

FREQUENTLY ASKED QUESTIONS ABOUT MARIJUANA IN THE WORKPLACE

AGENCIES SHOULD NOT RELY ONLY ON THIS GUIDE. Always refer to relevant agency policies, [State HR policies](#), and any applicable collective bargaining [agreement](#) for specific information. If you have additional questions, please contact the [CHRO](#) or DOJ's Labor & Employment Section.

How does the legalization of recreational marijuana change the workplace?

It doesn't. Remember, an employee cannot report to work impaired. The Drug-Free Workplace Act of 1988, which by DAS Statewide Policy applies to all employees, is unchanged by the legalization of recreational marijuana. Under the Drug-Free Workplace Act, employers must prohibit in the workplace the unlawful manufacture, distribution, dispensation, possession or use of controlled substances, including marijuana that is otherwise lawful under state law

Does the law allow employees to consume marijuana on breaks or lunch hours?

The legalization of recreational marijuana on July 1 does not allow employees to report for work impaired or to possess or use controlled substances in the workplace.

If an employee appears impaired, review the appropriate agency policies, State HR policies and any applicable collective bargaining agreement for guidance. You can also contact the CHRO or DOJ Labor & Employment section with questions.

What is considered the "workplace"?

The workplace is all property and facilities owned, leased or rented by the Oregon state government, including grounds, buildings, vehicles and any other equipment and any site where an employee performs work.

Is marijuana allowed in an employee's personal vehicle?

An employee cannot have marijuana in the workplace (defined above). If the employee's personal vehicle is parked within an area defined as the workplace, the rules governing a drug free workplace apply. If an employee parks in a private lot not under the control of the Oregon state government, that employee is subject to any applicable restrictions of the property owner and the laws applicable to marijuana in vehicles.

Are employees allowed to have marijuana-related paraphernalia in the workplace?

No. An employee cannot have marijuana paraphernalia in the workplace (defined above).

What if I receive a complaint about an employee's clothes or hair smelling of marijuana?

As with any other scent-related complaint, employees may be asked to adhere to any scent-free or scent-sensitive workplace directive. Most agencies routinely email to staff the agency's expectation for

scents and hygiene in the workplace. Please let the CHRO Policy Unit know if you need sample language.

How do agencies determine if an employee is “impaired”?

When a supervisor receives a complaint or witnesses abnormal behavior of an employee, in most cases it is advisable to manage the employee’s behavior or conduct (rather than assuming the cause of the employee’s behavior or perceived impairment). In some situations, reasonable suspicion testing may be permitted, such as where reasonable suspicion testing is permitted by the applicable collective bargaining agreement. Agencies should seek advice before testing an employee. It is recommended and by the terms of some collective bargaining agreements required, that two managers assess the employee to determine if the employee is impaired. It is important that supervisors document their observations, any conversations with the employee and note any witnesses.

How long does marijuana remain in the system after consumption?

Studies show marijuana may stay in someone’s system for up to 30 days. However, many factors determine the duration such as the amount used, the way it’s consumed and the strength of the marijuana.

If an employee smokes marijuana, will this jeopardize their employment?

It may, under some circumstances. Among them, the Oregon state government follows the Drug-Free Workplace Act of 1988. Under the Drug-Free Workplace Act, if an employee’s use or conduct involving marijuana occurs in the workplace and results in a criminal drug statute conviction, he or she must notify the employer no later than 5 days after the conviction. Depending on the circumstances, an employee may be subject to discipline up to and including dismissal.

If an employee in a position subject to drug testing tests positive for marijuana use, depending on the position, regulations and circumstances, the employee may be subject to discipline up to and including dismissal. If an agency is unsure, contact CHRO or DOJ’s Labor & Employment section.

Current THC level testing can show employers only that an employee has THC in their system, not the level of their impairment. How can an agency assess impairment for the purposes of discipline?

In most circumstances, an employer should focus on an employee’s performance or conduct (not the possible cause of an assumed impairment). An employee who is not performing acceptably, or who engages in misconduct, is subject to performance management. An employer may manage and, if necessary, discipline an employee for poor performance and misconduct based on the employee’s at-work behavior or conduct. That principle is unchanged by the legalization of recreational marijuana.

