

Substance Use Policies and Legal Cannabis: Balancing Compliance and Judgment in a Rapidly Shifting Landscape

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For years, workplace substance use policies were easy to administer and easy to defend. A positive drug test typically ended the analysis.

That is no longer true.

Legal cannabis has introduced a level of complexity that many employers have not fully absorbed. The issue is not whether employers can maintain drug-free workplaces. They can. The issue is whether their policies reflect the legal distinctions that matter now and whether their decision-making will hold up under scrutiny.

In 2026, the risk is not permissiveness. It is imprecision.

The instinct to rely on federal law is understandable, but often misplaced.

Cannabis remains illegal under the Controlled Substances Act. For certain employers, particularly those subject to the U.S. Department of Transportation, that fact continues to dictate outcomes. Safety-sensitive roles remain tightly regulated, and state law does not override those obligations.

But for most employers, federal law does not answer the questions that actually arise in practice. State law increasingly does.

The critical mistake is treating federal illegality as a blanket justification for broad policies or reflexive discipline. In many jurisdictions, that approach is no longer defensible.

State law has shifted the analysis in a meaningful way.

Across the country, legislatures have moved beyond legalization and into regulation of the employment relationship itself. In practical terms, that means employers are now operating within statutory frameworks that protect lawful, off-duty cannabis use and limit how employers can respond to it.

The implications are significant.

A positive test result, standing alone, is often no longer enough. Hiring decisions based on off-duty use are increasingly restricted. Policies that fail to distinguish between lawful conduct and workplace impairment are becoming harder to defend.

This is not a marginal development. It is a structural change in how substance use issues are evaluated.

The legal question is no longer “did the employee use cannabis.”

Questioning whether an employee used cannabis is no longer valid. It is whether the employee was impaired at work and whether the employer can prove it.

That distinction is where many policies break down.

Traditional testing methods detect past use, not current impairment. As a result, employers who continue to rely exclusively on test results are often relying on evidence that does not answer the legally relevant question.

State guidance is increasingly explicit on this point. Employers are expected to base decisions on observable, contemporaneous indicators of impairment that affect performance or safety. That requires more than suspicion and more than a laboratory result.

It requires judgment, documentation, and consistency.

Employers who have not trained managers to identify and articulate those indicators are, in effect, delegating critical legal decisions to individuals who are not equipped to make them.

These issues rarely exist in isolation.

Substance use questions often intersect with obligations under the Americans with Disabilities Act and parallel state laws.

That is where the analysis becomes more nuanced.

An employee's conduct may be unprotected. The underlying condition may not be. Treating those as the same issue is a common and costly mistake.

Medical cannabis adds another layer. While federal law does not require accommodation of marijuana use, state law may impose obligations that require a more individualized assessment. Employers who default to categorical rules risk overlooking when the law requires a closer look.

This is an area where rigid policies tend to create, rather than reduce, exposure.

Remote work has made outdated policies harder to defend.

The shift to remote and hybrid work has exposed another weakness in legacy substance use policies.

Rules that were drafted with a physical workplace in mind do not always translate well to a workforce that operates across locations and, in many cases, from home. The relevant inquiry is no longer where the employee is. It is whether the employee is fit for duty during working time.

That sounds like a subtle distinction. It is not.

Policies that focus on presence rather than performance are increasingly out of step with both how work is performed and how the law evaluates these issues.

What a defensible approach actually looks like.

Employers who are managing this well tend to have one thing in common. Their policies are not just updated. They are deliberate.

They distinguish clearly between off-duty conduct and on-duty expectations. They define impairment in terms that can be observed and documented. They use testing in a way that aligns with legal limits rather than as a default response. And they train managers to make decisions that will withstand scrutiny after the fact, not just in the moment.

Just as importantly, they recognize when a situation calls for legal analysis rather than a reflexive policy application.

The takeaway.

This is one of those areas where the law has moved faster than most workplace practices.

Employers who continue to rely on familiar approaches are not necessarily being careless. But they are often operating with assumptions that no longer reflect the legal landscape.

That is where risk accumulates.

A well-drafted policy is part of the solution. It is not the entire solution. Alignment between policy, training, and decision-making is what ultimately determines whether an employer is protected or exposed.

In a landscape that continues to evolve, getting that alignment right is not simply a compliance exercise. It is a strategic one.