

# Marijuana and the Workplace

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# Marijuana and the Workplace--Topics

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Marijuana laws and employment in the U.S.

Intoxication, impairment and under the influence

Signs and symptoms of drug \impairment

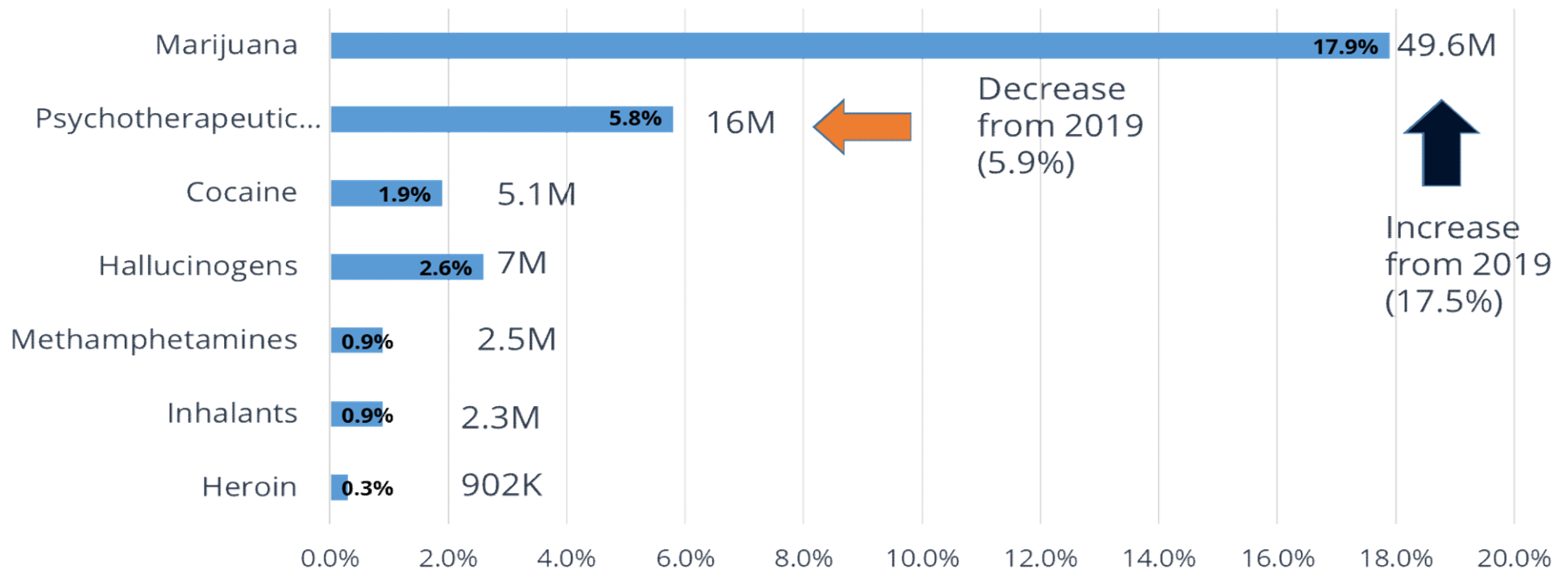
Testing considerations in detecting drug impairment in the workplace

# Marijuana by the numbers: 39 billion

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- Why has the legalization of marijuana spread so rapidly from state to state in the U.S. over the past 10 years?
- The answer is very simple—\$39,400,000,000. Or more succinctly stated: “39.4 billion dollars.” That’s what experts predict will be the projected revenue from sales of legal marijuana by 2023.
- Private equity and even state and federal governments have invested too much money into the legalization movement to ever let it die.
- 39 states, including D.C., have legalized marijuana for medicinal purposes (more than 145 million Americans now live in a state that has legalized marijuana).
- 18 of those states have also legalized marijuana for adult “recreational” use

# U.S. drug use (2020): marijuana most used drug



# Testing employees for marijuana remains legal

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- It is not surprising that employers have these concerns and are at the same time confused.
- However, the truth is it is **still legal in all 50 states** for employers to drug test for marijuana though conditions and limitations apply in some states that have legalized marijuana.
- **Even New York**, where testing for marijuana was recently deemed to be prohibited by the state Dept. of Labor, there are circumstances during which employers may continue to test for marijuana.
- Also, it is within the rights of employers in most states to take adverse employment action against someone who tests positive though, again, restrictions may apply in a small handful of pro-marijuana states.

