

Marijuana and its Effects on the Staffing Industry

By Tim Szuhaj

More American workers are testing positive for drugs than they have in the past 12 years, according to a recent study conducted by Quest Diagnostic.ⁱ Colorado and Washington, the first two states to “legalize” marijuana, have substantially surpassed the national average in this growing trend of positive drug test results for marijuana. In fact, Colorado saw an 11% increase and Washington saw a 9% increase in positive drug tests for marijuana as compared to just a 4% increase in the national average.

This trend is certainly impacting the Staffing Industry. For example, a Washington State staffing company recently reported that candidate drug screening failures rose to 30% following the legalization of weed as compared to a 20% failure rate pre-legalization.

Why does this matter to the staffing industry, especially in states with more liberal laws with respect to cannabis use? Simply put, despite the easing legal restrictions at the state and local levels, marijuana is still not legal under Federal law. Further, most companies not subject to statutory zero tolerance policies are free to adopt such policies and, in fact, many industry sectors do adopt zero tolerance policies driven mainly by workplace safety concerns. So, staffing companies will likely continue to screen candidates’ drug use for the foreseeable future, albeit in a more laid back and receptive environment with respect to use of marijuana outside of the workplace.

To complicate matters further, the nature and scope of the “legalization” of cannabis use varies widely from jurisdiction to jurisdiction. The impact of legalized recreational use and medical use are also very different. As noted above, recreational use can still result in disqualification of a candidate. Authorized medical use, however, calls into play disability statutes and the issue of reasonable accommodations.



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What are staffing companies to do? The best practice is to develop a policy to address the issue. Generally, the policy should create awareness and educate both candidates and employees about the legal landscape and the applicable drug screening policies and procedures. In particular, the policy may, at a minimum, include a list of acceptable activities, screening procedures and enforcement provisions. Finally, the policy should be communicated regularly to candidates, employees and, yes, to clients as well.

-- Tim Szuhaj is a Member of Becker LLC, a mid-market law firm, and is Chair of the Business Services Group and Co-Chair of the firm's Staffing Group. Under the firm's Business Services model, Tim counsels staffing industry clients with respect to growth strategies, mergers and acquisitions, risk management and indemnity issues, and other operational issues. <http://www.questdiagnostics.com/home/physicians/health-trends/drug-testing>

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