

CBD OIL

WHAT EMPLOYERS NEED TO KNOW

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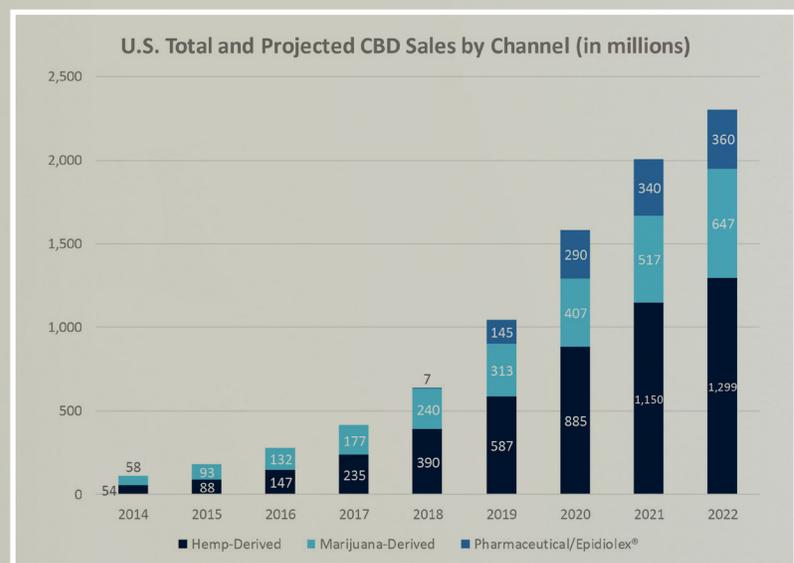
A 2017 study found that nearly 70% of CBD products do not contain the amount of THC advertised

Cannabidiol, also known as CBD, is growing in popularity as a cure-all for everything from insomnia to cancer to pet anxiety. CBD is extracted from either the hemp plant or mature marijuana plant and is generally believed to be the active “medical” ingredient in marijuana.

What is the legal status of CBD, and what do employers need to know about CBD when implementing workplace drug policies? This article will explore these questions and identify what we know, and what questions remain when it comes to CBD.

How is CBD Being Used?

Many believe that CBD can be used to treat medical conditions such as autoimmune diseases, neurological conditions, metabolic syndromes, neuropsychiatric conditions, gut diseases, cardiovascular dysfunction, and skin diseases. Some also claim CBD has cancer-fighting properties.¹



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However, the vast majority of these claims have not been validated by scientific research. Scientific research that supports CBD is most often limited to studies that fail to meet standard clinical guidelines. The lack of clinical data to support these claims can cause harm to users, as well as causing confusion and ineffective use of the drug. One example is studies that show that CBD is not absorbed well by the body when ingested orally. While research shows that less than 20% of the drug is absorbed if taken through traditional oral methods, oral ingestion remains one of the most common forms of use.² Another example is studies that show that CBD can interact with prescription medications either by raising the levels of the medication in the blood or by lessening the effects of the medication, depending on the substance.³

To date, one CBD product that has been approved by the United States Food and Drug Administration (FDA). CBD has been proven to be effective in treating childhood epilepsy, and in 2018 the FDA approved the CBD-based medication Epidiolex® as a Schedule V drug. Schedule V drugs represent the least potential for abuse and are shown to have accepted medical use as treatment in the United States. Epidiolex® is the only marijuana-based product to have approval at the federal level.

The most common form of CBD is CBD oil. Currently, 14 states have a legalized CBD oil program. All but two of those states have no legalized medical marijuana program. Most states with CBD oil programs require that CBD be extracted from hemp rather than from marijuana and also restrict the amount of tetrahydrocannabinol (THC, the principal psychoactive ingredient in cannabis) to less than 1%.

Nearly 43% of products tested contained less CBD than what they had advertised, and 26% contained too much.

An Overview of Some State CBD Oil Programs

| STATES WITH CBD OIL PROGRAMS | CBD LEVEL SPECIFIED | THC LEVEL SPECIFIED |
|------------------------------|--|--|
| ALABAMA | N/A | 3% THC or less |
| ARKANSAS | N/A | 0.3% THC or less |
| GEORGIA | N/A | 5% THC or less |
| INDIANA | At least 5% CBD | 0.3% THC or less |
| IOWA | N/A | 3% THC or less |
| KANSAS | N/A | 5% of CBD concentration or less |
| KENTUCKY | N/A | 0.3% THC or less |
| MISSISSIPPI | Minimum of 50 mg of CBD per milliliter | Maximum of 2.5 mg of THC per milliliter; must have a 20:1 CBD to THC ratio |
| NORTH CAROLINA | At least 5% CBD | 0.9% THC or less |
| SOUTH CAROLINA | At least 98% CBD | 0.9% THC or less |
| TENNESSEE | N/A | 0.3% THC or less |
| TEXAS | No less than 10% CBD | 0.5% THC or less |
| VIRGINIA | At least 15% CBD; must contain at least 5 mg of CBD per milliliter | No more than 5% THC; up to 10 mg of THC per dose |
| WYOMING | At least 5% CBD | 0.3% or less |

Although CBD oil programs generally restrict THC levels, a 2017 study found that nearly seven in each ten CBD products do not contain the amount of THC advertised.⁴ Additionally, nearly 43% of products tested contained less CBD than what they had advertised, and 26% contained too much.

