



IN-DEPTH RESEARCH REPORT

# MARIJUANA TESTING:

MAKING THE RIGHT DECISION



J. J. Keller®

COMPLIANCE  
**NETWORK**

# INTRODUCTION

## THE COMPLEXITIES OF CANNABIS

Marijuana is a perplexing issue. The drug is legal in many states yet remains illegal under federal law. Some employers are required to test for marijuana, while some state laws forbid it. Employees in certain jobs face severe consequences for using marijuana, while companies in some states face penalties if they don't let workers use weed on the weekend.

What's a business to do?

All businesses have an obligation to protect the **safety** of workers and the public. They need to make sure impaired workers do not put the health and well-being of themselves and others at risk. Employers also need to support workplace **productivity**. When workers can do their jobs to the best of their ability, a company's profitability and employee morale both receive a boost. The bottom line is healthier, and workers feel like they can contribute without wondering if a coworker is going to neglect their duties.

Workers who are impaired by drug use put those responsibilities in jeopardy. Drug use, including marijuana use, can diminish coordination, alertness, and concentration, and may bring paranoia. These effects certainly aren't good for the workplace, but does testing for marijuana make a difference?

The recent "Testing for Marijuana and Other Substances" Pulse Poll from J. J. Keller & Associates provides insights into **how employers are handing the issue**. Along with their responses and comments, we are sharing best practices that support a safe and productive workplace. In addition, we bring **clarity** to a complicated issue and provide information employers can use to guide their actions when **marijuana laws intersect with workplace policies**.





## FINDINGS

WE SURVEYED MANAGERS AND SUPERVISORS ON COMPANY PRACTICES SURROUNDING WORKPLACE TESTING FOR MARIJUANA AND OTHER DRUGS AND FOUND:

- 1. MARIJUANA TESTING IS NOT DEAD**
- 2. EMPLOYERS TEST FOR DIFFERENT REASONS**
- 3. REGULATIONS MAKE AN IMPACT**
- 4. ATTITUDES ARE CHANGING**
- 5. MARIJUANA TESTING WON'T END SOON**
- 6. EMPLOYERS TEST FOR DRUGS IN ADDITION TO MARIJUANA**
- 7. EDUCATION IS CRITICAL**

We also get to the heart of the matter and examine when marijuana testing is warranted.

**Bottom line:** When should you test for marijuana?

## WHO IS OUR SAMPLE?

This Pulse Poll survey was conducted from

**JULY 10 TO  
JULY 17, 2023**

**111**

**PARTICIPANTS**

completed the survey.

Survey respondents had to meet the following

## 2 CONDITIONS:

1. Have one of the following in their title: Safety, Environmental Health and Safety (EHS or HSE), health, compliance, risk, or human resources
2. Have manager or supervisor in their title

## TAKEAWAY 1:

# MARIJUANA TESTING IS FAR FROM DEAD.

A great deal of attention has been paid to newer state laws that **restrict testing** for marijuana. New York forbids all testing, unless another law requires it, and Washington and California are headed down that path. In some states, medical marijuana laws limit testing. Where marijuana testing is allowed, employers may opt not to test for the drug to broaden their hiring pool.

Despite marijuana testing becoming more restricted and less popular, many employers continue to test for marijuana. In some situations, they don't have a choice. Testing is **still required** under federal laws that cover employees in safety-sensitive roles, such as truck drivers and pipeline workers. In addition, in more than half the states, marijuana testing is **not limited**. In these states, employers may continue to test for marijuana as they see fit.

J. J. Keller's Pulse Poll found that marijuana testing is still widely practiced by employers. Whether it's because they are required to do so, or choose to do so when they have the option, the poll found that **81 percent of companies** test employees for marijuana.



*“ Our company uses federal guidelines to test our DOT and safety sensitive employees This includes marijuana. ”*

Survey Participant



## EXPERT TIP

### COVERED BY DOT RULES? KEEP TESTING

Despite state laws legalizing marijuana use, some employees are forbidden to use marijuana and must be tested when required. This includes truck drivers, pilots, train engineers, school bus operators, ship captains, and other workers covered by the Department of Transportation's (DOT) regulations for safety-sensitive transportation employees. If you employ workers covered by DOT rules, you need to continue to test for marijuana.

**“It remains unacceptable for any safety-sensitive employee subject to drug testing under the Department of Transportation’s drug testing regulations to use marijuana.”**

— Department of Transportation, DOT “Recreational Marijuana” Notice



## TAKEAWAY 2:

# TESTING IS PERSONAL: EMPLOYERS TEST FOR DIFFERENT REASONS

Why do employers conduct drug tests? Typically, it's done in these situations:

