

HOW LEGAL MARIJUANA IMPACTS THE WORKPLACE



Jo McGuire
jo@jomcguire.org



today's goals



- What's trending in the world of marijuana
- Safe Workplaces vs. an employee's rights to use drugs
- Drug testing and marijuana
- Policy options & purpose

trending for marijuana



- NORML aims to make workplace drug testing for marijuana illegal in states where marijuana is legal
- Pervasive feeling in the U.S. that drug testing is unfair
- MA judge has ruled that employees may sue employers for discrimination if fired for MMJ use
- AG Sessions has moved to revoke the Cole Memo
- States with RMJ are pushing back in favor of state's rights
- Some states have rules that prohibit discrimination against MMJ users
- Drug testing for THC is still legal in every state but some have restrictions re: pre-employment testing

NORML Forms Multi-State Workplace Drug Testing Coalition

by Kevin Mahmalji, NORML Outreach Coordinator

February 14, 2017

Comments



The fact that 190 million Americans now live in states where marijuana has been legalized to some degree is raising a number of questions and issues about how to integrate the American workforce and marijuana consumers rights in regards to drug testing. With medical marijuana is legal in 29 states and recreational marijuana for adult use in 8 states and Washington DC, millions of responsible and otherwise law-abiding adults remain at risk of being excluded from the workforce due to a positive drug test — even where the use does not affect an individual's job performance or has taken place days or weeks prior to the test.

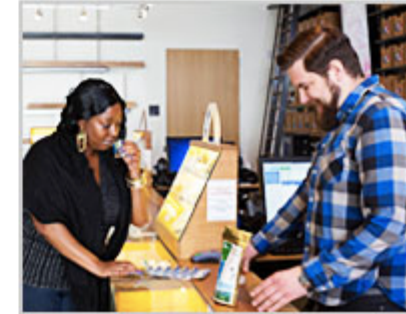
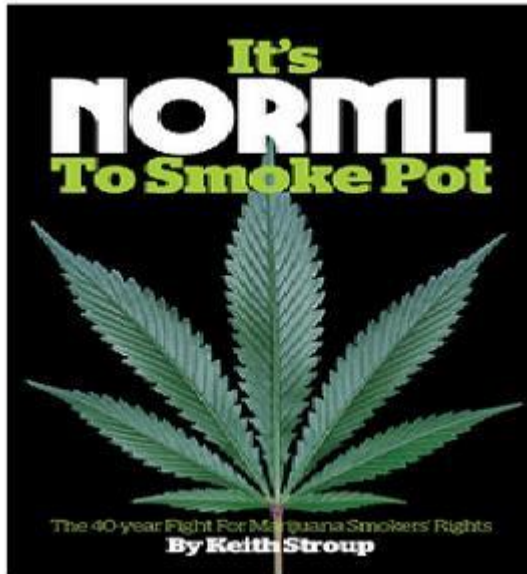


Photo: Drug Policy Alliance

NORML believes that this practice is discriminatory and defies common sense. As a result, a growing coalition of NORML Chapters in California, Oregon, Colorado and Washington have come together to advocate for necessary legislative and workplace reforms to protect responsible marijuana consumers.

NORML's Workplace Drug Testing Coalition's efforts will focus on these four areas:

Reform workplace drug testing policies





DRUG TESTING 101

By HIGH TIMES November 19, 2015



Marijuana Drug Test Detection Times

[Recommend](#) 891 people recommend this. Be the first of your friends. [Tweet](#)



NEW: [Overview of Oral Fluid Testing](#) 2/25/17

California NORML Guide Interpreting Drug Test Results

Updated August 2012

Contents:




ADVOCACY GROWING CULTURE COOKING MARIJUANA INDUSTRY

| How To Pass A Drug Test For Marijuana

BY TWB ON AUGUST 25, 2015

DRUG TESTING, MARIJUANA

The Washington Post

PostEverything

Pot is increasingly legal. Employers need to stop screening for it.

Employee drug tests have always been a privacy violation. Now they're just pointless.

By Gina Tron February 26, 2015 [Follow @GinaTron](#)

Gina Tron is a freelance reporter and author of the memoir "You're Fine."

Legal barriers to marijuana are falling all over the United States. Pot, tried by nearly half of all Americans at some point in their lives, is already legal in some form in 23 states, and four states allow recreational use. Last Friday, two House bills were filed that could end the federal prohibition of marijuana, including one which would remove marijuana from the Controlled Substances Act's schedules and regulate it similarly to alcohol. And as of the early minutes of this morning, pot is legal in the District of Columbia.

