

# It may be time to stop testing employees for marijuana



In this competitive hiring environment, you may need to be a little less picky about the applicants you accept. For an increasing number of employers, that includes dropping their marijuana testing requirement and being open to hiring people who may have used marijuana (or currently use it off-duty).

Last year, 3.9% of workplace drug tests came back positive for marijuana, according to Quest Diagnostic. That's a 20-year high, so to speak, up from 3.6% in 2020 and 2.5% five years earlier. In part, that positive rise is due to the legalization of medical marijuana in 37 states and recreational cannabis use in 18 states. In Congress, the House last month voted to make marijuana legal nationwide, but the Senate is unlikely to go along this year.

Yet Quest reports that fewer companies these days are testing their employees for THC, the chemical component in marijuana that delivers a high. Many employers have decided it's most practical to stop testing for marijuana in most locations. Amazon, the country's second largest private employer, announced last year that it stopped testing job candidates for marijuana. The company says it still tests workers for other drugs and conducts "impairment checks" on the job.

An increasing number of employers endorse this idea.

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"Employers have to now ask themselves if testing for marijuana is really effective or necessary. I am of the opinion that most employers ought to be doing away with testing," says attorney Dan Kaplan of Foley & Lardner in Madison, Wis. He suggests employers who currently do testing reevaluate the "why" and true risk factors.



*Advice:* Unless you must drug-test to comply with safety laws or government contracting rules, consider dropping workplace testing for pot. If you do, be sure to revise your employee policies accordingly. Follow these tips:

**State that you will no longer routinely test** employees for marijuana. However, reserve some flexibility by stating you may test in some circumstances.

**Review your policies on workplace behavior.** You can and should have a policy that forbids employees from being intoxicated at work, whether from marijuana or any other substance. In no state where cannabis is legal are employers required to tolerate employees who are impaired while on the job.

**Add language to your no-smoking policy** as well, making clear it covers smoking or vaping marijuana in addition to tobacco.

**Cover all the ways in which marijuana may be consumed.** You should prohibit use and possession of edible cannabis products at work.

**Address medical marijuana.** Be sure your policies specifically state your commitment to abiding by state laws on medical marijuana usage in states where you conduct business.