



**HOW TO ADDRESS MARIJUANA IN THE WORKPLACE:
THE CHALLENGES OF MEASURING IMPAIRMENT**

JUNE 22, 2022

Cannabis in the New Jersey Workplace Under the CREAMMA.

Drugs Don't Work in New Jersey, June 22, 2022



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CREAMMA and Employment

Employers cannot refuse to employ a person due to the “presence of cannabinoid metabolites” in that person’s bodily fluids resulting from cannabis consumption.

Exceptions: federal contracts or federal funding.

CREAMMA and Employment

Employers cannot refuse to hire, terminate, or take adverse action against any person because that person does or does not use cannabis products.

Employers cannot take adverse action against an employee solely because the employee tested positive for lawful cannabis.

CREAMMA and Employment

N.J.S.A. 34:6B-21: Employers cannot ask about, rely solely upon, or take adverse action against applicants (or employees) based on seven enumerated low-level marijuana/hashish offenses. (Took effect July 1, 2021).

Exceptions: Law enforcement, corrections, judiciary, homeland security, and emergency management.

CREAMMA and Employment

Drug testing for lawful cannabis use is allowed:

- Upon reasonable suspicion of cannabis use while performing work responsibilities.
- Upon observable signs of intoxication related to the use of a cannabis item.
- Following a work-related accident subject to investigation by the employer.
- Random, pre-employment screening and “regular screening of current employees to determine use during prescribed work hours.”

CREAMMA and Employment

A positive test result is not enough. There must also be “a physical evaluation in order to determine an employee’s state of impairment ... **conducted by an individual with the necessary certification** to opine on the employee’s state of impairment, or lack thereof, related to the usage of a cannabis item.”

CREAMMA and Employment

How the National Safety Council defines “workplace impairment:”

“The inability to function normally or safely as a result of a number of factors - from chemical substances such as alcohol, opioids, cannabis, to physical factors like fatigue, as well as experiencing mental distress and social factors like stress.”

CREAMMA and Employment

CREAMMA authorizes the CRC to create a “Workplace Impairment Recognition Expert” (WIRE) certification program in conjunction with the NJ Police Training Commission.

CRC may allow certified Drug Recognition Experts to be certified as WIREs.

WIRE training to be offered to full/part-time employees and contractors to identify cannabis usage/impairment and assist in accident investigation.

CREAMMA and Employment

Employers are not required to:

- Allow the use, possession, sale, growth, transfer, display, transporting, consumption, or being under the influence of cannabis in the workplace.
- Allow cannabis use or intoxication during work hours.
- Allow any otherwise-protected cannabis-related conduct if allowing that conduct would “result in a provable adverse impact on an employer subject to the requirements of a federal contract.”

CREAMMA and Employment

However...

The employer's right and obligation to maintain drug and alcohol-free workplaces are neither restricted nor pre-empted.

OSHA General Duty Clause – employers must provide a workplace “free from recognized hazards that are causing or are likely to cause death or serious physical harm.”

CREAMMA and Employment

Limitations:

- No state or federal law pertaining to employment matters is any way amended or affected.
- No person is required to violate a federal law.
- No person is exempted from federal law or permitted to obstruct the enforcement of a federal law.
- Cannabis use by persons under 21 remains unlawful and unprotected.

Jake Honig Compassionate Use Medical Cannabis Act

- An employee who tests positive for marijuana/cannabis must be given written notice of the opportunity to request a retest of the original sample or to produce evidence of a legitimate medical explanation.
- Employee has three working days to respond.
- CREAMMA does not amend or supersede this requirement.

What About the WIRE's???

- CRC: "We're working on it."
- CRC special interim rule (expires August 19, 2022): No physical evaluation of an employee being drug tested is required until the WIRE certification program is developed. *N.J.A.C. 17:30-2.1*.
- Can employers train/retain their own impairment experts?
- *State v. Olenowski*.



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KNOW THE SIGNS



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WHAT IS A DRUG?

