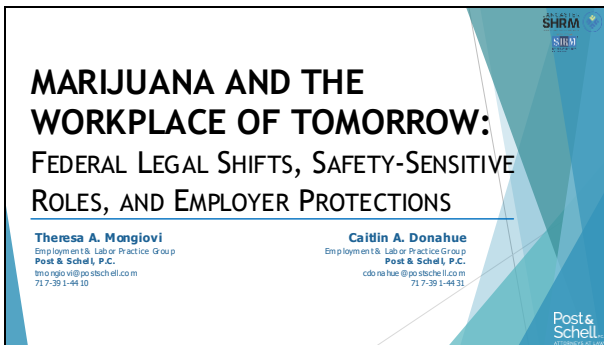
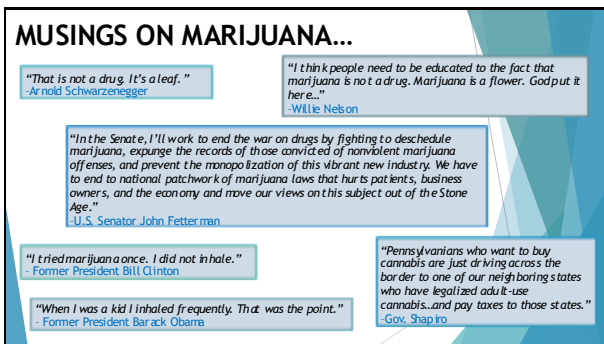


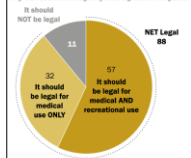






WHAT DO AMERICANS THINK?

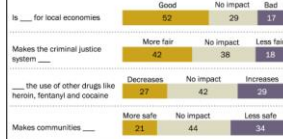
Only about 1 in 10 U.S. adults say marijuana should not be legal at all



Note: Fewer than 1% of respondents did not answer the question.
Source: Survey of U.S. adults conducted Jan. 16-21, 2024.
PEW RESEARCH CENTER

How Americans view the effects of legalizing recreational marijuana

% who say when marijuana is legal for recreational use, it ...



Note: No answer responses are not shown.
Source: Survey of U.S. adults conducted Jan. 16-21, 2024.
PEW RESEARCH CENTER

