Drug Testing Update: Are You In Compliance?

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Topics

- Statistics
- DOT FMCSA Clearinghouse
- Cannabidiol (CBD) Oil
- Impact of “Legal” Marijuana
Increase In Positive Rates

Since 2016 when recreational marijuana was legalized, the following states saw the largest marijuana positive increases:

- **Non-DOT:**
  - Nevada – 43% increase
  - Massachusetts – 14% increase
  - California – 11% increase

- **DOT:**
  - Nevada – 39% increase
  - California – 20% increase
  - Massachusetts – 11% increase

- With increased social acceptance, expect to see increased access and use.
What are the users saying?
When Do American Workers Get Lit?

- On the way to work: 28.23%
- On your lunch break: 22.75%
- Anytime: 18.82%
- In the afternoon while at work: 11.52%
- In the morning while at work: 10.53%
- On your way home from work: 5.20%
- Other: 2.95%

Source: Survey of 1,000 people
Where Do American Workers Get Lit?

- Car/parking lot: 48.03%
- In the bathroom: 18.40%
- Just outside of the building: 12.64%
- At my desk: 10.81%
- Other: 4.35%
- At a coworker's Desk: 2.53%
- In a supply closet: 1.69%
- In the kitchen: 1.54%

Source: Survey of 1,000 people
Cheating on the Test

Most Popular Ways to Get Over on Employer Drug Test

- Detox Drinks: 31.51%
- Urine Substitution: 24.37%
- Urine Dilution (with water): 20.59%
- Synthetic Urine: 17.65%
- Diuretic: 5.88%

23.06% of employees have cheated on a drug test

Source: Survey of 1,000 people.
This powerfully formulated detox drink can help assist in passing a urine drug test. If you need to pass a urine drug test and you are under 200lbs in weight. This drink makes passing a urine drug test a breeze. Simple to use, just abstain from all toxins for roughly 48-72 hours. To pass a urine drug test, simply drink the Ultra Klean Detox Drink an hour and a half prior to your urine drug test and follow it up with water, the quantity of which, is listed with the detailed instructions on the label of the detox drink.
Ultra Pure Synthetic Urine (4 ounce)

The 4oz Synthetic urine is a premixed sample that has been created to protect one’s privacy during a urine drug test. The size of the kit is appropriate for those who might have to give multiple samples to the lab on a single day or required you to deposit urine samples into a toilet without flushing. This is why, this larger 4oz drink is recommended to people appearing for a drug test on a urine sample. The Ultra Pure Synthetic Urine can be used both by men and women, making it a unisex product. This liquid contains all the necessary ingredients that are commonly found in urine and the levels of specific gravity, acidity, creatinine and other parameters are balanced so that you pass the urinary drug test. The bottle containing synthetic urine comes attached with a heating pad and a thermometer to make sure that the 4oz sample is close the body temperature.
DOT FMCSA Clearinghouse

• What is it?
  • Online database that will give employers and other authorized users real-time information about CDL holders drug and alcohol program violations.

• Current background requirement vs. Clearinghouse requirements
Queries

• Employers must conduct a pre-employment query for all prospective employees in the Clearinghouse prior to hiring the employee for a DOT covered position. The query will determine if the prospective employee is prohibited from performing safety-sensitive functions due to drug or alcohol program violations. (Full Query)

• Employers must query the Clearinghouse annually for all currently employed DOT covered drivers. (Limited Query)
  • If the Limited Query shows that information exists about the driver, a Full Query will be required.
Queries

• Driver Query Consent
  • Full Query – Driver must register a Clearinghouse account and give electronic consent.
  • Limited Query – Driver must sign a general written consent.
  • Employer must retain consent forms for a minimum of 3 years.

