



MARIJUANA & WORKPLACE CHALLENGES



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2013 U.S. DRUG USE

24.6 M drug users 12 yoa + up

Marijuana = 19 Million

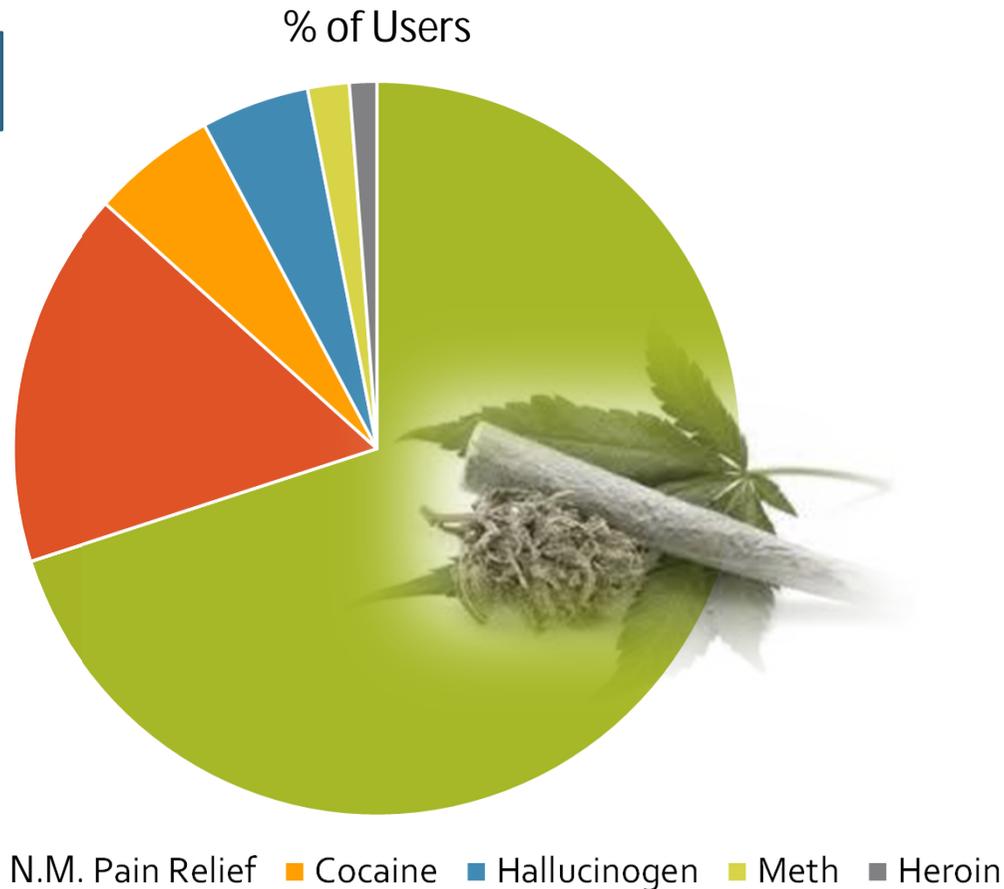
Non-Medical Pain Reliever = 4.5 Million

Cocaine = 1.5 Million

Hallucinogens = 1.3 Million

Methamphetamine = .5 Million

Heroin = .33 Million



<http://www.samhsa.gov/data/sites/default/files/NSDUHresultsPDFWHTML2013/Web/NSDUHresults2013.pdf>



Illicit Drug Use by Employees

- 9.1% of F/T employees are illicit drug users
- 13.7% of P/T employees are illicit drug users



Perception:

