

FEATURE

A sensible approach to workplace drug testing for cannabis

Abstract. As more states allow either medical or recreational use of cannabis (marijuana), the issue of workplace safety due to possibly impaired workers presents a dilemma for employers. While drug testing can determine if a worker has consumed cannabis, there is no way to determine from drug testing the date and time when the worker took the drug. Since the metabolites of cannabis products can remain in the body for up to three or even four weeks, a worker who shows no evidence of impairment and can safely and productively handle job responsibilities may be at risk of losing his job. This paper will explore the issue of worker safety and cannabis use, and propose a sensible approach to evaluating a worker's ability to perform in a safe and productive manner.

By Russell Phifer¹

Cannabis (marijuana) is classed as a Schedule 1 drug by the US federal government (21CFR 1308.11(d)(23). It was on the initial list of Schedule 1 drugs as mandated by Congress when it passed the Controlled Substance Act of 1970 and it was signed by President Nixon. To meet this criteria, these conditions must apply (21CFR 812(b)(1)):

1. The drug or other substance has a high potential for abuse.
2. The drug or other substance has no currently accepted medical use in treatment in the United States.
3. There is a lack of accepted safety for use of the drug or other substance under medical supervision.¹

While each of these points has been debated by various interested parties, there has been no change in status for the drug since it was first added to the list of Schedule 1 substances. Nonetheless, cannabis is widely used, particularly in those states that have legalized it for medical and/or recreational use.

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Cannabis is the most commonly used illicit drug (19.8 million past-month users) in the United States according to the 2013 National Survey on Drug Use and Health.² Despite continued Schedule 1 listing of cannabis, two cannabinoids, Dronabinol and nabilone, have been approved by the Food and Drug Administration (FDA) for medicinal use as Schedule III substances. Dronabinol (Marinol) and

occasional or new users would clearly show symptoms of impairment under most circumstances within time frames that are largely based on the method of consumption. There are three ways to use the drug – inhalation, oral, and sublingual. Each has a different time frame for the onset of symptoms. The chart below shows the approximate time between onset and duration of impairment.

	Inhalation	Oral	Sublingual
Onset	0–10 min	60–90 min	5–60 min
Peak	30 min	2–3 h	1–2 h
Duration	1–5 h	6–8 h	1–4 h

Nabilone (Cesamet) were both approved for use in 1985 for the treatment of nausea by cancer patients. There are reportedly 60 active ingredients in cannabis.⁵

PHYSIOLOGICAL EFFECTS OF USE

Cannabis sativa and cannabis indica, the two primary strains of cannabis, can impair workers. Effects of use may include euphoria, restlessness, fatigue, confusion, paranoia, or heightened sensitivity to external stimuli. While chronic users may be able to adjust for the effects with little or no outwardly evident impairment,

As with any exposure to stimuli, every individual is different in terms of the dose-response relationship. Factors that need to be considered include gender, body weight, general health, age and mental state at the time of the exposure. The greatest single factor is frequency of use; chronic, long-term users are able to control symptoms much more effectively than new or occasional users.⁴

PREVALENCE OF WORKPLACE DRUG TESTING

According to data from the Drug and Alcohol Testing Industry Association

(DATIA), approximately 57% of US employers require job candidates to be drug tested. The result is a drug-testing market worth \$2.6 billion in 2012 and projected to reach \$3.4 billion by 2018.⁵ DATIA has about 1200 members. In 2014, approximately 150 million drug tests were performed, most for either job candidate testing or employer drug testing programs. This represents approximately one test for each employee in the US workforce.⁵

DATIA has proven to be a strong lobby in Washington for drug and alcohol testing legislation. “DATIA maintains a proactive government relations program and protects the industry’s interests on Capitol Hill. DATIA promotes and supports legislation benefiting the drug and alcohol testing industry such as the Drug Free Workplace Act of 1998. An early success of DATIA was influencing passage of the Drug Free Workplace Grants Program, under which federal agency contractors and grantees must certify that they will provide a drug-free workplace as a pre-condition of receiving a contract or a grant from a Federal agency.”⁶

CURRENT WORKPLACE POLICIES

There is no argument that cannabis products can cause impairment and should not be used prior to or during work. However, there is little or no recognition of the time frame after use under which cannabis impairment exists. For a variety of reasons, most workplaces with drug testing programs have essentially a “zero-tolerance” policy.