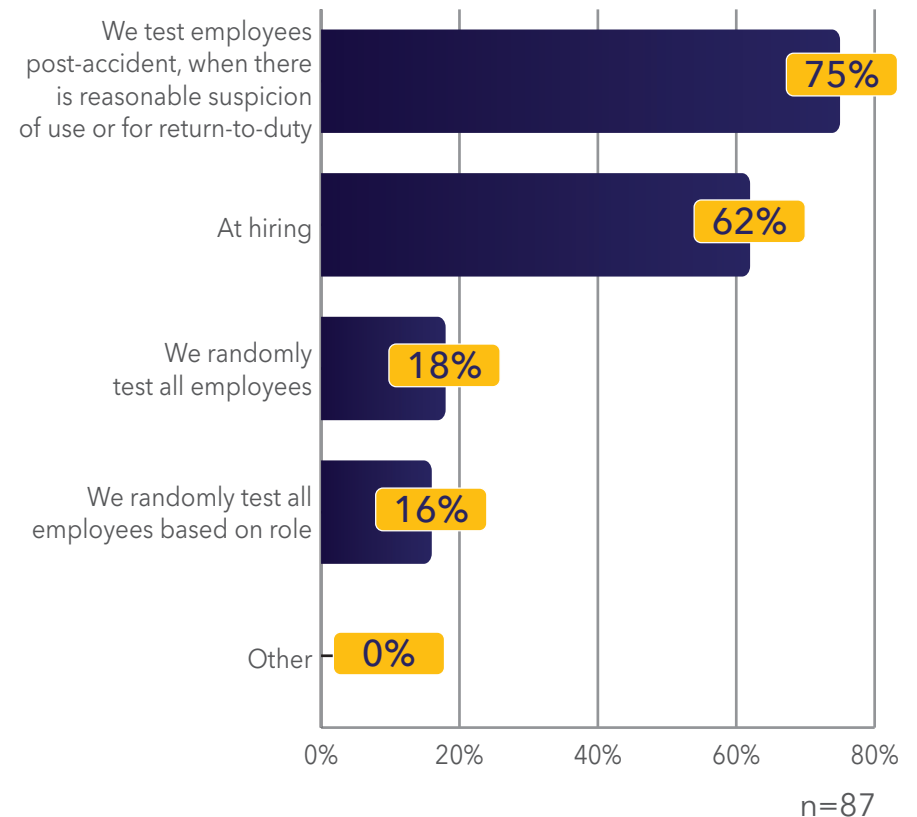
- ▶ Pre-employment: Before an employee is hired for a new job.
- ▶ Post-accident: After a qualifying accident.
- ▶ Random: At any time.
- ▶ Reasonable suspicion: When drug or alcohol use is suspected.
- ▶ Return-to-duty: Before an employee returns to work after completing a substance abuse program.
- ▶ Follow-up: For a period of time after an employee completes a substance abuse program.

All employers don't always test in each of these situations, however. When testing isn't required under a law, they decide when the test results provide meaningful information.

The Pulse Poll found that a test is often done after an accident or when there is a reason to suspect that drugs or alcohol are impacting an employee's behavior. Employers also test new employees as well as after employees return to work after attending a rehabilitation program.



## WHEN DO EMPLOYEES GET DRUG TESTED? (SELECT ALL THAT APPLY.)






## EXPERT TIP

### BE AWARE OF TESTING PROS AND CONS

Drug testing at various times during the employment cycle has pros and cons:

TYPE OF TEST	PROS	CONS
Pre-employment	Helps prevent the hiring of individuals who use illegal drugs. Substance abuse has been linked to increased absenteeism and an increased risk for injuries.  Can be limited to specific positions.	May be prohibited under a state law.  Limits the pool of eligible workers.  Employers need to be careful not to discriminate (must test all workers at the same time in the process, and all those hired for the same position).
Post-accident	May help determine the root cause of an accident.	Could be seen as retaliatory for reporting an accident if there is no way drug use could have played a role in the accident.
Random	Keeps employees on their toes; may deter drug use.	May be prohibited by state law or state constitution.
Reasonable suspicion	Supports a negative employment action (suspension or firing).	Supervisors should be trained so they recognize the signs of drug use.  Requires knowledge of what impairment or reasonable suspicion of substance abuse looks like.  Marijuana testing may be prohibited under state law.
Return-to-work	Shows that an individual is no longer using illegal drugs.	Marijuana testing may be prohibited under state law.
Follow-up	Supports recovery by encouraging an individual to abstain from illegal drug use.	Marijuana testing may be prohibited under state law.  Extensive testing could be seen as discriminatory; testing should be done as required under a treatment plan.





*We have chosen to overlook marijuana drug testing for hiring new employees. We still complete random drug screenings for post-incident or for reasonable suspicion.*

Survey Participant

*Post accident testing is required by our workers' compensation carrier. Until this year, we only conducted new-hire testing.*

Survey Participant

## TAKEAWAY 3: REGULATIONS MAKE AN IMPACT

Regulations are often the reason employers conduct drug tests, and the reason they don't.

Drug tests may be required:

- ▶ Under federal law when an employee works in a safety-sensitive job.
- ▶ Under a voluntary state law providing a workers' compensation discount.

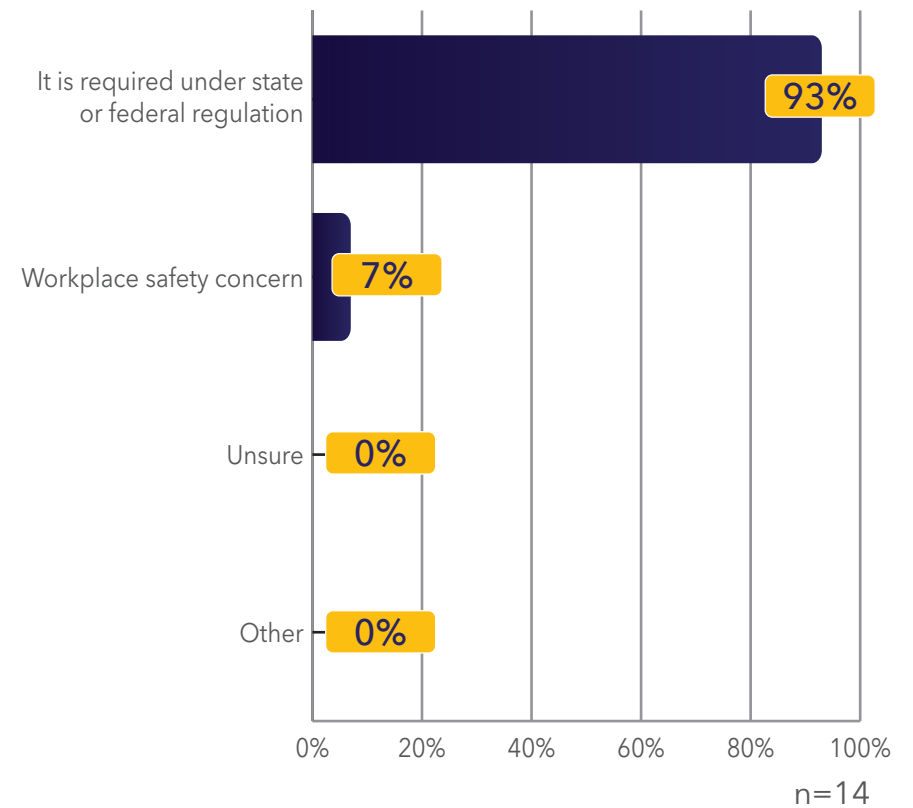
Drug tests may be prohibited:

- ▶ Under a state marijuana law.
- ▶ Under a state drug testing law or state constitutional provision (primarily impacts random tests).