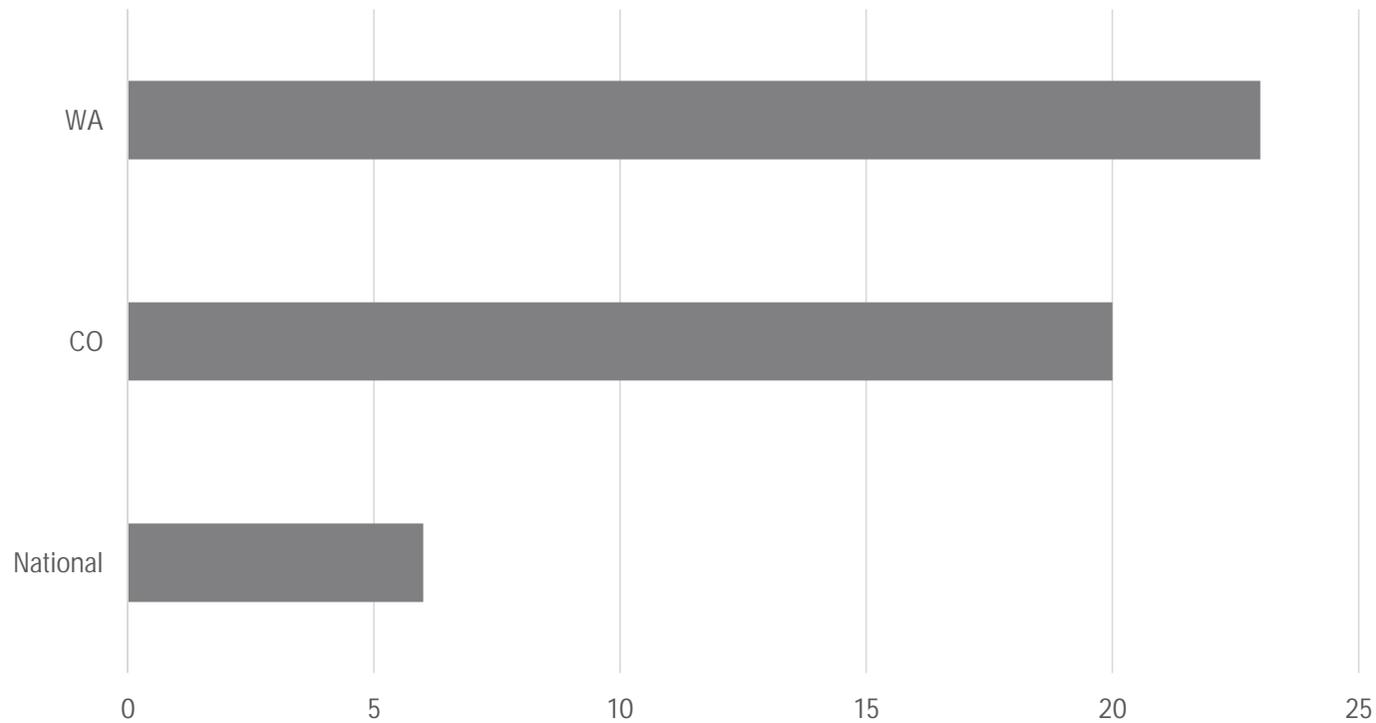


Reality:



Quest Diagnostics Drug Test Index™

Workplace Pos MJ Tests: Increase from 2012-2013



<http://www.questdiagnostics.com/home/physicians/health-trends/drug-testing>



Workplace Drug Use

F/T workers age 18-49 who currently use illicit drugs, report they have:

- Worked for 3 or more employers in the past year
- Voluntarily left an employer in the past year
- Were fired by an employer in the past year

An Analysis of Worker Drug Use and Workplace Policies and Programs, SAMHSA



Workplace Drug Use

F/T workers age 18-49 who currently use illicit drugs, report they have:

- Taken an unexcused absence in the past month
- Requested early dismissal or time off
- Had absences of 8 days or longer & significantly increased work tardiness



