



**Let's Roll With It**

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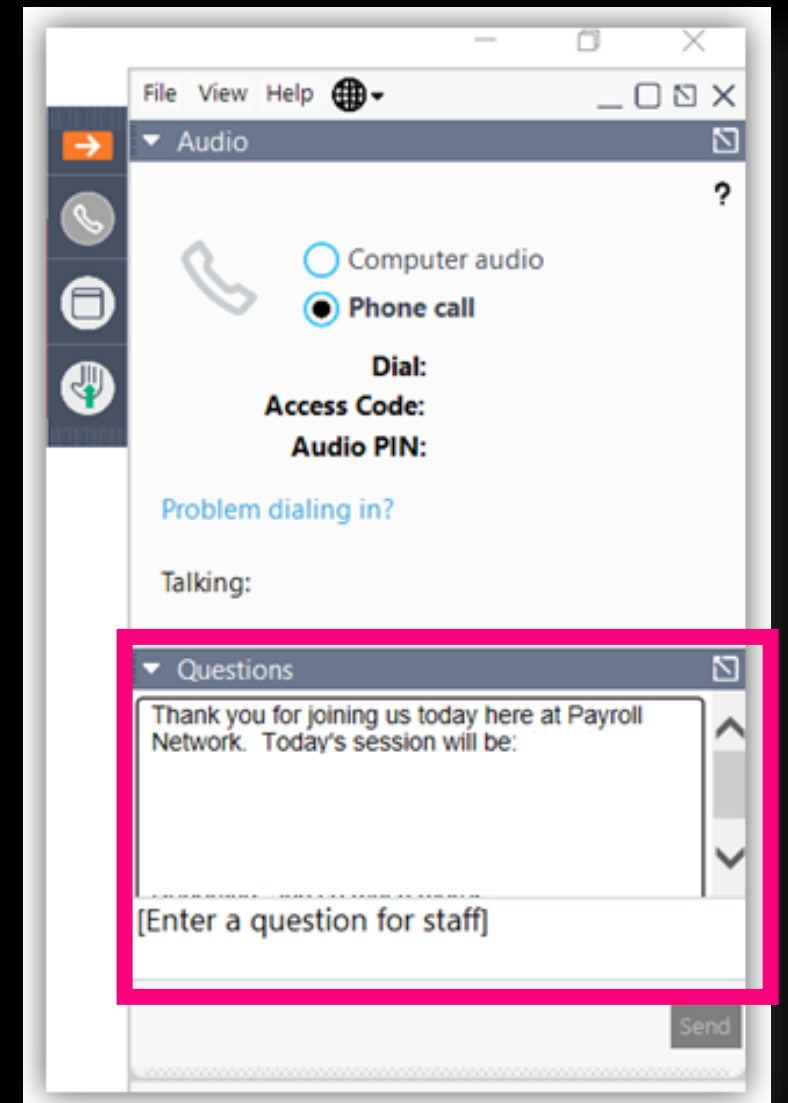
**Marijuana in the workplace**



- Webinar will be recorded
- All attendees will be placed on mute
- Ask questions!
- Survey will be sent after the webinar
- Handouts available
- Certified Course – polls!



# For Today's Session





- Legalization Key Points
- Testing Considerations
- Resources

# Agenda

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# Your Presenter's Today

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**Amy Miller**

- VP of Training
- Payroll Network/GovConPay



**Kyle Wade**

- VP of HR Services
- Payroll Network/GovConPay



## Legal Disclaimer

The information presented today is provided for educational purposes and should not be considered legal advice.

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The presentation and these materials do not represent the opinions of the presenter and those of Payroll Network.





**Poll 1**



**Marijuana use is legal for medicinal purposes everywhere in the United States.**



# Cannabis in the Workplace

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# Federal Stance on Cannabis



- Marijuana remains illegal on the federal level.
- According to a 2021 Gallup **poll** release, 68% of Americans support marijuana legalization.
- Legislation in the Works
  - Marijuana Opportunity, Reinvestment, and Expungement (MORE) Act
  - Cannabis Administration and Opportunity Act
  - States Reform Act
  - SAFE Banking Act of 2021

## Schedule I.—

- (A) The drug or other substance has a high potential for abuse.
- (B) The drug or other substance has no currently accepted medical use in treatment in the United States.
- (C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.



# October 6<sup>th</sup>, 2022

## I beg your pardon...

- Does not decriminalize the sale and distribution of marijuana at the federal level or the possession of it on federal land
- Will it remove barriers for seeking employment, housing and federal benefits?