A drug is ANY substance that when taken into the human body, may cause impairment.

Cannabis (Marijuana)

- **Primary psychoactive ingredient is Delta-9 THC**
- **Forms of Cannabis include: Marijuana, Hashish, Hash Oil, Dabs, Wax, and Shatter**
- **Usually smoke or ingested orally**
- **Brewed in Tea**
- **Domestic Marijuana is 4.89% pure**
- **Non-domestic marijuana is 11.86%pure**
- **Hash is 30.3%pure**
- **Hash oil is 30.3% pure**
- **Marijuana Dabs can be up to 95% pure THC**
- **Impairment usually lasts 4-6 hours depending on potency**

Marijuana

**Commonly Smoked or orally ingested in baked goods.
Approximately 21.4% of high school students have reported to have smoked marijuana within the last 30 days. Common street names include, “ Reefer, Grass, Ganja, Mary Jane, Hash, Herb, Boom, Chronic, Cheeba, Ashes, Bammy, Blanket, Bomber, Cripple, Ding, Jolly Green, Joy Stick, Roach.”**



Hashish

Extracted from the cannabis plant. Hashish is commonly smoked or ingested in baked goods.

Brown in color as opposed to marijuana's green coloring.

Highly potent when smoked or ingested.



THC Oil

Oil is extracted from the Marijuana plant for higher concentration of THC .

This can be smoked along with marijuana, baked into baked goods, or orally ingested alone.



Marijuana Dabs

Marijuana product extracted from the plant by butane or carbon dioxide and concentrated into a smoke able oil.

Known on the street as “Moon Rocks, Butter, 7:10”



Marijuana Wax

Highly concentrated form of Cannabis.

Can be up to 10 times more potent than regular marijuana when smoked or ingested.

May cause hallucinations in larger doses.



Marijuana Shatter

Marijuana product to which the THC is extracted from the Marijuana plant and cooked to a brittle form of hash oil which can be smoked, or ingested orally



Marijuana Edibles

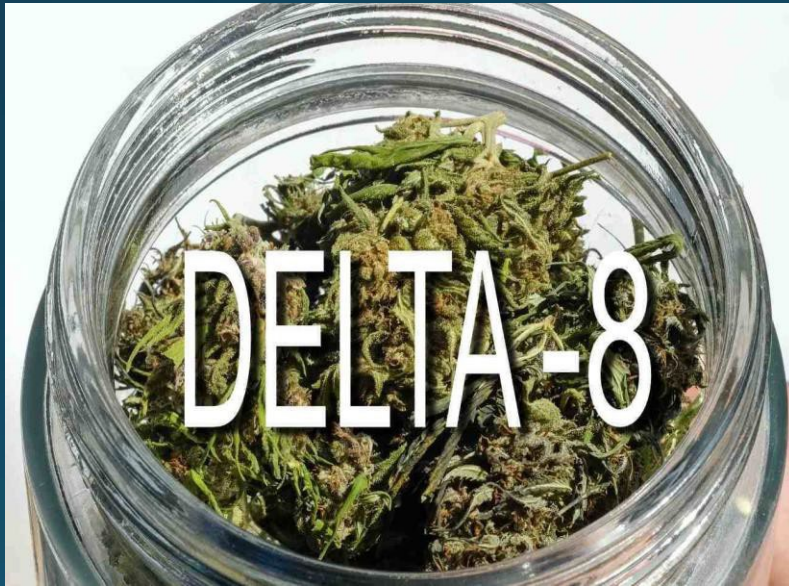


Tetrahydrocannabinolic Acid (THC Acid)

Advertised as the strongest form of Hash at up to 99% THC. It's clear or white in color



DELTA 8 – Known as “weed light”. Produces the same high as Cannabis although on a slightly lower scale. Is federally legal.



CANABIDOL OILS (CBD) – May cause a high, but unlike marijuana. Non-psychoactive concentrate extracted from hemp. Derived from the seed of the marijuana plant. Normally smoked in vaporizers or ingested orally in capsule form, food, or liquid drops. Can be used by applying directly to the skin. Can only be .03% THC to be legal CBD.



