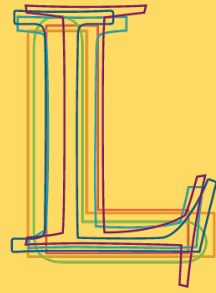


DRUGS

DON'T WORK

IN NJ

DDW.DRUGFREEENJ.ORG



What Does Drug-Free Workplace Mean in 2025?

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Littler[®]

Presented by



NANCY DELOGU

Shareholder

Washington DC

nndelogu@littler.com

202.414.6863



LAUREN MARCUS

Shareholder

Newark, NJ

lmarcus@littler.com

973.848.4707



DIMITRIOS MARKOS

Associate

Newark, NJ

dmarkos@littler.com

973.848.4764

Agenda

- Overview of evolving drug use law and policy in New Jersey and the United States
- What can an employer expect and require?
- Impairment and performance issues
- Can we test for marijuana?
- Updating your drug-free workplace policy & procedures





Overview of NJ Drug-Free Workplace Law

“Cannabis” vs. “Marijuana”

- New Jersey’s law, enacted 2021, uses the term “cannabis.”
- From an employment and testing perspective however, only some forms of cannabis contain psychoactive tetrahydrocannabinols – THC
- THC is the compound that has a psychoactive effect, that can cause a “high”
- Hemp and other cannabis products are lawful ***as a matter of federal law*** if they contain less than 0.3% THC
- Employer drug tests look for the presence of THC, not CBD (cannabinoid)
- To distinguish between cannabis products, we talk about marijuana use because THC containing products are the focus of the legalization effort
- It may be difficult or impossible to know if a particular cannabis product contains a particular amount of THC

New Jersey's Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (NJCREAMMA)

So, what does the law say about marijuana use by workers?

New Jersey's Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (NJCREAMMA)

Employers cannot refuse to hire any person, or discharge or take any adverse action against an employee (with respect to compensation or any other terms and conditions of employment) because they do, or do not, use cannabis products.

Drug Testing After NJCREAMMA

“[A]n employee shall not be subject to any adverse action by an employer solely due to the presence of cannabinoid metabolites in the employee’s bodily fluid from engaging in conduct permitted” by the legislature.

Drug Testing After NJCREAMMA

The statute provides that drug testing is permitted:

- Upon suspicion of cannabis use, while the employee is engaged in work;
- When you have observable signs of intoxication related to cannabis use;
- Following a work-related accident;
- At random;
- When scheduled; or
- Pre-hire

Drug Testing After NJCREAMMA

Employers can take adverse action **only if the employee is impaired by marijuana at work**. A drug test result can help show impairment, particularly if it does not measure metabolites.

Drug Testing After NJCREAMMA

HOWEVER...An individual who believes they have been denied a job because of a positive drug test or state-permitted off-work marijuana use has **no avenue to seek relief through the courts.**

What now?

