

Cannabis in the Workplace



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1

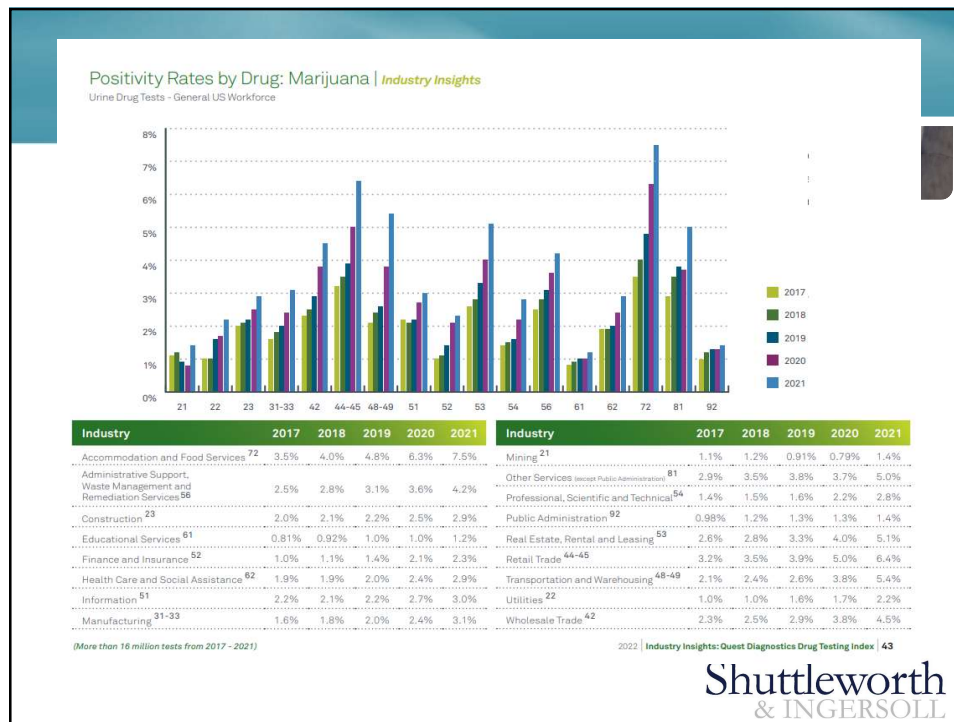
Why Should Employers Care?



- The rate of positive tests increased 35 percent from 2010-2019 in places where cannabis was ILLEGAL
- It has risen even faster in states where it's legal—in those areas it jumped 71 percent during that period
- Although the rates are increasing, the percentage who flunk in the general workforce was just 3.9 percent nationwide in 2021

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2



3

Why should employers care?

- Of workers who test positive for Marijuana:
 - 55% more industrial accidents
 - 85% have more workplace injuries
 - 75% have more absenteeism
- study published by C. Zwerling, J. Ryan and E.J. Orav in JAMA: The Journal of the American Medical Association

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“Impairment” Question



- The biggest problem is the lack of a standard for impairment for THC or CBD use
- Alcohol (.02) detection, (.08) impairment
- Cannabis (THC) – 50 ng/mL detection
- No standard for impairment
- No clear relationship between THC blood concentrations and impairment

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Urine Cannabis Metabolite Timeline



- The ability to detect the inactive THC metabolite (THC-COOH) in urine is unpredictable.
 - Infrequent users: 1-5 day detection period
 - Heavy users: Up to 15 days
 - Chronic users: Up to 30 days
 - Oral ingestion has slightly longer detection times of THC-COOH

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Blood Drug Testing for Cannabis



- THC detectable for ~ 5-8 hours
 - Rises quickly in the minutes following inhalation (often above 100 ng/ml), quickly declines to single digit levels within a couple of hours
- Indicator as to whether one is under the influence of cannabis?

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Saliva Drug Testing for Cannabis



- Shorter window of detection – parent compounds, not inactive metabolites
- Parent compound – Delta 9 THC
- Detection time 6-12 hours
- Currently under DOT proposal



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Hair Drug Testing for Cannabis

- Longest detection period
 - ~ 90 days with 1.5 inches of growth
- Measure of THC-COOH – inactive metabolite



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But how will I find enough employees?

- Many employer have expressed concern over whether it is “fair” to not hire employees (or fire) for a positive drug test due to legal medical cannabis use
- Even with medical cannabis laws – employers can still have policies prohibiting use of cannabis (except in a few states)
- State laws are in flux and vary

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Balancing the Issues



- Having enough employees and keeping quality employees (who may use during personal time)
- VS.
- Maintaining a safe workplace for all employees

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What's an Employer to do?