# Increasing Restrictions on Testing for Marijuana

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- **New York** became the first state to **prohibit virtually all forms of workplace drug testing for marijuana**, including pre-employment and random testing.
- The only *possible* **exceptions** include:
  - A **reasonable suspicion** or **post-accident drug test** when an employee is suspected of being impaired by cannabis while working. This means the employee manifests specific "**articulable symptoms of impairment**" that:
    - **Decrease or lessen the performance** of their duties or tasks,
    - **Interfere with the company's obligation** to provide a safe and healthy workplace, free from recognized hazards, as required by state and federal occupational safety and health laws.
- However, even in such circumstances, **an employer may not use a positive test for cannabis as the sole justification for adverse employment action.**

# What is impairment?



- “Impairment” is sometimes considered a **legal term** that has a **set/generally accepted limit**.
- Meaning a **“diminishment or loss of function or ability.”**
- Impairment...
  - Impacts **cognition**
  - Impacts the ability to **think clearly**
  - Causes issues **remembering** instructions
  - Causes issues **following** procedures
  - Results in **psychomotor** problems

**Cognition:** *“the mental action or process of acquiring knowledge and understanding through thought, experience, and the senses.”*

**Psychomotor:** *“the ability to perform physical motor movements such as movement of fingers, hands and legs, with precision coordination and strength.”*

Impairment  
can be, but  
isn't always  
caused by  
drug use

**Impairment can be caused by:**



Fatigue



Sleep deprivation



Stress, family or personal problems



Illness



Finances



Alcohol use



And more

# What is under the influence?

- More of a **policy definition** than a legal definition.
- Generally, means **having drugs or alcohol in your system**, but could be defined as a number of different things:
  - Exhibiting **signs and symptoms** of substance use (defined in a company's policy)
  - A **positive** drug or alcohol test
  - A **combination** of both
  - Something else entirely

## Impairment

- Typically, a **legal term**.
- **Sometimes used with specific numbers**, such as 0.08 BAC.
- **No established number for THC** impairment in the U.S. nor is there one for other abused substances outside of alcohol.

## Under the influence

- Typically, a **policy term**.
- **States may provide guidelines** as to what can constitute a determination of under the influence.
- Could mean having **any amount of substance** in your system or could mean **exhibiting specific signs** or **a combination of both**.

# Marijuana & impairment

## Does marijuana use cause a person to become impaired?

- Does marijuana cause a **decrease in the ability to process and remember instructions**, sometimes referred to as “**cognitive impairment**”?
- Does marijuana affect a person’s ability to perform **complex tasks** that require fully functioning **psychomotor capabilities** such as driving a truck or operating a forklift, often referred to as “**psychomotor impairment**”?
- **One of the most misleading and potentially dangerous claims about marijuana** is that its impairing effects only last 2-3 hours.

# Impairment factors

- Researchers have concluded that there are **many different factors** that influence how individuals become impaired by marijuana use and for how long.
- Much depends on:
  - Each user's drug-use history,
  - Frequency of use,
  - The level of tetrahydrocannabinol (THC, the psychoactive ingredient) in the marijuana being used,
  - The method of use (e.g., smoking a joint vs. eating THC gummies, etc.), and
  - The task being performed (e.g., remembering instructions vs. operating a motor vehicle).

## 2021 report on Cannabis Impairment & Intoxication

- **A relatively new report from the University of Sydney, analyzed 80 separate studies** to “determine when people would be impaired after cannabis use.
- Depending on how much THC is taken, how it’s taken, and the person taking it, they found cognitive **impairment could last between 3 and 10 hours.”**
  - **impairment may last up to 10 hours if high doses of THC are consumed orally.**
- typical duration of impairment, is **4 hours, when lower doses of THC are consumed via smoking or vaping** and **simple work tasks are undertaken** (e.g., those using cognitive skills such as reaction time, sustained attention and working memory).”
- **Impairment may extend 6-7 hours if higher doses of THC are inhaled** and **complex tasks**, such as driving, are assessed.”

# Frequency of Use

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- Frequent users vs. occasional users
  - Regular users of marijuana were found to experience less impairment than occasional users.
  - However, regular users often took higher doses of THC and had less predictable levels of impairment after use.
- Impairment is much more predictable in occasional cannabis users than regular cannabis users.
- Frequent users show significant tolerance to the effects of cannabis on driving and cognitive function, while typically displaying some impairment.”

# Intoxication v. Impairment

- It is important to understand that **intoxication and impairment are two very different things.**
- **cannabis intoxication**--physiological and psychological symptoms following the ingestion of marijuana including euphoria, preoccupation with auditory and visual stimuli, and apathy. Intoxication occurs almost immediately after use with smoking and is delayed when marijuana is ingested orally.
  - THC levels in the blood spike after consumption, but decline to low levels very quickly – **long before impairment ends.**
- Additionally, the **length and intensity of intoxication** [not necessarily impairment] depend not only on the **strength of the marijuana** product, but also on **how the drug is consumed.**
- **Inhaling marijuana** typically causes onset of intoxication **within five minutes**, with symptoms of intoxication [not impairment] lasting a couple of hours.
- **Ingesting marijuana orally** (gummies, in foods, etc.) can delay onset of intoxication between **one to four hours**, and **intoxication [not impairment] can last much longer** than that.”
- Impairment in specific behaviors, particularly complex divided attention tasks often extends for **up to 24 hours after intoxication.**
  - **Psychomotor impairment can persist after the perceived high (i.e. intoxication) has dissipated.**



# Signs & Symptoms of Drug Impairment and Under the Influence

# Reasonable Suspicion Testing for Impairment

Reasonable suspicion:

