

## Drug Test Or Not To Drug Test

Are your random drug screenings worth the time?

There are not many studies that suggest having a random drug testing policy in place automatically makes your workplace a safe working environment. Some insurance risk specialists suggest these policies could create a bigger headache for companies than they are worth. So, what is the best direction for a company to take now that medicinal/recreational marijuana is legal in many states?

### Employers

*“As far as Missouri goes, they can take any stance they want on medicinal/recreational marijuana, but their policy needs to be in writing. (This of course doesn’t count for any jobs that are federally regulated, like interstate truck drivers. The federal government tests for marijuana.) The three courses of action are as follows:*

- 1. Test for marijuana and don’t allow exceptions for positive tests.** *This would mean a non-hire decision on pre-employment tests and that employment action (discipline or termination) would need to be taken on any positives for a post-accident or a random drug test. The employee manual and hiring policy should state that there are no exceptions for medical marijuana, even if the employee has a prescription card.*
- 2. Test for marijuana but allow an exception for medical use.** *This would mean that an applicant could be hired if he/she could show that they had a valid medical marijuana card at the time of their test. This also means that an employee who had a positive post-accident or random test – and had a medical marijuana card – could not to be disciplined or terminated (unless the employer had reason to believe they were “high” during work hours). This policy would need to be stated in the employee manual and the hiring policy.*
- 3. Remove marijuana entirely from the employee drug testing panel.** *This would be the simplest policy to adopt because the employer does not have knowledge of the employee’s/applicant’s marijuana use. The drug testing policy – and hiring policy -- would need to indicate that drug testing for marijuana is not performed. All drug testing policies should contain a list of all drugs that are tested for.*



*An issue arises with what the workers' compensation insurance carriers have to say about this. My consistent experience is that carriers have little to say about any employer's drug testing program UNLESS such drug testing is required by law (like pilots or interstate truck drivers).*

*Theoretically, in Missouri, a work comp carrier can reduce a permanency settlement by up to 50% if an employee receives a positive drug test. In practice, however, this rarely works out because there is supposed to be a causal link between the drug use and the accident. In the large, complex cases, the claimant hires a lawyer who can successfully argue that there was no causal link. That leaves only the smaller cases where the claimant does not get a lawyer after the reduction of benefits, so the savings to the carriers is miniscule.*

*The policy is up to the employer's choice, and many are choosing not to test for marijuana or to allow an exception for prescription use."*

Many employers who choose to continue to drug test have taken marijuana out of the screeners panel and have not gone out of their way to inform their employees of that.

They have also decided to write a policy that addresses drug and alcohol use on company time and on the premises. Please contact Osha Compliance Consultants LLC for that policy.