At this time there is no accurate testing to discern the level of impairment. However, if the agency determines an employee is unable to perform the duties of the position and the decision is made to send the employee home, make the necessary arrangements to have the employee arrive home safely. Do not allow an impaired employee to drive. If you have a situation where you suspect an employee may be impaired and you are unsure what to do, contact the CHRO or DOJ’s Labor & Employment Section.

If an agency suspects an employee is impaired, can it require the employee to submit to a drug test?

Generally no. An agency may require a mandatory drug test only of employees (a) in classifications/positions (unrepresented) who have been designated by the agency's appointing authority and only if the agency has in place a policy with a drug testing program; or (b) for represented employees, if a collective bargaining agreement permits drug testing. Employees whose positions require possession and use of a commercial driver's license (CDL) are subject to drug tests as permitted and required by law.

Can an employee living in housing owned by the state or federal government grow, consume, use or store recreational marijuana on the property?

Agencies should review language in agreements with the federal government to determine if there is language in the applicable agreement requiring occupants of and visitors to the premises to adhere to all state and federal laws. Agencies should seek advice if they have questions about what their agreements with government partners require. Agencies have the authority to create a policy to restrict the use of controlled substances on the state-owned premises.

If an employee has a prescription for medical marijuana and uses it as prescribed, can they be disciplined?

Possibly. The legalization of recreational marijuana does not affect employers' obligations with regard to medical marijuana (which is not required to be accommodated). If an employee arrives at work and appears impaired, the agency will need to determine if the employee is able to work and, if not, arrange for the employee to make it home safely or, if appropriate, consider performance management or discipline. If an agency sends an employee home, do not allow the employee to drive.

If the employee is required to possess and maintain any type of licensing for the employee's job that prohibits the use of marijuana, the agency will need to follow the necessary procedure and assess possible discipline, if any.

If a doctor prescribes marijuana extract or oil that has an odor, can employees use it at work?

No. Consumption or use of marijuana, even for medicinal purposes, is not permitted in the workplace.

Vicodin is considered a controlled substance, why doesn't it violate the Drug-Free Workplace policy?

The Controlled Substance Act categorizes substances in Schedules I through V. Vicodin is considered a Schedule II controlled substance which means while it can be addictive, it is recognized as a prescription drug by the federal Food and Drug Administration (FDA). Marijuana is a Schedule I controlled substance. These substances are considered highly addictive and are not recognized as a prescription drug by the FDA. Regardless, if an employee has a prescription for Vicodin and reports to work impaired, the employee could be sent home.

If an employee is in an accident while on the job, is the employee required to submit to a drug test?

Maybe. If the employee's classification/position is one that is subject to testing permitted by either the agency's Drug Testing policy or the applicable collective bargaining agreement, the agency has the ability to require a drug test. If there are questions, call DOJ's Labor & Employment section to ensure both the employee's and agency's rights are protected.

Can agencies develop their own Drug-Free Workplace or Drug Testing policies?

Yes. If there are specifics unique to the agency not addressed in the State HR Policy, agencies have the authority to create their own policies. The CHRO Policy, Labor Relations and DOJ's Labor & Employment Section should review the policy(ies) prior to implementing.

Helpful links:

OLCC's Marijuana "What's Legal":

<http://whatslegaloregon.com/>

OLCC's Recreational Marijuana FAQs:

<http://www.oregon.gov/olcc/marijuana/Pages/Frequently-Asked-Questions.aspx>

BOLI's Website:

<http://www.oregon.gov/BOLI/pages/index.aspx>

Collective Bargaining Agreements:

<http://www.oregon.gov/DAS/CHRO/pages/cbas.aspx>

State HR Policy 50.000.01 – Drug-Free Workplace (currently being updated):

<http://www.oregon.gov/DAS/CHRO/docs/advice/p5000001.pdf>

State HR Policy 50.000.02 – Drug Testing (designated classifications/positions):

<http://www.oregon.gov/DAS/CHRO/docs/advice/p5000002.pdf>

CDL Testing OAR 105-050-0003:

http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_105/105_050.html

Drug Testing Final Applicants OAR 105-050-0004 (certain classifications/positions):

http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_105/105_050.html