Because CBD products are not regulated, users have very little assurance that the product they are using is what they believe it to be. The amount of CBD in the product most likely is not as advertised, meaning either a person is using more CBD than they realize, which could be a safety risk, or the person is using less CBD than they realize, which could impact its effectiveness as a treatment. A person may be consuming THC or other risky chemicals unknowingly. A person may not even be consuming a CBD product at all, which was the case with at least 52 residents of Utah who were hospitalized after consuming a synthetic cannabis they thought was CBD.⁵

What is Hemp and What is Its Legal Status?

Coinciding with CBD's rise, hemp from which CBD can be derived has received a quasi-legal status. The 2018 federal farming bill legalized



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Reference: Thompson, Dennis. "CBD Oil: All the Rage. But Is It Really Safe and Effective?" WebMD, 7 May 2018, www.webmd.com/pain-management/news/20180507/cbd-oil-all-the-rage-but-is-it-safe-effective#1.

hemp cultivation broadly. Under the bill, industrial hemp cannot contain more than 0.3% THC, which is the major way it is differentiated from other varieties of cannabis plants. While hemp production is legal, CBD and hemp meant for consumption or as a dietary supplement remain illegal under federal law.

States that choose to allow industrial hemp production must submit a plan detailing hemp regulation to the federal Secretary of Agriculture, who can either approve or deny each state's plan. States are also permitted to prohibit hemp cultivation within their borders.

Nine states continue to prohibit hemp production in their states. In these states, all hemp products, including CBD oil, remain illegal, despite federal legalization of hemp cultivation. This is true even if those states permit medical or recreational marijuana. However, it appears that these restrictions are not enforced in many jurisdictions.

The Legal Status of Marijuana and CBD

In some states, medical marijuana is legal, but CBD oil is not. In other states, CBD oil and hemp are legal, but marijuana is not. The federal government permits hemp cultivation and one CBD product, but prohibits marijuana and CBD oil. It fits together about as well as the pieces from three different jigsaw puzzles.

Can employees test positive for THC in a workplace drug test after using CBD products? It is possible, particularly in states where CBD is largely unregulated, because the amount of THC in CBD oil can vary wildly. Workplace drug tests do not test for CBD presence; rather, they test for THC. A 2017 study found that one in five tested CBD products contained THC, meaning it is likely that an individual using one of those products could test positive for THC.⁶ If an employee tests positive for THC, it will not be clear from the test results whether the employee used a CBD product or marijuana. However, the onus is on the employee, not the employer, to make sure any product they use is permitted under their workplace policy. Employers are not required to accommodate employees who take prohibited substances by mistake.

There are several stories coming to light recently of individuals terminated from employment after testing positive for THC from CBD products. Bianca Thurston of Pennsylvania tested positive for THC and was fired after consuming CBD drinks advertised as 0% THC.⁷ Douglas Horn of New York likewise was fired after testing positive for THC after consuming CBD products that were advertised as THC-free.⁸ Both individuals are suing the CBD companies that developed the products.

In states with legal CBD oil programs, employers are unlikely to come across employees who are legal CBD users. These programs are mostly restricted to people with conditions such as intractable epilepsy and end-stage cancer. Additionally, no state CBD oil programs require employers to accommodate CBD oil use by employees. Even if an employee is using CBD oil legally, an employer still has the right to prohibit its use by employees. Remember, CBD oil remains illegal at the federal level.



In states with medical marijuana programs, employers can either treat CBD oil the same way medical marijuana is treated or prohibit it altogether. While some state medical marijuana laws require accommodation of medical marijuana use outside the workplace, these laws do not require the same of CBD oil. It should be noted though, that in states where state disability law requires accommodation of medical marijuana use, CBD oil may require accommodation for employees with disabilities. If state disability law requires an employer to accommodate medical marijuana use by disabled employees, CBD may possibly require accommodation as well.

Clearly, the issue of CBD is complicated, and it will only get more so as more states put legal CBD programs in place in conjunction with medical and recreational marijuana laws.

➔ **Have more questions about CBD?**

Watch our recent webinar, *CBD In the Workplace*, to learn more about how CBD can impact your workplace.

1. CBD Oil: All the Rage, But Is It Safe & Effective? WebMD, date unknown. <https://www.webmd.com/pain-management/news/20180507/cbd-oil-all-the-rage-but-is-it-safe-effective#2>.
2. Grinspoon, P., MD (August 24, 2018). Cannabidiol (CBD) – what we know and what we don't. <https://www.health.harvard.edu/blog/cannabidiol-cbd-what-we-know-and-what-we-dont-2018082414476>
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6. Long, J. (April 24, 2019). Pennsylvania woman sues CBD company after failed drug test. <https://www.naturalproductsinsider.com/litigation/pennsylvania-woman-sues-cbd-company-after-failed-drug-test>
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8. *Id.*

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