

Marijuana Usage in the Workplace

Guidance for Employers

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The Employer's Resource



The **Employer's
Resource**
Training and Consulting

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- › How big is the problem?
- › Have laws changed the problem?
- › Do we need to test for marijuana at our workplace?
- › Do I have to change my policy?
- › What are my legal risks?

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Annual positivity rate increases

Insights from millions of combined US workforce urine drug tests



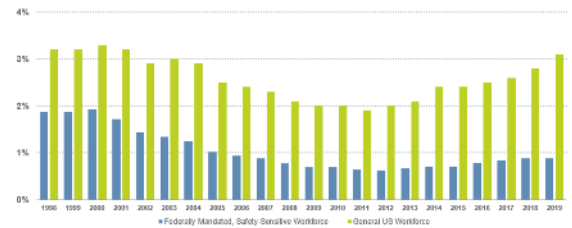
Source: Quest Diagnostics Drug Testing, Inc. | September 10, 2020

Quest
Diagnostics

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Marijuana urine drug test positivity

Dominates in the general US workforce



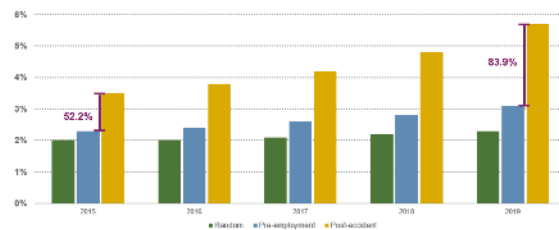
Source: Quest Diagnostics Drug Testing, Inc. | September 10, 2020

Quest
Diagnostics

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Marijuana urine drug test positivity by testing reason

US general workforce



Source: Quest Diagnostics Drug Testing, Inc. | September 10, 2020

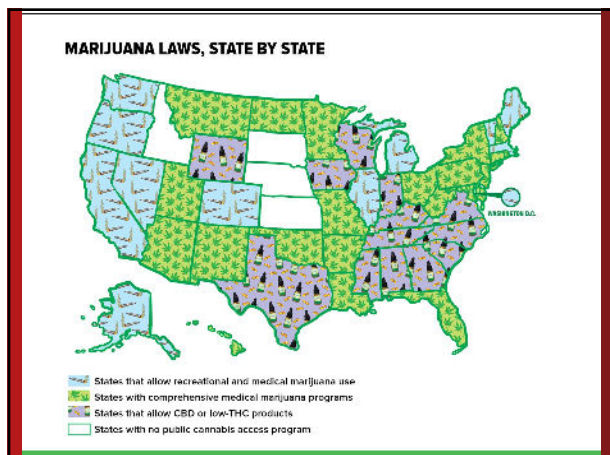
Quest
Diagnostics

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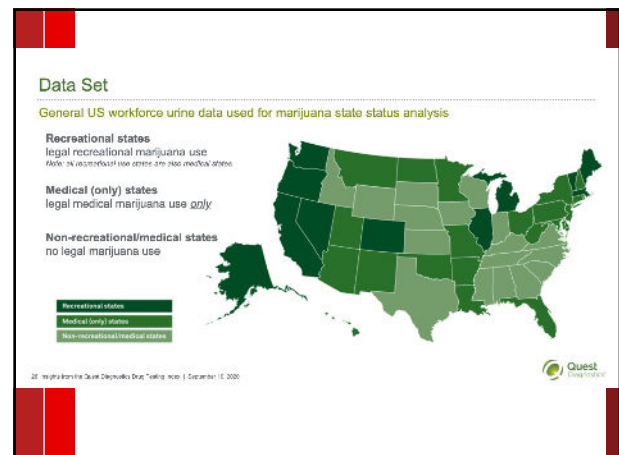