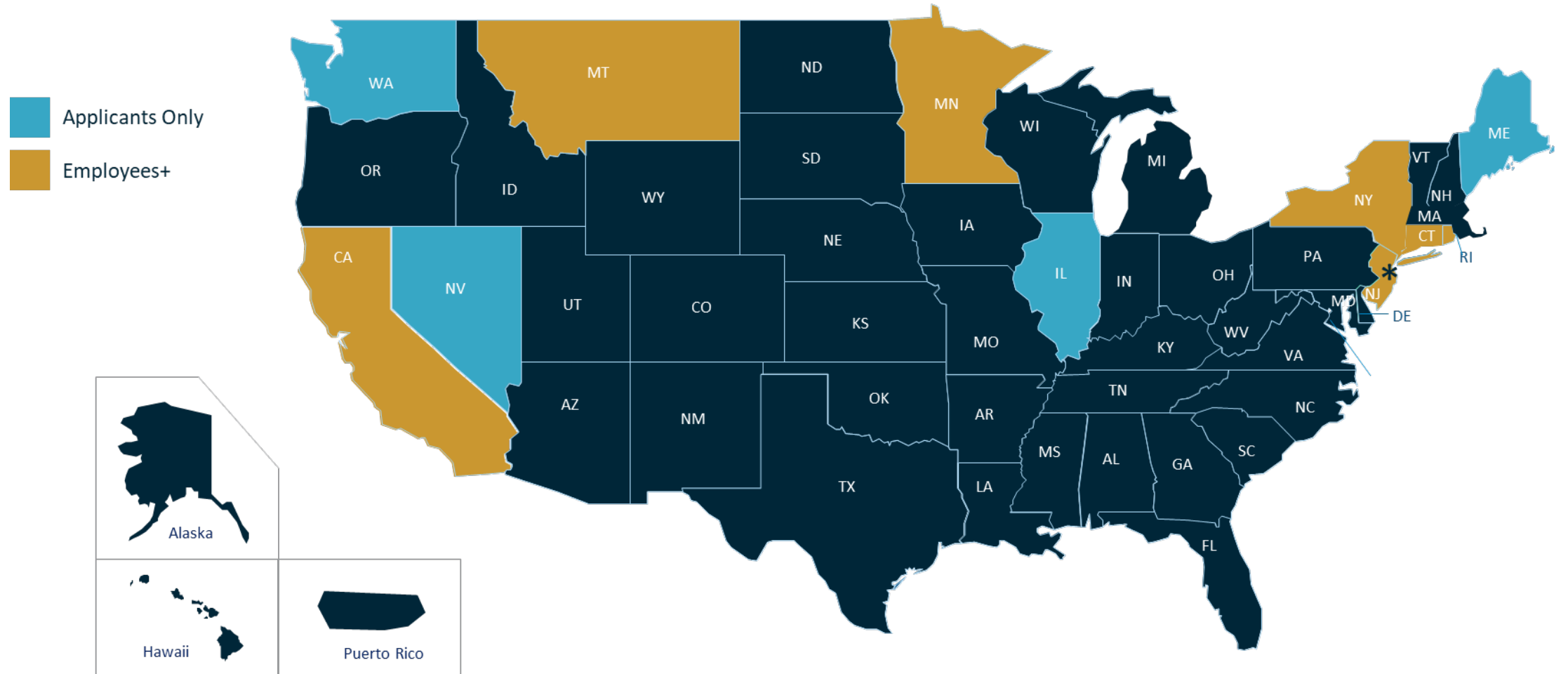


What's New with Marijuana and Marijuana Testing In New Jersey and Elsewhere

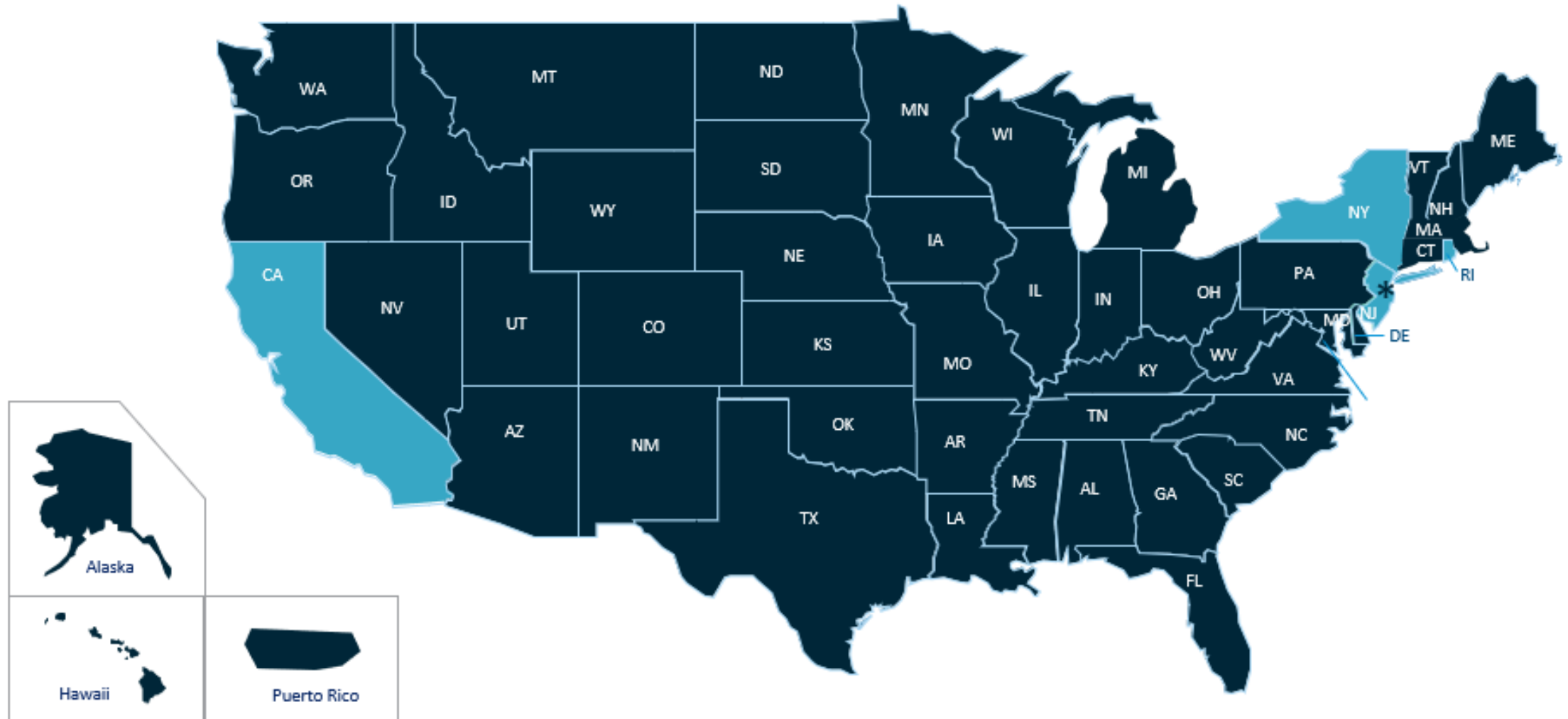
The Third Circuit Addresses NJCREAMMA

- On December 9, 2024, the U.S. Court of Appeals for the Third Circuit upheld a decision from the District of New Jersey, holding there is no private right of action under NJCREAMMA.
- As a result of the decision, applicants cannot bring a common law claim alleging failure to hire in violation of NJCREAMMA as against public policy.
- The decision makes clear that NJCREAMMA, by its terms, did not “amend or affect in any way State... law pertaining to employment matters.”
- While NJCREAMMA precludes discrimination based on an individual’s use or non-use of cannabis, an individual who is terminated or denied employment in violation of the law may not bring an action against the employer.

Recreational Marijuana Employee Protections by Jurisdiction



Protections for Safety-Sensitive Worker Off-Duty Recreational Marijuana Use



What Kind of Test May Comply With the New Law?

Oral Fluids Testing



Oral Fluids Testing

- Oral fluids testing is gaining widespread support, and has been approved for use by the United States Department of Transportation (DOT)

“While the science supporting oral fluids testing did not meet the standards of HHS [the US Department of Health and Human Services] in 2004, science and research studies have now reached the point where HHS has been able to determine that oral fluid testing is an appropriate alternate testing method for identifying illicit drug use in the Federal workplace.”

