
DEALING WITH DRUGS, ALCOHOL AND
PSYCHOLOGICAL ISSUES IN THE
WORKPLACE

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THE PROBLEM

WORKPLACE

ADDICTIONS

- Drugs
- Alcohol

MENTAL HEALTH ISSUES

- Depression
- PTSD
- Bipolar
- Obsessive/compulsive
- Schizophrenia
- Suicidal

Workplace Protections Growing for Cannabis Consumers

By Lisa Nagele-Piazza, J.D., SHRM-SCP
February 25, 2020

Although employers never have to tolerate on-the-job marijuana use, new legislation and recent court decisions are making it harder to enforce policies against employing cannabis consumers. All marijuana use is still illegal under federal law, but at least 33 states allow medical use. Eleven of those states and Washington, D.C., also allow recreational use. Recently, some of those states have been providing greater workplace protections. For instance, a big trend that's taking shape in 2020 is limiting pre-employment marijuana screening. On Jan. 1, a Nevada law took effect barring employers from considering a pre-employment marijuana test result (www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/nevada-bans-pre-employment-marijuana-tests), and beginning May 10, a New York City law will prohibit employers from conducting pre-employment marijuana tests (www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/new-york-city-lawmakers-ban-pre-employment-drug-testing-for-marijuana.aspx). Both laws have exceptions for safety-sensitive positions and jobs regulated by federal programs that require drug testing. Here are some other state-law developments on marijuana and the workplace that employers should note. We've rounded up articles and resources from SHRM Online and other trusted media outlets on the news.

California Lawmaker Wants to Protect Medical Use

California Assemblyman Rob Bonta, D-Alameda, recently introduced legislation (AB 2355 (http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB2355)) that would require employers to explore reasonable accommodations for job applicants and employees who are registered medical marijuana patients. "Medical cannabis, as recommended by a doctor, should be given a similar reasonable accommodation as all prescription drugs," Bonta said. (Los Angeles Times (<https://www.latimes.com/california/story/2020-02-19/california-cannabis-legalization-job-applicants-disqualified-marijuana-use>))

Feedback

Colorado Legislators Halt Bill with Broad Protections

Colorado Rep. Jovan Melton, D-Aurora, recently introduced HB20-1089 (<http://leg.colorado.gov/bills/hb20-1089>) who partake in legal activities under Colorado law—such as consuming cannabis products for medical purposes. The bill would prohibit employers from discriminating against employees who are still illegal under federal law. "As long as you're coming to work not high or intoxicated, the committee on Business Affairs & Labor postponed the proposal indefinitely, citing concerns about the bill's impact on employers." (Denver Post (<https://www.denverpost.com/2020/02/19/colorado-legislators-halt-bill-protecting-medical-marijuana-users/>))

Key Workers' Comp Claimant Gets Cannabis Reimbursement

Resources and Tools/ Legal and Compliance

LEGALLY SPEAKING

by Nadia A. Lampton
Taft/Law



CAN USING CBD OIL RESULT IN A FAILED DRUG TEST? THE ANSWER MAY SURPRISE YOU...

If you thought you had a handle on marijuana issues in the workplace, get ready for a curveball. Employers in Ohio have been grappling with marijuana-related issues for the last couple of years. Despite the time that has elapsed since medicinal marijuana was legalized in Ohio and nearby states, as well as the flood of states that have legalized the recreational use of marijuana, many questions remain unanswered and new issues have emerged. One such issue relates to the use of the seemingly innocuous line of “CBD” products, such as oils, topical lotions, bath bombs, vape pens, and even chewable gummies. These sorts of CBD products have been all the rage, with many companies selling CBD products, such as pills and oils, and marketing them with claimed medicinal properties. This hype can be described as nothing less than a national phenomenon, with CBD making headlines across national news (or commentary) outlets over the past several months:

- “Sunsoil USDA Certified Organic CBD” – Daily Beast
- “Best CBD Oil for Anxiety, Depression and Stress” – Observer
- “Top 10 Best CBD Oil Companies of 2020” – Austin Chronicle

THE STATISTICS

- One in four adults experiences **mental health disorders**
- Mental health is the **number one cause** of disability in the U.S. utilizing 40% of **sick leave**
- One in every 13 adults **abuse alcohol** – costing \$33-68 billion per year in absences, lost productivity, and injuries
- **Suicide** rates rose 33% to 14 per 100,000 people
- **Anxiety** disorders affect 30% of adults
- **Depression** affects one in 15 adults annually
- 11% of U.S. population diagnosed with **PTSD**