The Pulse Poll found that when employers randomly tested employees based on their job duties, they typically did so because it was required by the law.



### WHY DOES YOUR EMPLOYER TEST EMPLOYEES BASED ON THEIR ROLE?





## EXPERT TIP

### — UNDERSTAND THE INS AND OUTS OF RANDOM DRUG TESTING —

Random drug tests are the most controversial type of test and are the type of test most frequently restricted under state law. Yet some federal laws require them. When they are used, employers must be sure they are on solid footing.

Random tests can play a role in deterring employee drug use, as they are unpredictable and could be given at any time. With a scheduled test, an employee who uses illegal drugs may be able to pass the test by abstaining from drug use for a certain amount of time before the test. When tests are done randomly, this type of preplanning isn't possible.

Random tests raise privacy issues, however. An employee is not showing signs of impairment when a random test is given, and testing when these signs are absent could be seen as an affront to dignity and an invasion of privacy. Random testing is generally prohibited in California for this reason. The state's constitution has strong privacy protections, and the need to conduct a drug test must be balanced with an individual's right to privacy. Random testing is only allowed for employees whose job affects public safety or security, or whose impairment would have disastrous consequences for the employee, coworkers, or the public. Absent this type of compelling need, random drug tests are not allowed in the state.

Random tests are always allowed when they are required under federal law. This requirement is typically found for employees who are in safety-sensitive positions (such as truck drivers, train engineers, and pilots). They are seen to have jobs that so dangerous that privacy can be compromised. The implications of an employee driving or flying while under the influence of drugs could be catastrophic. This concern outweighs the employee's right to privacy when it comes to random testing.

In some states, an employer has the option of conducting random drug tests. When state law allows random testing, the employer can determine whether the nature of an employee's work supports the need to test on a random basis. When random testing is allowed, an employer should also consider state marijuana laws. If marijuana testing is prohibited, it should not be on the testing panel.

#### **When to use random tests:**

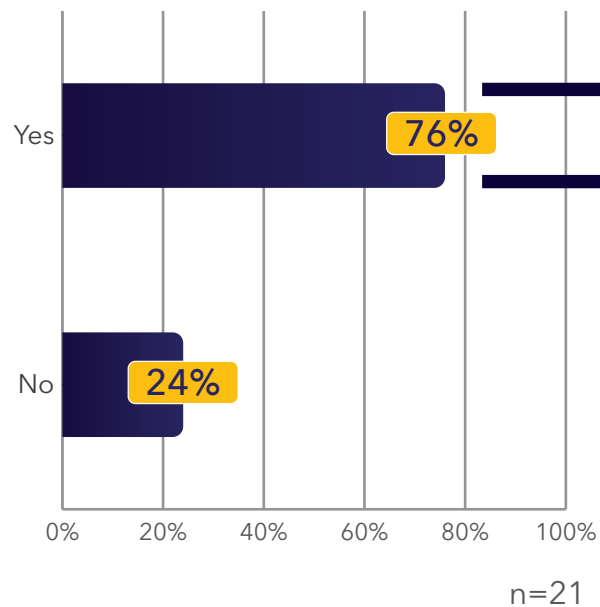
- ▶ When required by federal law
- ▶ When not prohibited by the state and the nature of the job supports the need

## TAKEAWAY 4: ATTITUDES ARE CHANGING

When marijuana testing is not required, fewer companies are testing for the drug. The Pulse Poll found that three-quarters of companies that are not currently testing for marijuana had previously tested for the drug. A third of those who are no longer testing stopped within the past year.

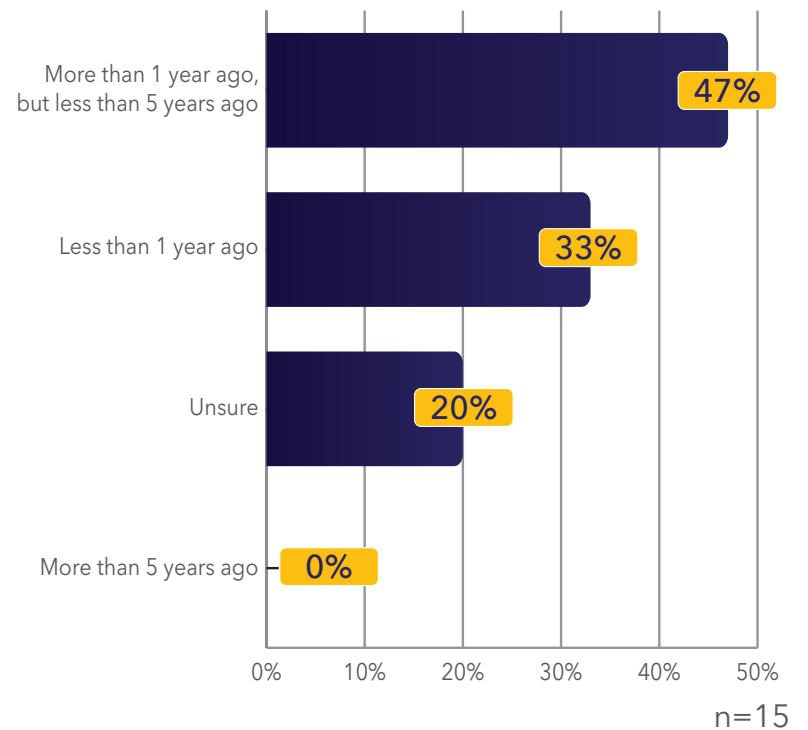
### HAS YOUR EMPLOYER PREVIOUSLY TESTED EMPLOYEES FOR MARIJUANA USE?