(Final Rule. Procedure for Transportation Workplace Drug and Alcohol Testing Programs: Additional of Oral Fluid Specimen Testing for Drugs.)

- Approved, but cannot be used, because waiting for HHS to certify at least two laboratories.

Potential Benefits to Oral Fluids Testing

- Oral fluids collections are always observed collections, unlike urine testing.
- Shorter detection window aids in showing present impairment (and is not prohibited by New Jersey law).
- Get results more quickly.
- Lower cost.

Drug Testing After NJCREAMMA

“[A]n employee shall not be subject to any adverse action by an employer solely due to the presence of cannabinoid metabolites in the employee’s bodily fluid from engaging in conduct permitted” by the legislature.

Drug Testing After NJCREAMMA

A drug test must include “scientifically reliable objective testing methods and procedures, such as blood, urine or saliva **and** a physical evaluation in order to determine an employee’s state of impairment.”

Drug Testing After NJCREAMMA

“The physical evaluation shall be conducted by an individual with the necessary certification to opine on the employee’s state of impairment, or lack thereof” as a result of marijuana use.

Drug Testing After NJCREAMMA

“The commission, in consultation with the Police Training Commission... shall prescribe standards in regulation for a Workplace Impairment Recognition Expert certification... based on education and training in detecting and identifying an employee’s usage of or impairment from a cannabis item or other intoxicating substance, and for assisting in the investigation of workplace accidents.”

