or alcohol abuse. Reasonable suspicion drug testing determinations are sometimes the most challenging aspects of a drug-free workplace program, yet can have a profound impact on safety, well-being and productivity.

Reasonable suspicion testing is challenging because it is discretionary. Supervisors often feel that they are ill prepared and worry about the impact if the tests are negative. Reasonable suspicion testing requires careful, comprehensive supervisor training to ensure consistent application of the program across the workforce. Reasonable suspicion testing, also known as for cause drug testing, is performed when supervisors have evidence or reasonable cause to suspect an employee of drug use. Evidence is based upon direct observation, either by a supervisor or another employee. Specific reasons for reasonable suspicion testing include physical evidence of illicit substances, patterns of erratic or abnormal behavior, disorientation or confusion and an inability to complete routine tasks.

An employer has the ability to create their own definition of a reasonable suspicion test. However, states where the employer does business may have specific regulations concerning the employer's ability to perform reasonable suspicion tests. There is language in some state laws that require

employers to demonstrate *impairment*, rather than the presence of cannabis in one's system, before taking action against the employee.

Issues to consider for a reasonable suspicion policy:

1. **Observation** – Who can make the observation? Where must the observation take place? What signs and symptoms should one look for?
2. **Confrontation** – Where should the confrontation take place? What should be said? What should one *not* say? Who will be involved in the confrontation?
3. **Documentation** – Has the company created a reasonable suspicion documentation form? When should this form be completed? Does each observer complete his/her own form?
4. **Testing** – Where is the employee taken to complete testing? Who will take the person to the testing facility? Is there availability at all hours of service for testing to be completed? Can on-site collection options be used (*and if so, what should the employer do with the employee while waiting for the collector to arrive*)?

Here are some best practices to follow related to reasonable suspicion drug and alcohol testing for the workplace.

- Make sure employees know that they are subject to reasonable suspicion drug testing.
- All supervisory personnel should receive a minimum of two (2) hours of training on reasonable suspicion signs, symptoms and documentation. Recurrent training is highly recommended to keep supervisors educated and prepared.
- Determinations should always be made based on current information. Observations may occur just before, during or just after the employee is working.
- When documenting, be as specific as possible. Name the behaviors in question—to make a case, there should be several present.
- It is strongly encouraged that at least two (2) supervisory personnel concur that there is reasonable suspicion for a drug test. This protects both the supervisor and the employee.
- Drug and alcohol testing should be done promptly after removing the employee from duty. The employee under suspicion should not be allowed to drive themselves to the collection site (or elsewhere) without a negative drug test result.

Sample policy language: *A drug and/or alcohol test may be required where there is reasonable suspicion that an employee is under the influence of alcohol or drugs while on company property or on company business and where there is reasonable prospect of impaired job performance. Reasonable suspicion testing must be based on the observation of an impaired condition or other circumstances by a member of management, human resources representative, or is a physician from the site occupational medical department must agree that such testing is appropriate. Those individuals performing these duties will be trained to make such observations reliably. Employees who have serious job performance problems such as involvement in accidents, erratic behavior, poor attendance, and deterioration of the quality of work may be required to report immediately for evaluation. Health Services may request an employee to submit to a drug and/or alcohol test. Employees who appear to be under the influence will not be permitted to drive.*

Q: How does cannabis affect driving?

A: Driving with cannabis in one's system is a serious public-health and safety concern. Nationally, cannabis remains the second most cited drug after alcohol in car crashes. In a study of seriously injured drivers admitted to a level-one shock trauma center, more than a quarter tested positive for cannabis. In California, drugged drivers are more prevalent on the roads than drunken drivers. Cannabis-related highway crashes increased 100 percent (to 319) between 2007 and 2012 in Colorado, where the legalization of medical and recreational cannabis has made the drug available to more people.

As more states consider legalizing cannabis, legislators are challenged to create laws on driving while impaired by cannabis. It's relatively easy to determine when someone is too drunk to drive. If a driver's blood-alcohol level is 0.08 percent or higher, that person is considered legally impaired. But measuring the effects of cannabis on drivers is far trickier, and that blood tests are an unreliable indication of impairment by cannabis. Lawmakers in states look to policies on drunken driving for cues on how to legislate against driving while high. But the body absorbs alcohol and cannabis in different ways. While drunkenness directly correlates to alcohol in the bloodstream, cannabis impairment takes place only when THC makes its way into the fatty tissue of the brain.