• Until January 6, 2023, employers are required to perform both Clearinghouse and manual background checks.
MRO Reporting Requirements

- Verified positive, adulterated, substituted tests and refusals to test.
- Reporting information must include:
  - Reason for test
  - CCF specimen ID number
  - Driver’s name, date of birth, CDL number and State of issuance
  - Employer’s name, address and USDOT number
  - Date of test and date of the verified result
  - Test result
- MRO must report the above within two business days of making their determination.
Employer Reporting Requirements

• Alcohol confirmation test result of 0.04 or greater.
• Driver’s refusal to submit to a DOT drug or alcohol test.
• Actual knowledge of drug or alcohol use while working.
• Negative Return to Duty test results.
• Date the driver successfully completed all follow-up tests.
Employer Reporting Requirements

• Reporting information must include:
  • Reason for test
  • Driver’s name, date of birth, CDL number and State of issuance
  • Employer’s name, address and USDOT number
  • Date of test and date the result was reported to you
  • Test result
    • Negative (only required for Return to Duty tests)
    • Positive
    • Refusals

• The above information must be reported by the close of the third business day after the employer is informed.
C/TPA Reporting Requirements

• Report alcohol test results of 0.04 or greater.
• Refusals to take a drug or alcohol test.
• Report negative Return to Duty tests at employers request.
SAP Reporting Requirements

• Information on all drivers that have entered the SAP Program.

• The information must include:
  • SAP name, address and telephone number
  • Driver’s name, date of birth, CDL number and State of issuance
  • Date of completion of the initial assessment
  • Date the SAP determines the driver is eligible for the Return to Duty test

• The SAP must report both the date of completion of the initial assessment and eligibility for Return to Duty by the close of the business day following the determination of both.
Clearinghouse Requirements

• What you need to do before January 6, 2020
  • Go to https://clearinghouse.fmcsa.dot.gov and register an account.
  • Designate your C/TPA
    • You must designate your C/TPA before they can access the Clearinghouse on your behalf.
    • This is required for all owner/operators
  • Select and purchase a query plan
    • There will be a fee of $1.25 per query
  • Employee ID Number
    • Must use CDL # and State of issue
  • Educate your employees
FAQ

• **Does the Clearinghouse rule change any of the DOT drug & alcohol testing rules in 49 CFR Part 40?**
  • A: No, nothing in the drug & alcohol testing regulations 49 CFR Part 40 will change as a result of the Clearinghouse.

• **Are all DOT FMCSA covered drivers required to register in the Clearinghouse?**
  • A: No, not all drivers are required to register in the Clearinghouse, but officials are encouraging all to do so. Effective January 6, 2020 all applicants for DOT FMCSA covered driver positions will for sure be required to register. Drivers must register if they want to view all information about them in the system—any time, free of charge. Drivers must register to give consent to a full query that an employer might be requesting, this may occur after a limited query shows there is information in the Clearinghouse.
FAQ

• **When a report on a driver is uploaded to the Clearinghouse, how is the driver notified?**
  • A: When information on a driver is added, revised, or removed, the driver will be notified. If an e-mail is on file for the driver the notification will be by e-mail otherwise it will be by US mail to the address on driver’s commercial driver’s license (CDL).

• **Is the Clearinghouse available to State Driver Licensing Agencies (SDLAs)?**
  • A: The Clearinghouse will be available to State Driver Licensing Agencies (SDLAs) for queries to be performed before completing licensing transactions, such as the issuance, renewal, transfer, and upgrade of a commercial driver’s license (CDL).
FAQ

• **Q:** Will drivers be able to access the Clearinghouse and what interaction will they have?

• A: Drivers will be able to login and see what information, if any, has been reported on them. There will be a process for drivers to challenge the accuracy of the information reported. Drivers will not be allowed to challenge the actual outcome or validity of test results or refusals which have already been vetted and reported by an MRO or an employer.
Cannabidiol (CBD) Oil

• What is it?
  • Cannabinoid harvested from the non-psychoactive parts of the cannabis sativa plant.
  • Typically marketed as a THC free alternative to marijuana.
  • Promoted as, “amazing, natural, healing product.”
  • Proponents claim that CBD provides relief from anxiety, pain, insomnia.............
Cannabidiol (CBD) Oil

• What We Know
  • Inaccurate labeling is common.
  • In 2018, the California Bureau of Cannabis Control (yes, it’s a real thing) tested nearly 26,000 products that contain cannabinoids sold at dispensaries.
    • Of the CBD only products
      • Only 30% were accurately labeled for potency or purity
      • 1 in 5 contained THC
    • If employees use CBD, will they test positive for THC?
Impact of Marijuana Legalization
Lessons from Colorado