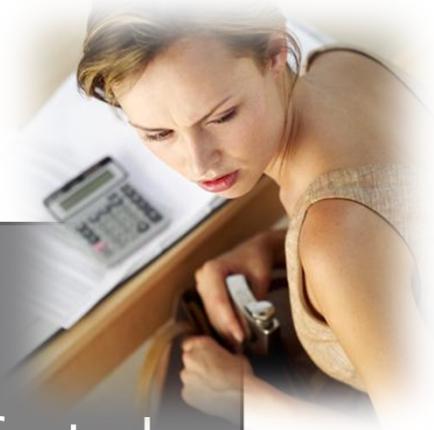
An Analysis of Worker Drug Use and Workplace Policies and Programs, SAMHSA



Workplace Drug Use

- 44% sold drugs to other employees
- 64% admitted that drugs adversely affected their job performance
- 18 % had stolen from co-workers to support their drug habit

<http://www.dol.gov/elaws/asp/drugfree/benefits.htm>



Workplace Drug Use



- 3.6x more likely to be involved in a workplace accident
- 5x more likely to file a workers' compensation claim

⁹Backer, T.E. Strategic Planning for Workplace Drug Abuse Programs, p. 4. NIDA. Rockville, MD.



Employee Marijuana **Use**



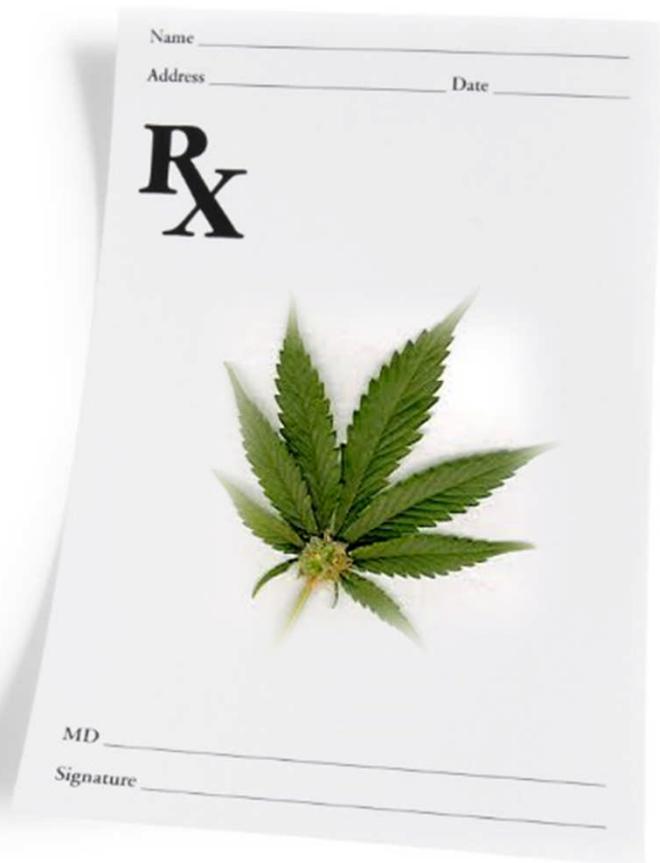
.55% more industrial accidents

.85% more injuries

.75% more absenteeism

Crites-Leoni, Abbie. "Medicinal Use of Marijuana: Is the Debate a Smoke Screen for Movement Toward Legalization?"
Journal of Legal Medicine (1998): 273-280. Journal.

What Does Schedule 1 Controlled Substance Mean?



- There is a high potential for abuse
- Lack of any accepted medical use
- No accepted safety standards for use under medical supervision
- Unable to regulate dosing standards



TODAY'S MARIJUANA

- Higher THC than we've ever seen before
- New delivery systems that are beyond our standard thinking
- Longer lasting impairment
- Confusing lack of standards regarding how to handle private use by employees
- Edible products complicate the issue