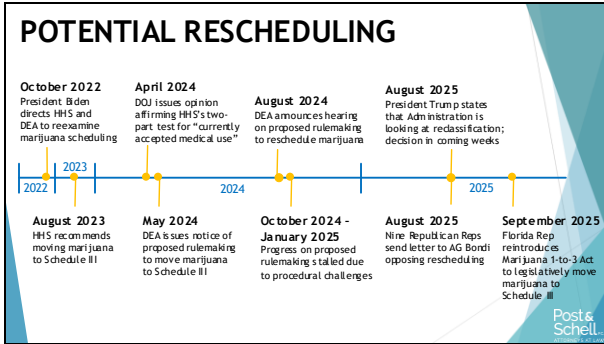
CURRENT STATUS OF MARIJUANA

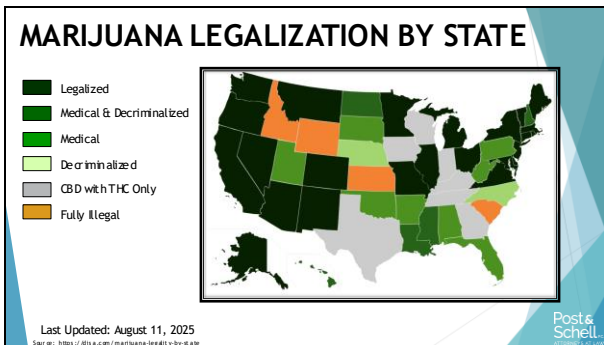
Post & Schell
RESEARCH

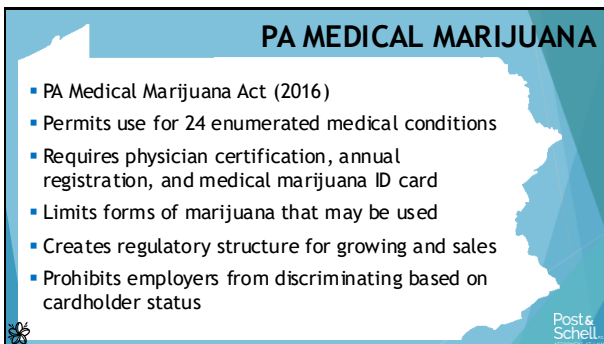
STATUS UNDER FEDERAL LAW

- Marijuana remains illegal under Controlled Substances Act
- Classified as Schedule I Drug
 - High potential for abuse
 - No currently accepted medical use in the U.S.
 - Lack of accepted safety for use under medical supervision
- Schedule I includes:
 - Marijuana
 - Heroin
 - LSD
 - MDMA (Ecstasy)
 - Peyote
 - Methaqualone (Quaalude)
 - Psilocybin (Magic Mushrooms)
 - Bath Salts

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RESEARCH







COVERED MEDICAL CONDITIONS

- Amyotrophic lateral sclerosis
- Anxiety disorders
- Autism
- Cancer, including remission therapy
- Chronic Hepatitis C
- Crohn's disease
- Damage to the nervous tissue of the central nervous system (brain-spinal cord) with objective neurological indication of intractable spasticity, and other associated neuropathies
- Dyskinetic and spastic movement disorders
- Epilepsy
- Glaucoma
- HIV/AIDS (positive status)
- Huntington's disease
- Inflammatory bowel disease
- Intractable seizures
- Multiple sclerosis
- Neurodegenerative diseases
- Neuropathies
- Opioid use disorder for which conventional therapeutic interventions are contraindicated or ineffective, or for which adjunctive therapy is indicated in combination with primary therapeutic interventions
- Parkinson's disease
- PTSD
- Severe chronic or intractable pain of neuropathic origin or severe chronic or intractable pain
- Sickle cell anemia
- Terminal illness
- Tourette syndrome

*Condition added based on Advisory Board recommendation

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LAWFUL FORMS OF MARIJUANA

PERMITTED

- Pill
- Oil
- Topical forms, including gels, creams or ointments
- Tincture
- Liquid
- Form medically approved for vaporization or nebulization

Effective 5/17/18 - includes dry leaf and flower per Advisory Board

PROHIBITED

- Smoking
- Edibles unless it "aids in ingestion of medical marijuana by patient"
- Growing or dispensing unless received a permit

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PA MEDICAL MARIJUANA PROGRAM

PROGRAM METRICS AS OF JUNE 1, 2025

- 441,530 Active Patient Certifications
- 1,053,992 Program-to-Date Patient Registrations
- 1,905 Approved Practitioners
- 193 Operational Dispensaries
- 32 Operational Growers/Processors
- \$1,302,888 Phase 3 Financial Benefit Distributed

Source: <https://www.pa.gov/jagen-des/health/programs/medical-marijuana/record-636471144?item=2a4f58021a>

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PA RECREATIONAL MARIJUANA

- Currently *illegal* under state law
 - Multiple proposed bills in recent years to legalize or decriminalize recreational marijuana
 - Legalization supported by Gov. Shapiro - budget proposals include revenue generated by recreational marijuana
- Local laws *decriminalizing* up to 30 grams

▪ Philadelphia - 2014	▪ Bethlehem - 2018
▪ Pittsburgh - 2015	▪ Lancaster - 2018
▪ Harrisburg - 2016	▪ Steelton - 2019
▪ State College - 2016	▪ Delaware Cnty. - 2020
▪ York - 2017	▪ Carlisle - 2020
▪ Erie - 2018	▪ Doylestown - 2021
▪ Allentown - 2018	

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STATUS OF LEGALIZATION

February 2025
Gov. Shapiro issues budget proposal providing for legalization of recreational use of marijuana

May 2025
PA Senate Law & Justice Committee declines to move HB1200 forward to full Senate consideration (7-3 vote)

July 2025
Sen Laughlin (R) and Sen Street (D) introduce SB120

- Adults 21 and older can possess 30 grams
- No jail time for minors in possession
- No smoking in public
- Expungement for past drug records
- Includes employment protections
- New Board to license and regulate industry
- Dispensaries would be dual-use (med and rec)

2025

May 2025
PA House of Reps passes HB1200

- Legalizes recreational sales through state-owned stores (similar to state liquor stores)
- Passed along party lines (102-101)