[High Times](#): summary for drug testing technologies.

[For Marijuana in Urine](#): Urine tests can detect presence of marijuana metabolites for days after consumption has passed.

Urine tests can detect presence of marijuana metabolites for days after consumption has passed.

Cannabis Consumers Campaign

We're coming out of the closet to stand up for equal rights.

Talking Points: Drug Testing is Job-Based Discrimination

Drug testing does not protect public safety. It serves mainly to identify and ban cannabis consumers from the workforce, or sanction them at the workplace or schools.

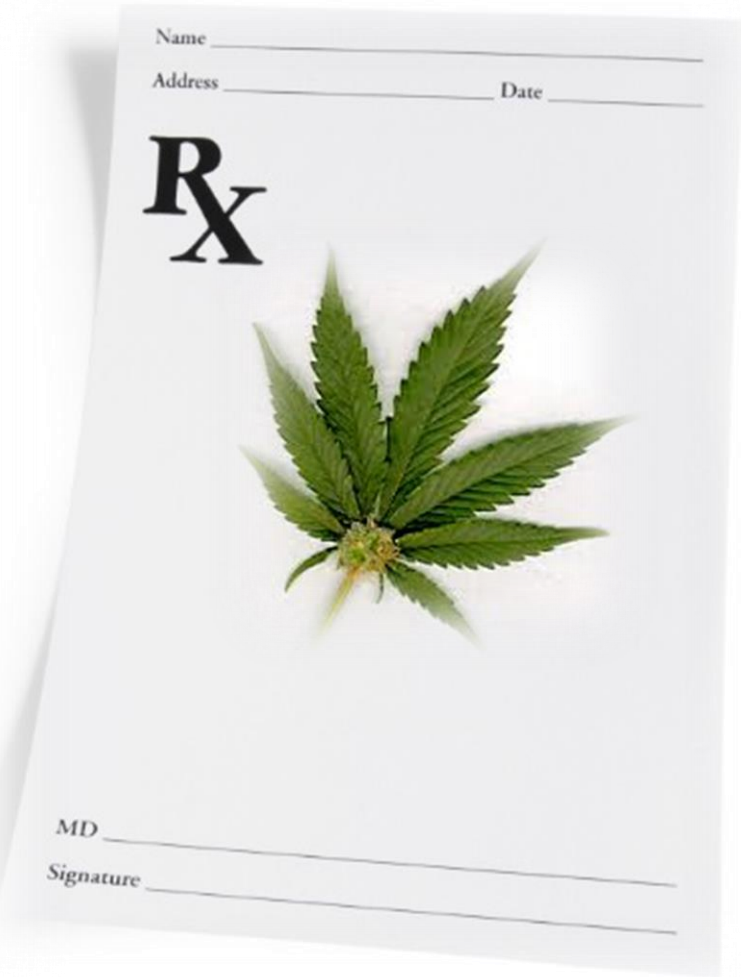
Drug Testing primarily targets people who use marijuana, as the other drugs which are tested dissipate very quickly. Marijuana may remain detectable for up to 90 days -- long after the effects are felt. Often people who have never done any drugs will fail a drug test as a result of false positives and inaccuracies within the testing industry itself.

Drug testing has nothing to do with impairment and everything to do with discrimination and is a violation of our human rights.

Potential ramifications of drug testing are loss of jobs or reputation, loss of benefits and pensions, loss of custody of children, denial of transplants, and revocation of probation or parole -- landing more people in jail (thus, increasing the prison industrial system).

The National Academy of Sciences formed the Committee on Drug Use in the Workplace -- a team of nationally recognized experts -- to study the effectiveness

why is cannabis still schedule 1?