*\*Includes respondents who indicated their company does not currently test for marijuana*



### WHEN DID YOUR EMPLOYER DISCONTINUE TESTING EMPLOYEES FOR MARIJUANA?

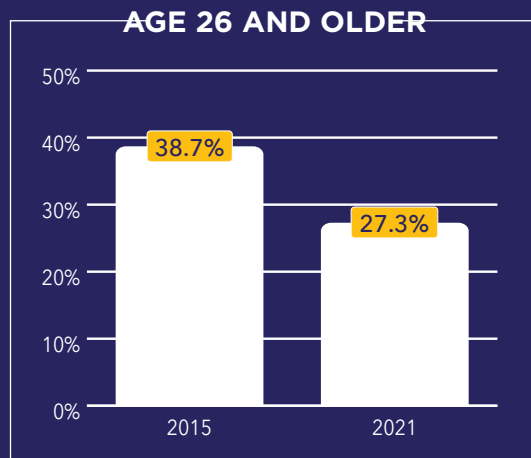
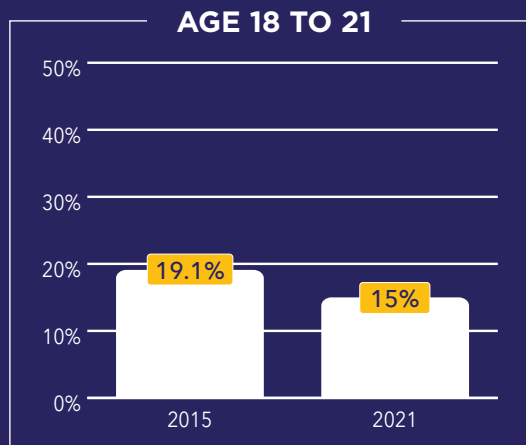
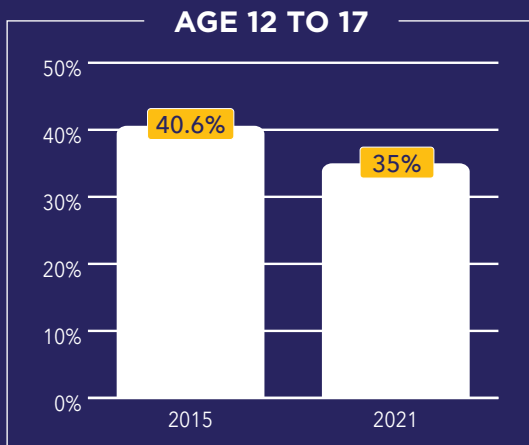
*\*Includes respondents who indicated their company does not currently test for marijuana, but did in the past*



TAKEAWAY 4:  
ATTITUDES ARE CHANGING

The drop in testing coincides with a cultural shift in Americans' views toward marijuana use. Each year the Substance Abuse and Mental Health Services Administration conducts the National Survey on Drug Use and Health. The survey's results show that Americans of all ages view marijuana use as less risky than they did a few years ago.