July 2025
Rep. Kinkhead (D) and Rep. Major (R) introduce HB20

- Adults 21 and older can possess 2.5 ounces
- No jail time for minors in possession
- No smoking in public
- Expungement for past drug records
- Includes employment protections
- New Authority to license and regulate industry
- Dispensaries would be dual-use (med and rec)

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DRUG TESTING POLICIES

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RANGE OF TESTING APPROACHES

Least Restrictive				Most Restrictive
- No D&A Policy - No Drug Testing	- D&A Policy - No Pre-employment Testing - Reasonable Suspicion Testing Only	- D&A Policy - Pre-employment Testing (marijuana excluded) - Reasonable Suspicion Testing	- D&A Policy - Pre-employment Testing (marijuana included) - Reasonable Suspicion Testing	- D&A Policy - Pre-employment Testing (marijuana included) - Reasonable Suspicion Testing - Random Testing

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POLICY CONSIDERATIONS



LEGAL REQUIREMENTS



NATURE OF JOB DUTIES



IMPACT ON CANDIDATE POOL



UNION POSITION

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POLICY CONSIDERATIONS



LEGAL REQUIREMENTS



NATURE OF JOB DUTIES



IMPACT ON CANDIDATE POOL



UNION POSITION

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LEGAL REQUIREMENTS

U.S. DEPT. OF TRANSPORTATION

- Federal Motor Carrier Safety Administration Regulations
 - Prohibit CDL drivers from being in possession of or under the influence of any Schedule I substance, including marijuana
 - State medical marijuana laws do not modify FMCSA drug testing regulations
- Employers of CDL Drivers must conduct testing required by FMCSA regulation - no exceptions:
 - Pre-employment
 - Random
 - Post-accident
 - Reasonable Suspicion
 - Return-to-Duty
 - Follow-up

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LEGAL REQUIREMENTS

PHILADELPHIA CODE § 9-5500

- Prohibits employers, labor organizations, and employment agencies from conducting *pre-employment* drug testing for marijuana
- Exceptions
 - Police and other law enforcement positions
 - Positions requiring a CDL
 - Positions requiring the supervision/care of children, medical patients, or disabled or other vulnerable individuals
 - Any position in which the employee could significantly impact the health or safety of other employees or members of the public, as determined by the enforcement agency
 - Employer is required to test for marijuana pursuant to federal or state statute, regulation, or order
 - Drug testing is required by a contract or grant between employer and federal government as term of grant
 - Drug testing is required by a valid collective bargaining agreement

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LEGAL REQUIREMENTS

PITTSBURGH CODE § 659.02

- Prohibits employers (five or more employees), labor organizations, and employment agencies from requiring medical marijuana cardholders to participate in:
 - *Pre-employment* drug testing; and
 - Marijuana testing *during employment* as a condition of employment
- Exceptions
 - Positions requiring a CDL
 - Positions required to carry a firearm
 - Drug testing is required by a valid collective bargaining agreement
 - For-cause drug testing performed when supervisors have reasonable cause to suspect an employee of being under the influence of a drug while at work
 - Drug testing performed after a workplace accident

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LEGAL REQUIREMENTS

OTHER BUSINESS LOCATIONS

- **DE:** Medical and recreational legal; MM cardholders protected from discrimination, but employers may still test for impairment
- **MD:** Medical and recreational legal; no statutory employment protections, employers may test and discipline for use
- **NJ:** Medical and recreational legal; off-duty use protected, employers need evidence of workplace impairment
- **NY:** Medical and recreational legal; off-duty use protected; testing limited to impairment-based
- **OH:** Medical and recreational legal; no statutory employment protections, employers may test and discipline for use
- **VA:** Medical and recreational legal; employers are barred from firing/disciplining solely for medical use, with federal exceptions
- **WV:** Medical only; no employment protections, employers may test and discipline for use



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POLICY CONSIDERATIONS



LEGAL REQUIREMENTS



NATURE OF JOB DUTIES



IMPACT ON CANDIDATE POOL



UNION POSITION

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NATURE OF JOB DUTIES

PA MEDICAL MARIJUANA ACT

MANDATORY EMPLOYMENT PROHIBITIONS

A patient may not operate or be in physical control of any of the following while under the influence with a blood content of more than 10 nanograms of active THC per milliliter:

- Chemicals requiring a federal or state permit
- High-voltage electricity
- Any other public utility

A patient may not perform the following employment duties while under the influence:

- Working at heights
- Working in confined spaces

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NATURE OF JOB DUTIES

PA MEDICAL MARIJUANA ACT

PERMISSIVE EMPLOYMENT PROHIBITIONS

A patient may be prohibited by an employer from performing the following while *under the influence*:

- Any task the employer deems life-threatening, to either the employee or any other employees
- Any duty which could result in a public health or safety risk

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SAFETY-SENSITIVE POSITIONS

What is a safety-sensitive position?

