

ABOUT DATIA

For more than 20 years, the Drug & Alcohol Testing Industry Association (DATIA) has grown to represent over 1,500 member companies worldwide to best serve the ever-changing and growing drug and alcohol testing industry. DATIA currently represents the entire spectrum of drug and alcohol testing professionals including specimen collection sites, employers, laboratories, Consortiums/Third Party Administrators (C/TPAs), Medical Review Officers (MROs), testing equipment manufacturers, and many more.

With a focus on workplace testing and employers' and their rights to maintain a safe and drug-free workplace, our mission includes supporting employers in effectively executing drug-free workplaces and ensuring that employers have the resources needed to achieve that goal successfully and effectively. This not only includes advocating for employer rights, but also ensuring that service providers are providing services to effectively achieve these goals.



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DATIA

The Drug & Alcohol Testing
Industry Association



Clearing the Haze of Confusion About Employee Marijuana Use



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Does it really matter if employees use marijuana?

Employees who use marijuana have 75% more absenteeism, 55% more industrial accidents and 85% more workplace injuries than other employees¹. Marijuana is the most frequently used drug in the United States.

Perhaps the greatest negative impact from drug use overall is the economic loss. The National Institutes of Health report that drug abuse costs the U.S. economy \$246 billion annually in decreased productivity, turnover, medical costs, increased accidents and absenteeism². *What is the cost to your company?*

DATIA Can Help You

As some states legalize marijuana for recreational purposes and others grapple with marijuana for approved medical conditions, employers from all sectors have asked for clarity on the best practices and responses. Employers want to maintain safe, healthy, productive and drug-free workplaces.

Therefore, the most experienced and well-trained DATIA experts have created a guideline tool that provides employers and workplace management/supervisors a solid strategy for dealing with the confusing and complex issue of employee marijuana use.

Be assured, while dealing with marijuana issues can seem like a tremendously complicated issue, there are clear-cut and simple solutions that can remove doubt, hesitation, fear, and inaction; helping you to create and maintain a safe, healthy, productive, and drug-free workplace. So let's clear the haze.

Marijuana is an Impairing Substance

Marijuana is an impairing substance that affects motor coordination, short-term memory, alters judgment and in high doses can cause paranoia and psychosis^{3,4}. The workplace is negatively impacted by drug use when safety protocols become jeopardized and machinery or equipment is used improperly.

¹Crites-Leoni, Abbie. "Medicinal Use of Marijuana: Is the Debate a Smoke Screen for Movement Toward Legalization?" *Journal of Legal Medicine* (1998): 273-280. Journal.

²"The Economic Costs of Alcohol and Drug Abuse in the United States" National Institute on Drug Abuse, Rockville, MD, 1992

³<http://www.nhtsa.gov/people/injury/research/job185drugs/cannabis.htm>

⁴<http://www.drugabuse.gov/publications/drugfacts/marijuana>

Have a Policy

No matter the size of a company – from a very small, local business to a large, corporate enterprise – there must be a policy in place that addresses employee drug and alcohol use. This does not need to be a complicated or daunting task. Liability and uncertainty are the results when a company fails to implement a policy. This is a first priority. While there are a variety of policy points that may suit one's specific workplace needs, it is most critical that employers and employees understand these key points:

- The policy needs to reinforce that it is never appropriate to come to work under-the-influence of any substance that compromises workplace safety. Every employer has the right to expect work readiness and to enforce all safety standards without compromise.
- Make sure the policy clearly states the actions that will be taken when/if employee substance use is suspected. Consider using the term "under the influence" rather than "impaired."
- A local Consortium/Third Party Administrator (C/TPA) will be able to provide personal guidance on policy best practices. Additionally, the Substance Abuse and Mental Health Services Administration (SAMHSA) website, found here: www.samhsa.gov, offers resources for the federal Drug Free Workplace Act. Helpful templates for policies can also be found on the Society for Human Resource Management (SHRM) website at: <http://www.shrm.org/templatestools/samples/policies/pages/safetytoc.aspx>.



Create Policy Awareness

Having a clear policy that addresses employee drug and alcohol use is not much help if employees and their supervisors are unaware of it. Education and training are a must. Use attendance sign-in sheets, email "read receipts" or policy manual signature sheets and keep them on file to verify employee awareness.