**“No one should be in jail just for using or possessing marijuana,**

*...Sending people to prison for possessing marijuana has upended too many lives and incarcerated people for conduct that many states no longer prohibit. Criminal records for marijuana possession have also imposed needless barriers to employment, housing, and educational opportunities. And while white and Black and brown people use marijuana at similar rates, Black and brown people have been arrested, prosecuted, and convicted at disproportionate rates.”*

*President Biden*

# State Stance on Cannabis



- Varies on a state by state basis
- Varies on Medical vs. Recreational

## **Samples State Laws:**

- Can be unlawful to require applicants to submit a marijuana test as a condition of employment
- Unlawful for an employer to fail or refuse to hire a prospective employee because of the presence of marijuana detected via a drug test

# City Stance on Cannabis

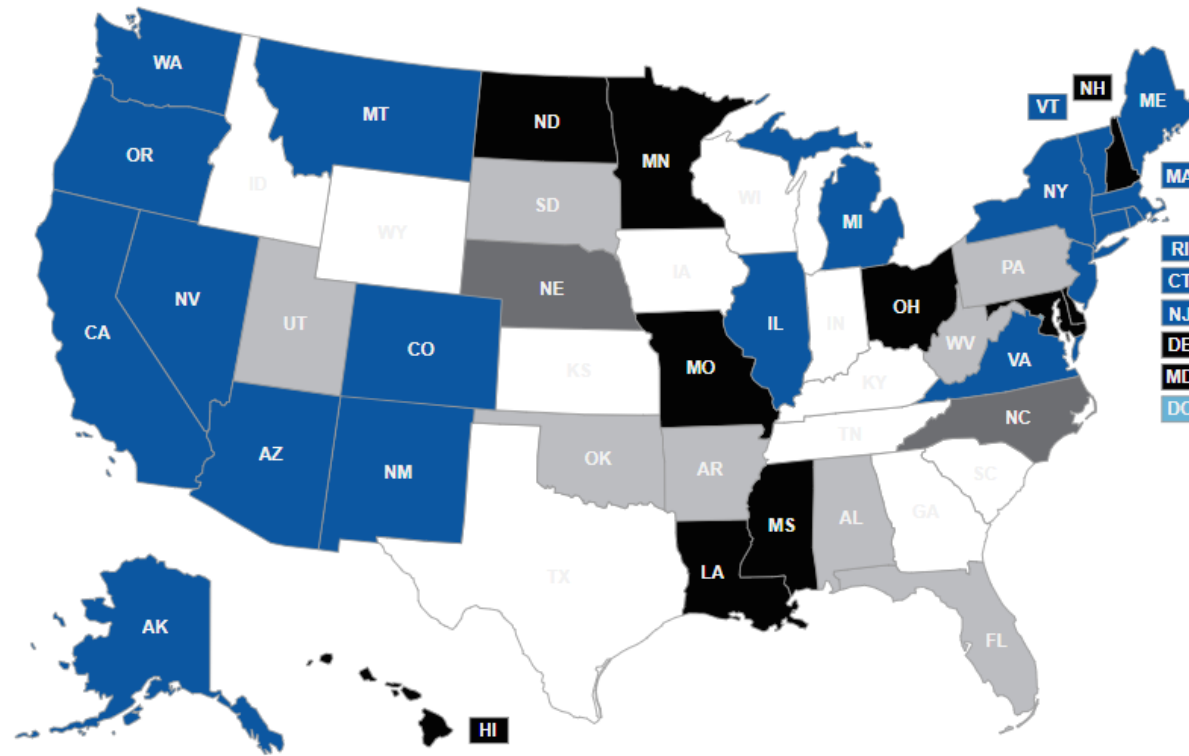


- Actions aren't limited to states
- Specific cities are focused more on the hiring process than on legal marijuana use by employees.
  - The **District of Columbia, New York, and Philadelphia** are among the municipalities that have adopted rules prohibiting employers from requiring prospective employees to take a test to detect cannabis use before they can be hired.
  - **Atlanta** forbids employers from requiring prospective employees who aren't applying for safety sensitive positions to undergo a post-employment offer cannabis test
  - **Kansas City, Mo.,** made it illegal for employers to require applicants to test for the presence of cannabis as a condition for employment



# What is your State's position?

Legal or Illegal



<https://www.mpp.org/states/>

# Concerns Relating to Cannabis in the Workplace

What Employers Need to Consider







## Poll #2

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In some places where marijuana use is legal, employers are banned from requiring job applicants to pass a marijuana screen as a condition of employment.



# Drug Testing in the Workplace

Schedule I drug under Controlled Substances Act

Federal and Federal-regulated jobs that affect public safety continue to test

Some companies are removing drug tests

Most states still allow employers to continue drug-free workplaces

To test or not to test will be the question...