Synthetic Marijuana

“Fake marijuana” is commonly sold as a green vegetation with various chemical properties unlike regular marijuana.

Chemicals are sprayed onto the vegetation to heighten the potent nature.

Spice originated in England. Was sold legally until 2013 when it was banned from every store.

K-2 or “Spice” is the most common form. Spice is nothing like real marijuana and is said to be far more dangerous.



Synthetic Marijuana Packaging

Unlike marijuana, Synthetic Marijuana is usually packaged in small plastic bags as shown here.

Synthetic marijuana oil is also sold in small glass vials usually smoked in vaporizers or juuls.



Synthetic Marijuana Oil

Synthetic Marijuana oil is also sold and most commonly smoked in vaporizers or juuls.



Common Indicators of Marijuana/Hashish Use

- **Body Tremors**
- **Slightly elevated blood pressure/pulse rate**
- **Bloodshot, Watery Eyes**
- **Green/Brown film on tongue**
- **Increased appetite**
- **Eyelid Tremors**
- **Dilated pupils**
- **Odor of burnt marijuana on breath and/or clothing**
- **Possible paranoia**
- **Relaxed inhibitions**

Indicators of Synthetic Marijuana Use

- **BEHAVIOR IS UNPREDICTABLE!!!!!!!!!!**
- **Hallucinations**
- **Dilated/Constricted Pupils**
- **Blank stare**
- **Lethargic**
- **Uncontrollable sweating**
- **Unsteady**

Dilated Pupils

**Marijuana
commonly dilates
an individual's
pupils.**

**Other commonly
used drugs that will
dilate the pupils are
Xanax, Cocaine, and
Meth.**



Green Tongue form Ingesting Marijuana



Cannabis Paraphernalia

**Marijuana pipes,
rolling papers,
grinders, and
storage devices .**



Cannabis Paraphernalia

**Several different
kinds of
smoking
devices.**



Marijuana Dabs/Oils Paraphernalia



Butane Torches

Best Dab Torches Review 2019



 **BEST GIFTS
FOR STONERS**

Vaporizers

Vaporizers are commonly used among individuals to conceal and smoke marijuana and synthetic marijuana oils.



THC/CBD Oil Vape Pens

Care By Design



Eternal



JUULS



Juuls and E-Cigarettes – Newest and Most Popular Way to Smoke THC and CBD Oils

E-Cigarette with Hash oil



Juul w/ THC cartridge



THC Oil/CBD Oil Juul Pods

Kushie Gold



Sunset Sherbert



How Does Law Enforcement Measure Impairment????

- Indicators- Bloodshot eyes, dilated or constricted pupils, slow deliberate movements, rapid movements, slurred/slow/rapid speech.
- Standardized Field Sobriety Tests (SFST) – Psychophysical tests utilized by Law Enforcement roadside to determine levels of impairment.
- SFST comprised of Horizontal Gaze Nystagmus, Walk and Turn Test, and the One Leg Stand Test.
- Each test has clues or indicators that Law Enforcement will base the ultimate decision on impairment.
- NJ is a breath only state – There is only one device(Alcotest) that can chemically measure impairment for alcohol.

How Does Law Enforcement Measure Impairment????

- Once a subject is administered the Alcotest and the reading does not indicate the level of impairment observed by the officer, the officer may then utilize the Drug Recognition Expert (DRE).
- DRE would respond and conduct a 12 step standardized and systematic drug evaluation to determine if the subject may possibly be under the influence of some type of drug.
- DRE's render their opinion based off of the 7 basic drug categories – CNS Depressants, CNS Stimulants, Hallucinogens, Dissociative Anesthetics, Narcotic Analgesics, Inhalants, and Cannabis.
- Each of these 7 drug categories have specific indicators that DRE look for to determine if a subject may possibly be under the influence of them.

So What Can You Do?????

