

Drug and Work Place Tolerances:

Venn Analyses

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Context of Employed Drug Users

ILLCIT DRUGS FAST-FACTS:

- ▶ Just over 60% of the entire World's illicit drugs are consumed by the population living in just "one" country.
- ▶ That "one" country is the United States...representing only 4.52% of the entire World's population.
- ▶ Only 23% of our nation's drug-abusers are the "typically-portrayed" people sitting in abandoned buildings and back alleys of our cities "shooting up" heroin or "snorting coke".
- ▶ The other 77% of drug-abusers are full or part-time **EMPLOYED!** (If you are not presently drug testing your employees, "some" of those 77% are most likely employed by your company!)

*<http://www.ohsinc.com>

*For information purpose only

Have you ever been drug tested for work?

Most employees and job applicants will be asked to take a drug test at least once in their careers. From the employer's perspective, illicit drug use by employees results in greater absenteeism, decreased productivity and other negative factors. Also, many employers enact pre-employment (and sometimes post-hiring) drug testing procedures to protect against **liability** for the actions of their workers.

Resource: <http://employment.findlaw.com/workplace-privacy/drug-testing-at-work.html>

ADA Accommodation?

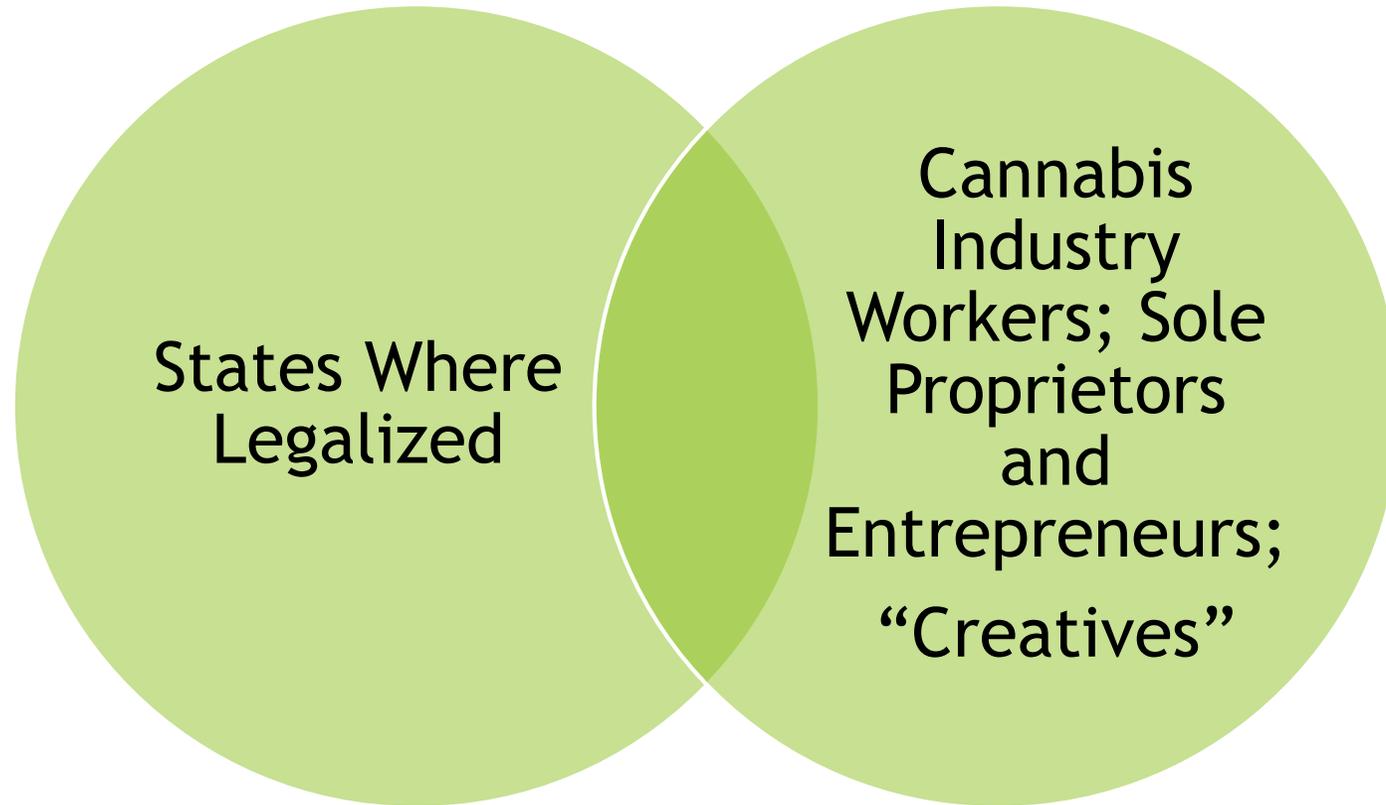
Medical Marijuana

- ▶ At least 16 states have passed laws allowing the medicinal use of marijuana by patients whose physicians recommend it. **But employers in those states are not required to provide a reasonable accommodation for medical marijuana users.**
- ▶ One of the legal reasons for this is that employers may still be held liable for any work-related injuries caused by an employee who tests positive for marijuana use, medical or not. Another reason is that certain employers (such as commercial transportation companies) must abide by federal regulations that require drug testing. **The federal government does not recognize the legitimacy of medical marijuana.**
- ▶ As an employee, you can be fired for using medical marijuana even if you are **not found to be under the influence of the drug during business hours.**
- ▶ The ADA does not require employers to permit marijuana use as a reasonable accommodation for an individual with a disability, even if that person is a registered medical marijuana patient.

Drug Testing and Timing

- ▶ **Pre-employment Drug Tests**
- ▶ **Random Drug Tests**
- ▶ **Reasonable Suspicion (aka, "For Cause") Drug Tests**
- ▶ **Post-accident Drug Tests**
- ▶ **Return to Duty Drug Tests-** for previously suspended employees
- ▶ **Follow-up Drug Tests-** applied only to previously suspended employees if rehired

Open to Cannabis...



Self - Employed

Three-in-Ten U.S. Jobs Are Held by the Self-Employed and the Workers They Hire

Resource: <http://www.pewsocialtrends.org>

U.S. Cannabis Industry Employment

<https://mjbizdaily.com>

- ▶ With 165,000-230,000 full- and part-time workers, the U.S. cannabis industry has quickly become a major job generator.
