

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.

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.

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, they 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.

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 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 or while performing the work on behalf of the state.

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). 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:

<https://www.oregon.gov/das/HR/Pages/LRU.aspx>

State HR Policy 50.000.01 – Drug-Free Workplace:

<https://www.oregon.gov/das/Policies/50-000-01.pdf>

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

<https://www.oregon.gov/das/Policies/50-000-02.pdf>

Drug Testing Final Applicants OAR 105-050-0003 (certain classifications/positions):

<https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=544>