- It ultimately depends on your HR departments
- As law enforcement in NJ, officers are subject to random urine testing as a stipulation of employment.
- The random urine testing must consist of at least 10% of the agency and is to be done twice a year.
- Any officer believed to be exhibiting signs of impairment or suspected of using substances on/off duty are subject to reasonable suspicion drug testing.
- If officers do not comply or refuse to comply with the drug testing, they could be terminated.

Since the Legalization of Marijuana in NJ.....

- Law Enforcement Officers in the State of New Jersey may consume Cannabis off duty.
- Law Enforcement executives are waiting for further guidance from the Attorney General's Office on whether Officers will eventually be prohibited to consume Cannabis products even off duty.
- Guidance is still sought regarding random urine testing among law enforcement if a positive test for Cannabis transpires.

Other Common Indicators

**Prolonged
Crystal Meth and
Crack Cocaine
usage may lead
to extensive sores
and scars to the
face after
prolonged usage.**



Decaying Teeth

As a result of smoking Meth, Crack, or many other drugs, users teeth may start to deteriorate from prolonged usage.



Burn Marks on Lips

A common sign of smoking Meth, Crack, or other drugs is burn marks on and around the mouth and lips.

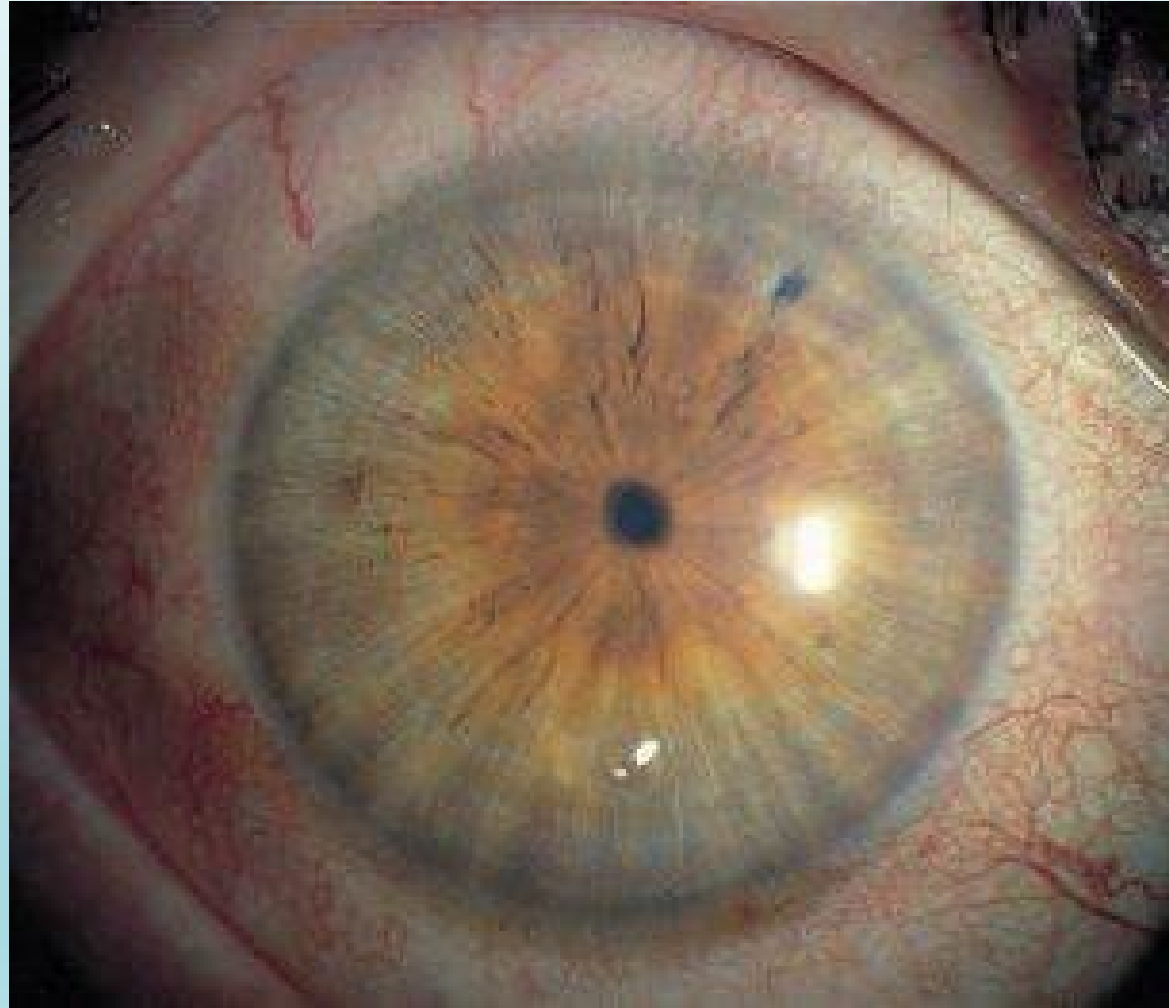


Burn Marks Inside Mouth



Constricted Pupils

Heroin along with other opiate based narcotics are the ONLY drugs which will constrict your pupils.



Physical Sign of Heroin/IV Drug Use

Injection sites are an indicator of intravenous drug usage.

Injection sites are commonly found on the arms, hands, and legs, but can be anywhere on the body where veins are prevalent.



Track Marks- Usually observed on Intravenous drug users who have been using narcotics for an extended period of time.