- ▶ Cannabis-related businesses now employ more people than there are dental hygienists and bakers in the United States and will soon surpass the number of telemarketers and pharmacists.

Marijuana Business

<https://mjbizdaily.com>

- ▶ The estimates - published in the newly released Marijuana Business Factbook 2017 - include employment data for retailers, wholesale growers, infused products/concentrates companies, testing labs and ancillary firms.
- ▶ The job figures represent an impressive feat for an industry that has, for the most part, been operating legitimately only since 2009.
- ▶ They also underscore marijuana's rapid transformation out of the black market and into a viable economic force, **capable of producing a host of new jobs and business opportunities** for towns and communities across the country.

Federal Laws and Policies

Prohibits Marijuana Use

www.chcoc.gov

CHCOC | Chief Human Capital Officers Council

As per May 26, 2015 Memorandum by Katherine Archuleta, Director

“Drug involvement can raise questions about an individual’s reliability, judgment, and trustworthiness or ability or willingness to comply with laws, rules, and regulations, thus indicating his or her employment might not promote the efficiency or protect the integrity of the service.”

Industries Closed to Drugs

The following industries have governing bodies that **mandate and regulate drug testing**:

- ▶ **Transportation**
- ▶ **Construction**

Studies have found that construction workers have some of the highest rates of employed drug users. When you consider the type of work they perform and the machinery they operate, mixing drugs in is a disastrous combination.

- ▶ **Sports**

Drug testing athletes is typically done with the intention of testing for performance enhancing drugs like HGH, although most organizations will also test for illicit drugs such as marijuana. Organizations like the MLB, NBA, NFL, NCAA, and the IOC all have their own unique standards for drug testing, but there are a lot of similarities in those standards.

- ▶ **Oilfield**

While there isn't an official governing body that controls all oilfield drug testing, almost every rig and job site in the oilfield will require drug testing, both pre-employment and random, for employment. Since oil boom towns can pop up anywhere at any time, they tend to attract frequent drug users. As a result, the oilfield takes drug testing very seriously.

Department of Transportation

www.transportation.gov

- ▶ “Safety-sensitive” transportation employees in aviation, trucking, railroads, mass transit, pipelines and other transportation industries
- ▶ No tolerance for illicit drugs or legalized cannabis for pilots, school bus drivers, truck drivers, train engineers, subway operators, aircraft maintenance personnel, transit fire-armed security personnel, ship captains, and pipeline emergency response personnel, among others.
- ▶ Large machinery operators
- ▶ State initiatives will have no bearing on the Department of Transportation’s regulated drug testing program. The Department of Transportation’s Drug and Alcohol Testing Regulation - 49 CFR Part 40 - does not authorize the use of Schedule I drugs, including marijuana, for any reason.

