

Welcome to Today's Webinar

The THC Dilemma: Drug Testing Policies in the Age of Marijuana Legalization

Tuesday, July 12, 2022, 2 p.m. Eastern time



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American Staffing Association

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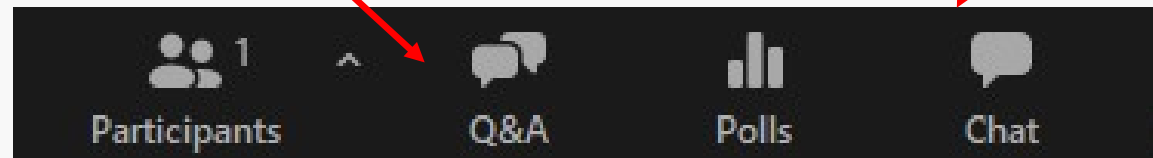
Ask a Question, Engage With Other Attendees

Q&A

Type your questions for the panel into the Q&A box

Chat

Start a conversation—say hello. Engage with panelists and other attendees.



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Today's Presenter



Joanna Monroe, Esq.
co-managing partner
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Agenda

- State of legalization
- Workforce impacts
- Policy considerations
- Testing methods
- Legal Issues
- Client concerns
- Workers' compensation

Evil Mexican Plants That Drive You Insane.


THE revolution in Mexico has brought with it not only the ravages of war, but also the degradation of the social conditions of violence and prisons. One of the latest forms of degradation is the result of Federal and state edicts in the habit of smoking marijuana, a deadly native plant of Mexico. According to reports many of the Mexican prisoners in the prison system in the City of Mexico are losing their minds as a result of smoking this weed.

animals are then attacked by hosts of devils and messengers of unholy of shape. The monster becomes larger and possessed of superhuman strength. It is at this stage of the delirium that convulsions are occasioned by smoke of the marijuana weed.


A few Americans have experimented with the weed. A few years ago a well-known citizen of this country purchased a large patch of land in southern Mexico. He was induced to try smoking marijuana; he became addicted to the habit, which rendered him insane in the habit.

class, living in the City of Mexico, who had smoked a marijuana cigarette, became insane, attacked and killed a policeman and badly wounded three others. Marijuana is one of the most dangerous drugs found in Mexico. The weed grows part of that country. Its wonderful power as an intoxicant have long been known to the natives, and many are the wild tales it has produced. So dangerous is it of Mexico and its vicinity that it is a mark of dishonor to be known to have smoked it.

Beware! Young and Old—People in All Walks of Life!

This  may be handed you by the friendly stranger. It contains the Killer Drug "Marihuana"—a powerful narcotic in which lurks Murder! Insanity! Death!

WARNING!
Dope peddlers are shrewd! They may

hide the drug in the  or



"REEFER MADNESS"



Cops Raid Pad Of Grateful Dead

THE OCT 3 1967
Two members of The Grateful Dead—the lively San Francisco group responsible for such rock hits as "Good Morning, Little School Girl"—were busted on marijuana charges yesterday.



This is your brain.



this is drugs.



this is your brain on drugs.



JUST SAY NO!

