

Marijuana in the Workplace

Challenges and Management in Occupational Health & Safety

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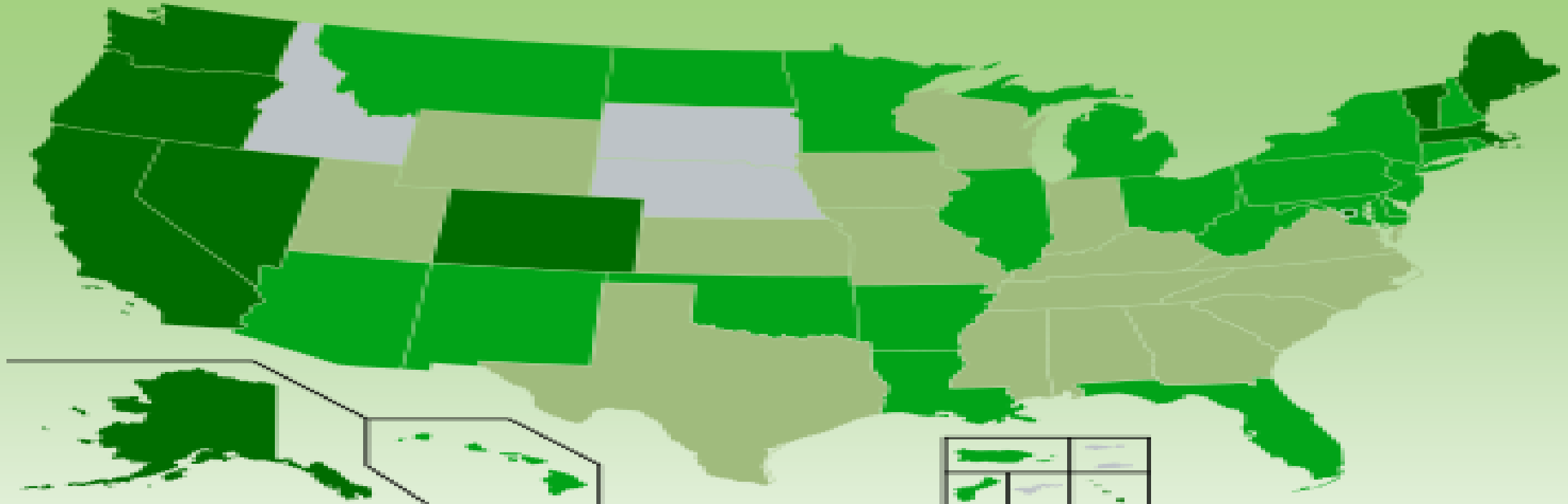


Is This How Your Employees Get to work?? It may soon be...



Legalization of Marijuana

- Legalization of marijuana has swept across the United States
- The majority of states and the District of Columbia have legalized marijuana and/or cannabidiol



States Permitting Recreational Marijuana

- Alaska
- California (2016)
- Colorado (1st-2012)
- District of Columbia
- Maine
- Massachusetts
- Nevada
- Oregon
- Washington



- None of the recreational marijuana statutes in these states contain employment protections for recreational marijuana users
- None of these states have limited an employer's right to enforce a zero-tolerance marijuana policy

States Permitting Use of Medical Marijuana

- Alaska
- Arizona
- Arkansas
- California (1996-1st)
- Colorado
- Connecticut
- Delaware
- District of Columbia
- Hawaii
- Illinois
- Maine
- Maryland
- Massachusetts
- Michigan
- Minnesota
- Montana
- Nevada
- New Hampshire
- New Jersey
- New Mexico
- New York
- North Dakota
- Ohio
- Oregon
- Pennsylvania
- Rhode Island
- Vermont
- Washington



States With Limited Marijuana Use Laws *A low-THC form of cannabis (CBD)*

- Alabama
- Florida
- Georgia
- Iowa
- Kentucky
- Louisiana
- Mississippi
- Missouri
- North Carolina
- South Carolina
- Tennessee
- Texas
- Utah
- Virginia
- Wisconsin



Pros of Marijuana Legalization

- **Medical**

- Pain control
- Multiple sclerosis
- Nausea
- Epilepsy
- Traumatic brain injury/concussions
- Alzheimer's disease
- Bipolar disorder
- Arthritis
- AIDS/HIV
- Glaucoma
- Certain irritable bowel syndromes



- **Economic**

- New jobs for packaging
- Horticulture
- Commercial leasing
- Warehousing
- Cuisine
- Marketing
- New jobs for government regulators, transporters, etc.