- The job duties of the position could affect the safety or health of an employee performing the duties or others (co-workers, customers, clients, members of the public, etc.)
- The job duties of the position could cause death or serious bodily injury to the employee or others (co-workers, customers, clients, members of the public, etc.)

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SAFETY-SENSITIVE POSITIONS

LEGISLATIVE INTENT (SB 1290; 2024) - NOT PASSED

A position that requires any activity that an employer reasonably believes presents a potential risk of harm to the health or safety of an employee or others, including, but not limited to:

- Duties performed at heights or in confined spaces
- The operation of a motor vehicles, or other vehicles, including forklifts
- Repairing, maintaining or monitoring the performance of operation of any equipment, machinery, power tools, or manufacturing process, the malfunction of or disruption of which could result in injury or property damage
- The operation, maintenance or oversight of critical services and infrastructure, including, but not limited to, electric, gas and water utilities, power generation or distribution
- Performing fire fighting duties
- The extraction, compression, processing, manufacturing, handling, packaging, storage, disposal, treatment or transport of potentially volatile, flammable, combustible materials, elements, chemicals or highlight regulated components
- Dispensing pharmaceuticals
- Carrying a firearm
- Direct patient care, elder or child-care



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SAFETY-SENSITIVE POSITIONS

JOB DESCRIPTIONS

- Should clearly identify safety-sensitive positions and duties:
 - "Safety-sensitive" indicator on job description form
 - Statement in position summary: *This is a safety-sensitive position*
 - Plain English description of job duties, physical demands, environment, PPE requirements
 - Statement after relevant duties: *This is a safety-sensitive job function*
 - May include description of potential injuries
- Positions on the edge:
 - Retain third party to assess duties of the position
 - Consult industry best practices, governmental safety regs
 - Document basis for decision

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SAFETY-SENSITIVE POSITIONS

Can employees who use medical marijuana be barred from holding safety-sensitive positions?

- MMA does not prohibit employees who use medical marijuana from holding safety-sensitive positions
- Only prohibits employees from being *under the influence* of medical marijuana while performing safety-sensitive duties

How to determine if an employee is *under the influence* given testing limitations?

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CLARK v. J.R.K. ENTERPRISES

LANCASTER COUNTY COURT OF COMMON PLEAS (2023)

- Facts:
 - Clark worked for roadway flagging company
 - Disclosed lawful use of medical marijuana
 - Terminated due to "federal law and safety concerns"
- Holding:
 - In context of DUI cases, PA Superior Court held that driving with controlled substance or metabolites in blood = under the influence
 - Clark admitted that, due to medical marijuana use, he always had marijuana in his system
 - Court found that Clark was "under the influence" and could be precluded from holding safety-sensitive position



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TYLER V. PENSKE TRUCK LEASING

EASTERN DISTRICT OF PA (2025)

- Facts:
 - Tyler received contingent offer as Sales /Operations Trainee
 - Penske considered position safety-sensitive due to driving duties and FMCSA regulations
 - Disclosed that he held MM card for anxiety - offer rescinded
 - Tyler offered to forego use of MM - Penske did not reconsider
- Court denied Pensky's Motion to Dismiss:
 - Tyler may not have been *using* MM when offer rescinded
 - Driving requirement may be pretextual
 - Tyler told he would not have to drive on public roads
 - FMCSA regs may not apply

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POLICY CONSIDERATIONS



LEGAL REQUIREMENTS



NATURE OF JOB DUTIES



IMPACT ON CANDIDATE POOL



UNION POSITION

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IMPACT ON CANDIDATE POOL

Bureau of Labor Statistics
BUSINESS RESPONSE SURVEY

1996 BRS SURVEY

Employers surveyed: 3,204; Number of employees: 50 or more Response rate: 90%

Private employers conducting drug tests:	48%
Manufacturing employers conducting drug tests:	60%
Private employers conducting alcohol tests:	23%
Manufacturing employers conducting alcohol tests:	28%