Common Indicators of Opiate Usage

- On the nod – user is in a state of unconsciousness, but is aware of surroundings
- Slowed reflexes
- Slow, raspy , slurred speech
- Slowed breathing
- Itching of arms, face, and body
- Drastic weight loss
- Vomiting
- Insomnia
- Constricted Pupil Size
- Open sores mainly on arms and face
- Wearing long sleeve shirts in hot/humid weather
- Fresh Injection Sites/Track Marks
- Low Blood Pressure and Heart Rate

Heroin/Fentanyl Packaging

Heroin is most commonly packaged in small wax folds with a stamp on same.

The stamps vary depending on where the Heroin is purchased.

CAUTION: DO NOT TOUCH THESE WAX FOLDS WITH BARE HANDS



Indicators of CNS Depressant Usage

- Dilated Pupils
- Abnormally low or high Pulse Rate
- Normally a lower Blood Pressure
- Alcohol like Intoxication
- Slow/Slurred Speech
- Deliberate Movements
- Pill Residue on Tongue or inside Nose
- HGN-Horizontal Gaze Nystagmus
- Lack of Convergence

HALLUCINOGENS

Meaning any substance which would cause hallucinations.

Of these substances, LSD, MDMA, and Salvia are among the most commonly abused.

Depicted below are LSD “Tabs or Blotters”.

CAUTION: LSD tabs are also transdermal and will soak in through your skin if touched.

Handle with care if located. LSD will usually be ingested in this tab form, but can be a liquid which is drank.



Indicators of Hallucinogens

- Unpredictable Behavior – Can produce a temporary condition like psychosis or insanity
- Synesthesia – Mixing of the senses - ex. Smelling, seeing, hearing things that are not there.
- Usually a Rapid Heart Rate and Blood Pressure
- Feeling of Euphoria
- Extremely unstable
- Lack of Convergence
- Horizontal Gaze Nystagmus

Dissociative Anesthetics

A drug or agent which will distort perceptions of sight and sound and produce feelings of detachment (dissociation) from the environment and self.

Pain receptors are severed.