Drug testing, whether based on blood or urine sampling, can detect cannabinoid metabolites for up to 3–4 weeks following consumption. New or occasional users may show impairment at lower concentrations quicker than chronic users, but the minimum amount of time before the drug is no longer detectable in urine or bloodstream is generally at least 3–4 days after use.^{7,8} This indicates workers who fail a drug test for cannabis metabolites may have no impairment unless they consumed cannabis a few

hours before or during work. Both the National Highway Traffic Safety Administration and the National Institute on Drug Abuse have stated that cannabis impairment testing via blood sampling is unreliable. Drug tests generally produce false-positive results in 5–10% of cases and false negatives in 10–15% of cases.⁹

It is easy to detect the presence of THC metabolites in the bloodstream, but impossible to tell exactly when it was ingested. THC can remain at low but detectable levels of 1–2 ng/ml for 8 h or more without any measurable signs of impairment in one-time users. In chronic users, detectable amounts of blood THC can persist for days.⁸

There are essentially four circumstances under which an employer may test an employee for cannabis (and other drug) use:

- Reasonable cause
 - o May be tested if behavior reasonably gives rise to suspicion of drug use
- Comprehensive
 - o Periodic scheduled testing of all employees
- Random
 - o Testing everyone or just particular groups of workers on an unannounced, irregular schedule
- Post-accident
 - o Test when accident report is made, regardless of whether or not conduct caused the accident or incident.¹⁰

During his re-election bid in 2014, then Pennsylvania Governor Tom Corbett blamed cannabis for the state’s high unemployment rate, stating “There are many employers that say, ‘We’re looking for people but we can’t find anybody that has passed a drug test’”.¹¹ The Pennsylvania Manufacturers’ Association—which defended Corbett at the time and supported his re-election bid—conducted a survey that found drug use and drug testing is a concern but not a major factor within industry. Their report found that most manufacturing companies do not require a drug test as a condition of employment. Those that do found that, on average, 16% of their

job applicants failed the test, and 19% declined to take the test or did not show up for it. For 70% of companies that test, the failure rates in both categories were less than 10% of applicants. “While in many cases the percentages are not high,” the report states, “the fact that 19% refuse to take drug tests as a condition of employment and 16% fail these tests raises a red flag.”¹²

“Recreational drug use has no place around heavy machinery and chemicals”, said David Taylor, the association’s executive director. “Workers need to realize that,”¹² he said, as lawmakers debate loosening cannabis laws and prescription drug abuse rises.

Many companies, however, perform testing beyond pre-employment testing. In the event of an accident, many companies have a policy of immediately testing the employees involved for both alcohol and drugs to help determine impairment at the time of the accident. Likewise, suspicious behavior and symptoms of drug abuse may also trigger a test.

MEDICAL VS. RECREATIONAL USE

A major issue when considering cannabis use among workers is that of medical vs. recreational use. In June, 2015, Colorado’s Supreme Court ruled that a medical cannabis patient who was fired after failing a drug test cannot get his job back.¹³ The case has significant implications for employers and cannabis users in states that have legalized medical or recreational cannabis. Colorado became the first state to legalize recreational cannabis use in 2012. Though the Colorado case involves medical cannabis, the court’s decision could also affect how companies treat employees who use the drug recreationally. Brandon Coats is a quadriplegic who was fired by Dish Network after failing a drug test in 2010. The company agreed that Coats wasn’t impaired on the job but said it has a zero-tolerance drug policy. Courts in California, Montana and Washington have also ruled against medical cannabis patients fired for cannabis use.¹³

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