### PERCENTAGE OF INDIVIDUALS PERCEIVING GREAT RISK OF HARM FROM USING MARIJUANA WEEKLY



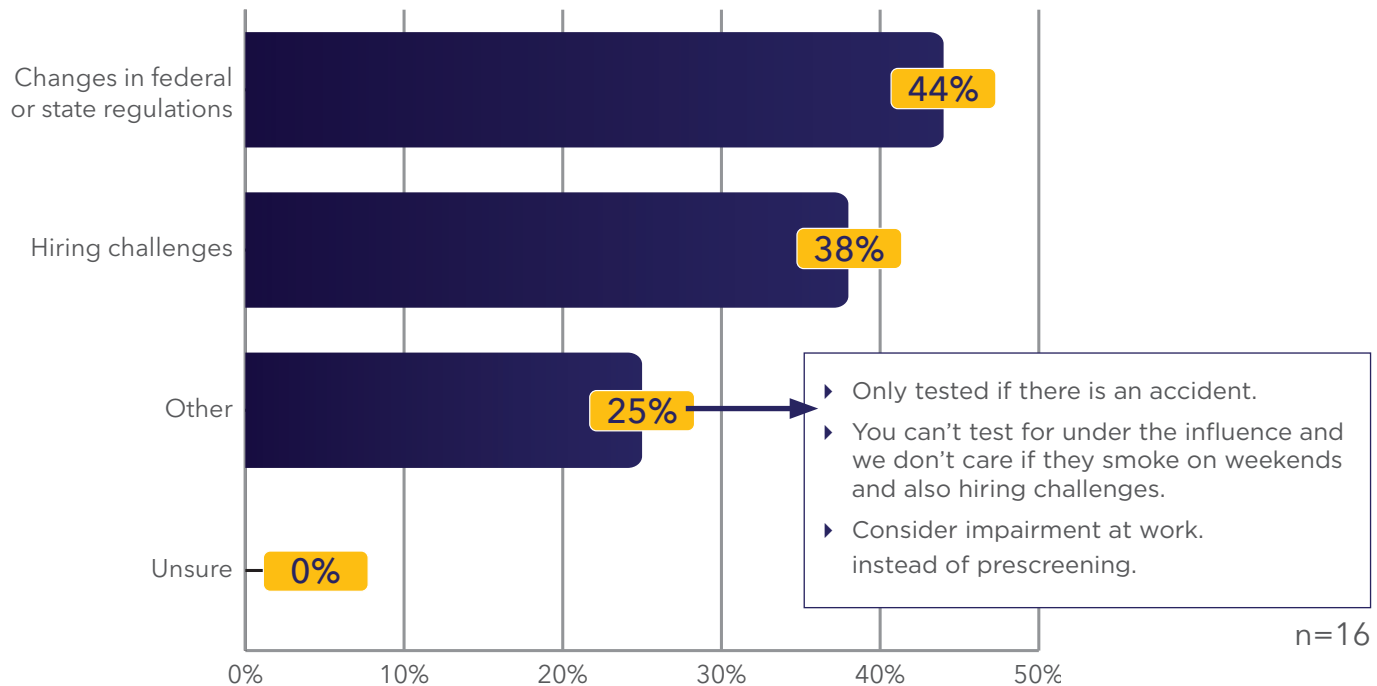
TAKEAWAY 4:  
ATTITUDES ARE CHANGING

A cultural shift in the nation's attitude toward marijuana risk is not the only factor impacting an employer's decision to stop testing for marijuana. An unemployment rate hovering around 3.5 percent makes it challenging to attract workers, and the requirement to pass a drug test that includes marijuana can limit the hiring pool. In addition, more states are legalizing marijuana for recreational and medical use, and some laws restrict or prohibit marijuana testing. The Pulse Poll survey found that these restrictions make a significant impact on whether an employer decides to stop testing for marijuana.

STATE REGULATIONS, HIRING IMPACT TESTING DECISIONS

WHY DID YOUR EMPLOYER'S APPROACH TO MARIJUANA TESTING CHANGE? (SELECT ALL THAT APPLY.)

*\*Includes respondents who indicated their company discontinued marijuana testing*





# LEGAL MARIJUANA

## Recreational and Medical

- Alaska
- Arizona
- California
- Colorado
- Connecticut
- Delaware
- Illinois
- Maine
- Maryland
- Massachusetts
- Michigan
- Minnesota
- Missouri
- Montana
- Nevada
- New Jersey
- New Mexico
- New York
- Oregon
- Rhode Island
- Vermont
- Virginia
- Washington
- District of Columbia

## Medical only

- Alabama
- Arkansas
- Florida
- Hawaii
- Kentucky
- Louisiana
- Mississippi
- New Hampshire
- North Dakota
- Ohio
- Oklahoma
- Pennsylvania
- South Dakota
- Utah
- West Virginia







## EXPERT TIP

### — UNDERSTAND STATE MARIJUANA TESTING RESTRICTIONS —

Every state marijuana law is a little different, and this makes testing a challenge. Employers testing workers for drugs in the states listed should be aware of restrictions on marijuana testing that are imposed by state recreational marijuana laws.

#### Recreational marijuana testing restrictions

STATE	LAW
California	As of January 1, 2024, employers cannot use drug tests screening for nonpsychoactive cannabis metabolites, unless an exception applies. As there are no tests that definitively meet the state criteria, employers should not test workers for marijuana unless these exceptions are met: <ul style="list-style-type: none"> <li>▶ Workers are in the building and construction trades or</li> <li>▶ Federal or state regulations require testing</li> </ul>
Connecticut	Employers must make their policy prohibiting marijuana use available to employees and applicants. If a conditional offer of employment will be rescinded based on a positive test for recreational marijuana, the policy must state that the company will take adverse action based on recreational marijuana use. There are exceptions for employers and employees in certain industries.
District of Columbia	An applicant may only be tested for marijuana after a conditional offer of employment has been extended. A broader prohibition on taking action based on a positive marijuana test is pending. There are exceptions for safety-sensitive positions.
Minnesota	Marijuana testing restricted except for safety-sensitive functions. Employers must have a policy meeting state requirements.
Montana	Employers cannot take a negative employment action based on a positive test for marijuana except when: <ul style="list-style-type: none"> <li>▶ Use of marijuana affects the safety of other employees or affects an individual's ability to perform job-related employment responsibilities,</li> <li>▶ An employer takes action based on the belief that the actions are permissible under an established substance abuse or alcohol program or policy, professional conduct, or a collective bargaining agreement, or</li> <li>▶ There is a conflict with a bona fide occupational qualification that is reasonably related to a person's employment.</li> </ul>

Continued on next page.

## Recreational marijuana testing restrictions

Nevada	<p>Employers cannot turn down job applicants based on a positive pre-employment test for marijuana. This does not apply to an employee applying for a position:</p> <ul style="list-style-type: none"> <li>▶ As a firefighter,</li> <li>▶ As an emergency medical technician,</li> <li>▶ Requiring the employee to operate a motor vehicle for which federal or state law requires the employee to submit to a screening test, or</li> <li>▶ That, in the determination of the employer, could adversely affect the safety of others.</li> </ul>
New Jersey	<p>An employer may not take action based on a positive drug test for recreational marijuana use unless:</p> <ul style="list-style-type: none"> <li>▶ There is reasonable suspicion that an employee used marijuana while working,</li> <li>▶ The employee is showing signs of intoxication from marijuana use,</li> <li>▶ The test is done because of a work-related accident requiring investigation.</li> </ul>
New York	<p>Marijuana testing is not allowed unless required by state or federal law.</p>
Rhode Island	<p>Employees can be prohibited from working while under the influence of cannabis, but a drug test showing that an individual has cannabis metabolites in their system does not prove impairment.</p>
Washington	<p>As of January 1, 2024, employers cannot use drug tests screening for nonpsychoactive cannabis metabolites, unless an exception applies. As there are no tests that definitively meet the state criteria, employers should not test workers for marijuana unless testing is required under federal law or the law provides for an exception. Employers may test employees in a safety-sensitive position for which impairment while working presents a substantial risk of death. These positions must be identified by the employer prior to the applicant's application for employment.</p>





“

*The marijuana test is problematic because it will give a positive even if the person has used cannabis up to a month ago or more.*

”  
Survey Participant



## EXPERT TIP

### — CONSIDER MEDICAL MARIJUANA ACCOMMODATIONS —

State medical marijuana laws may prohibit discrimination against medical marijuana patients and require employers to consider accommodations for off-duty medical marijuana use. This hasn't always been the case. Some of the earlier medical marijuana laws did not contain this protection and allowed employers to fire or refuse to hire an employee because of a positive test for marijuana.