TRENDS





nugtella



Hazelnut spread with
Medical Marijuana



EMPLOYER CHALLENGES



EMPLOYER CHALLENGES

Noon on Thursday:
6 company trucks
8 company logos on shirts



Colorado Springs
Gas & Grass Station



Job Applicants at CO Electric Company

February 2015

12 applicants in the pre-employment process

Mobile drug test collector arrives

9 applicants walk-out

3 complete pre-employment drug screen

2 pass the drug screen

1 fails (THC positive)



VS



Looking Outside the State for Qualified Employees



“ Jim Johnson said his company has encountered so many job candidates who have failed pre-employment drug tests because of their THC use ... it is actively recruiting construction workers from other states. ”

GE Johnson

<http://gazette.com/drug-use-a-problem-for-employers/article/1548427>





Haven of Hope: 500% rise over normal in homeless in summer 2014 (50 to 300)

Salvation Army: 33% rise since 2014 compared to 2013

Salvation Army: Survey 25% increase related to marijuana

www.denverpost.com/news/ci_26216037/legal-pot-blamed-some-influx-homeless-this-summer



“ “In February,” Leona Willener said,
“more than half the applicants who
came to her company looking for
work failed the required drug tests
because of THC use ... 1 in 3
attempted to cheat the test.”

Colorado Staffing Agency

<http://gazette.com/drug-use-a-problem-for-employers/article/1548427>



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Regulating “like” alcohol



ALCOHOL

- Cost \$185 billion annually
- \$10 of loss for every \$1 spent
- #1 Reason for Addiction in the U.S.
- Breath Alcohol Tests = blood alcohol content affecting the brain through oxygen/blood exchange
- Rate of elimination from body is fairly standardized
- DUI Limits standardized

MARIJUANA

- Costs are as yet unknown
- No limits on THC
- No standardized measurement
- #2 Reason for Addiction in the U.S.
- Impairment has no measurement
- Fat soluble – highly individualized
- Impairment with stronger THC lasting for 1-3 days
- Sub-acute impairment in discovery



IMPAIRMENT



Short Term for Standard THC Doses:

- Red eyes, strong smell; problems with memory & learning
- Distorted perception, difficulty in thinking & problem-solving
- Loss of physical & mental coordination in divided attention tasks
- Difficulty shifting attention to meet the demands of changes in the environment, and in registering, processing and using information
- Perceptual functions are significantly affected
- Diminished ability to concentrate and maintain attention
- Distorted time & distance tracking
- Residual effects have been reported from days to weeks

IMPAIRMENT



Long Term for Standard THC Doses:

- Fatigue, paranoia, possible psychosis, memory problems
- Mood alterations, decreased motor coordination, lethargy, slurred speech, & dizziness
- Impaired health – lung damage, behavioral changes, reproductive, cardiovascular & immunological effects
- Respiratory problems similar to tobacco smokers , daily cough & phlegm, symptoms of chronic bronchitis. (The amount of tar inhaled and the level of carbon monoxide absorbed by marijuana smokers is 3 to 5 times greater than among tobacco smokers.)