- New employee orientation should include education and training on the importance of workplace safety and the conflict substance use brings to a "safety first" environment.
- Regular company-wide meetings that provide policy reminders, safety updates and awareness on the topic of substance use trends should be held at least annually.
- Routine company-wide emails can stress safety compliance and may serve as helpful tools for maintaining and enhancing your safety culture.
- You can find DATIA's online training resource for workplace supervisors here: http://www.datia.org/index.php/?option=com_content&view=article&id=1838

Understand What Under-the-Influence Looks Like

The simplest way to recognize when something is not quite right with an employee is to know the employees well. When behaviors, attitudes and responses that are normal for a person begin to change, pay attention. Routine training is vital for staff preparedness and should be compliant with your specific workplace drug and alcohol policy so that procedural responses are automatic.

- Annual training for anyone who should be aware of the signs & symptoms of substance use should be mandatory. Training should include recent trends in substance use and paraphernalia awareness. DATIA offers training via in-person and online training courses.
- Reasonable suspicion training for both drugs and alcohol should be a routine offering for supervisory staff. Employee Assistance Professional (EAP) options should be clearly defined with referral resources available for employees who choose to self-report addiction problems.
- The best training modules include practice scenarios that will engage the trainees and prepare them to handle encounters should they arise.



Enforce Your Policy Consistently

It is vital that the company policy be enforced consistently from entry-level employees all the way to top-level executives. Maintaining a random drug testing protocol is one of the most effective means to keeping a safe and drug-free work environment. In fact, random drug testing programs have been proven to significantly reduce workplace accidents as much as 70%⁵.

- Department of Transportation (DOT) guidelines serve as a best practice model for policy enforcement, and even if your particular company is not required to follow DOT mandates, you may find the procedures are helpful. The model can be found here: <https://www.transportation.gov/odapc/part40>
- Research your state laws to ensure you follow any specific protocols outlined for workplace drug testing specifications.
- A regular, consistent random drug-screening program sends a clear message that safety is a priority and substance use will not be tolerated.

⁵Taggart, Robert W. "Results of the Drug Testing Program at Southern Pacific Railroad." *Drugs in the Workplace: Research and Evaluation Data*. Eds. Steven W. Gust, Ph.D. and J. Michael Walsh, Ph.D. Rockville, MD. NIDA. 1989

Understand Drug-Testing Options & Outcomes

A variety of screening options are available that are reliable and affordable. Understanding what types of tests may be most useful is important. Engaging a knowledgeable expert serves any workplace environment well.

Consider using a C/TPA who can provide random pool functions, screening services and make recommendations for your particular and unique screening needs. A C/TPA can place a buffer of protection between you and the employee so they cannot claim in court that they are being singled out or tested too frequently. Please refer to the DATIA members listing for a reputable drug and alcohol testing location near you at: <http://datia.org/directories/search-directory.html>

See the Helpful Resources list at the end of this brochure for more information on drug testing options.

Should Marijuana be Removed From a Testing Panel?

Marijuana remains a Federally Controlled Substance that causes impairment. Regardless of changing state laws or popular messaging, it is not safe to work under-the-influence of marijuana just as it is not safe to work under-the-influence of alcohol. Marijuana should not be removed from a standard drug test panel so everyone is functioning at optimal workplace readiness.

Use a Medical Review Officer (MRO) to Verify Test Results

Laboratory confirmation of drug test results should be sent to a certified Medical Review Officer (MRO) who will rule-out approved prescription medications, verify the presence of inappropriate substances, and provide expert testimony if needed. MRO certification means the physician has received up-to-date training on the most recent data and cutting-edge information regarding substance use. An MRO can provide appropriate credentials by a certifying agency such as AAMRO (<http://aamro.org/find-an-mro.aspx>) or MROCC (<https://www.mrocc.org/Search.cfm>)

- While point of collection testing/onsite testing (POCT) collection tools are extremely helpful for initial screening protocols, making employment decisions based upon a "non-negative" POCT result is unwise and illegal in some states since these tests utilize screening technology only. Sending the sample to a SAMHSA-certified lab for verification can rule out false-positives, second-hand exposure and other incidental contact.
- Laboratory tests are conducted according to well-researched and reasonably determined cut-off levels that withstand scrutiny in a court of law. This means that with a laboratory verified and MRO-certified test result, all excuses are ruled-out to confirm first-hand drug use has occurred.