THE IMPACT



- Decreased productivity/increased costs
- Workplace violence
- Poor attendance
- Inadequate performance
- Conflicts between workers
- Increased injuries
- Increased medical claims
 - Mental health expenses have escalated 10% annually over five years – medical costs escalated 5% annually
 - Employers spent \$2.6 billion on opioid addiction – eightfold increase over prior year
 - Treating depression costs \$110 billion annually

THE CAUSE

- New generation of employees
 - Generation Z depression symptoms increased 39%
 - Millennials 24%
- Enhanced diagnosis
- Workplace stressors
- Legalization of marijuana
 - 70% of U.S. workers live in states permitting use
- Societal stressors
- Over prescribing of drugs
 - Approximately 70% use at least one prescription/50% use two – 1:3 uses prescription opioid
- Inadequate employer response
 - Although 50% of employees (60% millennials) reported mental health lapse – only 1/3 reached out to employers

THE EMPLOYERS' OPTIONS

ACTIVE

- Awareness
- Accommodation
- Assistance
- Access
- Acceptance

PASSIVE

- Ad Hoc treatment of immediate issue
 - Discipline
 - Leave of absence

DO NOTHING?

THE LAW

- **ADA**
 - Reasonable accommodation for “qualified” individual with “disability” but not if “safety threat” or “undue hardship”
 - Current users excepted
 - Perceived disabilities actionable
- **FMLA**
 - Leave for serious health condition
- **Privacy Laws**
 - Confidentiality of protected health information
- **OSHA**
 - § 5(a)(1) – workplace free of hazards

POSSIBLE ACCOMMODATIONS

- Paid **leave** or additional unpaid leave **for** treatment and/or recovery
- **Modified work schedule**/assist with managing or negotiating workload
- Access to a “**quiet room**”
- **Reduce exposure** to stressors - supervisory
- **Relocate** to a quieter workspace or permit headphones
- Temporarily **modify duties** – customer facing work vs desk work
- **Change shifts**
- **Reassign** to more suitable equivalent position
- Pair with a trusted co-worker, **coach** or mentor to advocate and help

ADA / FMLA CASES

- *EEOC v. The Health Care Center at West Meade Place*, USDC Nashville – 10/22/19
- *Valdivia v. Twp. High School District*, 7th Circuit U.S. Court of Appeals – 11/12/19

“PLAYING THE DISABILITY CARD”

- Post incident **disability feigned**

Employee “defense” to legitimate employer action

- Case studies

WORKPLACE FACTORS IMPACTING MENTAL HEALTH

- Long work hours
- Inflexible work schedules
- Lack of workplace friends/positive relations
- Insufficient support from manager
- Lack of clarity about work tasks/organizational objectives
- Poor communications
- Unsafe work environment
- After hours emails/texts
- Work team esprit de corps
- Insufficient control over one's job
- Unqualified management

SIGNS OF MENTAL HEALTH CONCERNS

- Confrontation with team members
- Workload complaints
- “Lack of support” complaints
- Indecisiveness
- Loss of confidence
- Disorientation
- Increased irritability
- Increased emotionality
 - Easier to cry/emotional outbursts
- Sadness
- Difficulty concentrating

**Supervisors
Beware!**

WHAT EMPLOYEES WANT

- Mental health training
- Clearer **information** about available resources
- A more **open culture** about mental health at work
 - 62% of millennials say they're comfortable discussing mental health issues – twice as many as baby boomers
- Employer understanding
- Uniform application of policies on drugs/alcohol, etc.
- Prompt/appropriate **employer actions**

HINTS FOR EMPLOYERS

- **Screen** applicants more carefully
- **Monitor** workplace for signs of issues
- **Educate** and train management
- Have comprehensive EAP program
- **Inform** employees
- Retain a company mental health provider
- Follow the law
- Quickly/decisively address workplace incidents
- Create/maintain positive work environment
- Avoid perceiving a disability
- Document performance shortcomings not alleged mental conditions

LEGALLY SPEAKING

by Bob Dunleavy
Taft/Law



WORKPLACE MENTAL HEALTH ISSUES ABOUND!

It seems as though employers are being overwhelmed by their employees' mental health issues these days – something that cannot be ignored any longer, but something that is both delicate and difficult to deal with. Employers need to take the time to understand these issues and address them effectively and strategically so as to avoid claims of disability discrimination and incidents of workplace misconduct.

The new generation of employees comes to the workplace the product of a past environment which seems to have over diagnosed, over medicated, and over counseled them as children and young adults – many have been made dependent and ill-adjusted. Many lack interpersonal skills. The list of conditions go on forever – anxiety, depression, PTSD, bipolar disorder. Compounding the problem is that an unacceptable number of employees have drug and/or alcohol addiction issues. That list of controlled substances goes on well – meth, heroin, cocaine, pot, and fentanyl seem to be the most common. Approximately one in five claims some form of

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