It has become more common, however, for states to include anti-discrimination provisions in state laws and require employers to consider accommodations. In addition, court rulings have been favoring an employee's right to ask for a medical marijuana accommodation.

Because of this, when an employee asks for a medical marijuana accommodation, an employer should not automatically deny the request. Instead, the employer should pause and discuss this request with the employee. The employee's job and safety-sensitive nature of their duties can be taken into account. If off-duty marijuana use is not an option, the employer and employee should discuss other reasonable accommodation ideas.

This approach is a good one even in states where medical marijuana is not legal, because an employee who asks about a medical marijuana accommodation has asked for a workplace change due to a medical issue. This requires the employer to enter into the interactive process (talk with the employee), as required by the federal Americans with Disabilities Act (ADA). Even if medical marijuana use is not an option, the employer needs to discuss other reasonable accommodation possibilities.



“

*We allow positive pre-employment tests for marijuana if the employee has a medical marijuana card. As the manager, I monitor my employees in the facility, and they are all aware of the practice in place that even with a medical card they are not permitted to be under the influence while at the facility.*

”

Survey Participant

## TAKEAWAY 5:

# MARIJUANA TESTING NOT GOING AWAY

Among employers that are currently testing for marijuana, most will be keeping it on their testing panel for the foreseeable future. The Pulse Poll found that 74 percent plan to continue testing for marijuana. While 21 percent are not sure, 6 percent indicate that it will come off their panel in the next three years.

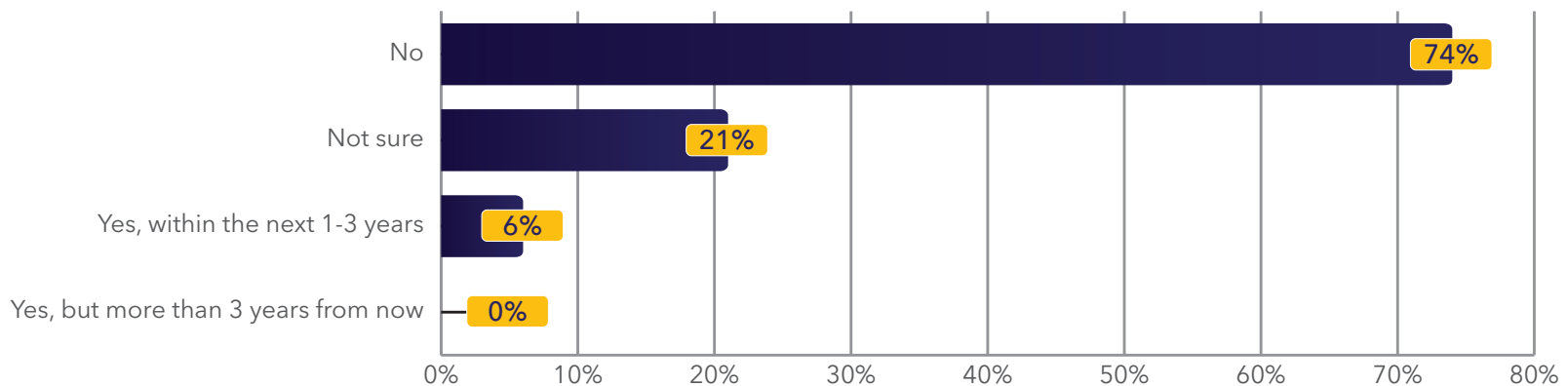
This response may be linked to the federal government's classification of marijuana as a Schedule I drug. The United States classifies drugs according to their acceptable medical use and potential for abuse. Schedule 1 drugs are the most dangerous; they have a high potential for abuse and no currently accepted medical use, as well as a lack of accepted safety for use under medical supervision. This list includes heroin, LSD, and ecstasy, as well as marijuana.

Despite marijuana being approved for medical use in 38 states, the U.S. Food and Drug Administration (FDA) has not approved marijuana for medical use. There have been attempts to take marijuana off the list of Schedule 1 drugs, and the FDA has approved a few drugs containing THC (the psychoactive compound in marijuana), but marijuana products have not been legalized on the federal level.

Because marijuana remains illegal under federal law, companies that are required to test for it under Department of Transportation (DOT) or other federal regulations must continue to test applicants and employees for the drug. Those who are not required to test for the drug can remove it from their testing panel if they choose.

### DOES YOUR EMPLOYER HAVE PLANS TO DISCONTINUE TESTING FOR MARIJUANA?

*\*Includes respondents who indicated their company currently conducts testing for marijuana*