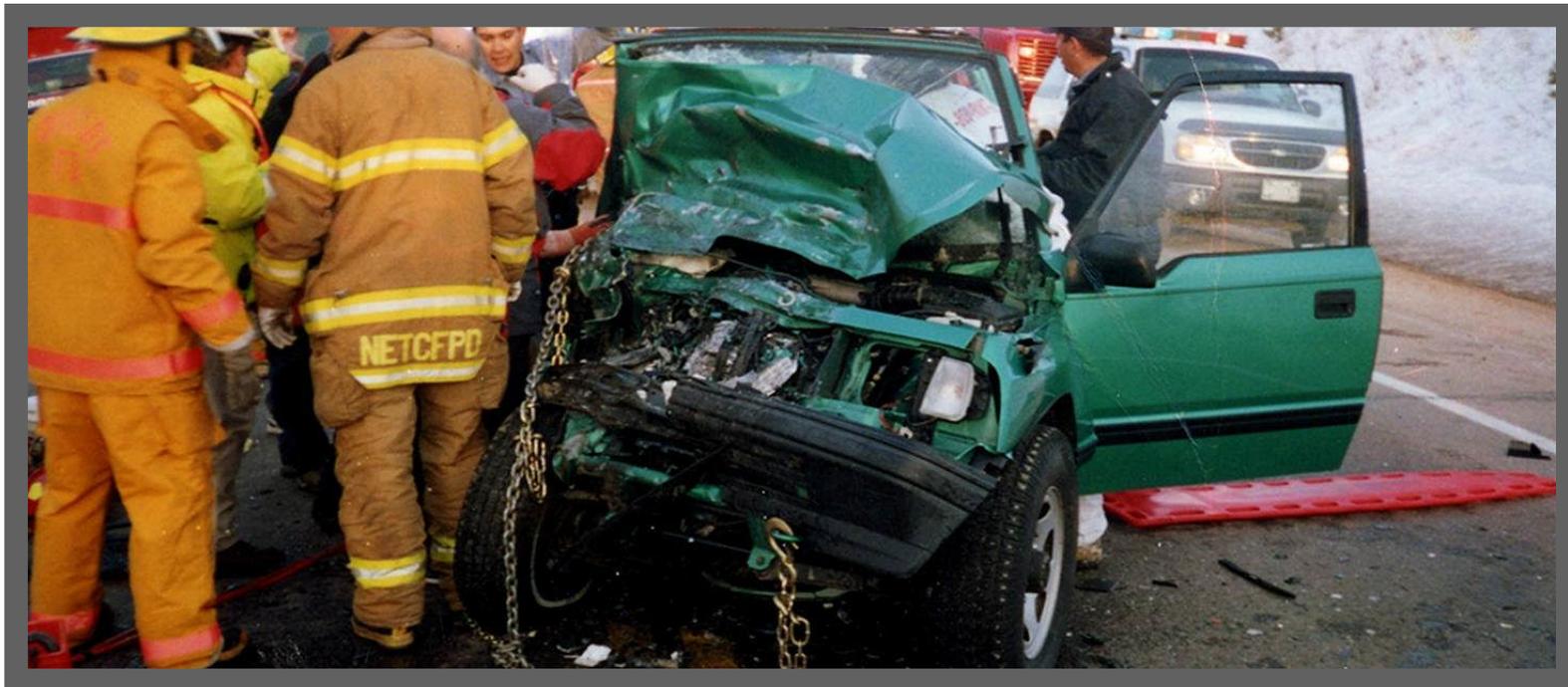
IMPAIRMENT



Short Term for Extreme THC Doses:

- Extreme paranoia
- Hallucinations
- Delusional behavior that can turn violent
- Bursts of violence, rage
- Heart palpitations, increased risk of heart attack
- Anxiety, panic attacks
- ER Visits – currently higher than any other substance
- The “high” has been reported to last for days, as yet unknown how long impairment can last

Traffic Safety



<http://www.drugabuse.gov/news-events/news-releases/2014/05/more-colorado-drivers-in-fatal-car-crashes-testing-positive-marijuana>
<http://www.nbcnews.com/health/health-news/pot-fuels-surge-drugged-driving-deaths-n22991>



What Colorado's Amendment 64 Says

"Nothing in this section is intended to require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale or growing of marijuana in the workplace or to affect the ability of employers to have policies **restricting** the use of marijuana by employees."



