

Insight

An e-newsletter for leaders from your Aurora Employee Assistance Program

The current legal landscape and workplace challenges of marijuana

Yes, it's complicated

According to the Society for Human Resource Management (SHRM), the legal landscape surrounding marijuana and the workplace is an ever changing, dynamic situation. Growing acceptance of marijuana has led to a proliferation of state laws legalizing medical and recreational cannabis use, and a push for employment protections related to off-duty marijuana use.

Employers must evaluate current federal and state statutes — and recent court decisions — when developing substance-abuse policies and drug-testing practices. Company leaders may be challenged to understand what they're allowed to do—and required to —within the legal confines of the workplace.



Marijuana remains a federally banned substance. Remember, no state law requires employers to tolerate on-the-job cannabis use or intoxication. Evolving marijuana legislation and related court cases can make it difficult for employers to craft policies that follow current laws, but also meet their need for maintaining a safe workplace. But, before employers start firing employees who fail drug tests or appear to be working under the influence, employers need to understand the relevant laws.

One size doesn't fit all

Currently, 24 states in the U.S. have legalized “recreational” marijuana use. 38 states, three territories and the District of Columbia currently allow the medical use of cannabis products.

Crafting company policies on marijuana use and drug testing requires being fully aware of a state's own rules and regulations and consulting with legal experts to ensure compliance. This is especially important for companies having a multi-state footprint. The differences in state-by-state rules, definitions, and interpretations of “recreational” and “medical” marijuana use and products, have added layers of complexity to drafting state-specific policies.

For more information, please call Aurora EAP at 1-800-236-3231.

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Trends in marijuana legislation

Although federal changes may happen more slowly, employers can expect to see speedier actions at the state level. Even those states that have already legalized medical marijuana use are expanding their laws to cover more reasons for legal use and additional ways to use cannabis (such as smoking and vaping).



Many state-mandated medical marijuana laws **prohibit employment discrimination** against applicants and employees who use **medical marijuana**. Courts are expected to continue the trend of protecting the rights of medical marijuana users in the workplace.

What about workplace drug testing?

State laws often conflict with federal law. Trends toward legalizing marijuana for medicinal and recreational purposes continue to be an evolving workplace issue. Employers are encouraged to review their company's workplace drug testing policies. This will ensure they are complying with current state laws, especially the statutes covering medical marijuana use.

According to recent surveys, some companies are revising their employee drug-use policies to become more attractive to job applicants who may use recreational marijuana. Employers might decide to reduce (or totally eliminate) pre-employment drug screening, especially in states that allow recreational marijuana use.

Will most companies continue to include testing for THC (the psychoactive component in cannabis) or will they eliminate drug testing altogether? Many questions still need to be answered.

If the Federal government legalizes marijuana in the future, this thorny issue will likely become more complex. Cannabis decriminalization could affect the workplace in other ways, including recruiting efforts, safety plans, and other company policies.



The DOT's position on marijuana

Remember, marijuana is still a federally banned substance, even though many states have enacted lenient marijuana laws. The Department of Transportation (DOT) continues to prohibit all use of marijuana among covered employees. **It remains unacceptable for any safety-sensitive employee, subject to drug testing under DOT's drug-testing regulations, to use marijuana.**

If company leaders are struggling to handle these ever-changing and challenging issues, seeking assistance and legal counsel is advised. EAP counseling for substance abuse problems is available to all Aurora EAP-covered employees and members of their immediate household.

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