2021 BRS SURVEY

Employers surveyed: 317,000; Number of employees: 1 or more Response rate: 26%

Private employers conducting drug or alcohol tests:	16%
Manufacturing employers conducting drug or alcohol tests:	28%

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POLICY CONSIDERATIONS



LEGAL REQUIREMENTS



NATURE OF JOB DUTIES



IMPACT ON CANDIDATE POOL



UNION POSITION

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BARGAINING OBLIGATION

PRIVATE EMPLOYERS	PA STATE/MUNICIPAL EMPLOYERS	FEDERAL EMPLOYERS
<i>Johnson-Bateman Co., 295 NLRB 180 (1989)</i>	<i>Cambria County Transit Authority, 21 PPER 21007 (1989)</i>	<i>U.S. Postal Service v. NLRB, 969 F.2d 1064 (D.C. Cir. 1992)</i>
"The Board has long held that drug and alcohol testing directly affects terms and conditions of employment and is therefore a mandatory subject of bargaining."	"[P]rior to the promulgation of any drug or alcohol testing program, the public employer must negotiate with the exclusive representative of its employees regarding . . . matters of employee discipline which follow a positive test result."	"Because drug testing policies go to the very heart of the employment relationship, they are mandatory subjects of bargaining under the NLRA."

POLICY DEVELOPMENT

NO PRE-EMPLOYMENT DRUG TESTING OR MARIJUANA EXCLUDED FROM PANEL

- Approach often driven by need for talent
- Drug testing does not indicate active impairment
- Testing only reflects a single point in time, does not capture ongoing use
- Cost and liability concerns if employee causes death, serious bodily injury, or property damage while under the influence?

EMPLOYEES TREATING WITH MM PROHIBITED FROM HOLDING SAFETY-SENSITIVE POSITIONS

- Law does not prohibit employees who use MM from holding SS positions
- *Clark v. J.R.K. Enterprises* - having marijuana in system constitutes being "under the influence"
- Prohibition must be based on active use/treatment with MM, not cardholder status

EMPLOYEES TREATING WITH MM PERMITTED TO HOLD SAFETY-SENSITIVE POSITIONS

- Off duty use of MM treated like alcohol
- Employees that hold SS positions maybe required to:
 - Voluntarily disclose use of MM;
 - Sign attestation that they will not report to work or perform SS duties while under the influence of MM; and/or
 - Provide certification from medical provider that employee can safely perform duties

TESTING PROCEDURES

- Provide advance notice to applicants in conditional offer letters:
 - Applicants may choose not to proceed
 - Letters should identify if safety-sensitive position and what happens if applicant tests positive for MM
- Understand drug testing vendor protocols:
 - Must have MRO
 - How will positive tests due to MM be reported:
 - Safety-sensitive positions
 - Non-safety-sensitive positions
 - Vendor must obtain copy of PA MM ID card
 - Some vendors push this responsibility to employer

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EMPLOYEE PROTECTIONS

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PROHIBITION ON DISCRIMINATION

PA MMA - SECTION 10231.2103(B)(1)

Employers may not discharge, refuse to hire, or discriminate against an employee solely on the basis of medical marijuana *certification*

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ASK HR...

Darryl Philbin was recently hired as the Warehouse Manager at Dunder Mifflin. The duties of the position include driving a forklift.



After receiving a conditional offer for the position, Darryl discloses that he has a medical marijuana card, which he obtained for pain management following a car accident last year. Darryl advises Dunder Mifflin that the pain from his accident is tolerable and he recently stopped using medical marijuana. Darryl is willing to provide a note from his doctor stating that he can safely perform the Warehouse Manager position.

Can Dunder Mifflin rescind Darryl's offer?

