

The background of the slide is a composite image. The top portion is a solid dark red color. Below this, the background is split into two vertical sections. The left section shows several glass test tubes or vials containing a dark liquid, set against a warm, orange-gold glow. The right section is a grayscale image of a chromatogram or spectral plot, showing a series of peaks and valleys.

A Sensible Approach to Workplace Drug Testing for Legal Marijuana

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Background

- “Legalized marijuana” applies to those states with medical marijuana use and/or recreational use provisions and those that have decriminalized its use.
- The criteria for Marijuana or any other drug being listed as a Schedule 1 controlled use substance is:
 - *The drug or other substance has a high potential for abuse.*
 - *The drug or other substance has no currently accepted medical use in treatment in the United States.*
 - ***There is a lack of accepted safety for use of the drug or other substance under medical supervision.***
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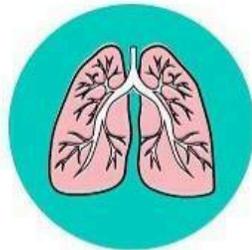
Prevalence of Marijuana use among full-time workers in the USA

- An estimated 6.4 percent, or 7.3 million, of full-time workers reported use of marijuana during the past month.
- Adults aged 26 to 34 were only about half as likely as 18- to 25-year-olds to be past month marijuana users (8.0 vs. 15.9 percent).
- The prevalence of past month illicit drug use among adult full-time workers was 8.2 percent.

HIGHER LEARNING

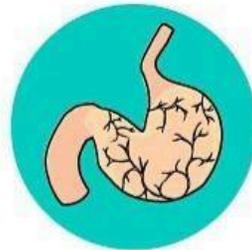
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OSMOSIS OF MARIJUANA



INHALATION

ONSET: 0-10 MINS
PEAK: 30 MINS
DURATION: 1-4 HRS



ORAL

60-90 MINS
2-3 HRS
6-8 HRS



SUBLINGUAL

5-60 MINS
1-2 HRS
1-4 HRS

The Drug Testing Industry

- 57 percent of employers in America now require job candidates to be drug tested, at an average of \$50 per person. The result is a drug-testing market worth \$2.6 billion in 2012 and projected to reach \$3.6 billion by 2018.
- The Drug & Alcohol Testing Industry Association (DATIA) has approximately 1500 members.
- Approximately 150 million drug tests were performed in 2014

Current workplace policies



"What the hell are we drug testing a janitor for? What's the worst he gonna do? Drop the mop? If you're thirty-nine years old and a janitor you should get to smoke a joint."

—D. L. HUGHLEY

Most workplaces with drug testing programs effectively have a zero-tolerance policy.

Companies Which Drug Test Employees

Business Category	Testing of New Hires	Testing of All Employees
Financial Services	35.8%	18.8%
Business & Professional Services	36.0%	18.4%
Other Services	60.3%	34.7%
Wholesale & Retail	63.0%	36.8%
Manufacturing	78.5%	42.2%

SAMHSA Guidelines

- (Substance Abuse and Mental Health Services Administration, US Department of Health and Human Services)
 - Applies to all federal government employees; adopted by many employers including government subcontractors – **ZERO TOLERANCE**



Current Worker Testing Triggers

– Reasonable cause

- May be tested if behavior reasonably gives rise to suspicion of drug use

– Comprehensive

- Periodic scheduled testing of all employees

– Random

- Testing everyone or just particular groups of workers on an
- unannounced, irregular schedule

– Post-accident

- Test when accident report is made, regardless of whether or not conduct caused the accident or incident.



Reliability of blood testing

- Both the National Highway Traffic Safety Administration and the National Institute on Drug Abuse have stated that **marijuana impairment testing via blood sampling is unreliable.**
- 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 hours or more without any measurable signs of impairment in one-time users. In chronic users, detectable amounts of blood THC can persist for days.