# What does Drug Testing confirm?

- Employers that drug test typically use a five-panel screen that includes amphetamines, cocaine, marijuana, opiates and phencyclidine (PCP).
- Delta-9-tetrahydrocannabinol (Delta THC)
  - Primary psychoactive cannabinoid in cannabis
  - Responsible for the cannabis “high.”
  - Only metabolite that most laboratories test for in employment drug testing
  - Tests cannot prove for impairment, only for presence
  - Difficulty to confirm usage on the job or on their own time
- Is CBD detected?



# Knowledge Check

- **Q** Can we mandate a drug screening upon hire for some job types and not others?
- **A** Yes. There's no federal law prohibiting you from screening some employees but not others based on the type of job they will hold. Generally, state laws follow this trend because job type isn't typically recognized as a protected class for purposes of antidiscrimination laws.



# Safety Sensitive Positions

We want to make it perfectly clear that the state initiatives will have no bearing on the **Department of Transportation's** regulated drug testing program. The Department of Transportation's Drug and Alcohol Testing Regulation – 49 CFR Part 40 – does not authorize the use of Schedule I drugs, including marijuana, for any reason.

# Safety Sensitive Positions

- Any job that includes tasks or duties that the employer reasonably believes could affect the safety and health of the employee performing the task or others.
  - U.S. Department of Transportation
  - Employers who have Federal Contractors or Grants
  - Police officers or those in other law enforcement positions;
  - Any position requiring a commercial driver's license;
  - Any position that includes the supervision or care of children, medical patients, disabled or other vulnerable people;
  - Any position where the worker may significantly impact the health and/or safety of other workers and/or members of the public, as determined by the enforcement agency, and pursuant to the law.

# What if I choose not to drug test?

- If you choose to not drug test, companies will want to review:
  - Workers Compensation Policy
  - General Liability Insurance / Commercial General Liability Insurance
  - Third Party Partnerships
  - Regulatory Requirements
- Employers still have responsibility to educate employees on cannabis in the workplace

# No one policy fits all companies

- Cannabis has created a landscape that is unique to every employer

## Things to consider:

- Applicable Federal, State, and Local laws and regulations (consider OSHA)
- Your industry
- Your positions, job duties, and responsibilities
- Your previous reason for conducting drug testing and does that make sense going forward





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## **Poll #3**

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Employers can always discipline workers who are high on the job.

# Reasonable Suspicion

- Implement a reasonable suspicion drug testing protocol
- Train Managers and Supervisors on recognizing, documenting and responding to the signs of impairment (samples below):
  - Odors (smell of alcohol, body odor or urine).
  - Movements (unsteady, fidgety, dizzy).
  - Eyes (dilated, constricted or watery eyes, or involuntary eye movements).
  - Face (flushed, sweating, confused or blank look).
  - Speech (slurred, slow, distracted mid-thought, inability to verbalize thoughts).
  - Emotions (argumentative, agitated, irritable, drowsy).
  - Actions (yawning, twitching).
  - Inactions (sleeping, unconscious, no reaction to questions).
- Ensure substance abuse policy is clear (at the time of hire and ongoing)

# What if there is suspicion someone is under the influence?

Suspicion Checklist provided

Record Date / Time of Incident

Document Location of Incident

Highlight the behavior observed

Confirm additional witnesses

**Reasonable Suspicion Checklist**  
(The following checklist should be completed when a manager or supervisor suspects drug or alcohol use based on the physical appearance and behavior of the employee. Also completing the checklist should be all other managers or supervisors who witnessed the employee being unfit for duty.)

