



**Let's Roll With It**

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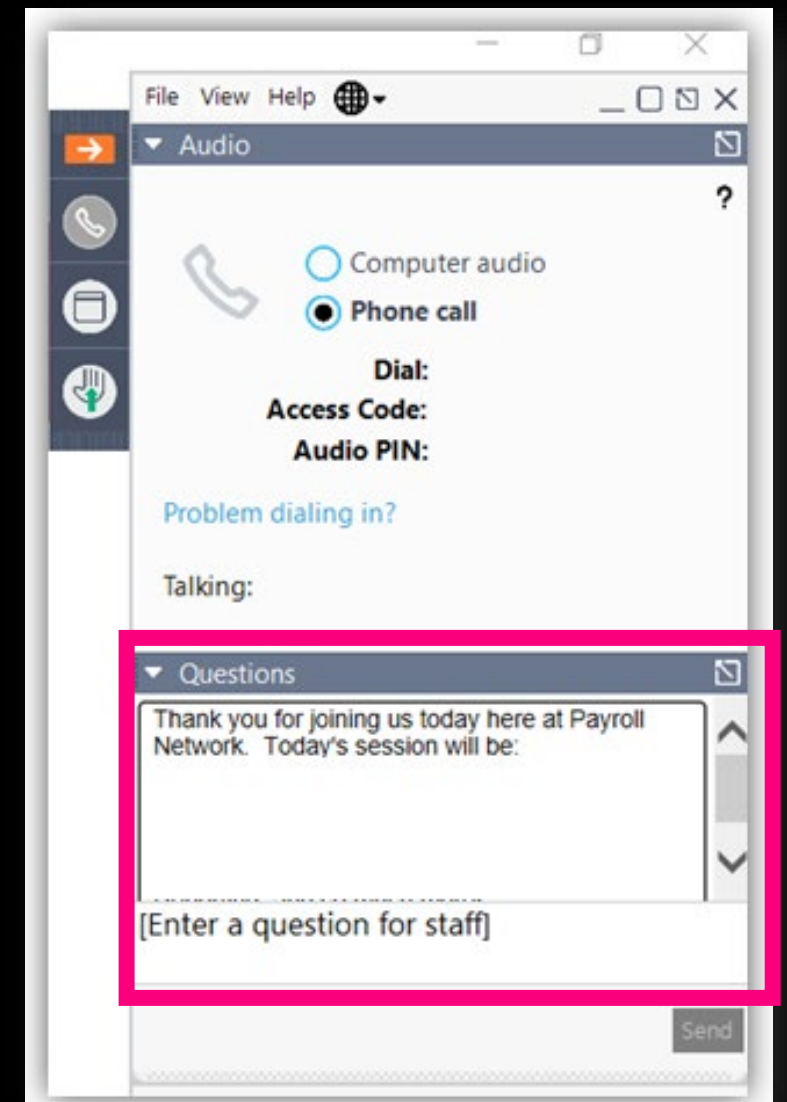
**Marijuana in the workplace**



- Webinar will be recorded
- All attendees will be placed on mute
- Ask questions!
- Survey will be sent after the webinar
- Handouts available
- Certified Course – polls!



# For Today's Session



- Legalization Key Points
- Testing Considerations
- Resources

# Agenda

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# Your Presenter's Today

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# Legal Disclaimer

The information presented today is provided for educational purposes and should not be considered legal advice.

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The presentation and these materials do not represent the opinions of the presenter and those of Payroll Network.



# Cannabis in the Workplace

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**Poll 1**

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**Marijuana use is legal for medicinal purposes everywhere in the United States.**

# Federal Stance on Cannabis



- Marijuana remains illegal on the federal level.
- According to a 2021 Gallup **poll** release, 68% of Americans support marijuana legalization.
- Legislation in the Works
  - Marijuana Opportunity, Reinvestment, and Expungement (MORE) Act
  - Cannabis Administration and Opportunity Act
  - States Reform Act
  - SAFE Banking Act of 2021

## Schedule I.—

- (A) The drug or other substance has a high potential for abuse.
- (B) The drug or other substance has no currently accepted medical use in treatment in the United States.
- (C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