Cons of Marijuana Legalization

- Medical

- Too much THC can lead to psychosis
- Anxiety
- Depression
- Cyclic vomiting syndrome
- Medical uncertainty
- Altered brain development in children
- Dependence
- Impaired coordination
- Altered judgment
- Short term memory loss

- Economic

- “Cash only” business
- Traffic accidents and fatalities
- “Doping” down America



Everything Old is New Again!

- Marijuana (cannabis) = most frequently used illicit drug in US/World
- 8.4% of full-time workers had used in preceding month (2007) SAMHSA
- 2nd only to Alcohol in DUI cases
- Drug-Free Workplace Act 1988
- OSHA -1998 letter of interpretation-"safety sensitive duties"

Properties of Marijuana

- Dozens of strains of marijuana (Cannabis sativa –majority)
- Primary Psychoactive substance = delta-9-tetrahydrocannabinol (THC)
- Over last 20 years, marijuana potency – expressed as a percentage of THC by weight of substance – has increased from approx. 3% in 1980s to approx. 15% today
- Rapid THC rise and fall with smoking – pulmonary absorption
 - CNS distribution in within minutes (11-hydroxy-THC)=psychoactive
 - Carboxy-THC (nonpsychoactive metabolite) appears later – UDS test- Long...
- THC can be detected in bloodstream days or weeks after ingestion (28+ days)

Marijuana Properties (cont.)

- Hepatic (liver) metabolism _CYP450
- Cannabis sativa = 400 different chemical compounds with >60 cannabinoids
- Modulate neurotransmission through CB1 (brain) and CB2 (gut/immune)
- Delta-9-THC acts on CB1 = psychoactivity
- D-9 mainly from leaf
- Stems/seeds more CBD that effect CB2 with a little CB1
- Bioavailability
 - Smoking 56% (onset seconds, max 15-30 mins, taper 2-3 hr)
 - Oral 10-20% (onset 30-90 mins, max 2-3 hrs, taper 4-12 hr)

Marijuana & Impairment

- Testing can indicate ingestion within 4-6 hours, however no accepted test to assess or predict impairment
- Impairment affected by:
 - Strain & potency of Marijuana
 - Physical characteristics of the user
 - Environmental surroundings
 - Frequency of use
 - Method of consumption

Impairment Of Judgment and Psychomotor Skills

- Numerous studies show cognitive/psychomotor decline
 - Attention, concentration and abstract reasoning
 - Less acute effects in long time users but significant delay in cortical processing
- Driving impairments
 - Increased risk MVA, especially fatal collisions
 - Delayed reaction time, impaired lane tracking, inattention to speed, aversion to risk.
 - Transportation Safety study = High dose use causes persistent, negative impact on memory, executive functioning, visual perception, psychomotor speed and manual dexterity **persisting up to 28 days after abstinence.**

Implications for Employers

Employers must ensure the health and safety of workers. Key considerations include:

1. Is the employee in a safety sensitive position?
2. Does the employee have a verified medical condition requiring medical marijuana? Or, is the employee using recreationally?

If there is a verified medical condition, the employer must examine if it can accommodate the employee's condition. Including, if that condition is addiction.

Implications for Employers

While updates to drug and alcohol policies will be needed, the basic principles regarding impairment in the workplace continue-

e.g. Employees are not permitted to be impaired at work or pose a safety risk to their co-workers or the public, regardless of whether they have a prescription and regardless of whether marijuana is legal

Note: Anti-smoking laws will apply to marijuana the same way as regular cigarettes

Drug and Alcohol Policies

- Currently, most drug and alcohol policies lump marijuana together with the prohibited use of other illegal and illicit drugs
- Once legalization occurs, the legal use of marijuana will have to be treated in a similar manner to rules around alcohol consumption
- Employer Issues with Medical Marijuana
 - Americans with Disabilities Act and corresponding state laws
 - Family and Medical Leave Act
 - Lawful off-duty conduct statutes
 - Duty to provide a safe workplace

Drug and Alcohol Policies (cont.)