There's no science that shows drivers become impaired at a specific level of THC in the blood. A lot depends upon the individual. Drivers with relatively high levels of THC in their systems might not be impaired, especially if they are regular users, while others with relatively low levels may be unsafe behind the wheel. Some drivers may be impaired when they are stopped by police, but by the time their blood is tested they have fallen below the legal threshold because active THC dissipates rapidly. The average time to collect blood from a suspected driver is often more than two hours because taking a blood sample typically requires a warrant and transport to a police station or hospital, the foundation said.

In addition, frequent cannabis users can exhibit persistent levels of the drug long after use, while THC levels can decline more rapidly among occasional users. Nine states, including some that have legalized cannabis for medicinal use, have zero-tolerance laws for driving and cannabis that make not only the presence of THC in a driver's blood illegal, but also the presence of its metabolites, which can linger for weeks after use.

In positions where safety is a factor, or when employees hold jobs that require the operation of motor vehicles, most statutes do not authorize the operation of any motor vehicle while under the influence. Rhode Island and Delaware, however, have issued statutes stating that a registered, qualified medical cannabis patient is not considered to be operating a vehicle under the influence solely because of the presence of cannabis in an employee's system.

There is good evidence from a meta-analysis and real and simulated driving studies indicating that cannabis can negatively affect drivers' attentiveness, perception of time and speed, and ability to draw on information obtained from experiences. Traffic studies of crash risk have shown that when cannabis was present in drivers' blood, they were much more likely to be at fault, and there was a dose-response relationship, with drivers having higher THC concentrations being more likely to be deemed culpable for the crash. Studies have confirmed that while using cannabis, individuals demonstrate impaired motor performance in both driving simulator and on-the-road tests. In the driving studies, the strongest decrements were in drivers' abilities to concentrate and maintain

attention, estimate time and distance, and demonstrate coordination on divided attention tasks—all important requirements for operating a motor vehicle.

In Montana, Washington, Pennsylvania, Ohio and Nevada, drivers are presumed guilty if they have a certain amount of THC in their blood. Colorado also uses a five nanogram threshold to assess impairment, though it allows suspects to provide evidence at trial that they were not impaired. In the Canadian legalization bill, the Canadian government recommends a safe driving limit of between zero and two nanograms of THC (the main psychoactive ingredient in cannabis) per milliliter of blood, but given the nature of the drug, it is not clear how much that equates to in practice.



Section 2 – Safety - Recommendations for EA Professionals

For decades EAPs have been partnering with employers to help make workplaces safer. Our field began with efforts at helping employees impacted by their alcohol and drug use. We have much expertise in this area, we can support employers who are trying to make their workplaces safe, and we have helped thousands of employees make better choices that lead to safety and health.

Just as a drunk employee impacts everyone, an employee who is stoned at work impacts everyone. Safety-sensitive employees are not allowed to be impaired at work for obvious reasons, and EAPs and SAPs help companies and their impaired employees every day to get the help they need. On the other hand, not everyone who drinks socially at home is a safety risk, and not everyone who uses cannabis legally (recreationally or medically) is a safety risk. Policies that companies develop fall on a continuum of safety considerations – some choosing to protect everyone’s safety at the possible risk of individual rights, and others choosing to protect individual rights at the possible risk of safety. This choice in policy language largely depends on the industry, and EAPs can offer suggestions and guidance to employers weighing these considerations.

EAPs are well-positioned to help employers develop humane policies which increase everyone’s safety – encouraging help when people voluntarily admit they have a problem and providing help when people violate a policy. At the same time, EAPs educate about the safety issues with cannabis use and support whatever policy an employer chooses. EAPs have expertise on teaching reasonable suspicion guidelines that help supervisors recognize impairment from cannabis use, can educate employees about use versus misuse, and provide help for employees who voluntarily admit they have a problem.

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If you are interested in contributing to the next installments of the EA Professionals Toolkit: Cannabis@Work please let Julia know at j.barnes@eapassn.org