- There is a high potential for abuse
- Lack of any accepted medical use
- No accepted safety standards for use under medical supervision
- Unable to regulate dosing standards

USDOJ: DEA Denial of Application to Reschedule Marijuana August 12,
2016

myths about marijuana & drug testing

- Marijuana is safe/harmless, like a glass of wine
- Marijuana is safer than alcohol
- Marijuana is not a drug/not impairing
- If I use marijuana one time, it will show up in a drug test 30 days later
- Presence-in-system testing isn't fair
- It's easy to cheat a drug test
- If you drug test, you won't have any employees left
- People who use daily are not impaired because they build up a tolerance
- You can't test for marijuana in recreational-legal states



Rocky Mountain Employment Council Survey: Denver/Boulder employers removing THC from the drug panel

Fear-based decisions

MSEC sent out surveys to 2,933 businesses and received 609 back, almost double the sample size of the 2014 survey

- About 10% of companies in the Denver and Boulder areas — considered a single region in the survey — dropped marijuana from their pre-employment tests and 2% removed the drug it from all drug testing.
- About 9% of the companies from Pueblo that responded omitted marijuana from pre-employment screening.



substance use in the workplace

- Substance abusers are five times more likely to file a workers compensation claim.
- Roughly 35% of the industrial injuries that take place in the U.S. involve drugs or alcohol.
- Substance abusers are 33% less productive on the job.
- Absenteeism among substance abusers is significantly higher.



substance use in the workplace



- Substance abusers file a higher number of medical claims than their counterparts.
 - Operating machinery under the influence of alcohol or drugs is clearly high-risk. But danger also increases when reflexes or judgment are compromised to any degree by drugs or alcohol.
 - Substance abusers are responsible for 40% of all industrial fatalities.
- Substance abuse costs small biz approx. \$7,000/month

employee marijuana use

- .55% more industrial accidents
- .85% more injuries
- .75% more absenteeism



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

employee marijuana use

“Does smoking cannabis affect work commitment?” (July 2012) *Addiction*



- Followed nearly 2,000 people for **twenty-five** years
- Regular MJ user less committed to work
- Level of commitment grew much worse over time.
- Commitment improved when MJ use ceased.

123 million f/t U.S. employees

over **75%** of U.S. employees live in a state where marijuana is legal in some form

51%: Med Marijuana States = 63 Million
26%: Recreational MJ States = 33 Million
23%: Illegal States = 27 Million

<https://www.bls.gov/ces/home.htm>



■ No MJ ■ Rec MJ ■ MMJ

Is “Friday night use” a big deal?!?!



contemporary marijuana

- Highest THC products in history 60-95%
- New delivery systems: vaping, dabbing/waxing
- Edible products are complicated



what's trending



is it nicotine or marijuana?



Can you tell which is which?

is it nicotine or marijuana?



is it nicotine or marijuana?



How about now?



FIVE MINUTES
of **courage**
marijuana facts



Marijuana



Nicotine



where is drug-friendly culture getting us?

- The Quest Diagnostics Drug Testing Index shows the greatest increase in use of all illicit drugs by U.S. employees in 12 years, based on laboratory drug test results.
- According to the U.S. Bureau of Labor Statistics drug and alcohol-related deaths in the workplace soared in 2016 with a spike of more than 30% in a single year.
- The BLS also shows that fatal work injuries in 2016 were the highest since 2008.



<https://www.questdiagnostics.com/home/physicians/health-trends/drug-testing>
<https://www.bls.gov/news.release/pdf/cfoi.pdf>

job applicants at CO electric company

February 2015

12 applicants in the pre-employment process

Mobile drug test collector arrives

9 applicants walk-out

3 complete pre-employment drug screen

2 pass the drug screen

1 fails (THC positive)



VS



looking outside the state for qualified workers



“ Jim Johnson said his company has encountered so many job candidates who have failed pre-employment drug tests because of their THC use ... it is actively recruiting construction workers from other states. ”

GE Johnson

<http://gazette.com/drug-use-a-problem-for-employers/article/1548427>

southern colorado challenges

Pate Construction

- For every 75 people we interview, we can find about 15 who can pass the drug test



Canon City Workforce Center

- It took 2 months to find 3 CDL drivers that could pass the drug test. Salaries offered were competitive

““In February,” Leona Willener said,
“more than half the applicants who
came to her company looking for
work failed the required drug tests
because of THC use ... 1 in 3
attempted to cheat the test.”