Use of medical marijuana to treat medical conditions must be treated in a similar manner to other prescription drugs that can cause impairment – including requirement to:

- Employee duty to report use/prescription of such medically prescribed drugs, and
- provide medical information on disability and type/amount/frequency of marijuana prescribed

Americans with Disabilities Act (“ADA”)

- Individuals “currently engaging in the illegal use of drugs” – including Schedule I marijuana – are not protected under the ADA – Exception: “Illegal use of drugs” does not include the use of a Schedule I drug taken under supervision by a licensed health care professional
- Employers may adopt reasonable policies/procedures to ensure that employees are not engaging in the “illegal use of drugs”
- Former/recovering addicts must be accommodated under the ADA; these individuals must be engaged in the interactive process
- Drug addicts may suffer from a disability under the ADA, provided that they are not currently using drugs/marijuana

Practical Considerations

- Avoid decisions based either on stigma around marijuana or on assumptions about the use of marijuana and its impact on employees' ability to do their jobs
- Like all employees with disabilities, the focus should be on whether the use of medical marijuana impairs the ability of the employee to perform the job
- Ensure relevant drug policies are updated and sufficiently address new marijuana reality

Be Tough, Be Prepared

- Act on concerns immediately and conduct fair, thorough, and impartial investigations
- Know what a patient requires to be legally authorized to possess medical marijuana
- Beware of the self-prescribing employee
- Don't be afraid to question the simple prescription

Occupational Medicine Physician Collaboration

- Employee suffering from disability (and doctor treating them for same)
- No other remedies/medication that is non-impairing that can be used instead of cannabis
- Ask doctor what dosage/day required form ingestion/frequency per day
- Ensure doctor understands employee's job duties

Train supervisors on how to recognize signs of marijuana impairment:

- Euphoric/increased sense of well being
- Lack of motivation
- Lowered inhibitions, talkativeness
- Dry mouth and throat
- Increased appetite/munchies
- Impaired coordination, concentration and memory
- Increased heart rate

Act quickly in cases of suspected impairment

Federal Drug Testing

- For positive test results in mandated/
regulated scenarios:
 - Certain tested substances have no legitimate medical use: (1) marijuana (federal); (2) heroin; and (3) PCP.
 - If the MRO determines that there IS a legitimate medical explanation, the MRO must verify the test result as negative.
49 CFR 40.137(d).
 - Therefore, MRO MAY not disclose existence of drug in employee's system to the employer.

MRO's Duty to Report

- However, even when federal law recognizes the presence of a “legitimate” drug, i.e., valium, **and** the MRO verifies positive test result to negative;
 - the MRO ***still*** may be ***required*** to inform the employer of the drug test result.
 - MRO **required** to raise fitness for duty considerations with the employer. (See 49 CFR 40.137).
 - **Without employee 's consent**, MRO may report drug test results if MRO believes “continued performance of safety-sensitive function is likely to pose significant safety risk.” (See 49 CFR 40.327).

Federal Law

- Federal Law Answer: 49 CFR 40.151(e).
 - “[An MRO] must **not** verify a test negative based on information that a physician recommended that the employee use a drug listed in Schedule I of the Controlled Substances Act. (*e.g., under a state law that purports to authorize such recommendations, such as the ‘medical marijuana laws that some states have adopted*).” (Emphasis added.)

Controlled Substance I

- Significance of Controlled Substance I:
(1) a high potential for abuse; (2) no currently acceptable medical use...
 - *See* 21 U.S.C. § 812 (b)(1).
- Thus, federal law does not recognize medical marijuana as a legitimate medical explanation because it is a Controlled Substance I.
 - * Marijuana has been a Controlled Substance I under federal law since 1970, with the passage of the Controlled Substances Act.

Federal Law v. State Law

- Federal law has NOT reclassified marijuana as Controlled Substance II.
 - Still recognizes marijuana as Controlled Substance I.
- 8/11/16 – DEA refused to reclassify marijuana as a Controlled Substance II.
- Accordingly, *federal* law at odds with *state* medical marijuana law.
- Significance: Employee protections from arrest, discharge, penalty, threatening, etc. under state law do NOT apply if federal law applies, i.e., CDL DOT testing, etc.