**PART 1: EMPLOYEE INFORMATION**

Employee Name: \_\_\_\_\_

Employee Job Title: \_\_\_\_\_

Observation Date: \_\_\_\_\_

Observation Time (indicate a.m. or p.m.): \_\_\_\_\_

Location: \_\_\_\_\_

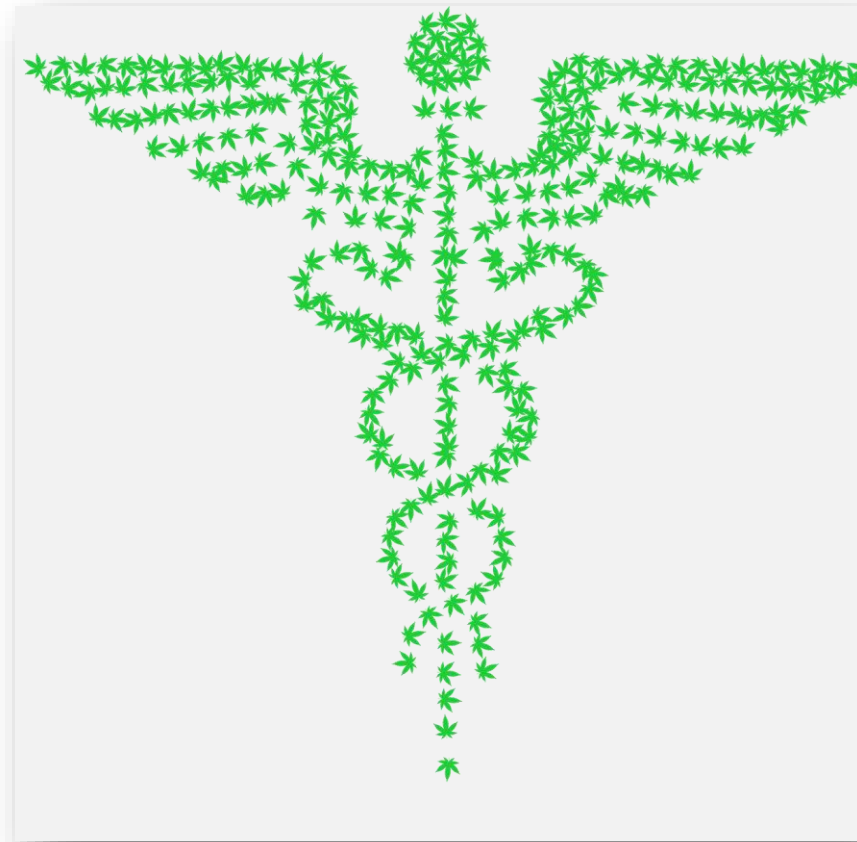
**PART 2: OBSERVATIONS**  
(Place a checkmark next to any of the following observations exhibited.)

**PHYSICAL**

Walking: \_\_\_\_\_

— Holding on: \_\_\_\_\_

— Swaying: \_\_\_\_\_



## Poll #4

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Medical marijuana users may have job protections under state disability discrimination laws.



# Reasonable Accommodation

- Court case situations and results involving Cannabis are growing in numbers
- What does it mean:
  - Employers may need to reasonably accommodate individuals who are legal users of medical cannabis.
  - Depending on the job, it may be that nothing needs to be done and no accommodation will be required because the employee's use of medical marijuana will not impact their ability to do the job. In other instances, the employer and employee may need to consider whether accommodations are necessary and if so, whether they can reasonably be made.
  - In some states or territories - employers may not discriminate against registered and authorized patients of medical cannabis in the recruitment, hiring, designation, or termination process or when imposing disciplinary actions.

# ADA Protections and Guidance

- The Americans with Disabilities Act (ADA) and related state laws require employers to enter discussions with workers with disabilities to determine if reasonable accommodations can be provided so such workers can perform the essential functions of their job.
- As a rule of thumb- engage in the interactive process with individuals to see if an accommodation is warranted.

# What do we need to do?

- Continuously look at your policies

## How do I prepare?

- Does your state permit the use of cannabis for Medical or Recreational use?
- Are there requirements in providing reasonable accommodations to employees with disabilities who may be medical marijuana users?
- Do you have employees working in safety sensitive positions?
- Are you an employer that is subject to the Drug-Free Workplace Act?

# If you do create a Drug Testing policy

- Your policy should be part of the Employee Application and handbook:
  - The purpose and parameters of the testing
  - How the testing will be conducted
  - What constitutes a failed test, and the actions and employer will take
  - For failed tests, whether the employee will be given the chance to explain the results or rehabilitate



# What about Medical Approved usage?

- Medical Users do not have any special rights or privileges at work that they did not have before. You do not have to tolerate usage during work hours.
- You should not ask the reason for the medical marijuana card.
- If an employee discloses that they have a medical marijuana card, and the drug test comes back positive, the employer may not terminate or discipline the employee solely based on a positive test. Employers should ensure to document the other reasons that would need to support adverse employment action.
- If you have an employee that request accommodation to use cannabis during work or to work while under the influence, you should speak to your legal counsel.

# Resources

- SHRM - <https://www.shrm.org/ResourcesAndTools/Pages/marijuana.aspx>
- Marijuana Policy Project - <https://www.mpp.org/>
- US Cannabis Council - <https://www.uscannabiscouncil.org/>
- The MORE Act - Marijuana Opportunity Reinvestment and Expungement Act
- National Drug Screening - <https://ndasa.com/>

Continue to visit our website for training/blog posts/webinars, etc.

[payrollnetwork.com](http://payrollnetwork.com)

[support@payrollnetwork.com](mailto:support@payrollnetwork.com)

[hradvisor@payrollnetwork.com](mailto:hradvisor@payrollnetwork.com)

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**Electronic Onboarding, Personnel Files, Performance, Workflows, Electronic Acknowledgements, etc.**

\*upgrade available