Companies That Don't Drug Test



Google



Twitter



Whole Foods



NPR

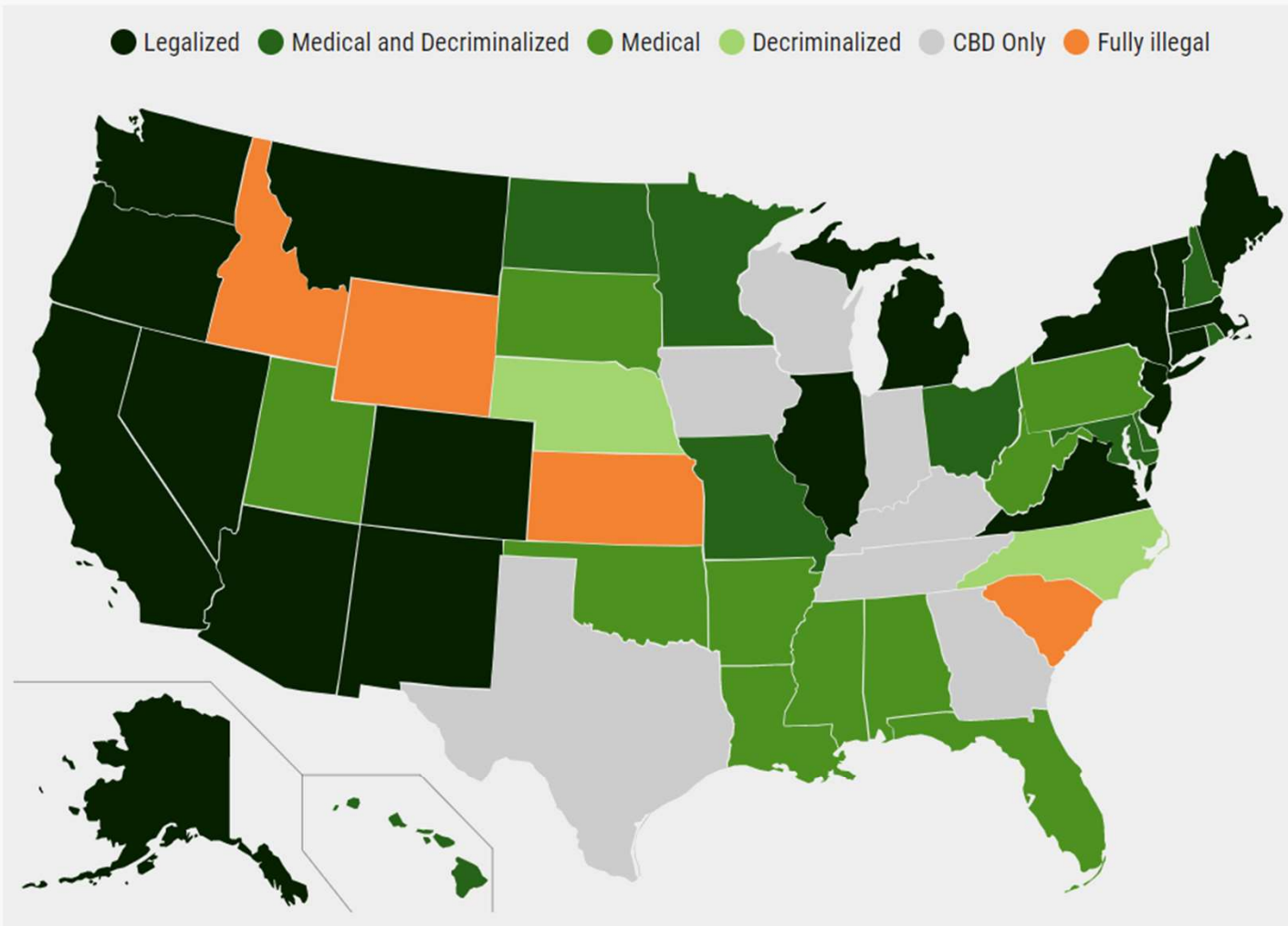


Red Bull

Are Amazon and Apple paving the way to cannabis legalization?
FILED NOV 26 2021

amazon





1970s -2000s: Efforts to decriminalize cannabis use

1996: CA voters approved medical use of cannabis

2012: CO & WA legalize recreational use of cannabis

Today: Only 11 states where cannabis is illegal under state law

91% support recreational or medical marijuana use

Workforce Impact



- Positive tests are skyrocketing
- 4% v. 2.7% in 2020¹
- 7% fewer urine tests for THC
- 9% of companies eliminated job screenings or drug tests²
- Amazon sets the bar

¹Wall Street Journal March 30, 2022.

²Manpower Employment Outlook Survey, Q4 2021.

Poll Question

Have you or your client ceased
pre-employment drug screening
(outside of safety-sensitive or where otherwise required positions)?