• Marijuana use in Colorado = 16% vs. 8.6% for national avg.
• In a 2017 poll 48% of people who used marijuana recreationally reported going to work high and 39% said they went to work high on a weekly basis.
• Hospital visits due to marijuana use increased by 52% from 2012 to 2016.
• Traffic accidents related to marijuana use increased from 11.43% in 2013 to 21.3% in 2017.
• Traffic deaths with drivers who tested positive for marijuana increased by 39% during the past four years.
Marijuana  (2-3 hours) (24+ hours) (4-45 days)

Physical Signs & Symptoms

• Eyes: bloodshot, redden, droopy eyelids
• Reduced attention span, impaired memory
• Euphoria and animation (loud)
• Loss of coordination, slow responses
• Low-grade body tremors
• Loss of sense of time and space
• Frequent hunger
• Increased heart rate
• Pupils: dilated or above normal size
Marijuana Potency

• Average THC Concentration
  • 1970’s – 1990’s = 3% - 5%
  • 1996 – California Compassionate Use Act
  • 2000 – 2006 = 5% - 8%
  • 2007 – 2014 = 9% - 13%
  • 2016 – California Recreational Use Legalization
  • Today = 20% - 30%
    • Extracts = 50% - 80%+
Misperception About Marijuana

Myth 1

- Marijuana is Harmless
  - Increased risk of mental illness, heart disease, cancer, lung disease and stroke.
  - Marijuana side effects have led to more emergency room visits than all other substances combined.
    - Psychosis
    - Anxiety
    - Cannabinoid Hyperemesis Syndrome
      - Ongoing nausea
      - Repeated episodes of vomiting
      - Belly pain
      - Decreased food intake and weight loss
      - Symptoms of fluid loss (dehydration)
Misperception About Marijuana

Myth 2

• Marijuana is a Medicine
  • Continues to be rejected for medicinal use by prominent national health organizations.
  • In medical marijuana states, less than 3% of users have cancer, AIDS, glaucoma, etc.
  • California
    • Average medical marijuana user is a 32 year old male with a history of alcohol/substance abuse and no history of illness.
Misperception About Marijuana

Myth 3

• Urine testing is unreliable because it does not measure impairment.
  • Presence vs Impairment
  • Presence-in-system testing remains the gold standard and is upheld by the courts as valid.
Prop 64
(Recreational use of Marijuana)

• Nothing in section 113 62.1 shall be construed or interpreted to amend, repeal, affect, restrict, or preempt:
  • (f) The rights and obligations of public and private employers to maintain a drug and alcohol free workplace or require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growth of marijuana in the workplace, or affect the ability of employers to have policies prohibiting the use of marijuana by employees and prospective employees, or prevent employers from complying with state or federal law.
Prop 64
(Recreational use of Marijuana)

• (g) The ability of a state or local government agency to prohibit or restrict any of the actions or conduct otherwise permitted under Section 11362.1 within a building owned, leased, or occupied by the state or local government agency.

• (h) The ability of an individual or private entity to prohibit or restrict any of the actions or conduct otherwise permitted under Section 11362.1 on the individual's or entity's privately owned property.
Medical Marijuana

Ross v. RagingWire Telecommunications

- The California Supreme Court held that employers are not required to accommodate an employee’s medicinal marijuana use irrespective of the Compassionate Use Act of 1996.

- Other States?
Common Questions

• As an employer in a state where recreational and/or medical marijuana is legal, we continue to test for marijuana. How can we prevent employees from challenging their termination?
  • Courts have consistently ruled in favor of employers:
    1. Have a sound drug/alcohol testing policy (Education).
    2. Regularly make employees aware of the policy (Education).
    3. Enforce the policy consistently (Deterrent).
    4. Have a drug testing program (Deterrent).
Common Questions

• With marijuana legal in California for recreational use, should we consider removing it from our drug testing panel?

• If we remove marijuana, what about other substances?

• The Evidence............You Decide
Questions?