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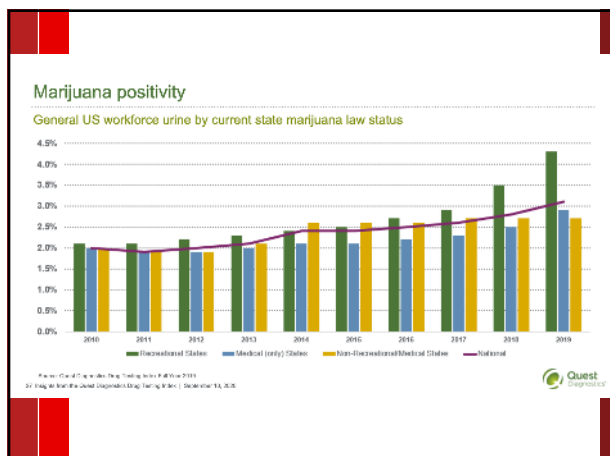
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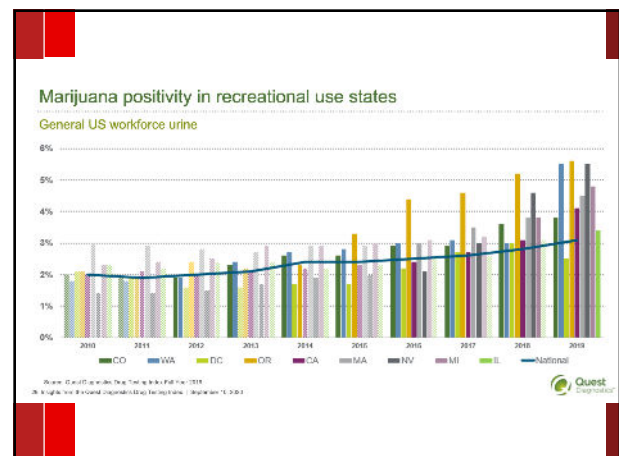
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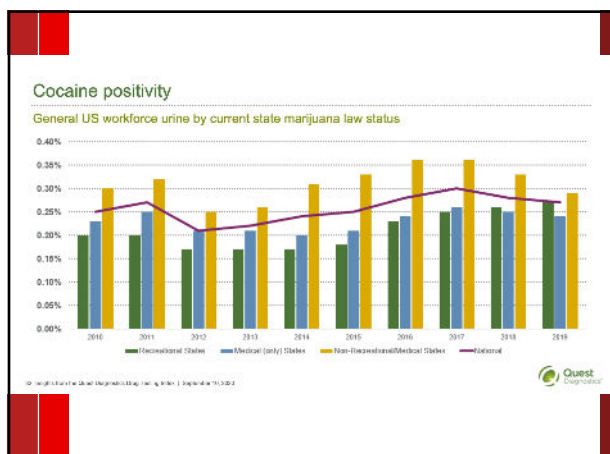
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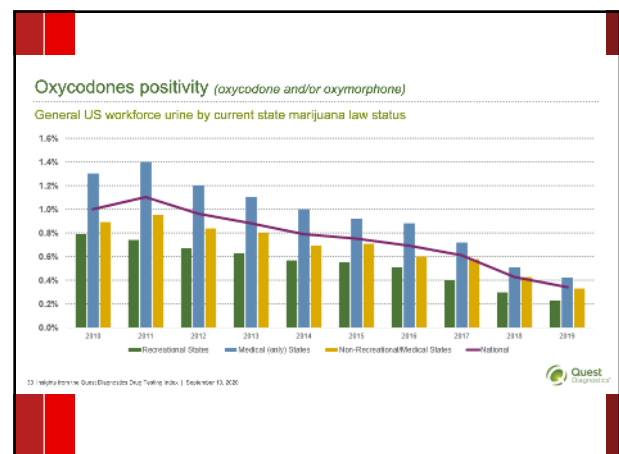
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Marijuana and Workplace Impairment

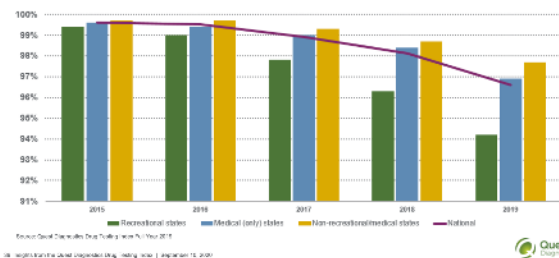
- › Impaired body movement and motor coordination
- › Difficulty thinking and problem-solving
- › Memory problems
- › Altered sense of time
- › Delayed reaction time
- › Increased accidents
- › Impaired driving ability



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Drug testing including marijuana in general US workforce

By current state marijuana law status



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It Depends on Where You Work



- › NV, ME, NYC – Prohibit MJ test for applicants - with exceptions
- › IL, MA, DE, AZ, CT, ME, AR, PA, NY, NV, RI, MN, DC = Cannot fire for positive MJ if card holder
- › Can still test if have reasonable suspicion – policy driven
- › Check with your Legal Council

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Policy Strong: Common GAPS

- › **Specify Applicable Employee Groups:** Or all employees for whom policy will apply. What you do for one, you must do for all, to reduce legal liability.
- › **Testing Alternatives:** Expand matrix for testing: Urine, Saliva/Oral Fluid, Hair, Breath.
- › **Reasons for Testing:** New-Hire, Random, Post-Injury, Post-Vehicle Accident, Reasonable Suspicion, Follow-up, Return-To-Duty, Other.
- › **Policy Specifies Conditions of Employment; Consequences Of Policy Violations**
 - For any verified positive drug screen, will the policy advise to terminate?
 - Or, will the policy give an employee a 2nd chance?
 - If policy directs a 2nd chance, is an evaluation by a Substance Abuse Professional required?
 - Does policy define who pays for evaluations and/or follow-up drug or alcohol testing?
 - Is re-hire after termination stated in policy? If so, define period of time (30-60 days).
 - Self-Admission of Substance Abuse: Next steps when employee self-admits?
 - EAP: Employee Assistance Program (EAP) to whom employee can seek help?

