WORKPLACE EXPOSURE

GROWING CANNABIS USE RAISES INJURY, LIABILITY RISKS

AS STATES relax their laws and cannabis use becomes more mainstream, employers are increasingly exposed to costly workers' compensation claims and lawsuits if employees report to work impaired or indulge during a break.

Cannabis can affect reaction time, coordination, concentration and judgment, increasing the potential for accidents, particularly among workers who drive, operate machinery or perform hazardous tasks. These effects can put employees, coworkers and third parties at risk of injury.

While employers may tolerate off-duty use, consumption shortly before or during work can create serious safety and liability exposures.

Changing laws complicate policies

As of 2026, 24 states and Washington, D.C., permit recreational marijuana use. Approximately 40 states allow medical cannabis under varying restrictions.

Some states prohibit employers from discriminating against workers for lawful off-duty cannabis use or restrict pre-employment marijuana testing.

In April 2026, the Department of Justice reclassified products covered by qualifying state-issued medical marijuana licenses from Schedule I to Schedule III under the Controlled Substances Act. This moved those products from the same schedule as heroin to a category for substances with accepted medical uses and that are only mildly addictive.

Employers are still allowed to prohibit employees from working while under the influence of cannabis or any other substance.

Workers' comp complications

Consider a printing press operator who uses marijuana shortly before work and subsequently suffers a hand injury in an industrial printer.

A post-accident drug test may reveal cannabis use, but proving impairment is another matter. Unlike alcohol, evidence of marijuana use can remain detectable for days or weeks after its intoxicating effects have worn off, depending on the testing method and frequency of use.

In many states, a positive test alone cannot be used to justify denial of workers' compensation benefits. Employers or insurers may need evidence that impairment caused or contributed to the accident.

Disputes over impairment can lead to litigation, additional medical examinations and higher claims costs.



Third-party liability risks

The consequences can be more severe when an impaired employee injures someone outside the company or damages another party's property.

Consider a delivery driver who uses marijuana during a break and becomes drowsy while driving. If he veers off the road and crashes into several parked cars, injuring two people, his employer could face costly litigation.

If plaintiffs' attorneys discover evidence of impairment, they may argue that the employer failed to enforce safety policies, properly supervise workers or respond to warning signs. Large verdicts could exceed a company's primary liability insurance limits.

How employers can reduce their exposure

Establish clear policies – Prohibit workplace impairment and emphasize that cannabis should not be consumed before work, during work hours or on breaks.
Review drug testing – Ensure any employee drug testing complies with applicable local, state and federal laws.
Train supervisors – Teach managers to recognize and document signs of potential impairment, including poor coordination, delayed reactions and unusual behavior.
Prioritize hazardous jobs – Establish additional safeguards for drivers, equipment operators and other employees in safety-sensitive roles.
Educate workers – Explain how cannabis affects performance, judgment and safety and how edible products can have delayed and prolonged effects.
Document incidents – Maintain records of suspected impairment, safety violations and corrective actions to support any necessary employment decisions.
Review insurance – Have in place a general liability policy with umbrella coverage to cover incidents involving employees and third parties or their property.

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