



Cannabis in the Workplace:

Should We Treat it Just Like Alcohol?

AUGUST 22, 2022

Ida S. Shafaie

L. Michelle Lewis

Always exceed expectations through teamwork and excellent client service.

Policy Considerations

- **Americans with Disabilities Act**
- **Occupational Health & Safety Act**
- **Workers' Compensation Act**
- **Drug-Free Workplace Requirements for Federal Contractors (41 U.S. Code § 8102)**
- **Drug-Free Schools & Communities Act (A/K/A “Drug-Free Schools and Campuses Regulations, EDGAR Part 86”)**
- **National Labor Relations Act**
- **Applicable State Laws**

Policy Considerations

■ TESTING “TRIGGERS”

- Pre-Employment/Post-Offer?
- Reasonable Suspicion?
- Post-Accident?
- Periodic/Random?
- Industry/Occupation-Specific Mandates?
 - Transportation
 - Construction
 - Healthcare
 - Childcare

Policy Considerations

■ PERFORMANCE-RELATED ISSUES

- Off-duty/off-campus recreational use
- Work-related injuries
- “Acceptable” level
- Testing for Impairment vs. Testing for Use
- Accommodation requests
 - Flexible schedule to accommodate medical cannabis use
 - Voluntary rehabilitation

Policy Considerations

▪ PRIVACY

- Balancing searches with expectations of privacy
 - Workplace setting
 - Residential facilities
- Maintaining privacy of medical information

Other Policy/Testing Considerations

- **Regulation of conduct:**
 - off-premises, non-work, non-call hours;
 - work-sponsored events and/or travel
- **Clear designation of “safety-sensitive” positions that are subject to drug testing**
- **Consider excluding Cannabis from the drug testing panel**
- **Supervisory training**
 - Consistent application and enforcement are KEY!

Recent Legal Updates

- **WORKERS' COMPENSATION**

New Jersey Supreme Court affirmed workers' compensation court ruling that required the employer to reimburse the employee for medical cannabis expenses he incurred to treat chronic pain stemming from work-related injuries.

Hager v. M & K Construction, 247 A.3d 864 (NJ Sup. Ct. 2021)

Recent Legal Updates

■ POLICY LANGUAGE

Illinois Court affirmed an arbitrator's decision that the employer breached the collective bargaining agreement by firing a union employee without just cause after the employee failed a post-accident drug test.

Employee admitted to off-duty recreational cannabis use.

The employer's Code of Conduct did not explicitly prohibit off-duty cannabis use.

Leggett & Platt, Inc. v. United Steelworkers Local 9777-51, No. 21 C 4854, 2022 WL 1092241 (N.D. Ill. April 12, 2022)

Recent Legal Updates

■ DISABILITY ACCOMMODATION & ESSENTIAL JOB FUNCTIONS

Remote worker who used CBD oil to treat severe migraines sued employer for violating her ADA rights after she was fired for failing a drug test.

Company argued, in part, that passing the drug test was a requirement for the job and that overlooking a positive drug test was not a reasonable accommodation.

Louisiana Court denied the employer's motion for summary judgment.

Huber v. Blue Cross & Blue Shield of Florida, Inc., No. 20-3059, 2022 WL 1528564 (E.D. La. May 13, 2022)

THANK YOU



Ida Shafaie

314.552.6668 / ishafaie@atllp.com



Michelle Lewis

314.259.4704 / lmlewis@atllp.com