

Marijuana in the workplace: Are you prepared for the coming storm?

Now is the time and today is the day to prepare the workplace for the incoming tide of marijuana legislation.

By Cheryl Brown Merriwether | October 08, 2021 at 09:59 AM



Because state laws vary widely and change frequently, employers may hesitate to take adverse action against employees simply because of a positive marijuana test. (Photo: Bloomberg)

The year was 2019. B.C. (Before COVID). I was attending a local HR networking/professional development association meeting. The group included 100 HR practitioners, consultants and vendors from companies of all sizes and industries, both public and private. The facilitated program was a town hall discussion between seasoned professionals around pressing HR topics.

One attendee shared an interesting story about worker's compensation. Another raised a question about corporate ethics that led to a lively discussion about conflict of interest. And then it came...a question that instantly shifted the mood. "I work for a multi-state employer. We have offices in four states and Puerto Rico. We have a problem with employees using marijuana. A couple are using it for medical reasons, but others use it when they're not at work for recreational purposes. How are you guys handling things like this?"

Related: [Fast-changing cannabis landscape raises numerous questions for employers](#)

No one spoke for the longest time. The deafening silence from this group struck me as awkward, yet it was clearly palpable. And because I am an HR professional who also works in the field of substance abuse, I found it remarkable and fascinating to observe. I remember thinking, "Why is no one speaking up? Surely, they know what is coming their way! Do they not realize how important this question is? Is no one paying attention to what is happening around this issue?"

And then finally, from the back of the room, one brave soul rose to her feet and stated the following: "Well, our company has some of the same

problems. We handle each case as it comes up the best way we can because they're all so different depending on the person, what their job is, what happened and what state they work in. It just depends on the situation. We can't treat them all the same. We spend a lot of time talking to our legal team whenever marijuana problems pop up."

Now fast forward to 2021 and 18 months into a global pandemic. According to the CDC, more than 93,000 individuals lost their lives in 2020 due to drug overdoses. Despite the enormity of this number, it is still difficult to comprehend the magnitude, impact and consequences of the day-to-day challenges of individuals, families, communities, and workplaces. These deaths represent a pandemic within the pandemic. They are separate from, and in addition to the more than 659,000 and climbing deaths due to COVID 19.

Incoming storm

Hurricane season begins in June and runs through the end of November. And so far, this year Fred, Grace, Henri, Ida, and Larry have reminded us of the importance of preparing for coming storms.

With that in mind, it seems like a good time to remind my HR colleagues and friends that now is the time and today is the day to prepare the workplace for the marijuana storm that is coming our way. Like hurricanes, this storm has a name. Sometimes it goes by the name of "Mary", while others call it "Jane". This genie is not going back into the bottle.

The use of cannabis or marijuana as a drug is not new, but can be traced back more than [2,500 years](#). But the current storm that is threatening the US workplace began in November of 2000, when voters in Colorado amended the State Constitution to allow for medical use of marijuana. 36 other states, and the District of Columbia, then followed Colorado's lead and have also legalized marijuana for medicinal purposes. Some 12 years later, in 2012, Colorado and Washington State became the first of now 18 states, two territories, plus D.C. to legalize the recreational use of marijuana...with more likely to follow.

Evidence suggests the rapidly expanding state-level legalization of marijuana accurately reflects the will of the American people. An April 2021 [Pew Research Study](#) found 91% of U.S. adults believe marijuana should be legal in some form. 60% favor medicinal and recreational use, while 31% favor medicinal use only. Only 8% oppose any form of legalization.

Marijuana is by far the most used illicit drug. A July 2019 [Gallup Poll](#) reported that 2% of U.S. adults, and about 15 % of teens, (or approximately 24 million Americans over the age of 12) said they smoke marijuana. SAMHSA ([Substance Abuse and Mental Health Services Administration](#)) reports that adults (age 26+) are the most frequent users of marijuana. And, given that [70% of illicit drug users](#) are employed either full or part-time, the growing use of marijuana should be recognized by HR professionals for what it is...a rapidly growing storm that dramatically impacts the workplace.

How does this affect the workplace?

In 1970, the Federal Government's Controlled Substances Act classified marijuana as a Schedule 1 drug, meaning that it has a high potential for abuse with no acceptable medical use. To help put that in perspective, in addition to marijuana, other Schedule 1 drugs include heroin and cocaine.

Because marijuana is illegal at the federal level, workplace policies regarding marijuana use are primarily dictated by state law. This becomes particularly challenging for multi-state employers, in general, as well as for companies that are subject to the [Drug-Free Workplace Act](#). The Drug-free Workplace Act was passed by Congress in 1988 and requires some federal contractors and all federal grant recipients to establish drug-free workplaces as a pre-condition of receiving the federal grant or contract.

As any HR talent acquisition or recruiting practitioner knows, recruiting, hiring, and retaining talented employees is challenging enough under ideal circumstances. The challenge has only intensified during the COVID-19 pandemic. Consequently, finding qualified people who can pass a pre-employment drug screen is a matter of serious consideration and discussion.