Staffing Firms Are Asking

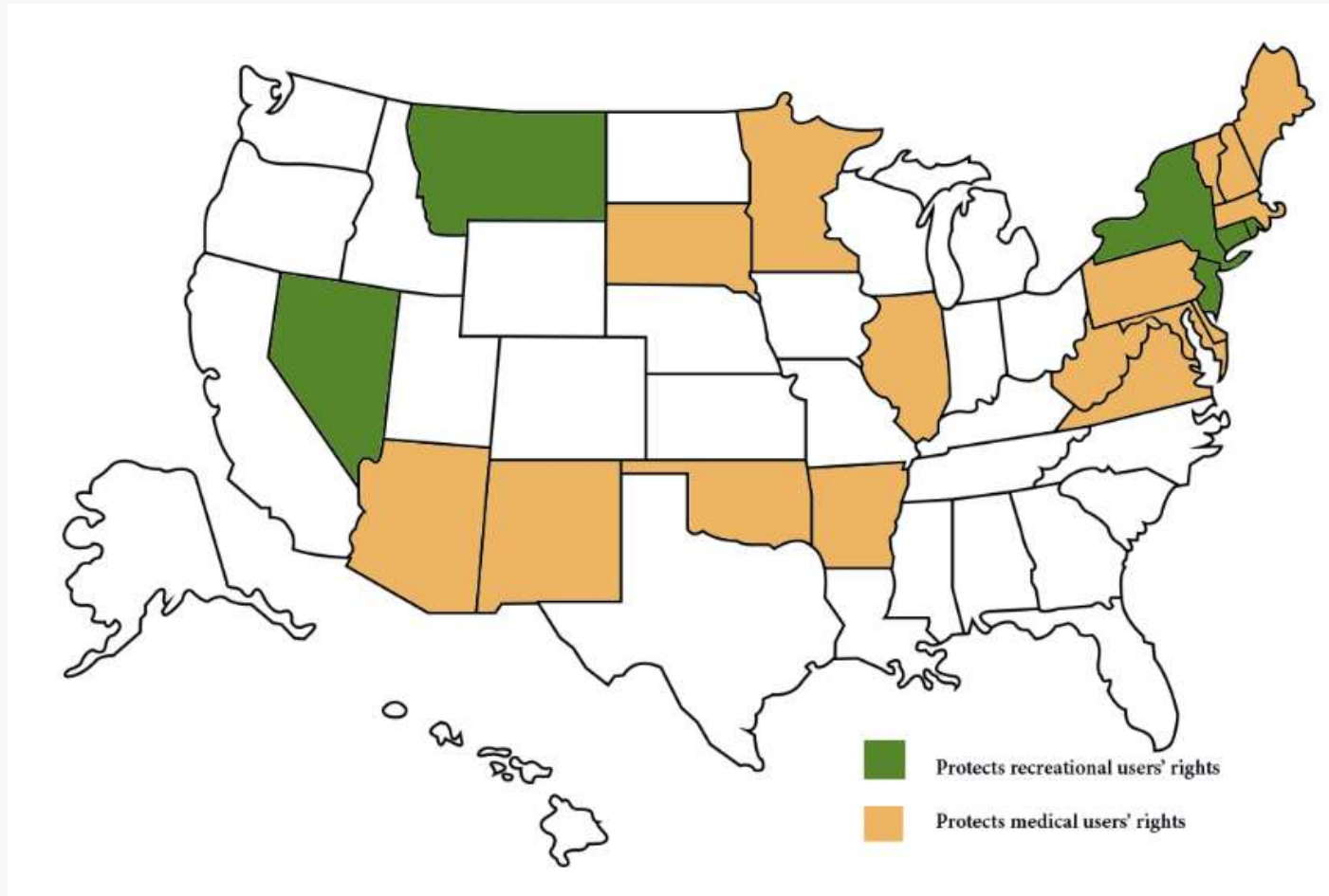
- Should we continue to test?
- Can we continue to test?
- What are the legal risks?

Considerations

- Method and timing of testing
- Safety sensitive positions
- Federal contracts
- Client requests
- Unemployment & workers' comp



Employees' Rights States



In the chat, tell us:

What type of pre-employment drug tests do you most commonly use?