Common Indicators of PCP Use

- Nausea
- Paranoia
- Perspiring
- Piloerection (Goosebumps) – common in LSD
- Poor perception of time and distance
- Synesthesia – sensory perception disorder; transposition of senses

Example: seeing light when telephone rings

- Uncoordinated
- Flashbacks
- Inability to feel pain
- Violent tendencies
- Thousand yard stare

Other Uncommon Substances abused in America:

- **Whip Its – Whip Cream Cans**
- **Nitrous Oxide**
- **Gasoline/Spray Paint/Paint Thinners**
- **Engine Degreaser**
- **Insecticides**
- **Ether**
- **Glade Air Freshener**
- **Acetone**
- **Glue**
- **Hair Sprays**
- **Rubbing Alcohol**

Concealment Methods

- **Drawers**
- **Books**
- **Audio Equipment (DVD player, headphones, etc)**
- **Under mattress**
- **In clothing- Stash Pockets**
- **Behind posters/pictures on wall**
- **Shoes**
- **Writing Utensils**
- **Make up/Personal Hygiene products**
- **Bathroom Toilets/ Vents**
- **Candy Containers/Wrappers**
- **Soft Drink Containers**
- **Cellular Phone Covers/Fake Cellular Phones**
- **School Supplies**
- **Jewelry**
- **Belt Buckles**
- **Toys/Stuffed Animals**
- **Motor Vehicles**
- **Vents**

Marijuana & the NJ Workplace

Some Practical Considerations and Cautions

Partnership for a Drug-Free New Jersey
(June 22, 2022)



Disclaimer: This presentation is provided solely for informational purposes and does not constitute legal advice or opinion.

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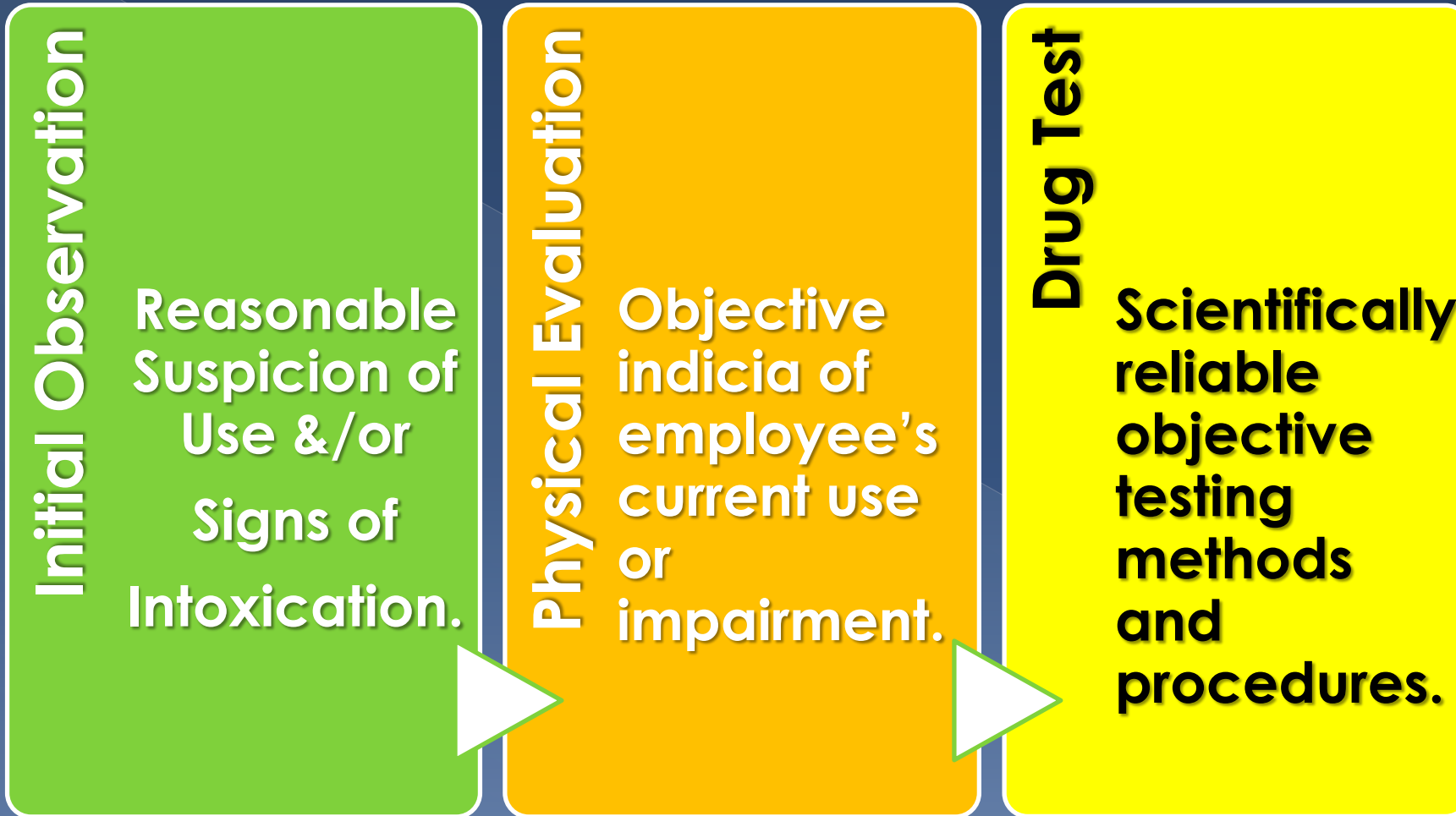
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CREAMMA in Action