Transportation and Policy

- ▶ It is important to note that marijuana remains a drug listed in Schedule I of the Controlled Substances Act. It remains unacceptable for any safety-sensitive employee subject to drug testing under the Department of Transportation's drug testing regulations to use marijuana.
- ▶ This includes both use of marijuana medically or recreationally regardless of state laws.
- ▶ Department of Justice guidelines will have no bearing on the Department of Transportation's regulated drug testing program. We will not change our regulated drug testing program based upon these guidelines to Federal prosecutors.
- ▶ The Department of Transportation's Drug and Alcohol Testing Regulation - 49 CFR Part 40, at 40.151(e) - does not authorize "medical marijuana" under a state law to be a valid medical explanation for a transportation employee's positive drug test result.

Controlled Substances Act

- ▶ The Controlled Substances Act (CSA) places all substances which were in some manner regulated under existing federal law into one of five schedules. This placement is based upon the substance's medical use, potential for abuse, and safety or dependence liability. More information can be found in Title 21 United States Code (USC) Controlled Substances Act.
- ▶ In order for a substance to be placed in Schedule I, it must be evaluated as having a high potential for abuse; no currently accepted medical use in treatment in the U.S.; and there is a lack of accepted safety for use of the drug under medical supervision.
- ▶ To be classified in another Schedule under the CSA (II-V), a substance must have a “currently accepted medical use in treatment in the United States.”

Reference: www.dea.gov

2018 DOT Random Testing Rates

The following chart outlines the annual **minimum** drug and alcohol random testing rates established within DOT Agencies and the USCG for 2018.

DOT Agency	2018 Random Drug Testing Rate	2018 Random Alcohol Testing Rate
Federal Motor Carrier Safety Administration [FMCSA]	25%	10%
Federal Aviation Administration [FAA]	25%	10%
Federal Railroad Administration [FRA]	25% - Covered Service 50% - Maintenance of Way *	10% - Covered Service 25% - Maintenance of Way *
Federal Transit Administration [FTA]	25%	10%
Pipeline & Hazardous Materials Safety Administration [PHMSA]	50%	N/A
United States Coast Guard [USCG] <i>(now with the Dept. of Homeland Security)</i>	25%	N/A

State Drug Testing Laws

<http://employment.findlaw.com/workplace-privacy/drug-testing-at-work.html>

The following is a brief sampling of state drug testing policies:

- ▶ **California:** Employers awarded state contracts or grants must certify that they will provide a drug-free workplace (similar to the federal requirement); contractors also must provide a written policy to their employees
- ▶ **Florida:** State law requires that preference for state contracts be given to contractors who have implemented a drug-free workplace policy; employers with drug-free workplace policies receive a **discount on workers' compensation premiums**
- ▶ **Illinois:** No legislation concerning drug testing
- ▶ **New York:** No legislation concerning drug testing; random drug and alcohol testing of city bus drivers, police officers and corrections officers has been upheld by state courts
- ▶ **Texas:** Employers with more than 15 employees (and workers' compensation coverage) must adopt a workplace drug reduction policy of their own choosing

\$\$\$ Follow the Money \$\$\$

- ▶ **Workers' Compensation**
- ▶ **Personal Injury Litigation**
- ▶ **Third Party Suits**
- ▶ **Tax Revenue for States:** California's recreational market alone could eventually bring in between \$4.5 billion and \$5 billion in annual retail sales - more than the nation's entire legal cannabis industry generated in 2016 - so the impact adult-use legalization will have on business and employment opportunities in the state is massive. (<https://mjbizdaily.com>)
- ▶ **Decriminalization and Prison Expenditures**

Federal Motor Carrier Safety Administration

Reference: <https://www.fmcsa.dot.gov/medical/driver-medical-requirements/medication-issues>

- ▶ **Unique responses:** We are unique and so are our reactions to medications. You have heard the statement, "I can take that medication and not be the least bit drowsy, but my sister falls asleep two minutes after swallowing it." Our body chemistry, composition, and how fast our liver works to clear medications out of our system are evidence of our differences, and those factors play a role in medication use. So just because a medication works for you doesn't mean it will work the same for someone else.
- ▶ **Unsafe:** Medications, particularly those that have a narcotic component, may be habit-forming and may pose a severe risk to safe driving. Side effects such as drowsiness, dizziness, and confusion have a direct impact on the focus, concentration, and stamina needed for commercial driving. Although you may not have an adverse reaction to the medication, someone else may. Thus, sharing a medication with another driver who may have a different reaction to the medication can cause serious public safety concerns.