EXHIBIT A
Implementation of Amendment 64
Employer and Employee Rights
Article XVIII, Section 11(6)(a)
Proposed Regulations/Statutory Implementation

Consistent with the Amendment 64 Constitutional rights to personal use of marijuana for adults ages 21 and over, and to fully implement the same, the following action should be taken:

1. Amend the Colorado Employment Security Act C.R.S. § 8-73-1005(e)(IX.5) to:
1) repeal this section entirely, or 2) to exempt "presence in the system" of marijuana as a disqualifying event. "Presence in the system" disqualification for marijuana is unconstitutional in light of Amendment 64. It is over-inclusive, since a drug test cannot show when use occurred and would include off-duty use under Colorado Constitutional right. According to the US Department of Labor, "it is important to note that a positive urine test does not necessarily mean a person was under the influence of drugs at the time of the test." DOL ELans, <http://www.dol.gov/eisawrap/drugfree/drugs4d.asp>. The DOL also reports that "drug testing does not determine impairment or current drug use." *Id.*

NOTE: Other unemployment statutes already disqualify for benefits based on: 1) off-duty use of controlled substance to a degree resulting in interference with job performance (C.R.S. § 8-73-1005(e)(VIII); and 2) on-the-job use of controlled substance (C.R.S. § 8-73-1005)(e)(IX).

Therefore, repeal of Section 51(e)(IX.5) would harmonize Amendment 64 rights with the purposes of disqualification only for conduct interfering with job performance.

2. Issue regulations or statutes harmonizing the Amendment 64 right with legitimate business interests of prohibiting interference with job performance, for private employers as follows:
 - a. Employers are not permitted to test employees or applicants for the presence of marijuana in their systems unless specifically required by federal law, i.e. the employer is subject to the federal Omnibus Transportation Employee Testing Act/DOT regulations for specifically defined "safety sensitive" positions. Employers must disclose the specific applicable federal law in advance by written policy.
 - b. "Zero-tolerance" drug policies may not include off-duty marijuana use. Employers may not take adverse employment actions against employees because of off-duty off-premises exercise of Amendment 64 rights, unless they can establish interference with job performance with competent evidence of causation.
 - c. Employers may not inquire about marijuana use by applicants unless they can show a business-necessity for a particular written job description because state or federal statutes or regulations require such inquiry.
 - d. Policies "restricting" employee use must be limited to on duty activities – i.e. policies may provide that employees may not report to work if they are unable to perform their duties competently, and may provide disciplinary action based on performance issues.
 - e. Statutory remedies for violations include the right to a jury trial, back pay, front pay, compensatory damages, punitive damages, attorneys' fees, costs, interest, equitable relief, and any other relief allowable at law.



“Every existing Colorado law that is not compliant with Amendment 64 should be changed because an employee’s Constitutional Right to use marijuana supersedes an employer’s right to drug test.”

– Kimberlie Ryan, Atty



What is the Discussion REALLY About?

- ❑ The right to Drug-Free vs. the right to Drug-Use
- ❑ Safety vs. Liability
- ❑ Responsibility vs. Culpability
- ❑ Productivity vs. Loss/Risk Control



Employer's Rights

Know Your State Laws

Employer's Rights

Unemployment Laws

Worker's Compensation Act

Provisions in States Where Marijuana is Legal in Some Form



Drug Testing Ins & Outs



- Since marijuana is stored in the body's fat cells, it can be detected for up to 30 days
- 15 ng/mL cut-off level is standard for a positive drug test result
 - Before you consider increasing the cut-off level for your company, remember that 5 ng/mL is a DUID in the State of Colorado

TYPES OF TESTS

- Oral Swab
 - Shorter detection time after use
 - Less problems with cheating
 - Lab-based confirmation needed
- Urinalysis
 - Longer detection time after use
 - Lab-based confirmation needed
- Hair Test
 - Detection window is very long. Must wait 7-10 days to detect recent use
 - Lab-based results only

Employer's Rights

Have a sound drug policy in place

Zero-tolerance is absolutely

Allowable & enforceable

Communicate the policy & expectations with all staff & employees

Consistently enforce policies with clarity



Employer's Rights



Pre-Employment, Post-Accident, Random &
Reasonable-Cause

All supervisors should be trained in detecting signs &
symptoms

Never call a Reasonable Cause test a "random"

Employer Responsibilities

Safe and Drug-Free Workplace

Protect employees, customers,
work-environment and the public

Get involved in Protecting
Employer's Rights





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