Former (Obama) Attorney General Holder:

- The Justice Department will ***not*** attempt to challenge state laws that allow for the medical and recreational use of marijuana as long as the drug sales do not conflict with eight new federal enforcement priorities.
- Those [priorities] include the distribution of marijuana to minors and sales that assist or act as cover for trafficking operations...

See USA Today Article “Justice Department Won’t Challenge State Marijuana Laws,” 8/29/13

Trump/Sessions Administration

- Presently, federal authorities, i.e., US Justice Department, are seeking to **abolish** the current policy prohibiting use of federal funds to prosecute medical marijuana patients and physicians.
- Thus, federal authorities could seek to enforce the Controlled Substances Act (***federal*** law classifying marijuana as Controlled Substance I).

*See **Washington Post** Article, “Jeff Sessions Personally Asked Congress to Let Him Prosecute Medical Marijuana Providers,” 6/13/17.*

Federal law at odds with public opinion

- April, 2017 Quinnipiac Poll:
 - Medical marijuana is incredibly popular;
 - Supported by 94% of public;
 - Nearly 75% of public disapprove of federal government enforcing federal laws in states that have approved medical marijuana use.

Marijuana



WHY SHOULD GLAUCOMA
PATIENTS HAVE ALL THE FUN?

Employers Rights preserved in “legal” States

- Employers retain **right to maintain a safe and drug free work environment** and to maintain **zero tolerance drug policies**
- Employers free to have **no drug policy, progressive discipline** policy or **zero tolerance** policy in regard to marijuana depending on the safety sensitivity of jobs

Work Comp. Cases

- Workers' compensation insurers retain the same rights to **reduce benefits for the presence of marijuana** in a person's system at time of injury **and for violation of employer's safety rules**
- **Termination for cause** for drug policy violation will result in **termination of temporary indemnity benefits**

Remember

- Individual's constitutional right to use marijuana does not trump or supersede an **employer's constitutional right to maintain a drug free work environment.**
- Employer's drug policy should **expressly identify marijuana** as an illegal drug

Conclusions

- Marijuana as currently used for palliation and treatment does not conform to safety, consistency, reliability and proven efficacy standards of FDA-approved medications.
- The intended and unintended effects on neurocognitive performance range from several hours to beyond 28 days of abstinence.
- There is no reliable means to determine impairment based on lab
- Neurocognitive testing is the only way to consistently determine impairment – not realistic for wide use
- Many factors (concentration, duration, metabolism...) make determination of a universal safe intershift abstinence period impossible

Recommendations

- It is reasonable and responsible for employers to ban the use of marijuana at any time by employees, contractors and other workers.
- Review relevant policies on a regular basis (keep up!)
- Approval or tolerance of medical marijuana should not be considered in any industry for which specific federal or state safety standards prohibit its use. (any federal drug testing)
- Suspected intoxication = immediate removal
 - THC level 5ng/ml – generally legal limit for motor vehicle operation and constitute evidence with s/s of impairment
 - THC negative or <5 = undergo FFD exam with Occ Health

Accepting Medical Marijuana?

- Get Occupational Physician trained and knowledgeable on impact/evaluation of potentially impairing substances in the workplace
- Get Legal counsel and formalize company policy
- Establish and consistently apply clear guidelines on the situations for which the use of medical marijuana would be considered.
 - Dx, medical basis for tx, schedule of use relative to work hrs, route on admin.,
 - Any recommended work accommodations/restrictions
 - Duration of use
 - Required report of any change in product, dose, frequency, timing or route.
 - Allow for neurocognitive testing in company policy to determine potential impairing effects.

Accepting Medical Marijuana?

- Make sure reason for Rx matches state approved uses
- Assess individual risk of impairment and deny if any safety concern
- Never allow Marijuana on site

Hang on for the Ride...



How about republicans drop Trump for President 2016, and instead nominate Snoop Dogg?

He is a much better Rap Artist than Trump

Snoop Dogg For President 2016

America, One Nation under One God