The Commonwealth of Massachusetts is interested in good practice related to marijuana policy and testing. They would love to hear what others are doing or considering. Please take a moment to answer the following questions.

- Do you have a policy related to the use of marijuana? What are the penalties for a policy violation?
- Since the legalization of recreational marijuana in some states, have you made any changes to your employment policies related to the use of marijuana? If yes, what is the policy change?
- Do you have any type of drug testing? If yes, when does it take place? What are the ramifications of a positive test? What nuances in action do you consider for positive results?

Dana Yonchak, The Commonwealth of Massachusetts

<table>
<thead>
<tr>
<th>COMPANY, CONTACT NAME</th>
<th>COMMENT</th>
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<tbody>
<tr>
<td>Sanofi Ayelet Mosaffi</td>
<td>• Do you have a policy related to the use of marijuana? What are the penalties for a policy violation? We do not have a policy specific to the use of marijuana. We have a “Substance Abuse Free Workplace and Drug and Alcohol Testing Policy” which addresses the company’s commitment to a drug free work environment as well as pre-employment drug testing, drug-testing post-incident and testing if there is reasonable suspicion.</td>
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<td>• Since the legalization of recreational marijuana in some states, have you made any changes to your employment policies related to the use of marijuana? If yes, what is the policy change? At this time we have not modified our policy. We have a large employee population in NJ, and we are evaluating NJ’s proposed regulations for recreational marijuana and medicinal marijuana before updating any policies or processes.</td>
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<td>• Do you have any type of drug testing? If yes, when does it take place? What are the ramifications of a positive test? What nuances in action do you consider for positive results?</td>
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<tr>
<td>Company</td>
<td>Contact Person</td>
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</tbody>
</table>
| Prudential    | Cheryl Solon   | cheryl.solon@prudential.com            | • Do you have a policy related to the use of marijuana? What are the penalties for a policy violation? Yes. **We only test candidates to whom we have made a conditional job offer, not employees.**  
• Since the legalization of recreational marijuana in some states, have you made any changes to your employment policies related to the use of marijuana? If yes, what is the policy change? **We have not made any changes to our recreational marijuana use policy.**  
• Do you have any type of drug testing? **Yes, urine only.**  
  o If yes, when does it take place? **We only test candidates to whom we have made a conditional job offer.**  
  o What are the ramifications of a positive test? **We engage in an interactive accommodation process for medical marijuana use, asking for the medical marijuana card or documented proof of a physician recommending use of marijuana for medical purposes. If no proof is given then the offer of employment is rescinded.**  
  o What nuances in action do you consider for positive results? **None.** |
| Chubb         | Julie Flores   | julieflores@chubb.com                  | • Do you have a policy related to the use of marijuana? What are the penalties for a policy violation? **Chubb does not have a policy specifically regarding the use of marijuana. We do, however, have a Substance Abuse Policy. This outlines prohibited conduct, which mentions specifically marijuana usage. Penalties could rise to the level of termination.** |
| Since the legalization of recreational marijuana in some states, have you made any changes to your employment policies related to the use of marijuana? If yes, what is the policy change? **Not specifically** – the substance abuse policy does state that an employee is not permitted to be at work while under the influence of drugs or alcohol.

| Do you have any type of drug testing? If yes, when does it take place? What are the ramifications of a positive test? What nuances in action do you consider for positive results? **Yes** – Chubb performs pre-employment drug testing and reserves the right to test if we have reasonable suspicion that our substance abuse policy is being violated.

| **Herman Miller**  
| **Heather Brazee**  
| [heather_brazee@hermanmiller.com](mailto:heather_brazee@hermanmiller.com)  

| **Do you have a policy related to the use of marijuana? What are the penalties for a policy violation?** We have a Substance Abuse policy, which includes information related to the use of drugs in the workplace. See below for the answer regarding ramifications of a positive test.

| Since the legalization of recreational marijuana in some states, have you made any changes to your employment policies related to the use of marijuana? If yes, what is the policy change? **Yes**, our policy lists conduct that is prohibited under the policy. One of the items listed was “Possession or use of alcohol”; we added “and marijuana” to this bullet point. Before it was covered under the bullet point, “The illegal possession, sale, use, or distribution of a controlled substance”. We have shared with our employees that we follow federal law in regards to Marijuana which still considers it an illegal substance. Therefore we do not make accommodations for employees with state Medical Marijuana cards.

| Do you have any type of drug testing? If yes, when does it take place? What are the ramifications of a positive test? What nuances in action do you consider for positive results? **Yes**, we do drug testing for the following: post job offer, post-accident (OSHA-recordable injury or any time there is damage to company property, equipment, and/or individuals or an incident that constitutes a threat of damage to company property,
equipment, and/or individuals on the premises), reasonable suspicion, job-specific testing (jobs that require special safety, security, or customer requirements beyond those normally expected of all employees), and DOT-mandated testing. If we receive a positive test on a post job offer candidate, the offer would be rescinded. If we receive a positive test for an employee who is still in their new hire probationary period (180 days), they would be terminated. If we receive a positive test for an employee for an employee who has successfully completed their new hire probation period, they would enter into a second-chance agreement, in which they enter into the highest level of the progressive disciplinary process, must agree to meet with an EAP counselor, must agree to follow the recommendations of the EAP counselor, and are randomly tested for 24 months.

