

REMOVING MARIJUANA

FROM YOUR DRUG
TESTING PANEL

A NEW TREND?

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AMAZON, one of the largest and most successful companies in the world, arguably just became a great place to land a job if you're a drug user.

On June 1, 2021, Amazon announced that it will no longer drug test as many applicants and employees for marijuana.ⁱ Additionally, the company stated that it will be using its considerable influence to convince congressional lawmakers to legalize marijuana federally. Amazon is the latest large company to drop marijuana from their testing panel—companies such as AutoNation made the decision a number of years ago and it's likely that other companies have enacted similar measures without making public announcements.ⁱⁱ

Only time will tell what impact removing marijuana from a drug test panel will have generally and on any specific company. However, this much we already know: employees under the influence of marijuana at work are less productive and more prone to causing accidents, filing workers' compensation claims and more likely to be absent from work.ⁱⁱⁱ In other words, marijuana users are more expensive to employ than their non-marijuana using co-workers.

So, let's clarify three critical questions:

1. **Are employers eliminating all testing for marijuana?**
No. In fact, much of what most companies are eliminating is pre-employment testing for marijuana. Post-hire testing following incidents or testing of those in safety-sensitive positions will continue, including at Amazon.
2. **Are employers challenging the U.S. Department of Transportation's (DOT) regulations that require employers in various transportation industries to drug test for several substances, including marijuana?** No. Across the U.S., even companies that have dropped other tests for marijuana continue to comply with DOT requirements for pre-employment and post-hire testing for marijuana.

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Marijuana users are more expensive to employ than their non-marijuana using co-workers.



Workplace testing for marijuana is legal in all 50 states.

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3. Why are some employers supporting efforts to get the federal government to legalize marijuana?

We would not presume to speak for such employers, but we know from various reports that some employers are complaining that the legalization of marijuana is making it more difficult to find qualified workers to hire.^{iv} In other words, more people are failing their pre-employment drug test.^v We also know that a growing number of states that legalize marijuana are placing restrictions on what employers can do when an applicant or employee tests positive for marijuana, often requiring employers to prove the individual was impaired and not simply positive on a drug test. A recent-use detection drug testing method like oral fluid testing can help with this.

Predicting the future

Ultimately, we can safely predict the following about employers that choose to drop marijuana from their testing panel:

- They will have less trouble finding people to hire because they will, in many instances, no longer screen out marijuana-using job applicants.
- The company will likely see a negative impact on the safety and security of its workplaces. There's no way around that fact. Less accountability will lead to more marijuana users on the payroll, more people high on the job, with all the well-documented consequences of such a scenario.^{vi}
- Some employers may choose to eventually re-instate pre-employment testing for marijuana.

Trends in drug panels

In a 2021 survey of 348 employers conducted by the Current Consulting Group, 47.6% indicated they were concerned about the legalization of marijuana's impact on safety in the workplace and 32.2% indicated they were at least a little concerned about safety.^{vii} That is nearly 80% who, probably on a regular basis, are dealing with problems related to employees being at work under the influence of marijuana.

Only 9% of respondents in the same survey indicated they were considering removing marijuana from their drug test panel in the next 12 months. And of that group, 12.5% said it was because testing for marijuana was not permitted in their states, which is not true. In reality, workplace testing for marijuana is legal in all 50 states. There may be conditions that must be met and pre-employment testing for marijuana may be limited to certain safety-sensitive occupations, but testing for marijuana is permitted in every state.

Employers who choose to eliminate marijuana from their testing panels may want to consider adding to their panel in other areas, such as adding an expanded opiate panel. For years opioid use has been on the rise, recently reaching an all-time yearly high of 81,000 drug overdose deaths, resulting in expanded safety concerns for employers as opioid use and abuse increased during the COVID-19 pandemic at an accelerated pace.^{viii}

Trends in state laws and city ordinances

Increasingly, legislators are shifting laws from more traditional, employer-focused laws to laws that instead choose to offer greater



protections to employees. New York City and Philadelphia, for example, have both recently passed city ordinances that severely limit an employer's right to conduct pre-employment testing for marijuana. Both cities include a safety-sensitive carve-out for positions that employers can and should continue testing applicants for marijuana. In both cities,

employers required to comply with regulations such as those put forth by the federal DOT are not required to comply with the city ordinance.

Currently, Nevada is the only state that has a similar law that limits the actions an employer can take based on a positive pre-employment test for marijuana. AB 132, passed in 2019, prohibits employers from failing or refusing to hire prospective employees because of a drug test indicating the presence of marijuana metabolites. Employers can continue pre-employment marijuana testing—it is only action based on a marijuana positive test that is prohibited in certain circumstances. Similar to New York City and Philadelphia, Nevada's law includes a safety-sensitive carve-out.

It is likely that Nevada, New York City and Philadelphia are only the beginning. Already in 2021, a number of similar bills have been proposed both on the state and the city levels. Legislators seem to recognize the need for continued marijuana testing for current employees and applicants for safety-sensitive positions, at a minimum.

Why continue testing for marijuana?

Misinformation is a common problem throughout the country when it comes to the legalization of marijuana. If a company is considering removing marijuana from its drug test panel, consider these reasons to continue testing for marijuana:

- **Legalizing marijuana has led to more people smoking marijuana.** There has been a dramatic increase in marijuana use as the legalization of the drug spreads across the country. In 2020, the federal government reported that the percentage of Americans 12 and older who admitted to using marijuana in the past year increased from 15.9% to 17.5% in just one year.^{ix} That's what statisticians refer to as a "statistically significant" increase. Additionally, marijuana is the most commonly used addictive drug after tobacco and alcohol.^x
- **Legalizing marijuana has led to more employees and applicants testing positive for marijuana.** According to one major drug testing laboratory: "Marijuana positivity surged in states with legal recreational use statutes 118.2% from 2012-2020 (2.2% in 2012 versus 4.8% in 2020). In states with only medical marijuana statutes, marijuana positivity increased 68.4% (1.9% in 2012 versus 3.2% in 2020). In states with no medical or recreational marijuana statutes, marijuana positives increased 57.9% percent (1.9% in 2012 versus 3.0% in 2020)."^{xi}
- **Legalizing marijuana has led to more traffic accidents and drug-related fatalities.** Various reports show that an increase in marijuana-related traffic fatalities, for example, corresponds directly with the legalization of marijuana in a state. For instance,

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Continued testing for marijuana can help reduce costs while protecting safety.



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"The latest AAA Foundation research found that between 2008 and 2012—the five-year period before the drug was legal—an estimated 8.8% of Washington drivers involved in fatal crashes were positive for THC. That rate rose to 18% between 2013 and 2017."^{xii}

Additionally, an estimated 65% of all workplace accidents and 38–50% of all workers' compensation claims are due to drug and alcohol use, including marijuana.^{xiii}

Conclusion

More marijuana usage. More workers testing positive. More accidents. More fatalities. Also consider the fate of alcohol in the U.S. Although a federally legal substance, society still recognizes that alcohol use has an impairing effect and can result in significant safety hazards. Because of this, employers are still required to test for alcohol use in many instances, regardless of the legal status of alcohol use.

Marijuana, similarly, although legal in many states, has an impairing effect on users and can result in significant safety hazards. Each employee with an untreated substance use disorder costs an employer an average of \$8,817 annually—continued testing for marijuana can help reduce these costs while protecting safety.^{xiv}

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