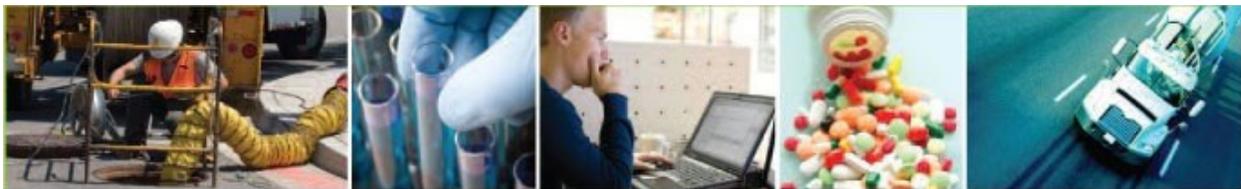


DRUGS DON'T WORK IN NJ

DDW.DRUGFREENJ.ORG



Update 96

Fall 2020

How New Jersey Employers Can Brace for the Legalization of Recreational Marijuana

By Bill Current, President of the Current Consulting Group

Marijuana use and safety-sensitive workplaces are a dangerous combination, and the legalization of cannabis has coincided with a dramatic increase in the number of marijuana users, according to a new government report.ⁱ That means more people are driving under the influence of marijuana,ⁱⁱ more employees are testing positive for marijuana,ⁱⁱⁱ and they are causing more workplace accidents.^{iv} Unfortunately, it appears that there's more of that on the horizon.

Marijuana legalization is on the November ballot in New Jersey and four other states, including Arizona, Montana, Mississippi and South Dakota. Marijuana on the ballot typically gets young voters to the polls, which often results in victory for the legalization movement. Currently 34 states, including the District of Columbia, have legalized marijuana for medical use with 11 of those states also making it legal to smoke marijuana for so-called recreational use.

In the early days of the legalization movement, many state legal marijuana laws protected employers' right to prohibit workers from being on the job while under the influence of cannabis. That is still the case in most states; however, more recently the statutory trend has been to restrict some forms of drug testing and, just as importantly, what employers can do with a positive drug test result for marijuana.

Other State Laws

During the past few years other state marijuana laws were taking the workplace issue to new levels of restriction. Several states have enacted restrictions intended to further limit employers' right to drug test for marijuana and/or take adverse employment action against "legal" users of marijuana. In Nevada, for example, AB 132 states:

“It is unlawful for any employer in this state to fail or refuse to hire a prospective employee because the prospective employee submitted to a screening test and the results of the screening test indicate the presence of marijuana.”^v

In other words, with the exception of a handful of safety-sensitive positions, a job seeker could theoretically come to an interview in Nevada high on cannabis and the employer wouldn't be able to refuse to hire the person for testing positive for marijuana.

Amidst all the hoopla about marijuana, some employers have chosen to drop it from their drug test panel rather than deal with the legal ambiguity. In a 2020 survey of drug test providers and employers conducted by the Current Consulting Group, 5 percent of employers indicated that they had discontinued testing for marijuana.^{vi} In another survey conducted this year by the Current Consulting Group, when employers who had discontinued testing for marijuana were asked why, 33 percent said it was because testing for marijuana was not permitted in their state.^{vii} In reality, testing for marijuana, even in states with restrictive legal marijuana laws, is permitted in all 50 states under most circumstances.

Marijuana and Workplace Safety

The legalization of marijuana has certainly caused employers headaches in a number of areas, including the hiring and retaining of good, qualified workers, increased absenteeism, and decreased productivity. But costs associated with workplace safety seem to weigh heavy on their minds. When employers in a 2020 survey were asked “How concerned are you about safety in the workplace due to legalized marijuana?” more than three-quarters said they were either “concerned” or at least “slightly concerned.”^{viii} In the same survey, when employers were asked what costs they anticipate increasing due to the legalization of marijuana, 61 percent said “costs due to workplace accidents and incidents,” 43 percent said “workers’ compensation,” and 33 percent said “legal costs.”

New Jersey Question 1 – The Marijuana Legalization Amendment

New Jersey Public Question 1 is a legislatively referred constitutional amendment. A “yes” vote amends the state constitution to make marijuana legal for persons 21 and older. Voting yes also legalizes the cultivation, processing, and sale of retail marijuana. A “no” vote rejects the proposed amendment to the state constitution.