Additional Information

This map shows every US state where pot is legal

States where marijuana is legal

Legalized recreational and medical marijuana
Legalized medical marijuana
LEGAL CONSIDERATIONS FOR EMPLOYERS

*Marijuana in the Workplace: Guidance for Occupational Health Professionals and Employers*

- Parsing the interaction between federal and state law can be complex, especially when they are at odds

*How Do Recreational Marijuana Laws Affect the Workplace?*

- Employers have to be prepared for the fact that it is now much easier to obtain marijuana
- Marijuana is still illegal under federal law, so employers should consider maintaining drug-free workplace policies
- Employers should note that a few states—such as Massachusetts and New York—afford protections to registered medical marijuana users
  - This means that if an employee in one of these states is using marijuana with a medical card, employers cannot fire them on that basis.
    - However, if an employee is using marijuana recreationally, the employee's job would **not** be similarly protected
  - Employers may need to **engage in an interactive process to see if a reasonable accommodation can be made** in some circumstances

*Medical Marijuana and Its Impact On the Workplace*

- Employees who qualify under their state’s medical marijuana laws can use medical marijuana regardless of federal treatment of marijuana
  - Except employees whose jobs are regulated by federal law—for example CDL drivers
- ADA may not protect disabled individuals using medical marijuana
  - BUT state disability laws (i.e., the Pennsylvania Human Relations Act) may
- Employers in states with legalized medical marijuana:
  - Engage in an interactive process with employees who disclose a disability and use of medical marijuana for that disability to evaluate ability to safely perform essential functions of the job with or without reasonable accommodation
- **Employers should consider the following:**
  - Whether they are regulated and funded by the federal government in a way that should impact their drug testing policies and their treatment of medical marijuana
  - The overall temperament of the company for medicinal marijuana use
  - The company’s existing drug testing policies, definitions under the policies and whether revisions are necessary
  - The medical marijuana laws in the state(s) in which they operate and whether the laws allow employers to discipline for use of medical marijuana and, if so, in what contexts
  - Whether the laws allow employers to regulate medical marijuana use for safety sensitive positions and, if so, whether they employ any individuals in such safety sensitive positions
  - The impact of the Americans with Disabilities Act and the state law component and their resulting obligations thereunder

*Trend in Medical Marijuana Suits Favors Employees*

- Multi-state employers should have specific state addenda to any drug testing policies in their employee handbook
DRUG TESTING

Labor shortage: More businesses are mellowing out over hiring marijuana smokers

- SHRM finds that 57% of companies do drug tests
- Dropping marijuana testing is one step that more companies are taking to expand their pool of applicants to fill a near-record level of openings
- It matters if the position is safety-related
  - If a manufacturing worker, for instance, isn't driving a forklift or operating industrial machinery, employers may deem a marijuana test unnecessary
  - Businesses that contract with the government or that are in regulated industries, like air travel, or that have safety concerns involving machinery, are continuing marijuana tests, employment lawyers say
- Example: AutoNation
  - The company stopped testing for marijuana about a year ago.
    - Response to evolving public attitudes
    - Fear of losing prospective employees
    - “The labor market has tightened up,” Cannon said. AutoNation heard from other business leaders. They said things like, “We’re doing the same thing; we just didn’t want to share it publicly.”

Will legal marijuana kill the employment drug test?

- Companies in states that have legalized recreational or medical marijuana are leading the way on dropping tests
- Still reserving the right to test after an accident or if an employee comes to work notably impaired
- Mini Case Study: Excellence Health
  - No longer drug tests people coming to work for the pharmaceutical side of the business
  - Stopped testing for marijuana 2 years ago
  - Wants to help people, instead of saying “you can’t work for us because you used a substance”
  - Added a hotline for workers who might be struggling with drug use
  - Still drug-tests any employee working on a government contract, even in states where weed is legal
- Drug testing restricts the job pool, and in the current tight labor market, that’s having an impact on productivity and growth
- Companies that are NOT making changes and still regard cannabis as illegal:
  - Restaurant Brands International Inc.
  - Ford Motor Co.

The Legalization of Medical Marijuana and its Impact on Workplace Zero-Tolerance Policies

- Zero-tolerance policies send a strong message
  - Employers who are not subject to the Drug-Free Workplace Act may want to consider:
    - Flexibility by proactively treating employees individually and voluntarily providing accommodations for medical marijuana for those who are qualified to use it legally
    - Regarding the lawful use of medical marijuana in the same light as the lawful use of prescription drugs, at least for non-safety-sensitive jobs
• Revamping their zero-tolerance drug policy to a “no-impairment” policy which covers both alcohol and drug usage
• If an employee tests positive for marijuana, the employer may then begin a process of verifying the employee’s participation in a medical marijuana program
  o Evaluate the employment situation
  o Determine accommodations, if needed, based on the nature of the job and the safety sensitivities of that job
• Ensure that job descriptions are up-to-date and that safety-sensitive jobs are clearly labeled as such

OVERVIEW OF SHIFTING LANDSCAPE

Cannabis: A Changing Conversation
As marijuana legalization continues to expand rapidly, many employers are grappling with how to update their drug policies without employee privacy going up in smoke.

Changes in Cannabis Potency Over the Last 2 Decades (1995-2014): Analysis of Current Data in the United States
Marijuana is the most widely used illicit drug in the United States and all over the world. Reports indicate that the potency of cannabis preparation has been increasing. This report examines the concentration of cannabinoids in illicit cannabis products seized by the U.S. Drug Enforcement Administration over the last 2 decades, with particular emphasis on Δ9-tetrahydrocannabinol and cannabidiol.

Cannabis@Work: Employee Assistance Professionals Tool Kit
This is the first in a series of publications intended to give EA professionals information to assist their companies and clients. We recognize that this is rapidly shifting territory, so this is a snapshot of the state of cannabis in the workplace in the Fall of 2017. The Tool Kit is organized in sections starting with the foundation of employer policies. Areas addressed are 1) Employer Policy, 2) Safety, 3) Compliance, 4) Productivity, 5) Flexibility, 6) Legislation and Litigation, and 7) Employee Rights. This is the first installment covering policy issues and safety concerns.