# State Stance on Cannabis



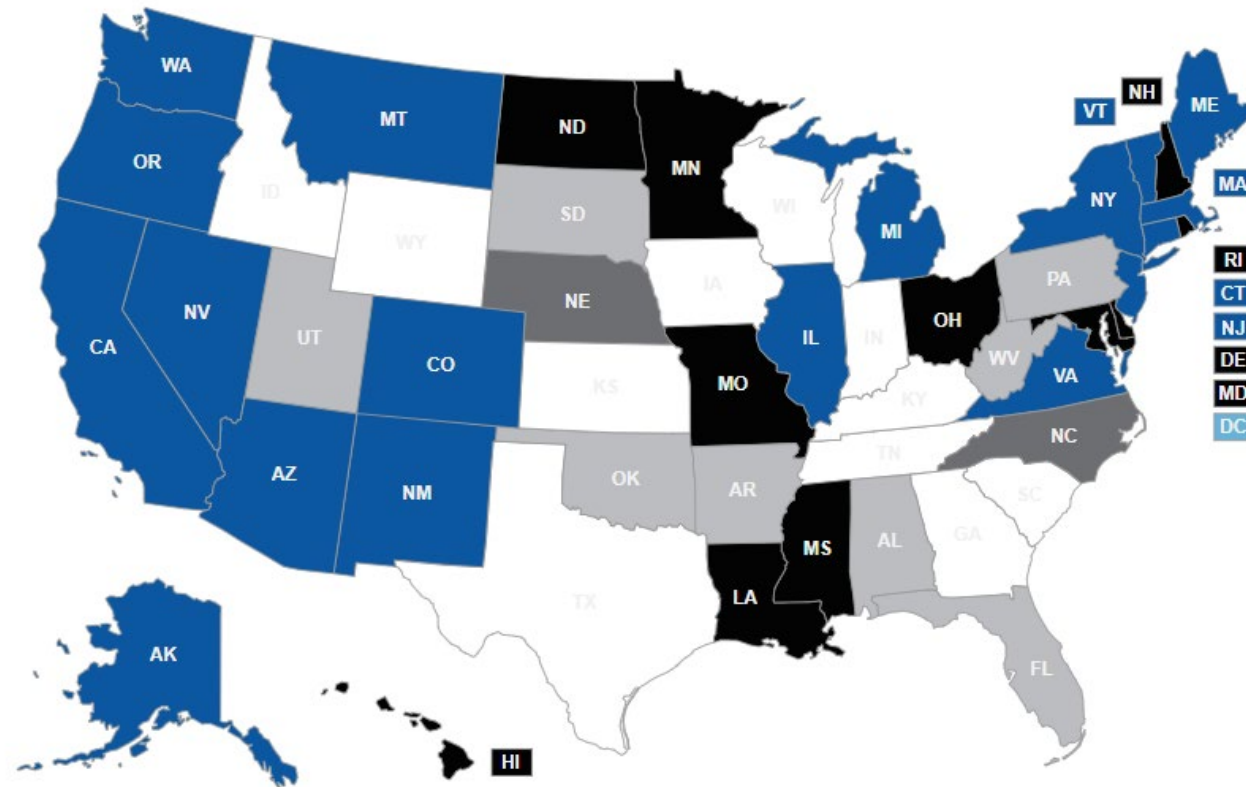
- Varies on a state by state basis
- Varies on Medical vs. Recreational

## **Samples State Laws:**

- Can be unlawful to require applicants to submit a marijuana test as a condition of employment
- Unlawful for an employer to fail or refuse to hire a prospective employee because of the presence of marijuana detected via a drug test

