

# TerranearPMC Safety Share

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## **Week of July 22, 2019 – Marijuana Substance Abuse Testing**

With so many states legalizing marijuana for medicinal and adult recreational use, many employers are being challenged for how to implement mandatory substance abuse testing. Working under the influence of any substance is a very serious situation – especially for equipment operators where a miscalculation can result in a workplace injury. The problem when it comes to marijuana, is that using this substance, whether for recreational or medicinal purposes, remains in our system for a period way beyond the actual time of use. So, while testing may indicate cannabis within our system, it cannot be concluded that one is under the influence. Typically, the active ingredient in marijuana, delta-9-tetrahydrocannabinol, or simply, THC, is detectable for up to 90 days in hair, or between 3 days to a month or longer in urine, 48 hours in saliva, and up to 36 hours in blood. These “residence times” vary, depending on many factors; most common influence being the frequency a person uses cannabis products.

When inhaled (i.e. smoking) THC passes from the lungs into the bloodstream, where it is carried to the brain and other organs. Via its interaction with the endocannabinoid system (a set of signaling molecules in the central and peripheral nervous system that helps regulate processes of the body such as appetite, pain, mood, and memory), THC affects areas of the brain related to movement, sensations, coordination, memory, reward, and judgment. THC is also absorbed into fat tissue and the heart while being metabolized by the liver into various metabolites. The metabolites are quickly excreted in urine. However, when not fully metabolized, - such as with chronic users, THC builds up in fatty tissues faster than it can be eliminated, which means a heavy smoker could test positive for marijuana use many days after using.

Several different testing methods are available that can be used to detect the presence of marijuana. These tests vary in the timeframe during which they can detect marijuana and its metabolites in a person’s system. They include testing saliva (where positive results can occur up to 34-48 hours after use) and testing urine – the most common procedure. Infrequent users (less than 2 times/week) can have a positive urine test for 1-3 days while a moderate user (several times per week) can test positive for 7–21 days after last use and a heavy user can test positive for a month or longer after last use. And people who eat marijuana (i.e. brownies and other edibles) may produce a positive result for 1-5 days. Blood testing for marijuana and its metabolites can be detected for up to 36 hours.

At the same time, there are a number of drug characteristics must be considered, including THC concentration, route of administration, dose and frequency, and pharmacokinetics, as well as the risks inherent to particular workplace environments. Employers, however, must be prepared for the fact that it is now much easier to obtain marijuana as people are using oils, creams, brownies, and perhaps even infused butter they bought at a dispensary.

Recently (May 2016), the Occupational Safety and Health Administration (OSHA) has announced its view on enforcing policies requiring mandatory drug testing after a workplace accidents/incidents via electronic reporting of workplace injuries and illnesses, as detailed in 29 CFR 1904 “Recordkeeping and Reporting Occupational Injuries and Illnesses.” OSHA has stated



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that employers are only permitted to perform incident-related drug tests when: (a) there is reason to believe that an employee's potential drug use was likely a contributing factor to the incident, and; (b) the drug test can accurately identify the impairment caused by drug use. Thus, it would be *NOT* be reasonable for an employer to provide post incident drug testing for the following sort of problems: bee stings, repetitive strain injuries, lack of machine guarding, or machine malfunction.

Nevertheless, employers are left with the challenge to ensure their work environment offers their workers a place of employment that is free of recognized workplace hazards. And that means there needs to be a thorough understanding that their employees are capable to function without a compromised ability; thus, being a potential source of injury to themselves as well as fellow-workers. As such, drug testing remains a common practice: some may trigger legal concerns while others may have limited effectiveness. Below, is a summary of the more common drug testing protocol.

**Reasonable Suspicion:** This form of testing is used when an employer has a reasonable suspicion or probable cause to believe that an employee is under the influence of drugs in the workplace. This is by far the most discretionary of the drug testing policies and therefore it is subject to the most scrutiny. As such, employers will need to make sure that they are not being discriminatory in their drug testing, as a testing policy that singles out a certain group of people may be a violation of the Civil Rights Act.

**Random Drug Testing:** The recent OSHA regulation does not affect an employer's prerogative to perform random drug tests. Employers can continue such policies as they have in the past. Because random drug testing is done on an entirely random basis at unannounced times, it serves as an effective deterrent to employee drug use. And if all employees are equally subject to random drug tests, there can be no allegation of discrimination.

**Periodic Testing:** Periodic testing is done on a scheduled and announced basis, such as quarterly or annually. This method ensures that all employees are tested on a regular basis and at the same time. The down side to this approach is that it is not as effective in screening out drug users. Employees can evade detection so long as they have enough will power to abstain for a few weeks in advance.

**Post-Incident Testing:** OSHA's recent interpretation most directly affects employers who want to continue testing after a workplace incident has taken place. As mentioned earlier, employers will no longer be able to perform blanket post-incident drug tests. Instead, they will only be permitted to test employees if employee drug use was likely a contributing factor to the incident, and a drug test would accurately identify the impairment caused by drug use. Accordingly, employers may need to review and possibly change their policies.

**Don't ever wrestle with a pig. You'll both get dirty, but the pig will enjoy it** - Cale Yarborough (NASCAR driver)