- So, how does an employer distinguish between off-duty use and on-duty use, when the level for detection stays in the body so long?
- The focus should be on impairment – training on and looking for signs of impairment
- Direct observation of use
- Can/should we care if the impairment is from cannabis or some other drugs or alcohol?

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Areas of concern for employers



- Medical cannabis use
- Recreational cannabis use
- Drug Testing
- **Workplace safety**
- Off-duty conduct
- Privacy
- Disability Discrimination

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Federal Laws Implicated



- Drug Free Workplace Act of 1988
 - Certain federal contractors and all federal grantees must be drug-free workplace
 - Must prohibit unlawful manufacture, distribution, dispensation, possession, or use of controlled substances in the workplace,
 - And must have penalties in place as well as an awareness/educational program

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Americans With Disabilities Act



- Does not protect employees or applicants who currently use illegal drugs, but does protect former users
- Can prohibit use of illegal drugs at work
- Allows drug testing
- Requires reasonable accommodation of underlying disability for medical users

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Americans with Disabilities Act



- ADA protects legal use of prescribed drugs
 - But cannabis cannot be a “prescribed” drug under federal law because it is still illegal under federal law
 - * Employers can still require employees to meet standards of performance despite drug use *

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Other Federal Laws

- Omnibus Transportation Employee Testing Act of 1991 – requires drug & alcohol testing of safety sensitive personnel in these fields:
 - Motor carriers
 - Railroad
 - Oil & gas pipelines
 - Aviation
 - Transit & maritime

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Expansion of Cannabis Legalization

- EVERY SINGLE CANNABIS PROPOSITION THAT WAS ON THE BALLOT IN 2020 PASSED!
- Over 1/3 (44%) of states allow recreational use now
- 76% of states provide for medical use
- Clear national trend toward legalization

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State Laws

- 38 States and DC have legalized medical use:

AK, AL, AZ, AR, CA, CO, CT, DE, FL, HI, IL, KY, LA, ME, MD, MA, MI, MN, MO, MS, MT, NV, NH, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SD, UT, VT, VA, WA, WV, and DC

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State Laws

- 9 States have legalized Limited Medical Use:

GA, IN, IA, NC, SC, TN, TX, WI, WY

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State Laws

- 22 States (and DC & Guam) have legalized recreational use:

AK, AZ, CA, CO, CT, DE, IL, ME, MA, MI, MO, MT, NV,
NJ, NM, NY, OR, RI, VA, VT, WA

Minnesota just signed into law recreational use –
effective August 1, 2023

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State Laws

- Now only 3 States and the Federal Government have NOT legalized any use:

ID, KS, NE

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Current State of State Laws

- States that may be next to legalize?
- FL, OH, PA

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Iowa Law

- Iowa Code Chapter 124E
- Amendment of Iowa Code Section 730.5, which covers private sector workplace drug testing
- Iowa Code Chapter 216 – The Iowa Civil Rights Act

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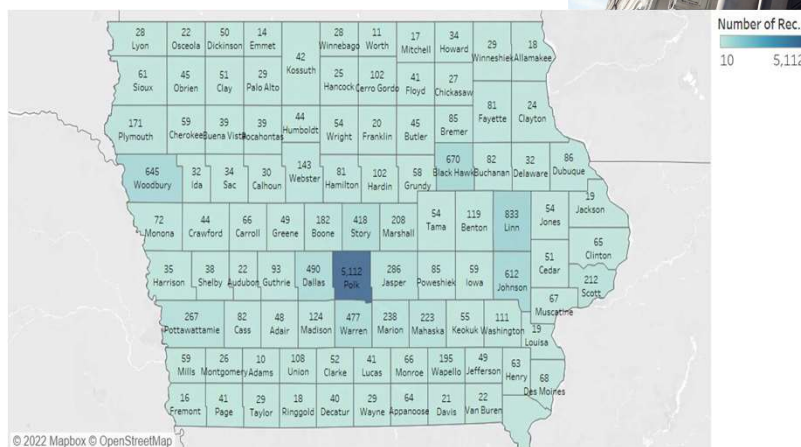
124E – Debilitating Medical Conditions

- Governor expanded the list of conditions in legislation signed June 2020 – each year this is reviewed
- Cancer, Multiple Sclerosis, Seizures, AIDS or HIV, Crohn's Disease, ALS, Parkinson's, Terminal conditions, Untreatable (now chronic) pain – Adds PTSD, severe autism
- The 2020 law changed Iowa's cap on the amount of THC that a dispensary can give to a person, replacing Iowa's 3% limit with a cap of 4.5 grams per patient every 90 days – actually reduces the amount some patients can receive
- **exception if health care provider certifies that 4.5 grams every 90 days is not enough to treat their condition, or if the patient's medical condition is terminal, with a less than one-year life expectancy**

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Cardholders by County



Map based on Longitude (generated) and Latitude (generated). Color shows sum of Number of Records. The marks are labeled by sum of Number of Records and County. The data is filtered on Application Status, which keeps Approved and Issued.

