

Legal Marijuana Use Is Growing

» YOUR DRUG POLICIES NEED TO BE TIGHTER THAN EVER

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AS OF THIS WRITING, 12 states have legalized recreational marijuana, and 22 more states have legalized marijuana for medicinal use. Legalization has arrived, and is only likely to grow more widespread in the near future.

Data shows that increasing numbers of employees are testing positive for marijuana use, both medicinally and recreationally. More federally regulated employees are testing positive, too. FMCSA's Drug and Alcohol Clearinghouse reported 40,500 positive tests between January and September 2020, 52% of which were for marijuana.

At the federal level, marijuana is still an illegal Schedule I Controlled Substance. The Department of Transportation (DOT) prohibits medical marijuana use by employees in safety-sensitive positions subject to federal testing guidelines. For workers who hold a Commercial Driver's License (CDL), the Federal Motor Carrier Safety Administration (FMCSA) makes it explicitly clear that there is no scenario in which marijuana use—medical or otherwise—is allowable.

If your state has legalized recreational or medical marijuana, the drug is readily available to your employees. Your staff might be more likely to push back against your drug policy, or take the federal regulations less seriously, when state and federal laws conflict. This could increase your company's risk of facing fines, violations, and other negative impacts on your daily operations.

TESTING AND MONITORING

A lot of companies in states that have legalized marijuana are becoming lax about testing employees for marijuana. Following federal regulations means that you're required to regularly screen all employees with a CDL—which likely includes a large portion of your staff. Make it your company policy to always test all employees according to FMCSA guidelines. Additionally, it's a good idea to supplement testing with monitoring. Keep your middle management up-to-date with drug and alcohol Reasonable Suspicion Training.

Consult with an attorney about non-regulated employees carrying medicinal marijuana cards. Currently, no state requires employers to allow medical marijuana use while on the job. However, if a non-regulated employee tests positive for marijuana use and holds a medical marijuana card, the wrong disciplinary action could open you up to Equal Employment Opportunity Commission claims.

A well-built, fully developed, and consistently implemented drug use policy can do wonders to protect your company against the pitfalls of the always-changing local, state, and federal marijuana legislation. Stay consistent, firm, and fully aware of what you can do to keep your daily operations safe and to make your safety culture thrive.



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ABOUT THE AUTHOR

Kyle Rask is the Program Manager for Concrete Pumping at NBIS with over 18 years of experience in Concrete Pumping operations, safety/regulatory management, leadership and product development. Kyle is an active member of the American Concrete Pumping Association (ACPA), and serves on several committees and is also a current ASME B30.27 Subcommittee member.

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