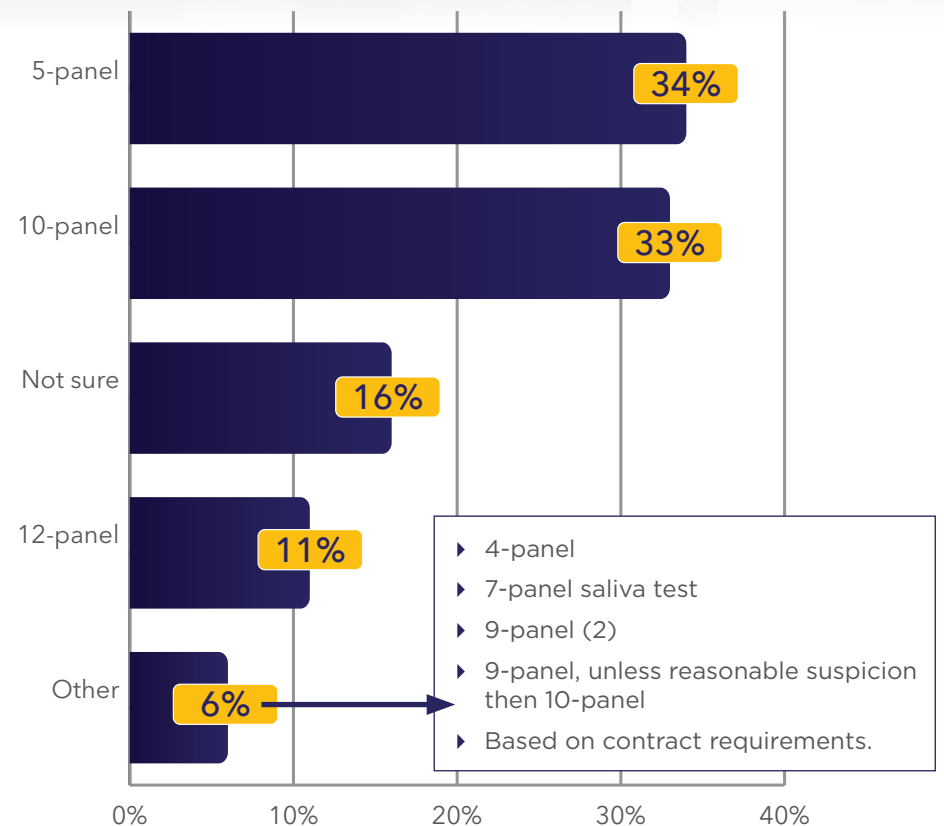


## TAKEAWAY 6: EMPLOYERS TEST FOR DRUGS IN ADDITION TO MARIJUANA

A drug test involves testing for a number of drugs, including marijuana. Employers that are required to test under DOT regulations must use a 5-panel test. They can also test for additional drugs under their company policy. Federal or state contracts or state laws may also require an employer to test for certain drugs. When employers are not required to use a panel required by state or federal regulations, they can use their own drug testing panel. Employers that do not wish to test for marijuana can work with a lab to have it removed from the panel or not take action based on the marijuana test results.



### WHAT DRUG PANEL DOES YOUR COMPANY USE TO TEST EMPLOYEES? (SELECT ONE)



n=108

## COMMON TESTING PANELS

### 5-panel test

1. Marijuana
2. Cocaine
3. Amphetamines (Amphetamine, Methamphetamine, MDMA, MDA)
4. Opioids (Codeine, Morphine, 6-AM (Heroin), Hydrocodone, Hydromorphone, Oxycodone, Oxymorphone)
5. Phencyclidine (PCP)

### 10-panel test

1. Amphetamines (Amphetamine, Methamphetamine, MDMA, MDA)
2. Barbiturates
3. Benzodiazepines
4. Cocaine
5. Marijuana
6. Methadone
7. Methaqualone
8. Opioids (Codeine, Morphine, 6-AM (Heroin), Hydrocodone, Hydromorphone, Oxycodone, Oxymorphone)
9. PCP
10. Propoxyphene

### 12-panel test

1. Amphetamines (Amphetamine, Methamphetamine, MDMA, MDA)
2. Barbiturates
3. Benzodiazepines
4. Cocaine
5. Marijuana
6. Methadone
7. Methaqualone
8. Tramadol
9. Demerol
10. Opioids (Codeine, Morphine, 6-AM (Heroin), Hydrocodone, Hydromorphone, Oxycodone, Oxymorphone)
11. PCP
12. Propoxyphene





## EXPERT TIP

### TESTING PANEL CONSIDERATIONS

A decision on which testing panel to use will depend on federal or state requirements as well as any concerns employers have about use of a particular drug by employees.

#### Drug testing panel checklist

- Are we required to follow federal drug testing laws for safety-sensitive industries?
- Do we have a federal contract? If so, does it require testing with a specific panel?
- Do we have a state contract? If so, does it require testing with a specific panel?
- Are we complying with a voluntary state drug-free workplace law? If so, does it require testing with a specific panel?
- Is there a particular drug that is a concern in our community?
- Is there a particular drug that is a concern in our workplace?
- Is a particular panel recommended by our drug testing lab?

If you checked a box relating to a required panel, this is the panel that must be used. If you checked boxes relating to drugs of concern or lab recommendations, you may work with your drug testing lab to use a panel that meets your workplace needs.



A person wearing a red coat is shown from the chest down, holding a yellow pill bottle in their right hand and several white pills in their left hand. The background is a blurred red surface, possibly a car door. A dark blue rectangular box with white text is overlaid on the image.

“

*Ideally, I would like to take marijuana off of the panel for pre-employment and randoms but test for it post-accident and for reasonable suspicion.*

”

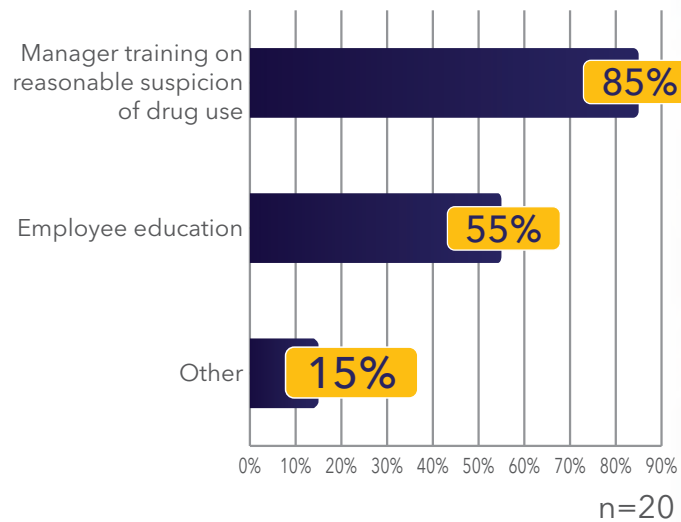
Survey Participant

## TAKEAWAY 7: EDUCATION CRITICAL WHEN TESTING ISN'T CONDUCTED

Regardless of whether employees are tested for marijuana or other drugs, an employer must provide a safe workplace. Employers primarily use supervisor training and employee education to support workplace safety when marijuana testing isn't conducted.