Colorado Staffing Agency

<http://gazette.com/drug-use-a-problem-for-employers/article/1548427>



employer challenges

Exposure to Chemicals, Molds, Pesticides, Herbicides, etc.



employer challenges

Exposure to Chemicals



FIVE MINUTES
of **courage**
marijuana facts

1 in 5 marijuana
users in the state
also reported
driving after using
marijuana



Keri Headley, Pueblo, CO

<https://www.colorado.gov/cdphe/marijuanause>

boundaries work



- Swerdfeger Construction in Pueblo, Colorado has a robust company located in the heart of legal recreational marijuana territory and insists that maintaining a strong workplace drug and alcohol testing program has kept employees from engaging in activities that would put their safety record at risk.
- Reg Rudolph who has been in the public utilities industry for 26 years in Pueblo, Colorado states, “We’ve had to make some major operational changes. Overall, from an HR perspective we’ve maintained a hard line on marijuana. So far, we’ve had no issues but we’ve been clear about our policy and interpretation.”

drug test programs have proven success

- NSDUH: Workers who are not in a drug testing program have substance use rates 50% higher than those who are subject to mandatory drug testing.
- The U.S. Department of Transportation's model of drug-free workplace programs have achieved significant improvements in safety and productivity.
- National Bureau of Economic Research: "Using the U.S. Military's policy of random drug testing and zero tolerance, we find that a strict employer anti-drug program is a highly effective means of deterring illicit drug use among current users as well as potential users."



marijuana & drug testing

- Since marijuana is stored in the body's fat cells, it can be detected for up to 30 days for **CHRONIC** use – NOT ONE TIME USE
- **5 ng/mL** for roadside is strictly a whole blood test
 - *Passes through blood quickly, must be captured within the hour*
- Blood vs. urine measurements are not comparable
- Marijuana does not pass through the breath (potential for capturing oral fluid)
- Stronger potencies are yielding higher THC results
- Test results do not tell us precisely what, how often or how much is used



oral fluid testing

- Less invasive
- Always observed
- Reduce opportunities to cheat the test
- Can detect use within the last 15-24 hours
- Lab-based results with MRO verification are evidential
- Growing in popularity due to effectiveness
- Excellent for roadside testing



<http://www.orasure.com/docs/pdfs/products/intercept/Intercept-Detection-of-Marijuana-Use-by-Oral-Fluid-and-Urine-Analysis.pdf>

Photo: quest diagnostics drug testing

lab based urinalysis

- Reliable, evidentiary
- Gold standard of drug testing
- Efforts must be taken to prevent cheating
- Direct observation can prevent cheating
- Detects occasional pot use 24-72 hours after use
- DOT has added expanded opiates testing as of Jan 1



impairment testing

When Will We Have a Drug Test that Measures Impairment?

- The short answer is: **Not any time soon**
- It's extremely complicated
- States or Feds could “force” an impairment standard but it must hold up in court
- Currently 5 ng in whole blood is highly contestable and losing more than winning
- Presence-in-system simply *is what it is*



policies & practices



- Should employers remove THC from the drug panel?
- Should employers increase screening cut-off levels?
- Why don't we/When will we have impairment tests?
- Do zero-tolerance policies still work?
- What are the best policy options for dealing with legal marijuana?
- What about the person who used one time 30 days ago?

Perception:



Reality:



FIVE MINUTES
of **courage**
marijuana facts

Cannabis and its Effects on Pilot Performance and Flight Safety: A Review



Author

Dr David G. Newman
MB, BS, DAvMed, PhD, MRaES, MAICD, AFAIM
Aviation Medicine Consultant



FIVE MINUTES
of **courage**
marijuana facts

24 Hours After Smoking One Joint

- Difficulty in aligning with and landing on runway
- Increased vertical & lateral deviation from required flight path
- Lateral deviation on approach to land twice pre-marijuana test
- Sig increase in distance from center of runway on touchdown
- One pilot landed off the runway entirely
- Pilots not aware of any impairment



Yesavage JA, Leirer VO, Denari M, Hollister LE. Carry-over effects of marihuana intoxication on aircraft pilot performance: a preliminary report. Am J Psychiatry 1985; 142:1325-9.



who can be under-the-influence at work?

In addition to greater accidents & injuries:

- Slow response time
- Memory retention problems
- Lack of ability to multi-task
- Apathy & lack of motivation
- Inability to problem-solve and reason
- Decreased ability to handle stressors
- Time & distance tracking problems
- Neuropsychological decline → marijuana-induced psychotic symptoms



what's the big deal about a policy?

people in the community know whether or not
your company is “drug-friendly”

The screenshot shows the Jobs2Careers website interface. At the top, there's a navigation bar with 'Jobs2Careers', 'Reno, NV', 'Popular', 'Advice', 'For Employers', and 'Post Jobs'. Below this is a search bar with a magnifying glass icon. The search bar contains the text 'No Drug Test'. Below the search bar, there's a location dropdown set to 'Reno, NV'. The search results are displayed under the heading 'Search by Popularity in Reno, Nevada'. The results are organized into a grid of job categories with their respective counts. A pink oval highlights the text '337 No Drug Test jobs in Reno, NV!'.