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Important Components of a Drug Policy Make Your Policy Strong

› Drug/Alcohol conviction in privately owned/non-commercial vehicles:

If your employee's driving privileges are revoked, cancelled or suspended (by resident State U.S. Department of Transportation) due to a drug/alcohol conviction in their privately-owned or non-commercial vehicle, specify if policy will subject employee to evaluation, referral and treatment conditions defined in your policy and/or if disciplinary action up to and/or including termination from employment. Define if employee must notify Human Resources of their conviction. If employee fails to notify, specify if failure to notify will result in disciplinary action up to and/or including termination from employment.

› Supervisor Notification of Prescription Medications:

For employees who perform safety sensitive work (CMV driver, crane operator, machinists, nuclear power, etc.), it has become a policy requirement for employee to notify supervisor what medication he/she has been prescribed, reviewing medication warning labels, and side affects that may impair judgment, cause sleepiness, nervousness, loss of concentration, loss of motor skills. Employees who have valid opioid prescriptions for pain (Hydrocodone (Vicodin), Oxycodone (OxyContin)) will be at risk for performing safety sensitive work. The Policy directs supervisor to make accommodations while employee is taking this medication.

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Important Components of a Drug Policy Make Your Policy Strong

› Physician Validation of Prescription Medications for Safety Sensitive:

When an employer receives a verified negative drug screen with a safety sensitive concern determined by the Medical Review Officer, it is becoming common practice for an employer to contract with a physician to review job description, review employee's prescription drug dosage, drug warning label, medication package insert from manufacturer, purpose of prescription, duration, to advise employer how duties should be modified while the employee is taking this medication.

› Post-Injury Testing:

Is drug or alcohol testing required after each work-related injury? Check with Workers' Compensation Insurance Carrier to inquire if Post-injury testing may qualify for insurance premium credits.

› Reasonable Suspicion:

Policy will require drug or alcohol testing for Suspicion or Cause. Policy to direct that employee is driven home or placed in a taxi after submitting to testing.

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Policy Strong: Common GAPS Specimen Collection Challenges.

ADVISE YOUR COLLECTION SITES WHAT TO DO WHEN.....

› **Temperature-Out-Of-Range:** Define next step or consequences when a urine drug test specimen is determined to be out of the normal temperature range of 90°-100°F. Will policy require employee or candidate to immediately retest? Will employee be terminated? Will a temperature-out-of-range disqualify a new hire candidate for the job? Does your policy indicate that an alternate testing method can be utilized?

› **Possible Substitution:** Synthetic urine, Urine Luck, Spectrum Labs.

› **Possible Adulteration:** Smells like bleach, vinegar, is a different color other than human urine.

› **Shy Bladder:** If donor cannot produce a urine specimen or provides less than 45mL of urine, what does your policy require if Non-Regulated?

› **Dilute:** Dilution indicates that the specimen's creatinine and specific gravity values are lower than expected for human urine. DOT/FMCSA permits a 2nd test to be performed ONLY if it is defined in employer's policy and the 2nd test becomes the test of record. Dilution can be an attempted form of Adulteration.

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Policy Strong: Common GAPS DOT/NON-DOT Clarify Financial Decisions

› **Outpatient Treatment/Who Pays:** If an employee tests positive and must be referred to a Substance Abuse Professional (SAP), policy should define who pays for treatment, outpatient programs, follow-up random drug tests, etc.

› **Substance Abuse Professional (SAP):** DOT/FMCSA requires covered employees to be evaluated by an SAP if test is reported as a verified positive. An SAP will interview and evaluate the employee and determine a treatment plan. The SAP will develop a follow-up drug testing plan for employee and notify employer. Specimen testing must consist of at least (6)-tests within the first 12 months following return to safety sensitive. SAP can direct number and frequency of drug tests for up to 60-months.

› **EAP:** EAP services are commonly an employer paid benefit to the employee.

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Potential Risks

- › You MUST have a policy in place
 - Be sure to have legal resources review it
- › Review Job Descriptions
 - Include Essential Duties and any Safety expectations
- › Leaders & Supervisors – cannot ask if someone is a 'medical marijuana user' (EEOC issue).
 - You can ask if the individual is able to do their job safely
- › Train Supervisors to identify impairment
- › Educate Employees on the Drug Use policy and consequences if violated

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Thank you for your attention.

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