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What Forms are being sold/used?

IOWA
HHS

Chapter 124E allows Iowa's two licensed manufacturers to manufacture products in the following forms: oral forms (tinctures, capsules, tablets and sublingual forms), topical forms (gels, ointments, creams, lotions and transdermal patches), nebulizable forms, suppository forms and vaporized forms (vaporized forms became available for sale on August 7, 2019). Figures 13 & 14 depict the percentage of product sales in 2022 by formulation and product type.

FIGURE 13

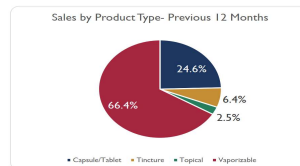
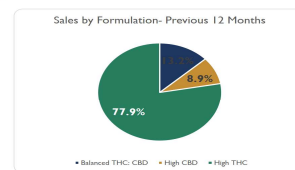


FIGURE 14



17

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Iowa Statute

- Need to get certification from health care provider, then CBD card is issued from IDPH
- As of 11/30/22 Iowa had
 - Almost 2000 providers
 - 14,446 patient cardholders (up from 7,871 at end of 2021)
- Of those, 10,198 are for chronic pain conditions, 2,829 for PTSD
- Still not a big percentage of the workforce, but growing quickly

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Section 730.5 Drug Testing

- Allows testing of prospective employees and current employees under a written policy
- Employers can choose the drugs to be tested
- Initial test (urine or saliva = 50ng/mL)
- Confirmatory test (urine or saliva = 15 ng/mL)
- A confirmed positive test, standing alone shall not determine whether an employee is “disabled” under Iowa law

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Amendment -730.5(11)(f)

- “Employers are immune from liability for testing and taking action against employees or prospective employees who have confirmed positive drug test results due to use of medical cannabidiol authorized under Chapter 124E”
- This went into effect 5/12/17, along with 124E

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Iowa Code 216



- “Disability” protections in employment
- Covers mental and physical disabilities
- Requires reasonable accommodations for known disabilities
- Unlike ADA, IA law does not remove protections from persons who currently use or formerly used drugs (or cannabis)

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Employment Considerations



- Employers must understand Federal and State laws that apply
- Review Policies and Revise as needed:
 - Drug testing
 - Review/Revise reasonable accommodations practices
 - Impairment – training to identify
 - Decide whether to include THC in testing
 - Consider drug testing for safety sensitive positions only (unless testing required under federal laws)

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Reconsider their Policies



- Can you eliminate THC from your drug testing program?
- What about safety sensitive positions?
- What is a safety sensitive position?
- Iowa Supreme Court case addressed testing “safety sensitive position”

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Training on Impairment



- Signs of cannabis impairment:
 - Bloodshot eyes
 - Increased appetite
 - Lack of motivation
 - Impaired/slowed coordination/slowed reaction time – Difficulty with routine tasks
 - Nervous or paranoid behavior or anxiety
 - Dizziness
 - Memory impairment/impaired judgment/distorted perception

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Detecting Impairment



- Need a baseline on the individual in order to determine a decrease in functioning
- If they appear to be impaired – what can we do?
 - Safety Sensitive position?
 - Non-Safety Sensitive?
 - What can I ask them?
 - Can I send them home?

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Best Practices for Employers



- Train Supervisors
 - Signs of impairment for cannabis
 - Do's and Don't's of handling employee cannabis use
- Keep up with changes to the Laws
- Review and Revise policies as necessary

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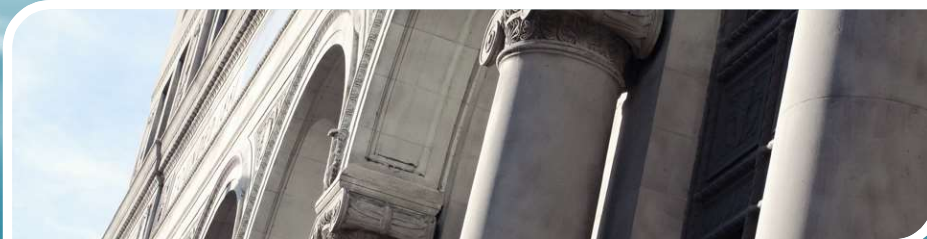
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37



THANK YOU!

QUESTION & ANSWER

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38