The [Journal of Addictive Disease](#) reported that since the onset of COVID-19, individuals using medical marijuana as part of a mental health treatment protocol increased their use of marijuana an average of 91%. During this same period, and always, employers are required to provide and maintain a safe working environment, minimize risk, and reduce loss that can result from employees working while impaired or under the influence of marijuana.

Most states continue to support an employer's right and obligation to maintain drug-free workplaces. In practice this means employers are not

required to accommodate the sale or use of marijuana in the workplace; and employees are likewise prohibited from using or being under the influence of marijuana while at work.

However, it is also a fact that absent a pre-employment drug screen, recreational or medical users of marijuana, may never be recognized unless identified through random testing that is administered because of reasonable suspicion or post-accident drug testing. Consequently, HR practitioners must work closely with legal counsel to identify and implement the most appropriate, cost effective and legally compliant, marijuana policies and procedures.

Employers also recognize that currently there are no breathalyzers or blood tests available that measure marijuana impairment. This is particularly troubling given that today's marijuana is considerably more potent than in years past. In fact the National Institute for Drug Abuse states in the [Marijuana Potency Project](#) that some marijuana concentrates sold by dispensaries have THC (psychoactive) potency levels today ranging anywhere from 16 % to 90% compared to an average of 6% THC in 2008.

Despite this fact, because state laws vary widely and change frequently, employers may hesitate to take adverse action against employees simply because of a positive marijuana test. Employers have learned that a positive drug test alone does not prove the employee was impaired while at work. In fact, some states even prohibit an employer's refusal to hire an applicant simply because of a positive drug test.

On the legislative horizon...

While President Biden has expressed strong opposition to adult-use legalization of marijuana, he also indicated that he would support federal decriminalization of marijuana. In 2019, now Vice-president Kamala Harris was the lead Senate sponsor of the Marijuana Opportunity Reinvestment and Expungement Act (MORE Act). Had it passed, this bill would have decriminalized marijuana.

Specifically, the MORE Act sought to remove marijuana from the list of scheduled substances under the Controlled Substances Act, remove the federal prohibition of marijuana while encouraging the elimination of criminal penalties for individuals who manufacture, distribute, or possess marijuana. The Marijuana Opportunity, Reinvestment and Expungement (MORE) Act passed the House, but did not advance in the Senate.

In July of 2021, Senate Majority Leader Chuck Schumer, along with several other senators introduced the Cannabis Administration Opportunity Act (CAOA). The purpose of this legislation was to remove marijuana from Schedule 1, decriminalize marijuana use, allow persons incarcerated for marijuana offenses to petition for resentencing, while further reducing the negative consequences that have largely impacted communities of color.

Senator Schumer is quoted as saying that “not only will this legislation remove cannabis from the federal list of controlled substances, but it will also help fix our criminal justice system, ensure restorative justice, protect public health, and implement responsible taxes and regulations.”

September 1st marked the end of the [public comment period](#) for the Cannabis Administration Opportunity Act (CAOA). Advocates and

coalitions, both for and against this bill weighed in, and time will tell the outcome.

Preparing for the storm

Individuals living in areas regularly impacted by severe weather speak emphatically of the necessity and benefits of preparing for seasonal storms. Regardless of the time of year that the storm hits, one is wise to anticipate the inevitable. It is not will the storm hit, but when.

Consequently, at the very least residents learn to keep a toolkit handy that includes things like non-perishable food, water, flashlights and battery-operated radio with extra batteries. Depending on the possible duration and severity of the storm, one should also have a first aid kit, medications, and copies of any important personal or legal documents. We gather fuel for heaters or generators, fill up our cars with gas, pull cash out of the ATMs, and make sure our cell phones are fully charged.

Marijuana in the workplace is convoluted, confusing and hard to navigate. The good news is that there are resources available to help employers prepare for the storm. The Drug-Free American Foundation and the National Drug-Free Workplace Alliance have prepared a [**Marijuana in the Workplace Toolkit**](#). This 10-page document is replete with valuable information designed to help employers review their programs, policies, rules and procedures in relation to applicable laws, regulations and statutes.

Other organizations, such as the International Center for Addiction and Recovery Education (ICARE) provide employers with access to Certified Addiction Awareness Facilitators (CFAA's) and Certified Professional Recovery Coaches (CPRC's). These professional facilitators and coaches are qualified to deliver webinars, workshops and other training to educate the workforce about the use of marijuana, alcohol, and other substances in the workplace.

Cheryl Brown Merriwether, SHRM-SCP, SPHR, CPRC, CRSS, CM Vice President, Executive Director, [**International Center for Addiction & Recovery Education**](#)[™] (ICARE) brings over two decades of experience in corporate Human Resource management, addiction recovery awareness, and adult education to ICARE. As Executive Director she oversees and directs the administration, operations, and student support services for ICARE's three divisions. In addition to being an Associate Faculty Member at the University of Phoenix, Cheryl is also the 2021 President of GOSHRM and serves on the Board of Directors for Project Opioid, Central Florida.