If Employee Tests Positive

- Give three days written notice of legal rights and an opportunity to present a medical marijuana card (or other “legitimate medical explanation”), challenge validity of finding, and/or request another drug test at employee’s own expense.
- Then what?

What actions are prohibited?

	Jake Honig CUCMA	CREAMMA
Prohibits	adverse employment actions against registered qualifying medical marijuana users	refusing to hire or employ any person or discharging from employment or taking any adverse action solely due to the presence of cannabinoid metabolites in the employee's body
Requires	giving the employee or job applicant an opportunity to: <ul style="list-style-type: none"> • present a legitimate medical explanation for the positive test result or • request a retest of the original sample at the employee or job applicant's own expense. 	<p>drug testing may be done (1) pre-employment, (2) randomly, (3) on reasonable suspicion, (4) if observable intoxication, or (5) post-accident. If done, must also conduct physical examination (by a WIRE).</p> <p>Allows: employer to use the results of the drug test when determining the appropriate employment action concerning the employee, including, but not limited to dismissal, suspension, demotion, or other disciplinary action.</p>
Source:	N.J.S.A. 24:6l-1 et seq.	N.J.S.A. 24:6l-31 et seq.

When Can You Take Adverse Action?

Jake Honig CUCMA	CREAMMA
<p>When the individual is a registered qualifying medical marijuana user but cannot be reasonably accommodated in the role</p> <ul style="list-style-type: none">• E.g., If person has to use cannabis while at work.	<p>When the individual has cannabis in their system and:</p> <ul style="list-style-type: none">• is currently impaired (as determined by a drug test and physical evaluation (by a WIRE); and/or• the individual has engaged in other unsatisfactory conduct or work performance warranting discipline.
<p>Individual uses or possesses cannabis at work or during work hours.</p>	<p>Individual uses or possesses cannabis at work or during work hours.</p>
<p>Failure to discipline would cause the employer to be in violation of federal law, result in a loss of a licensing-related benefit pursuant to federal law, or result in the loss of a federal contract or federal funding.</p>	<p>Failure to discipline would cause the employer to be in violation of federal law, result in a loss of a licensing-related benefit pursuant to federal law, or result in the loss of a federal contract or federal funding.</p>

What About EAP?

Referral to EAP should not constitute an adverse action:

- ⦿ Not a disciplinary action
- ⦿ Does not alter the terms or conditions of individual's employment
 - > Continue to receive normal salary (via accrued sick leave or other means)
 - > Maintain pre-EAP leave balance

(Cf. *Ndzerre v. Wash. Metro. Area Transit Auth.*, 275 F. Supp.3d 159 (D.D.C. 2017))

What About Other Legalized States?