# What is your State's position?

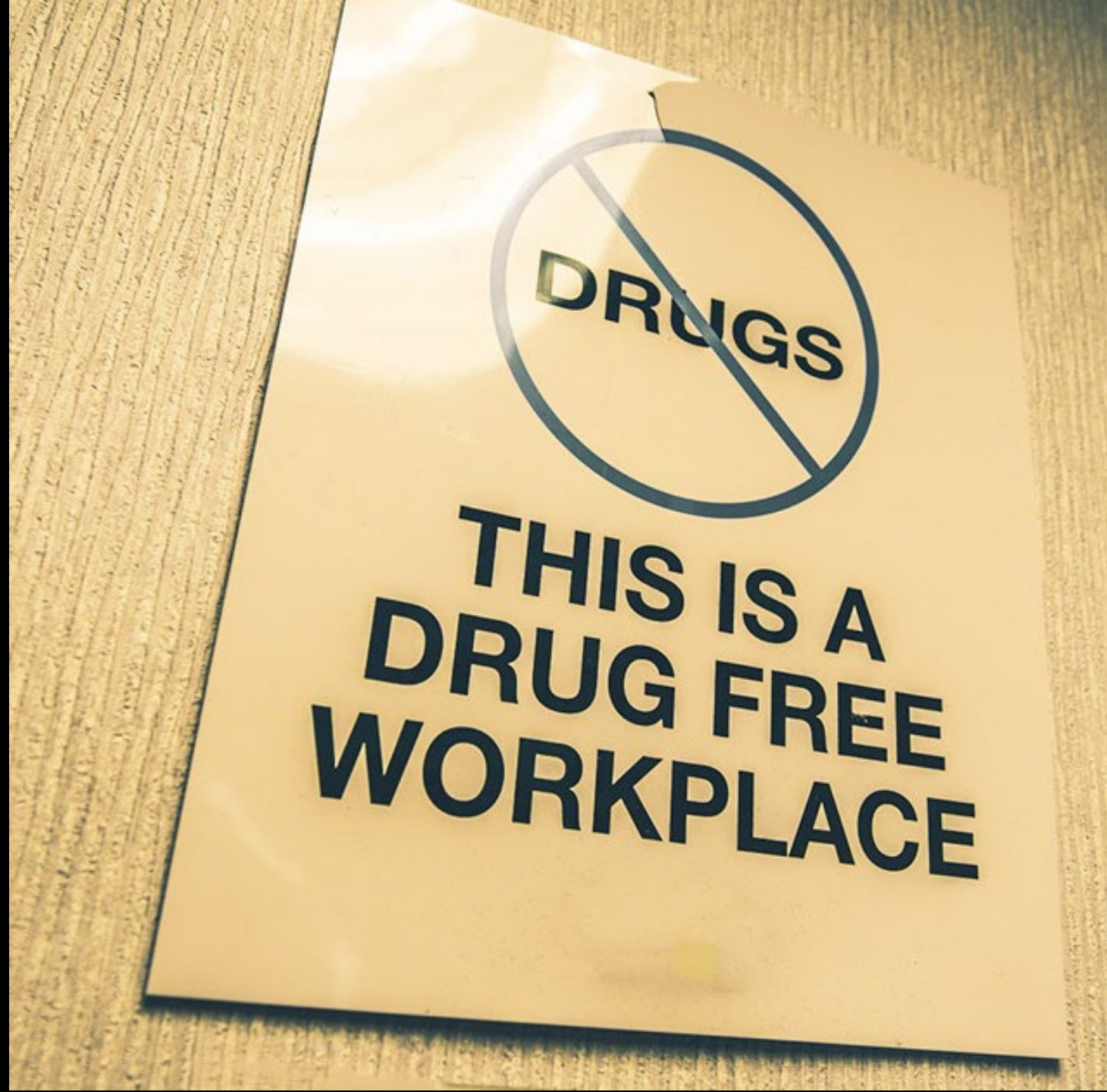
# Legal or Illegal



<https://www.mpp.org/states/>

# Concerns Relating to Cannabis in the Workplace

What Employers Need to Consider





## Poll #2

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In some places where marijuana use is legal, employers are banned from requiring job applicants to pass a marijuana screen as a condition of employment.

# Drug Testing in the Workplace

To test or not to  
test will be the  
question...