TCH Testing Can Be Highly Unreliable

- Many factors impact test sensitivity
- THC can stay in the body for several days or even weeks

Estimated Detection Window¹

- Saliva 24-72 hours
- Blood tests 3-4 hours
- Urine tests 3–30 days
- Hair tests up to 90

A Workable Approach



- Prohibit employees from use, possession or being under the influence of marijuana at work
- Exceptions for
 - Safety sensitive positions
 - Testing is required by law or client

Safety Sensitive Positions

"There is no level of cannabis use that is safe or acceptable for employees who work in safety-sensitive positions."¹

Test when:

- A mistake can threaten the life, health or safety of self or others
- Impairment increases risk to other workers, the public or property



Federal Law or Contract

- The Drug-Free Workplace Act of 1988
 - Requires a drug-free workplace policy
 - Details consequences for violation
 - Educates about drug use dangers
 - Offers counselling
- DOT requires drug free drivers



Considering Client Demands



- Generally, follow client's policy
- If it runs afoul of the law, educate
- Seek indemnification

Reasonable Suspicion

- Receive complaint
- Observe employee
- Document observations
- Meet with employee
- Send employee for testing
- Respond to results



Reasonable Suspicion

Symptoms of impairment

- Appearance
- Breath
- Speech
- Awareness
- Motor Skills
- Balance
- Walking

Employee's Name: _____	Observer.: _____
Job Title: _____	
Location of Incident: _____	Date: _____ Time Observed: _____

I. **Cause for Suspicion** (observed possession or use and/or paraphernalia, abnormal or erratic behavior, etc.)

II. **Observed Personal Behavior Checklist** (Please check all that apply)

Appearance	<input type="checkbox"/> Normal	<input type="checkbox"/> Flushed	<input type="checkbox"/> Pale
	<input type="checkbox"/> Disheveled	<input type="checkbox"/> Bloodshot Eyes	<input type="checkbox"/> Having odor
	<input type="checkbox"/> Profuse Sweating	<input type="checkbox"/> Puncture Marks	<input type="checkbox"/> Tremors / shaking
	<input type="checkbox"/> Dilated/Constricted pupils		
Breath	<input type="checkbox"/> Alcohol odor	<input type="checkbox"/> Marijuana odor	<input type="checkbox"/> Vomit odor
Speech	<input type="checkbox"/> Normal	<input type="checkbox"/> Mumbled	<input type="checkbox"/> Silent
	<input type="checkbox"/> Confused	<input type="checkbox"/> Incoherent	<input type="checkbox"/> Shouting
	<input type="checkbox"/> Slurred	<input type="checkbox"/> Slowed	<input type="checkbox"/> Rambling
Awareness	<input type="checkbox"/> Normal	<input type="checkbox"/> Confused	<input type="checkbox"/> Drowsy
	<input type="checkbox"/> Disoriented	<input type="checkbox"/> Lethargic	<input type="checkbox"/> Hyperactive
	<input type="checkbox"/> Sad / crying	<input type="checkbox"/> Paranoid	<input type="checkbox"/> Euphoria
Motor Skills	<input type="checkbox"/> Normal	<input type="checkbox"/> Falling	<input type="checkbox"/> Slow
	<input type="checkbox"/> Swaying	<input type="checkbox"/> Staggering	<input type="checkbox"/> Shaky
Walking & <u>Turning</u>	<input type="checkbox"/> Stumbling	<input type="checkbox"/> Staggering	<input type="checkbox"/> Unsteady
	<input type="checkbox"/> Needs support	<input type="checkbox"/> Swaying	<input type="checkbox"/> Falling

III. **Written Summary**

Summarize the facts and circumstances of the incident, employee response, supervisor actions, and any other pertinent information not previously noted on this form.

IV. **Observer's Opinion**

Based upon my observations as noted on this checklist, I recommend that an alcohol and/or drug test be administered.

Observers Name (Print)

Observer's Signature

Date

Post Accident

- Generally legal, depends on the state
- Don't retaliate for reporting an injury
- Test the right person



Workers' Comp Concerns



- Studies show decrease in comp claims in recreational states¹
- Generally, not required to reimburse for medical marijuana
- May be able to deny benefits
- May impact discounts or incentives

Action Items for Staffing Firms

- Determine your approach
- Draft a written policy
- Identify prohibited behavior
- Notify of potential workplace searches
- Explain testing process
- Communicate consequences for violations
- Obtain consent



Please feel welcome to share your questions in the Q&A panel.

Questions



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Thank You!



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**You will now be redirected
to a brief survey**