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ACCOMMODATION LIMITATIONS

PA MMA - SECTION 10231.2103(B)(2)

Employers not required to accommodate use of medical marijuana on *property or premises* at place of employment

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ACCOMMODATION OBLIGATIONS

STATUTES	CASE LAW
AMERICANS WITH DISABILITIES ACT - Covered Employers: 15 or more employees - Covered Employees: Qualified individuals with a disability who can perform essential functions of job with or without reasonable accommodation - Requires an "interactive process" - No medical marijuana accommodation because marijuana = illegal under federal law	HUDNELL V. TJ UNIVERSITY (E.D. PA 2021) - Plaintiff permitted to proceed with failure to accommodate claim - Hospital had obligation to engage in interactive process
PA HUMAN RELATIONS ACT - Covered Employers: 4 or more employees - Same standard/obligations as ADA - Obligation to accommodate medical marijuana since legal under state law	HACC V. PHRC (CMWLTH. CT. 2020) - Nursing student requested accommodation to take medical marijuana, and waiver of annual drug test - Definition of "disability" does not include use of controlled substance - HACC not required to provide accommodation for on-site use - Could be safety risk for nurse to work while under the influence

ASK HR...

Dwight Schrute is a sales representative and Assistant Regional Manager at Dunder Mifflin. Dwight suffers from chronic back pain from years of harvesting beets at Schrute Farms. Dwight's back often bothers him in the afternoon, after he's been sitting at his desk for several hours, and from craning his neck to supervise Jim.



Dwight recently obtained a medical marijuana card for his chronic pain. Dwight asks Michael, the Regional Manager, if he can take extended lunch breaks to go home and use medical marijuana at midday. Dwight believes that using medical marijuana over lunch will make him more productive in the afternoon, since he will not be in pain.

- Must Michael approve Dwight's request?
 - Should there be an interactive process?
 - What is a reasonable accommodation for use of MM?

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EMPLOYEE DISCIPLINE

PA MMA - SECTION 10231.2103(B)(2)

Employers not precluded from imposing discipline when:

- Employee is *under the influence* in the workplace;
- Employee is working under the influence of medical marijuana and *employee's conduct falls below standard of care* normally accepted for the position

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ASK HR...

Roy Anderson works in the warehouse at Dunder Mifflin and is the primary delivery driver for local customers. His position is safety-sensitive because he operates both a forklift and straight truck (non-CDL).



Dunder Mifflin does not conduct pre-employment drug testing or require safety-sensitive employees to disclose use of prescription drugs or medical marijuana. Earlier today, Roy accidentally hit the wall while backing the straight truck into the warehouse. When Michael instructs Roy to undergo a post-accident drug test at Lake Scranton Urgent Care, Roy tells Michael that he uses medical marijuana off-duty and will test positive. Roy is adamant that he is not under the influence of medical marijuana at work.

- Can Dunder Mifflin fire Roy if he tests positive for marijuana?
 - How else can Dunder Mifflin establish that Roy was impaired at the time of the accident?

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UNDER THE INFLUENCE

LEGISLATIVE INTENT (SB 1290; 2024) - NOT PASSED

"Under the Influence" means one or more of the following:

1. A drug test pursuant to which it is determined that:
 - i. An employee or job applicant tests positive for marijuana at a level of THC acid in urine equal to or greater than 15 nanograms per milliliter; or
 - ii. Fails to submit to a marijuana test.
2. An employer's good faith determination that an employee or job applicant is *under the influence of marijuana based on observable physical behavior or characteristics*, provided that an employee may rebut the determination by immediately submitting to a drug test, the results of which demonstrate that the level of THC acid in the employee's urine is less than 15 nanograms per milliliter.

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UNDER THE INFLUENCE

Job Descriptions

- Identify the standard of care required for the position: physical requirements, soft skills, mental acuity
- Inquiry: What is required of similarly situated employees who do not hold medical marijuana card?

Reasonable Suspicion Procedures

- Train managers in reasonable suspicion identification
- 2x2 rule
 - Two people observe
 - Two signs/symptoms documented
- Use Reasonable Suspicion checklist to document observations

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EMPLOYER ACTION ITEMS

Be Aware of State/Local Restrictions

Legal requirements for pre-employment testing on pain, safety sensitive positions

Review Drug and Alcohol Policy

Decide whether marijuana is included on drug panel
Decide whether pre-employment, reasonable suspicion, and/or random

If Hiring EEs From Out of State...

Consider that recreational marijuana may be permitted in those states

Update Job Descriptions

Define safety-sensitive positions
Clarify essential functions tied to impairment risks

Update Reasonable Suspicion Procedures

Train managers on reasonable suspicion protocols
Use checklist to document observations

Enhance Communication and Training

Educate workforce on company drug and alcohol policy and updates