- > Connecticut: 2021
- > New Mexico: 2021
- > New York: 2021
- > Virginia: 2021
- > Arizona: 2020
- > Montana: 2020
- > ***New Jersey: 2020***
- > Vermont: 2020
- > Illinois: 2019
- > Michigan: 2018
- > California: 2016
- > Maine: 2016
- > Massachusetts: 2016
- > Nevada: 2016
- > District of Columbia: 2014
- > Alaska: 2014
- > Oregon: 2014
- > Colorado: 2012
- > Washington: 2012

Has Cannabis Impacted Workplace Fatalities?

State	Year and number of work-related vehicular deaths									
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Colorado	41	33	31	45	36	48	36	24	39	33
California	156	156	156	126	157	168	153	173	159	140
New Jersey	41	35	45	37	41	43	29	33	28	25

(Source: BLS, Census of Fatal Occupational Injuries (2011 forward);
<https://www.bls.gov/data/home.htm#injuries>)

Hager v. M&K Construction (246 N.J. 1 (2021))

- Vincent Hager suffered a workplace injury for which his doctor prescribed medical cannabis. It cost over \$6k a month.
- M&K challenged his eligibility for WC reimbursement on several bases, including that the:
 - federal Controlled Substances Act preempted the Jake Honig Act and prohibited the employer seeking reimbursement for cannabis; and
 - cannabis was not a “reasonable and necessary” medical treatment.
- NJ’s Supreme Court held that the current federal forbearance from prosecuting cannabis cases shows no preemption or positive conflict exists; and that competent medical testimony is enough to show cannabis is a “reasonable and necessary” treatment.

So, Workers’ Compensation may cover medical cannabis.

WC If Impaired While Injured?

NJ's Workers' Compensation Law (at N.J.S.A. 34:15-7) covers all occupational injuries . . .

except when the injury or death is intentionally self-inflicted, or when intoxication or the unlawful use of controlled dangerous substances as defined in the "New Jersey Controlled Dangerous Substances Act," P.L.1970, c. 266 (C. 24:21-1 et seq.), or willful failure to make use of a reasonable and proper personal protective device or devices furnished by the employer, which has or have been clearly made a requirement of the employee's employment by the employer and uniformly enforced and which an employer can properly document that despite repeated warnings, the employee has willfully failed to properly and effectively utilize, is the natural and proximate cause of injury or death

BUT intoxication must be the sole cause of injury or injury is WC compensable.

Tlumac v High Bridge Stone (187 NJ 567 (2006))

- The employee, a truck driver, was a heavy drinker. On the day of the accident, he blacked out and drove his tractor-trailer off the road, hitting another truck, a guard rail and utility pole.
- The responding police officer smelled alcohol, and the employee admitted to drinking the night before. An expert for the employer opined the employee's blood alcohol level was between .10 and .18 at the time of the accident. The legal limit is .08.
- Finding that credible evidence showed employee recently had worked long hours and lost sleep because of personal responsibilities, the WC Judge, Appellate Division and Supreme Court **denied the employer's intoxication defense because it could not prove alcohol was the sole cause** of the accident.

What's next?

Proposed Bill	Intro'd	Description
A 3511	3/8/2022	Requires workers' comp, PIP, health insurance coverage for medical cannabis under certain circumstances
A3914	5/2/2022	Permits law enforcement agencies to prohibit the use of recreational cannabis by officers
A3870	5/9/2022	Permits employers to prohibit use of cannabis by certain employees (who operate heavy machinery, weapons, or whose use would put others at serious risk, law enforcement officers)
S2518	5/12/2022	Permits employers to prohibit use of cannabis by certain employees (first responders)
S2656	5/16/2022	Concerns cannabis use by certain law enforcement (law enforcement officer and duties require to carry a firearm)



**ACCESS THE DRUGS DON'T WORK IN NJ WORKPLACE TOOLKIT
AT [DDW.DRUGFREENJ.ORG/WORKPLACEKIT](https://ddw.drugfreenj.org/workplacekit)**