Search by Popularity in Reno, Nevada			
1,034 Customer...	356 Retail Jobs	259 Administrative Jobs	351 Customer
343 Felony...	108 Alorica Call...	456 Walmart...	161 Cna Jobs
155 Information...	46 Bookkeeper Jobs	117 Manufacturing...	118 Mechanic Jobs
434 Administrative...	173 Warehouse...	78 Construction...	70 Assembler Jobs
366 Warehouse...	66 15 An Hour Jobs	296 Dignity Health Jobs	48 Customer...

hold the line

- Employers have an opportunity to teach the boundaries
- There should be zero-tolerance for working buzzed, stoned or under-the-influence
- Drugs and safety don't mix
- Keep policies intact & enforced
- Create a culture of safety 1st
- Educate, educate, educate
- Protect the vulnerable



things to consider

- DO NOT implement a drug/alcohol testing program without a policy in place that has been communicated to your workforce
- Avoid “case-by-case” scenarios as a policy catch-all
- Under-the-influence vs. impaired
- Use certified collections professionals
- Use the correct testing products
- Perform the right type of drug test
- Use an MRO



- ☐ yes
- ☐ no
- ☐ maybe

policies & practices

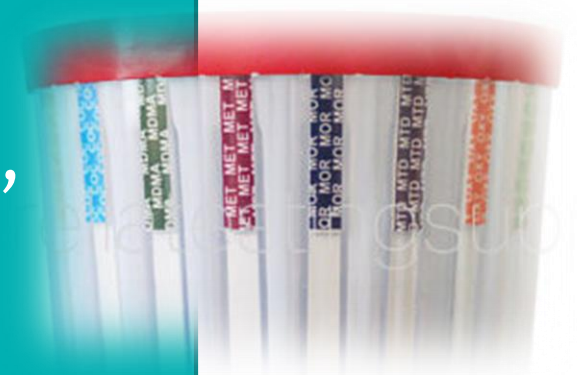
What about removing THC from the drug screen?

BAD IDEA

Employers will assume all liability for accidents, injuries, damages and even fatalities.

- Remember that 40% of workplace fatalities involve employee substance use
- Substance users have 5x more accidents and injuries

Workplace Statistics: dol.gov



policies & practices

What about increasing the THC limit?

BAD IDEA

- How much is enough?
- How much is too much?
- Cut-off levels have been established by SAMHSA representing decades of scientific research
- Employers are not toxicologists & should not assume liability for “allowing” employees to perceive a certain amount of THC is “safe”

PCP	Phencyclidine	25 ng/ml
THC	Marijuana (Tetrahydrocannabinol)	50 ng/ml
BZO	Benzodiazepines	300 ng/ml

policies & practices

What about allowing “recreational use”
of other drugs used for medical purposes?

BAD IDEA

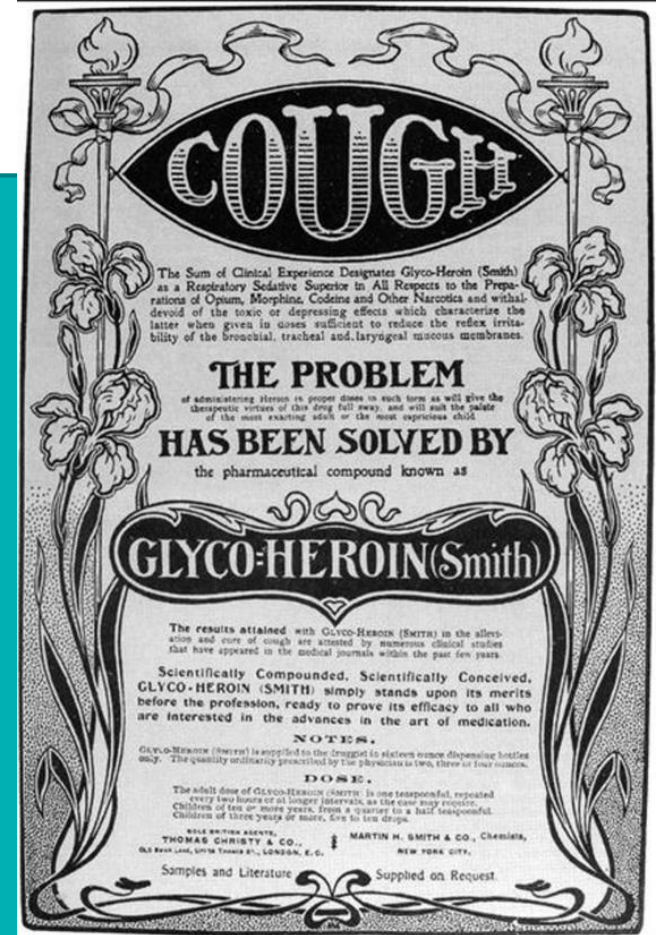
- Are we thinking about what our D&A Policies state and what messages we are sending?
- Could we potentially set precedence for other drugs to be used recreationally, if we allow it for marijuana?
- How about recreational Oxycodone?