Workplace Impairment Recognition Expert

- The Commission did not publish either regulations or guidance.
- The Commission indicated that employers could make decisions about impairment without the use of a WIRE.
- Organizations are currently purporting to provide “WIRE Training.”

Other Methods of Screening for THC

- California's Legislature said:

“As science has improved, employers now have access to multiple types of tests that do not rely on the presence of nonpsychoactive cannabis metabolites. *These alternative tests include impairment tests, which measure an individual employee against their own baseline performance* and tests that identify the presence of THC in an individual's bodily fluids.”

AB 2188 (Sec. 1)

“Impairment Tests”

- What are these tests?
- Possibly tests that measure dexterity or reasoning ability, periodically compared against an individual’s baseline performance.
- None in broad circulation or that are validated as reliable.



Other Forms of Testing

- Retinal scans, marijuana breathalyzers, and perhaps more?
- Considerations:
 - Is it a medical exam?
 - Has it been validated as effective and reliable?
 - Cost?



Gun Rights and Marijuana?

- Federal law prohibits marijuana users from possessing firearms.
- In Virginia, woman sentenced to 21 months in prison on federal charges after prosecutors learned she possessed marijuana and a firearm.
- August 2023, 3-judge panel of U.S. Court of Appeals for the 5th Circuit ruled federal law was overbroad in that it barred possession of a firearm for anyone with a history of marijuana use.

Gun Rights and Marijuana in New Jersey?

- New Jersey's administrative courts have ruled that law enforcement officers may use marijuana pursuant to NJCREAMMA, even if they carry firearms.
- Mayor of Jersey City has authorized a suit against the State of New Jersey for its policy of allowing police officers to use marijuana off duty.



Drug-Free Workplace Developments

Opioid Abuse Updates

- More than 100,000 deaths each year for each of the last several years.
- National Safety Council reports over 525 people died of an opioid overdose *at work* in 2023.
- Naloxone (Narcan) – more employers are adding to workplace safety programs
“The “Good Samaritan” component of the “Opioid Antidote and Overdose Prevention Act” provides legal protections, both civil and criminal, to the overdose victim and the person who seeks medical assistance, including the administration of naloxone, for the victim of an opioid overdose.”

From NJ.gov

Opioid Abuse Updates

Workplace Safety & Health Topics

Promoting productive workplaces
through safety and health research 

Opioids in the Workplace

[Print](#)

Updated March 1, 2023

The effects of opioid use and misuse are not isolated to work or home environments, and the potential for opioid use disorder may be preceded by injuries that happen in the workplace, with the consequences affecting both an individual's working life as well as their home life.

By using [Total Worker Health®](#) principles, NIOSH is developing solutions to help workers and employers facing this crisis in their communities. about the specific steps NIOSH is taking to approach this challenge.



Find Help and Treatment for Opioid Abuse

Information for:



[First Responders](#)



[Healthcare Personnel](#)




[Researchers](#)