### WHAT IS YOUR EMPLOYER DOING TO ENSURE SAFETY ISN'T COMPROMISED BY MARIJUANA USE? (SELECT ALL THAT APPLY.)

*\*Includes respondents who indicated their company currently does not test for marijuana*





## EXPERT TIP

### SUPPORTING WORKPLACE SAFETY

For decades, drug testing has been seen as a way to support workplace safety. It can determine whether applicants or employees have been using drugs, and having to face the consequences of a positive test can deter drug use. Testing is not always an option, however, and an employer may determine that testing is not the best use of company time or resources.

When testing is not conducted, most employers turn to **supervisor training** to ensure that workers are not impaired by drugs or alcohol. Supervisors are not expected to diagnose alcohol- and drug-related problems or initiate counseling because these tasks require specialized expertise. However, supervisors can be trained to spot the signs that indicate that a worker is under the influence of drugs or alcohol. Training can also include information on proper documentation of these signs and what a supervisor should do after the signs have been observed.

**Employee education** is also an important tool for employers. When marijuana is legal under state law, an employee may not automatically understand what restrictions are in place at work. In all states, an employer can prohibit employees from being impaired by marijuana at work or from possessing, using, or selling marijuana in the workplace, on company property, and on work time. When this is part of an employer's workplace drug and alcohol policy, employees should be aware of it. In addition, employees should be aware of resources that are available if substance abuse becomes an issue. An employer's employee assistance program (EAP) and community resources should be well-publicized.





## EXPERT TIP

### TRAINING TIPS

#### Both employees and supervisors should have information on:

- ▶ The company's drug and alcohol policy
- ▶ The company's stance on marijuana use
- ▶ The impact substance abuse makes on the workplace
- ▶ What to do when substance abuse is suspected
- ▶ Where to go if help is needed

#### Supervisors should also be trained on:

- ▶ The physical signs of substance abuse
- ▶ Performance and attendance patterns that indicate an employee may have a problem with substance abuse
- ▶ How to properly document the signs of substance abuse
- ▶ When to send employees for drug testing based on reasonable suspicion of impairment due to substance abuse
- ▶ Legal issues that can arise if drug testing is conducted improperly
- ▶ Referring employees to available assistance, such as counseling or an EAP



# EMPLOYER QUOTES

## WHAT EMPLOYERS ARE SAYING

EMPLOYERS OFFERED THEIR COMMENTS AND OPINIONS ON MARIJUANA TESTING IN THE PULSE POLL SURVEY.

“You can't test for under the influence and we don't care if they smoke on weekends. Also, hiring challenges [are a consideration].”

“[Marijuana] should be removed from our drug testing panel. Cannabis is legal for personal use in Arizona so it is [unwise] to deny employment for using a substance that is essentially harmless as well as perfectly legal to consume.”

“Consider impairment at work instead of prescreening.”

“Saliva testing for marijuana is not effective which is frustrating. Obviously, it is becoming a much larger issue to determine if the person is under the influence or has used previously. This makes HR's job all but impossible.”

“The states should never have legalized marijuana without a test for under the influence. This affects workplaces and driving under the influence.”

“We are a safety sensitive industry. Positions that are not operating heavy equipment, driving, or making financial decisions would be as negatively impacted by marijuana use outside of work.”

“We did remove testing for marijuana for pre-employment screening in April of 2022.”

“We are a safety-sensitive company and perform dangerous tasks that require our employees to not be influenced by drugs or alcohol.”

“We test for marijuana, but do not hold it against employment. We have the conversation about not allowed to do it before or after work. Or being under the influence at work.”

# BOTTOM LINE

## SHOULD WE TEST FOR MARIJUANA?

Marijuana policies are not going to get less complicated any time soon. States continue to legalize marijuana, and each state crafts its law a little differently. To stay on top of this complex issue, employers need to:

- ▶ Review their marijuana testing policy
- ▶ Understand any federal requirements they must follow
- ▶ Be aware of applicable state marijuana and drug testing laws
- ▶ Review employee job descriptions for safety-sensitive job duties
- ▶ Be aware of any workplace safety issues relating to drug and alcohol use
- ▶ Update their policy
- ▶ Share their policy with employees

SITUATION	TEST FOR MARIJUANA?	CONSIDERATIONS
We are covered by a federal law requiring drug testing	Yes	Some employees, such as truck drivers or pipeline workers, may be covered by federal regulations that require them to take drug tests and forbid marijuana use. When this is the case, federal regulations must be followed.
Workers have safety-sensitive job duties	Lean toward yes	If employees might pose a danger to themselves or others while impaired, testing for marijuana is recommended when it's allowed by state law.
Drug use has been a problem in our workplace	Lean toward yes	If workers have been using, growing, or selling drugs at work, testing (when allowed under state law) can be one way to deter employees from breaking company policies prohibiting this.
Supervisors have had reasonable suspicion training	Maybe	Supervisors should be trained to spot signs of impairment and understand what to do when those signs are observed. Testing could be used to support the suspicion that an employee is impaired by drug or alcohol use.
Safety is not an issue	Probably not	When employees have desk jobs that pose a low probability of safety issues, marijuana testing is less important. These workers can be made aware that they must meet job expectations and should know about your workplace drug and alcohol policy which likely prohibits marijuana use in the workplace, on company time, and in company vehicles.
State law prohibits it	Definitely not	Unless they're following federal regulations that require testing, employers always need to follow state drug testing and marijuana laws. When these laws prohibit testing, cannabis can't be included on the drug testing panel.

# ABOUT THE AUTHOR

Terri Dougherty, PHR, SHRM-CP, has been an Editor with J. J. Keller & Associates, Inc.'s HR Publishing Team since 2011. She's driven by dedication to assisting others, which is shown in her customer-centric approach to answering questions and finding solutions, as well as her contributions to community and professional organizations.

Terri oversees the *Everyday Drug & Alcohol Program Management* manual and *Employee Health and Wellness Training Advisor/LivingRight*. In addition, she directs the content for J. J. Keller's employment law posters.

As a member of local and national Society for Human Resource Management (SHRM) chapters, Terri shares insights on marijuana laws and drug testing, addressing audiences at various industry events.



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