Measuring Functional Impairment on the Job

- ▶ Now legal in 29 states, the District of Columbia, Puerto Rico, and Guam.
- ▶ Although studies have suggested that marijuana may be used with reasonable safety in some controlled environments, there are potential workplace consequences involved in its use that warrant scrutiny and concern.
- ▶ The potential consequences of marijuana use in the workplace include the risk and associated cost of adverse events and the loss of productivity.
- ▶ Until state and federal laws coincide, legal challenges and uncertainty in the workplace will continue

What is Functional Impairment on the Job?

Impairment periods vary with the dose administered and the route of administration. For smoked marijuana, subjective impairment begins soon after smoking initiation and peaks in about 1 hour and lasts 3 to 4 hours after smoking. Experimental studies suggest that measurable impairment in test subjects lasts approximately 6 hours. Many studies focusing on the duration of impairment after acute use were conducted when marijuana typically had a lower THC concentration. Thus, the applicability of these older study results to today's more potent varieties is questionable as the duration of effect may be longer than previously reported.

Functional Impairment

- ▶ Impaired behavior from acute use differs between occasional users and long-term users. There is good evidence that chronic frequent marijuana users exhibit less impairment from acute THC than do occasional users, but the degree to which impairment is mitigated in safety-sensitive activities is unclear. This finding can be likened to the chronic drinker who has less apparent intoxication at a given blood alcohol concentration (BAC) than a naive drinker, yet is still acutely impaired.
- ▶ In summary, there is good evidence from a number of studies and a meta-analysis that serum levels of an average of 3.8 (3.1 to 4.5) for oral and 3.8 (3.3 to 4.5) for smoked marijuana cause impairment approximately equivalent to a BAC of around 0.05 g%. Based on these consistent findings, a plasma level of 5 ng/mL of THC can be used as one indicator with other medical signs of acute impairment from marijuana. The active metabolite THC-OH can also be measured and it may provide additional information regarding impairment. Nevertheless, as the exact level of THC and THC-OH to use as a marker for impairment is not known at this time.

Serum Levels, Edibles and Portability of Testing

- ▶ THC levels should never be assessed in isolation—definable signs of impairment (either documented by a supervisor and/or demonstrated on a medical examination) should also be present. Testing of oral fluid, that is, saliva, may prove useful in the future as a screening tool to determine whether further blood testing is necessary.
- ▶ It is advisable for medical evaluations to include:
 - ▶ documentation of state registration for medical marijuana;
 - ▶ the schedule of use relative to working hours;
 - ▶ cannabis form used (e.g., smoked plant material, edible cannabis product, low THC/CBD product);
 - ▶ the need for any accommodations given the employees' job duties; and
 - ▶ anticipated duration of use.

Common Physical Concerns

- ▶ Impairment of motor coordination
- ▶ Balance, dizziness and heights
- ▶ Slower reaction time
- ▶ Ability to drive, including distractibility

Dispensaries Go Main Stream

The Best Dispensary In San Francisco, CA

- ▶ Established in 2013, Barbary Coast Collective upholds a tradition of higher quality in San Francisco. Combining trusted products with a relaxed environment, knowledgeable staff, and affordable prices, we ensure a positive and rewarding experience. We work with medical cannabis doctors, offer one-on-one patient consulting and help you navigate options to determine the ideal solution for your specific needs.

Offering Recreational & Medicinal Marijuana Products

- ▶ Barbary Coast Collective is unique in San Francisco in that we offer full-quartz eNails used on SkyGlass rigs. While quartz may look like glass, it is much stronger, nearly unbreakable, and tolerates high amounts of heat. Unlike titanium, quartz will not distort the flavor of the dab and provides full terpene expression when you dab at low temperatures. You can also take advantage of our solvent-less station to dab Flower Rosins and full-melt hashish.
- ▶ Visit Barbary Coast Collective in San Francisco, and smoke or vape in our Lounge while enjoying sporting events shown on our 5 HD big screens. For your convenience, we have rolling trays, bongs, and VapeXhale units available to borrow. Our goal is to provide a safe and relaxing environment, where you can focus on your health.

*For information use only.

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