Schedule I drug under Controlled Substances Act

Federal and Federal-regulated jobs that  
affect public safety continue to test

Some companies are removing drug tests

Most states still allow employers to continue  
drug-free workplaces



# What does Drug Testing confirm?

- Employers that drug test typically use a five-panel screen that includes amphetamines, cocaine, marijuana, opiates and phencyclidine (PCP).
- Delta-9-tetrahydrocannabinol (Delta THC)
  - primary psychoactive cannabinoid in cannabis
  - responsible for the cannabis “high.”
  - Only metabolite that most laboratories test for in employment drug testing
  - Tests cannot prove for impairment, only for presence
  - Difficulty to confirm usage on the job or on their own time
- Is CBD detected?



# Safety Sensitive Positions

- Any job that includes tasks or duties that the employer reasonably believes could affect the safety and health of the employee performing the task or others.

We want to make it perfectly clear that the state initiatives will have no bearing on the **Department of Transportation's** regulated drug testing program. The Department of Transportation's Drug and Alcohol Testing Regulation – 49 CFR Part 40 – does not authorize the use of Schedule I drugs, including marijuana, for any reason.

# What if I choose not to drug test?

- If you choose to not drug test, companies will want to review:
  - Workers Compensation Policy
  - General Liability Insurance / Commercial General Liability Insurance
  - Third Party Partnerships
  - Regulatory Requirements
- Employers still have responsibility to educate employees on cannabis in the workplace

# No one policy fits all companies

- Cannabis has created a landscape that is unique to every employer

## Things to consider:

- Applicable Federal, State, and Local laws and regulations (consider OSHA)
- Your industry
- Your positions, job duties, and responsibilities
- Your previous reason for conducting drug testing and does that make sense going forward



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## Poll #3

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Employers can always discipline workers who are high on the job.

# Reasonable Suspicion

- Implement a reasonable suspicion drug testing protocol
- Train Managers and Supervisors on recognizing, documenting and responding to the signs of impairment (samples below):
  - Odors (smell of alcohol, body odor or urine).
  - Movements (unsteady, fidgety, dizzy).
  - Eyes (dilated, constricted or watery eyes, or involuntary eye movements).
  - Face (flushed, sweating, confused or blank look).
  - Speech (slurred, slow, distracted mid-thought, inability to verbalize thoughts).
  - Emotions (argumentative, agitated, irritable, drowsy).
  - Actions (yawning, twitching).
  - Inactions (sleeping, unconscious, no reaction to questions).
- Ensure substance abuse policy is clear (at the time of hire and ongoing)

**What if there is  
suspicion  
someone is  
under the  
influence?**

Suspicion Checklist  
provided

Record Date / Time of Incident

Document Location of Incident

Highlight the behavior observed

Confirm additional witnesses

**Reasonable Suspicion Checklist**  
(The following checklist should be completed when a manager or supervisor suspects drug or alcohol use based on the physical appearance and behavior of the employee. Also completing the checklist should be all other managers or supervisors who witnessed the employee being unfit for duty.)