What to do if The Employee Claims Marijuana Use Was From 30 Days Ago

Let's clear up this common myth. Employers often feel backed into a corner because employees with a positive THC drug screen claim, "I used once while on vacation several weeks ago. I'm not impaired, it's just still in my system." This causes confusion and concern that disciplinary action is unfair. But that is not how THC works. While THC is absorbed by the body's fatty tissues (including the brain), detectable THC in a drug screen may indicate chronic use and the science tells us that normal functions are continually compromised⁶.

Substances are Often Combined and Addiction Can be Treated



Reporting to work under the influence of any impairing substance is unsafe and unacceptable in the workplace. Combining substances multiplies the impairment factor significantly and increases risks to health. It is not uncommon that regular consumers of drugs combine substances. Employers who consider making exceptions for marijuana use by employees must understand this provides opportunity for other drugs of abuse to gain presence that will increase risk and liability. It is also important to note that addiction is a disease that can be successfully treated⁷. An

employer can be instrumental in helping employees regain health and wellness by offering EAP benefits and/or providing opportunities for an employee to retain their job while participating in treatment.

What the Courts Have Decided so Far

U.S. Courts continue to rule in favor of employers who have a strong policy in place, make employees aware of that policy and consistently enforce their policy through the valuable tool of a drug and alcohol-testing program. Cases of note include: *Roe v. TeleTech Customer Care Management* (WA 2011), *Casias v. Wal-Mart Stores, Inc.* (6th Cir. 2012), *Gonzales v. Raich* (U.S. Supreme Court, 2005) and *Ross v. RagingWire Telecomms, Inc.* (CA 2008).

In *James v. City of Costa Mesa* (9th Circuit, 2012) it was ruled that medical marijuana use is not protected by the Americans with Disabilities Act (ADA). Most recently the *Coats vs. Dish Network Case*⁸ in Colorado proved once again that

while marijuana may be legalized under state laws, it is illegal under federal law due to a lack of accepted safety standards for use, high potential for abuse and no accepted medical efficacy⁹. Therefore, employees may be legally disciplined or terminated per the company policy.

In *Swaw v. Safeway* (US District Court, Western District of Washington at Seattle, 2015), the Court dismissed all of Swaw's claims, holding that Washington law does not impose upon employers a duty to accommodate medical marijuana in drug-free workplaces. The court referenced 21 U.S.C. § 812(c); RCW 69.51A.060(6) ("Employers may establish drug-free work policies. Nothing in the Medical Use of Marijuana Act requires an accommodation for the medical use of cannabis if an employer has a drug-free work place"); *Roe v. TeleTech Customer Care Mgmt., LLC*, 171 Wn.2d 736, 748, 751 (2011).¹⁰



Cultural Acceptance Creates Change

While we believe that an emphasis on workplace safety combined with scientific research and good statistical data will continue to support employers' rights, we are obviously witnessing a cultural shift that is increasing tolerance of marijuana use. Attitudes of acceptance trend toward increased drug use¹¹. It is now more important than ever for employers to be educated, aware and stay abreast of trends, laws, and outcomes that have a direct effect on the legalities of employee drug use and workplace safety.

This document may be updated as needed. Please refer to datia.org for the most recent information.

Helpful Resources:

<http://datia.org/datia-resources/marijuana-outreach-resources.html>

http://datia.org/datia/eNews/marijuana_longbrochure.pdf

http://datia.org/datia/eNews/marijuana_shortbrochure.pdf

http://datia.org/datia/advocacy/IBH_workplacetesting.pdf

<https://www.encompinc.com/general-compliance.php>

<http://www.statedrugtestinglaws.com/>

http://www.orasure.com/Legalized_Impairment-Workplace.pdf

⁶ Workplace Drug Testing in the Era of Legal Marijuana, p. 9, DuPont, Robert et al., Institute for Behavior and Health, Inc. Rockville, MD, 2015

⁷ <http://www.drugabuse.gov/publications/drugfacts/understanding-drug-abuse-addiction>

⁸ https://www.courts.state.co.us/Courts/Court_Of_Appeals/Opinion/2013/12CA0595%20%26%2012CA1704-PD.pdf

⁹ U.S. Food and Drug Administration Controlled Substances Act, Title 21 U.S.C. 812 (b)(1)

¹⁰ <http://hr.cch.com/ELD/SwawSafeway112015.pdf>

¹¹ Johnston, et al. Monitoring the Future national results on drug use: 1975-2013: Overview, Key Findings on Adolescent Drug Use. Ann Arbor: Institute for Social Research The University of Michigan