policies & practices

What about medical use of other illicit drugs or alcohol?

BAD IDEA

- While some employers may choose to make allowances for medical marijuana, where are the boundaries?
- There is a movement for decrim of heroin & psilocybin as “medicine”
- How do you make allowance for some illicit drugs and not others?



policies & practices



There are solutions for keeping people working with zero-tolerance for under-the-influence at work:

- Re-apply in 30 days
- Suspensions (paid or unpaid) for positive drug tests

policies & practices



There are solutions for keeping people working with zero-tolerance for under-the-influence at work:

- Increase random testing programs
- Substance Abuse Counseling & Recovery

position descriptions

Define who is safety sensitive and who is not



Articulate why each position description should/may not operate under-the-influence of drugs/alcohol

substances to be tested

Marijuana Federally Illegal

Medical Review Officers will not verify a drug test as negative based upon information that a physician recommended that the employee use “medical marijuana.”

Marijuana remains a drug listed in Schedule I of the Controlled Substances Act.

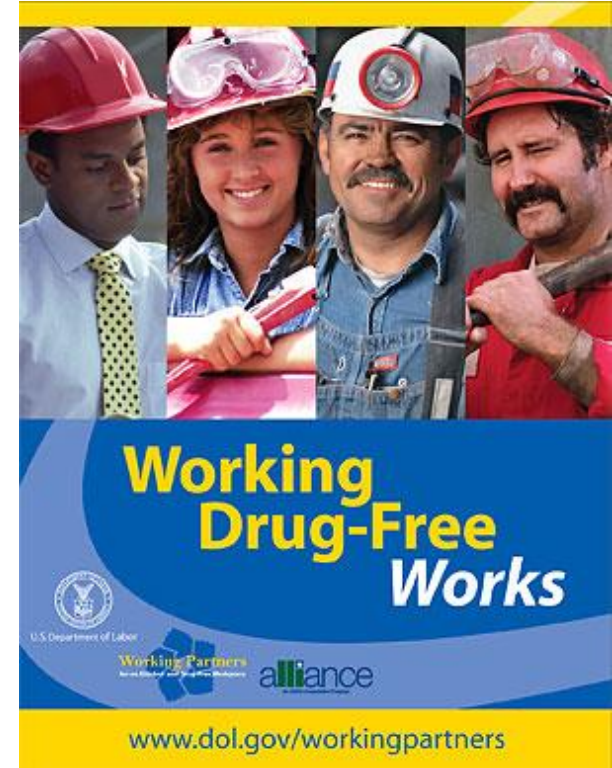
It remains unacceptable for any safety-sensitive employee subject to drug testing under the Company’s drug testing regulations to use marijuana.

employer's rights

Safe & Drug Free Workplace Act

Protecting employees, customers,
the work-environment and the public:

Every employee has a FAMILY



EAP/SAP

what resources will you provide for those who violate the policy?

- Explain how to get help
- Include information on any existing employee assistance program(s)
- Describe the benefits offered by any existing health insurance plan
- Identify local resources that may be available
 - Supply a list of treatment providers, substance abuse professionals, AA meetings, NA meetings, any local resources that may be helpful



care about people





HOW LEGAL MARIJUANA IMPACTS THE WORKPLACE



Jo McGuire
jo@jomcguire.org