**PART 1: EMPLOYEE INFORMATION**

Employee Name: \_\_\_\_\_

Employee Job Title: \_\_\_\_\_

Observation Date: \_\_\_\_\_

Observation Time (indicate a.m. or p.m.): \_\_\_\_\_

Location: \_\_\_\_\_

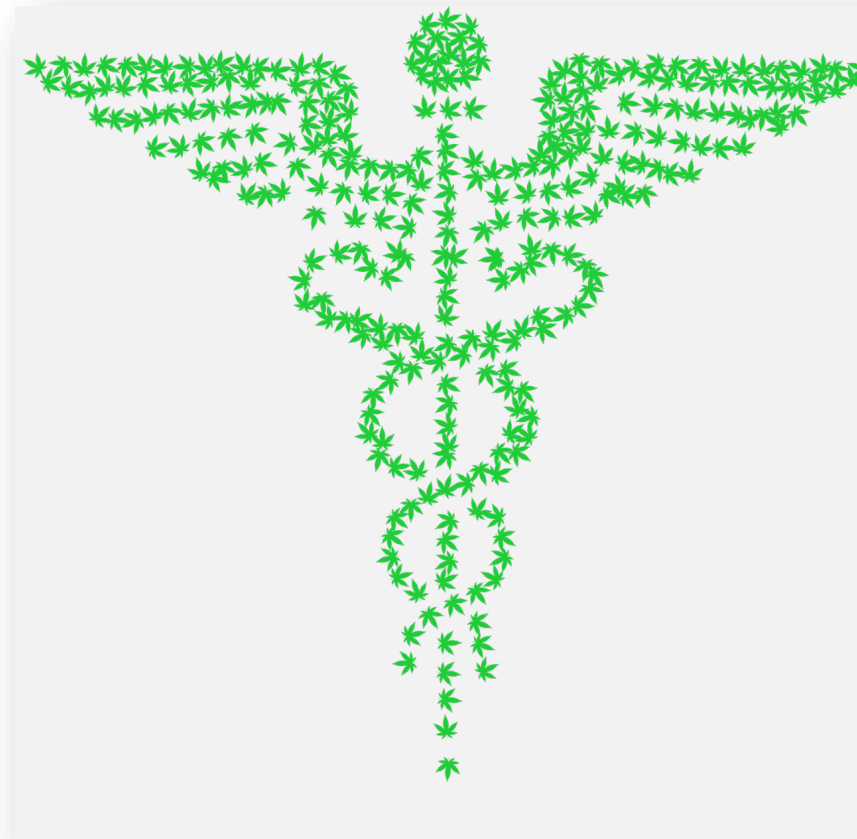
**PART 2: OBSERVATIONS**  
(Place a checkmark next to any of the following observations exhibited by the employee.)

PHYSICAL

Walking: \_\_\_\_\_

\_\_\_\_\_ Holding on; \_\_\_\_\_

\_\_\_\_\_ Swaying; \_\_\_\_\_



## Poll #4

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Medical marijuana users  
may have job protections  
under state disability  
discrimination laws.

# Reasonable Accommodation

- Court case situations and results involving Cannabis are growing in numbers
- What does it mean:
  - Employers may need to reasonably accommodate individuals who are legal users of medical cannabis.
  - Depending on the job, it may be that nothing needs to be done and no accommodation will be required because the employee's use of medical marijuana will not impact their ability to do the job. In other instances, the employer and employee may need to consider whether accommodations are necessary and if so, whether they can reasonably be made.
  - In some states or territories - employers may not discriminate against registered and authorized patients of medical cannabis in the recruitment, hiring, designation, or termination process or when imposing disciplinary actions.

# ADA Protections and Guidance

- The Americans with Disabilities Act (ADA) and related state laws require employers to enter discussions with workers with disabilities to determine if reasonable accommodations can be provided so such workers can perform the essential functions of their job.
- As a rule of thumb- engage in the interactive process with individuals to see if an accommodation is warranted.

# What do we need to do?

- Continuously look at your policies

## How do I prepare?

- Does your state permit the use of cannabis for Medical or Recreational use?
- Are there requirements in providing reasonable accommodations to employees with disabilities who may be medical marijuana users?
- Do you have employees working in safety sensitive positions?
- Are you an employer that is subject to the Drug-Free Workplace Act?

# If you do create a Drug Testing policy

- Your policy should be part of the Employee Application and handbook:
  - The purpose and parameters of the testing
  - How the testing will be conducted
  - What constitutes a failed test, and the actions and employer will take
  - For failed tests, whether the employee will be given the chance to explain the results or rehabilitate

# What about Medical Approved usage?

- Medical Users do not have any special rights or privileges at work that they did not have before. You do not have to tolerate usage during work hours.
- You should not ask the reason for the medical marijuana card.
- If an employee discloses that they have a medical marijuana card, and the drug test comes back positive, the employer may not terminate or discipline the employee solely based on a positive test. Employers should ensure to document the other reasons that would need to support adverse employment action.
- If you have an employee that request accommodation to use cannabis during work or to work while under the influence, you should speak to your legal counsel.

# Resources

- SHRM - <https://www.shrm.org/ResourcesAndTools/Pages/marijuana.aspx>
- Marijuana Policy Project - <https://www.mpp.org/>
- US Cannabis Council - <https://www.uscannabiscouncil.org/>
- The MORE Act - Marijuana Opportunity Reinvestment and Expungement Act
- National Drug Screening - <https://ndasa.com/>

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