- is based on observations of an individual
  - Contemporaneous—just before, during, or after duty period
  - What the supervisor sees, hears or smells
- is based on objective, documented criteria
  - Capable of being expressed as signs or symptoms of possible use of drugs/alcohol

Reasonable suspicion testing:

- is used to **“rule out”** or eliminate alcohol or drug use as a cause of the individual’s behavior or appearance
- is not a diagnostic tool

## Signs of Alcohol Intoxication/Impairment

Odor of alcohol on breath

Poor judgment, increased risk-taking behavior

Decreased reasoning ability, forgetfulness

Slower reflex reactions

Clumsiness, staggering, unsteady gait

Poor coordination, slowed reflex, diminished reaction times

Bloodshot eyes, impaired tracking ability

Slurred speech patterns

Exaggerated emotion, excitement, belligerent attitude

Disheveled clothing, poor personal grooming

Flushed complexion, sweating

# Signs & symptoms associated with impairment from psychoactive drugs

**Appearance changes:** personal grooming often deteriorates or dramatic changes in hairstyle, clothing may occur

**Changes in eyes:** eye movements such as tracking ability are affected; pupil size is altered

- Opioid/opiate intoxication frequently causes pin-point or restricted pupils; individuals have difficulty functioning in low light conditions
- Stimulants cause dilated pupils (very sensitive to light; wear dark glasses, even in indoor lighting conditions)
- Bloodshot, watery or unfocused eyes, red, irritated eyes

**Complexion changes:** Profuse sweating, the chills, flushed or pallid complexion may be due to the effects of the drugs

**Speech patterns change:**

- stimulants create rapid, pressured speech patterns
- Narcotics produce slow, thick, slurred speech
- Hallucinogens may produce nonsense, fantasy speech

**Psychomotor functioning is impacted**

- Stimulants speed up the body's motor activity
- Sedatives or narcotics slow down motor functions: opiate/opioid intoxication may cause individual to stagger, move very slowly, be unsteady when walking
- Hallucinogens may produce bizarre motor movements
- Marijuana delays reaction times, impairs eye-hand coordination and creates unsteadiness

# Signs & Symptoms of Recent Cannabis Use

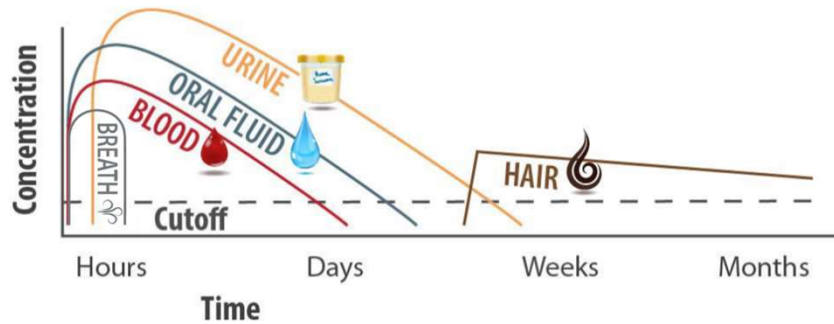
- ❑ Slurred or slow, hesitant speech patterns.
- ❑ Red, glassy eyes.
- ❑ Loss of focus during a conversation. Marijuana intoxication makes it difficult to hold a normal conversation, lacking the ability to stay focused.
- ❑ Loss of coordination. Difficulty going from sitting to standing, or vice versa, stumbles or walks into obstacles, this could indicate impairment.
- ❑ Dramatically increased appetite. After smoking or consuming recreational marijuana, many individuals will want to eat large amounts of junk food and sweets.
- ❑ Lack of energy and loss of motivation. Look for a loss of interest in activities that were once a significant part of the individual's duties. Drowsiness, sleeping on the job is another sign of impairment.
- ❑ Emotional behavior that doesn't match the situation. This might include laughing or crying inappropriately and/or uncontrollably, or outbursts of anger.
- ❑ The smell of marijuana on the employee. When marijuana is smoked, it has a distinctive strong earthy odor that is detectable on the breath, hair, clothing.

# Supervisor's Role

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- ☐ Identify the specific observations of employee behavior and appearance
- ☐ Explain to the employee that a reasonable suspicion test will be conducted to determine if he/she has drugs/alcohol in his/her system while at work.
- ☐ Fully explain the consequences of the employee's refusal to comply
- ☐ Supervisor does not need to identify the specific drug associated with the behavior or appearance
- ☐ Supervisor should be alert to changes in the employee's usual behavior and appearance

# Testing Considerations



- Most drugs have a window of intoxication/impairment that is **relatively short** (minutes to hours), meaning that **recent-use detection is essential**.
- Find a testing specimen that can detect drugs within minutes after usage, that has a relatively **short window of detection** *and* that **covers the entire window of impairment** for cannabis (in particular).
- At this time, oral fluid** is the preferred testing method that **covers the entire window of impairment** for cannabis and **detects recent-use**.

# The Window of Impairment for Cannabis

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