Reliability of urine testing

11-nor-9-carboxy-delta-9-THC (*inactive metabolite*) is detectable several days to several weeks, even longer for extremely heavy users. THC is a lipid soluble drug; the amount of time it takes to clear the system is dependent on how much drug was used and over what period of time the drug is used.

Attempts to correlate urine concentration with impairment or time of dose are complicated by variations in individual metabolism, metabolite accumulation in the chronic user, and urine volume changes due to diet, exercise, and age. Therefore, a positive result by the urine cannabinoid test indicates only the likelihood of prior use.



Why is testing done in the workplace?

- Pre-employment
- Suspicious or unsafe behavior
 - Post-accident



What do the courts say on admissibility of drug tests?

- Idaho, Kentucky, Oklahoma, Michigan, North Carolina, Utah – metabolites in a criminal defendant's blood or urine are not a Schedule 1 controlled substance
- In some other states, a positive drug test is not evidence of impairment, or “under the influence”
- In most other states and on federal land, zero-tolerance may be enforced.

Worker's Compensation

- Most states won't deny a worker's compensation case based solely on a drug test
- Employer generally must combine a positive test result with other evidence



Impairment Testing

- “The available information indicates that **impairment testing is not just a better answer on paper, but in practice as well.**
- Employers who have used impairment testing consistently found that it reduced accidents and was accepted by employees. Moreover, these employers consistently found that it was superior to urine testing in achieving both of these objectives.”
- *National Workrights Institute, "Impairment Testing: Does It Work?" (Princeton, NJ: NWI, undated).*

Objectives of impairment testing

- Address employer concerns about human safety and protection of property.
 - Will promote these goals among all employees and reduce unreported accidents
- Employees who use medical marijuana will be able to reveal it
- Focusing on impairment fulfills the goals of disability discrimination statutes: to protect applicants and employees with a disability who can perform successfully with reasonable accommodations by the employer.¹

• 1. Hofstra Labor & Employment Law Journal, Vol.29.2



Standard Field Sobriety Testing for Impairment

- Impaired performance on the SFSTs is positively related to the dose of THC administered
- Designed for both alcohol and drug impairment
- SFST Manual – detailed training for administration of tests
 - Horizontal Gaze Nystagmus (HGN)
 - Walk-and-Turn (WAT)
 - One-Leg Stand (OLS)



HGN

- Horizontal Gaze Nystagmus is an involuntary jerking of the eye that occurs naturally as the eyes gaze to the side. When an individual is impaired, nystagmus is exaggerated and may occur at lesser angles. **An impaired person will also often have difficulty smoothly tracking a moving object.**
- Success rate: 88%



Walk & Turn / One Leg Stand

- These are "divided attention" tests that are easily performed by nearly all unimpaired individuals. They **require the subject to listen to and follow instructions while performing simple physical movements**. Impaired individuals have difficulty with tasks requiring their attention to be divided between simple mental and physical exercises.
- Success rate: 79% / 83%
- (National Highway Traffic Safety Administration)

Combined SFST Tests vs Impairment testing

- When the component tests of the SFST battery are combined, officers are accurate in 91 percent of cases, overall, and in 94 percent of cases if explanations for some of the false positives are accepted
- Drug tests generally produce false-positive results in 5% to 10% of cases and false negatives in 10% to 15% of cases
- (Stuster and Burns, 1998).



Research / new technologies

- Breathalyzer for marijuana?
 - Colorado has passed a law creating a threshold for legal DUI for Δ 9THC of 5 nanograms per ml of blood
 - Lifeloc Technologies has a \$250,000 grant from the Colorado Office of Economic Development and International Trade to develop a breathalyzer



Innovative Programs

- In 1984, CSX Transportation implemented Operation RedBlock - a union-initiated, management-supported program that uses peer involvement to prevent employee use of alcohol & drugs while on duty or subject to call.
- The program's more than 3000 volunteers are trained to confront substance abusers, and if appropriate, refer them to the company's Employee Assistance Program. Since 1990, less than one percent of the drug tests administered to safety-sensitive employees have been positive.

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- Questions / Comments

- Thank you!

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