

# Ohio Business Concerns with Marijuana

## ■ Workplace Concerns

- Marijuana continues to be the most commonly detected illicit drug of workforce urine drug tests.<sup>1</sup>
- An analysis of urine drug test data for the combined U.S. workforce from the two states with "recreational" use laws – Colorado and Washington – showed marijuana positivity rates increased 20 and 23 percent, respectively, in the general workforce between 2012 and 2013, compared to the 5 percent average increase among the U.S. general workforce in all fifty states.<sup>2</sup>
- Studies have also suggested specific links between marijuana use and adverse consequences in the workplace, such as increased risk for injury or accidents.<sup>3</sup>
- Marijuana is known to have the following effects, which can impact worker readiness and productivity:
  - Short-term memory problems and impaired thinking
  - Loss of balance and coordination and changes in sensory perception
  - Impaired ability to perform complex tasks
  - Decreased alertness, concentration, and reaction time

## ■ Litigation

- A Michigan Court of Appeals in October 2014 found that employees approved by the state to use medical marijuana are entitled to unemployment compensation if they were fired for failing a drug test.<sup>4</sup>
- Marijuana may pose a litigation risk to employers. An estimate of the cost of defending an employment practices liability suit is between \$69,000 and \$107,000-not including any awards.<sup>5</sup>
- In October, 2014, a New Mexico appellate court ruled in favor of an employee that medical marijuana must be covered by the workers' compensation system and employer.<sup>6</sup>
- Since marijuana remains illegal under federal law, any workplace that receives federal funding or is subject to federal regulations requiring the testing of safety-sensitive workers must continue to consider marijuana a prohibited substance (Drug-Free Workplace Act of 1988).

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Drug Free Action Alliance

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Drug Free Action Alliance is a statewide, 501(c)(3) non-profit charitable organization founded in 1987. We deliver up-to-date information and develop initiatives that serve the immediate needs of those working to prevent substance abuse throughout the State of Ohio and beyond.

While young people are our primary target population, we also engage in efforts to promote healthy lifestyles for all Ohioans. We form partnerships with businesses, community members, substance abuse prevention professionals, policy makers, law enforcement, school personnel, and, most importantly, parents.

1 "Workforce Drug Test Positivity Rate Increases for the First Time in 10 Years, Driven by Marijuana and Amphetamines, Finds Quest Diagnostics Drug Testing Index™ Analysis of Employment Drug Tests", Quest Diagnostics, September 11, 2014.

2 Ibid

3 Macdonald S., Hall W, Roman P, Stockwell T, Coghlann M, Nesvaag S. "Testing for Cannabis in the workplace: a review of the evidence." *Addiction*. 2010; 105:408-416.

4 [http://employmentlawblog-vanhyfte.typepad.com/employment\\_law\\_michigan/2014/11/michigan-medical-marijuana-cards-and-unemployment-benefits.html](http://employmentlawblog-vanhyfte.typepad.com/employment_law_michigan/2014/11/michigan-medical-marijuana-cards-and-unemployment-benefits.html)

5 Millman, George. "Medical marijuana poses litigation risks to employers." *Wall Street Journal*, August 15, 2013.

6 Gregory Vialpando v. Ben's Automotive Services and Redwood Fire and Casualty, May, 2014, <https://coa.nmcourts.gov/documents/opinions/Vialpando%20FO.pdf>