Should the referendum be approved, many questions arise for the employer. What about using marijuana before work, during breaks or being at work while impaired by marijuana? And what happens with workplace drug testing and dealing with positive results? Public Question 1 sheds no light on these issues. New Jersey affords medical marijuana users a lot of protection. Will those same protections apply to recreational users? We really do not know. For now, employers are well advised to proceed with caution, but not to give up on their drug-free workplace policies and drug testing programs, including testing for marijuana.

Public Question 1 provides no guidance on how the legalization of recreational marijuana will affect drug-free workplace programs, and there currently are no other legislative proposals related to the workplace and recreational marijuana. If Public Question 1 passes, it will make it very challenging for employers to deal with hot-button issues like workers using marijuana while on the job, bringing marijuana to work, being impaired by marijuana, and what to do when an applicant or employee who's not a registered

medical marijuana user tests positive. These and other issues may have to work their way through the legal system before New Jersey employers have a firm idea of the initiative's ultimate impact.

ⁱ "2019 NSDUH Detailed Tables." *SAMHSA.gov*, The Substance Abuse and Mental Health Services Administration, 11 Sept. 2020, www.samhsa.gov/data/report/2019-nsduh-detailed-tables.

ⁱⁱ Drugged Driving-- Marijuana-Impaired Driving. National Conference of State Legislatures. October 1, 2020. <https://www.ncsl.org/research/transportation/drugged-driving-overview.aspx>

ⁱⁱⁱ Workforce Drug Testing Positivity Climbed to Highest Rate in 16 Years, New Quest Diagnostics Drug Testing Index™ Analysis Finds. Quest Diagnostics. August 25, 2020.

<https://www.questdiagnostics.com/home/physicians/health-trends/drug-testing/>

^{iv} How Does Marijuana Use Impact Job Safety? National Safety Council. <https://www.nsc.org/membership/training-tools/best-practices/marijuana-at-work>

^v Nevada AB 132. <http://labor.nv.gov/uploadedFiles/labornv.gov/content/Employer/AB%20132-%20NRS%20613%20Amendment.pdf>

^{vi} "The COVID-19 in the Workplace Survey." *Current Consulting Group*, July 2020.

^{vii} "The 2020 Employer Drug Testing Survey." *Current Consulting Group*. February 2020.

<https://www.currentconsultinggroup.com/the-2020-employer-drug-testing-survey/>.

^{viii} "The 2020 Employer Drug Testing Survey." *Current Consulting Group*. February 2020.

<https://www.currentconsultinggroup.com/the-2020-employer-drug-testing-survey/>.

About the Author:

Bill Current founded the Current Consulting Group in 1998 which is recognized as a leader in compliance and business development consulting in the drug testing industry. The consulting team is made up of expert consultants in all facets of drug testing, federal regulations, policy creation, program design, training, & more. Bill is the former Executive Director of the American Council for Drug Education, Director of the Institute for a Drug-Free Workplace, and Vice President of Consulting at Employee Information Services. Visit the website at www.currentconsultinggroup.com

Notice: This article reflects the opinion of the author and does not necessarily reflect the opinion of the Partnership for a Drug-Free New Jersey (PDFNJ). This information is provided for educational purposes only and should not be construed as legal advice from the author or PDFNJ. Please consult your own attorney before making any legal decisions. No portion of this article may be reproduced, retransmitted, posted on a website, or used in any manner without the written consent of the Current Consulting Group, LLC. When permission is granted to reproduce this article in any way, full attribution to the author and copyright holder are required.

The Partnership for a Drug-Free New Jersey (PDFNJ) is a private 501 (c) (3) not-for profit organization that promotes the prevention of substance abuse throughout the state through media campaigns, school based programs and community and workplace initiatives. PDFNJ programs are made possible by support from the Governor's Council on Alcoholism and Drug Abuse, the New Jersey Department of Human Services, and funding from corporations and foundations. All programs and services provided by PDFNJ are free of charge. For more information visit www.drugfreenj.org or call 973 467-2100.

For Treatment Information

Call 1-844-Reach NJ or visit www.reachnj.gov

Please share this update with other business associates in New Jersey that you think will benefit from this information and please encourage them to sign up to become a member of this **free** program.