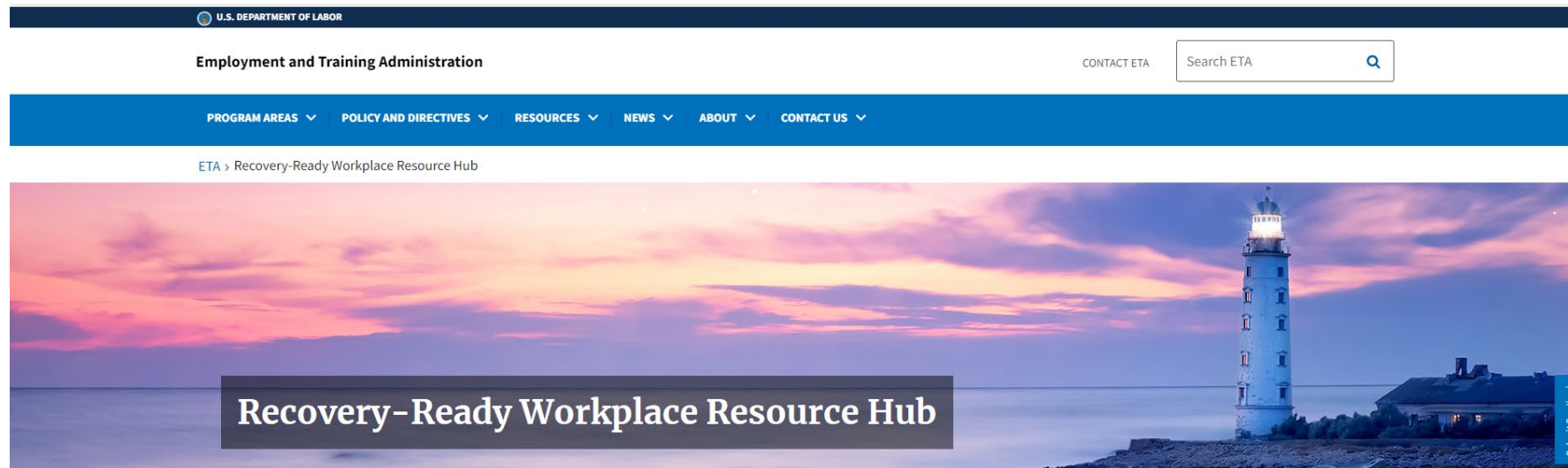


Responding to a Suspected Overdose

Workplace Resources for Employers and Workers

- [Using Naloxone to Reverse Opioid Overdose](#)
- [Medication-Assisted Treatment](#)
- [Infographics](#)
- [Recovery-Ready Workplace Resource Hub](#) 
- [Initiatives to Prevent Opioid Misuse and Promote Recovery-Friendly Workplace Programs \(nih.gov\)](#) 
- [Opioid Overdose Prevention Toolkit – Substance Abuse and Mental Health Services Administration](#)  [\(en Español\)](#) 
- [Prescription Opioid and Benzodiazepine Medications and Occupational Safety and Health](#)

“Recovery-Friendly Workplace”



What is a Recovery-Ready Workplace?

Recovery-Ready Workplaces adopt policies and practices that:

- expand employment opportunities for people in or seeking recovery;
- facilitate help-seeking among employees with substance use disorder (SUD);
- ensure access to needed services, including treatment, recovery support, and mutual aid;
- inform employees in recovery that they may have the right to reasonable accommodations and other protections that can help them keep their jobs;
- reduce the risk of substance misuse¹ and SUD, including through education and steps to prevent injury in the workplace;
- educate all levels of the organization on SUD and recovery, working to reduce stigma and misunderstanding, including by facilitating open discussion on the topic; and,
- ensure that prospective and current employees understand that the employer is recovery-ready and are familiar with relevant policies and resources.

Search for RRW Resources:

Search

Sign Up for Alerts!

Psychedelics and Emerging Drugs of Abuse

- Psilocybin
 - Denver (many other cities have followed), Oregon, Colorado but
 - Not easy to test for
- Ketamine
 - Anesthetic, hallucinogenic
 - Short-acting, but hallucinations may continue for weeks
 - Used to facilitate sexual assault
 - “cat valium”
 - Associated with depression, cognitive impairment, agitation, amnesia, physical side effects; overdose includes unconsciousness and slowed breathing



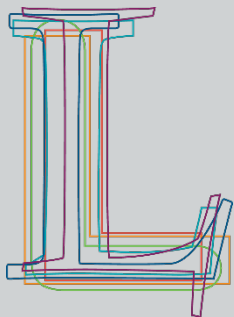
Evaluating Your Policy & Procedures

What Can Our New Jersey Policies Require?

- OK to prohibit the possession and use of marijuana (including “edibles”) and all other illegal drugs at work and during work time.
 - Even if lawful for those over 21, can treat like alcohol at work.
- OK to discipline workers who come to work impaired.

What Can Our New Jersey Policies Require?

- OK to drug test as long as policy follows both New Jersey Supreme Court's guidance on whom and how to test, and NJCREAMMA.
- You don't need a test to act if you have evidence of a policy violation.



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Questions?

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Contact

NANCY DELOGU

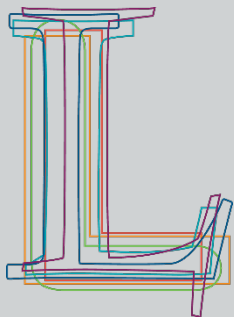
Shareholder | Washington, D.C. | nndelogu@littler.com | 202.414.6863

LAUREN MARCUS

Shareholder | Newark | lmarcus@littler.com | 973.848.8707

DIMITRIOS MARKOS

Associate | Newark | dmarkos@littler.com | 973.848.4764



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