Drug Testing Today’s Workforce
Drug Testing Challenges
Marijuana, Opioids, and CBD Oil
MARIJUANA IN 2018

[Map showing the status of marijuana legalization across the United States in 2018, with states colored to indicate whether they have legalized, medical and decriminalized, medical, decriminalized, or are fully illegal.]
Marijuana: Public Opinion

In 1969, only 12% of all adults supported legalization. Since then, support for legalization has increased, and in 2018, most American adults (66%) supported legalization.

From 2014 to 2018, positive marijuana tests for employees increased from 2.4% to 2.8% nationwide, a 16% increase.

Post recreational marijuana legalization, marijuana positive drug test results in the workplace increased 20% in Colorado and 23% in Washington.

Side effects of marijuana include but are not limited to dizziness, speech disorders, muscle twitching, numbness, psychiatric issues, euphoria, dysphoria, impaired memory, acute psychosis, attention disturbances, disorientation or confusion, and blurred vision.
CBD Oil – A Complicated Belligerent Discussion

- CBD Oil has documented, medicinal benefits (e.g. Chronic inflammation and pain relief)
- CBD Oil can be made from marijuana or hemp
- CBD Oil made from hemp is legal if it contains less than 0.3% THC
- The FDA DOES NOT regulate or test the THC levels in CBD Oil
- There are real world cases of CBD Oil containing significantly more THC
- Consuming high doses of CBD Oil can result in a positive test for THC
- There is no confirmatory test to separate THC in CBD Oil from Marijuana

An equivalent example would be taking pills to feel better, without knowing what they were. Then failing a drug test for oxycodone.
Over **two million** Americans are estimated to have a problem with opioids.

33.4% of Americans used prescription painkillers in 2017; of these, **12.2%** did so without being directed by a doctor.

Addressing the impact of substance use alone is estimated to cost Americans more than **$740 billion** each year.

The non-medical use of prescription psychotherapeutic drugs and of pain relievers are now **second only to marijuana** use among the nation’s most prevalent drugs of choice.
Prescription Drug Abuse – A National Problem

Source: Centers for Disease Control and Prevention, U.S. State Prescribing Rates, 2017
### % of Employers Impacted by Opioid-abusing Employees

<table>
<thead>
<tr>
<th>Category</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>None of the above</td>
<td>29%</td>
</tr>
<tr>
<td>Overdose</td>
<td>10%</td>
</tr>
<tr>
<td>Arrests (on/off job)</td>
<td>10%</td>
</tr>
<tr>
<td>Borrowing or selling prescription drugs at work</td>
<td>14%</td>
</tr>
<tr>
<td>Near miss or injury</td>
<td>15%</td>
</tr>
<tr>
<td>Complaints to HT/Negative impact on job replacement</td>
<td>22%</td>
</tr>
<tr>
<td>Family member of employee affected</td>
<td>29%</td>
</tr>
<tr>
<td>Impaired or decreased job performance</td>
<td>29%</td>
</tr>
<tr>
<td>Positive drug test</td>
<td>32%</td>
</tr>
<tr>
<td>Employee use of prescription pain relievers</td>
<td>39%</td>
</tr>
<tr>
<td>Absenteeism or missed work</td>
<td>39%</td>
</tr>
</tbody>
</table>

2017 National Safety Council Survey
It is extremely difficult to identify when an individual with a prescription is misusing such medications.

Even those using certain prescriptions in accordance to a doctor’s advice can affect job performance and safety to the point of being unfit for duty.
The Opioid Epidemic has Led to a Rise in Methamphetamine Use

As opioids continue to be restricted, individuals are moving towards more easily obtainable drugs. Methamphetamines now result in more positive drug tests than Cocaine or Opioids!
Consequences of Drug Use in the Workplace

- Inconsistent work quality
- Poor concentration and lack of focus
- Lowered productivity or erratic work patterns
- Increased absenteeism
- Unexplained disappearances from the jobsite

- Carelessness, mistakes, or errors in judgement
- Needless risk taking
- Disregard for safety for self and others – on-the-job and off-the-job accidents
- Extended lunch periods and early departures
- Driver accidents
The Cost of Drugs in the Workplace

❖ Nationally, U.S. companies lose approximately $100 billion/year due to alcohol and drug-related abuse.

❖ 40% of all industrial workplace fatalities are caused by substance abusers.

❖ On average, 10-20% of all work-related fatalities in the U.S. test positive for drugs or alcohol.

❖ 17% of the average workforce in the U.S. is made up of substance abusers. Each substance abuser costs their company an average of $7,000 per person/year.

❖ For safety sensitive industries, DISA believes that number is closer to $35,000 per person/year.

Narconon New Life Retreat, Companies in the U.S. Lose $100 Billion per Year Due to Alcohol and Drug Abuse. National Council of Compensation Insurance
CleanFleet. Workplace Safety, date unknown.
Bradford Health Services, Workplace Accidents and Drug or Alcohol Abuse. Date unknown.
U.S. Navy Personnel Research & Development Center
Understanding Your Options
What you can test and when
What Drugs Get Tested For?

5 Panel *(DOT Mandated)*
- Marijuana
- Cocaine
- Opioids (incl. synthetics)
- Amphetamines
- PCP

10 Panel *(includes all 5 panel drugs)*
- Barbiturates
- Benzodiazepines
- Propoxyphene
- Methadone
- Methaqualone
Most Common Drug Testing Methodologies

5-Panel Lab-based Urine Testing *(DOT Mandated)*
10-Panel Lab-based Urine Testing

5-Panel Lab-based Hair Testing
11-Panel Lab-based Oral Fluid Testing

**Windows of Detection**

Source: SAMHSA, Drug Testing Advisory Board (DTAB) Meeting, Ron Flegel Presentation 1/26/2011
<table>
<thead>
<tr>
<th>Test Panel</th>
<th>Positivity Rate</th>
<th>#1 Drug of Choice</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Pre-Employment</td>
<td>Random</td>
</tr>
<tr>
<td>5 Panel Urine</td>
<td>1.72%</td>
<td>1.01%</td>
</tr>
<tr>
<td>10 Panel Urine</td>
<td>2.99%</td>
<td>1.04%</td>
</tr>
<tr>
<td>5 Panel Hair</td>
<td>7.33%</td>
<td>1.04%</td>
</tr>
</tbody>
</table>
| 11 Panel Oral   | 1.00%          | 0.23%             | Marijuana         

* Hair Testing = Cocaine, Opioids, and Amphetamines all result in more positive tests than Marijuana
Effective Employee Screening

Calculate your own Drug & Alcohol positivity rates based on number of employees by visiting:

DISA.com/calculator
Using All the Tools

Combat abuse with training and policy
Abuse and misuse of prescription-controlled substance medications is more prevalent than “illicit” drug use.

Opioid epidemic reached crisis proportion in U.S.

DHHS and DOT expanded the federal drug testing panel in 2018 to include semi-synthetic opioid drugs

Painkillers, tranquillizers, and sleep aids readily available via the internet and “walk-in” clinics

Medication interactions are often unknown and not monitored because people get multiple medications from several physicians

Hundreds of new drugs on the market every year that have “impairing” effects

HOW CAN YOU COMBAT IT?
Many people use legally-prescribed drugs without failing a drug test or violating company policy, and the DOT specifically states that the age of the prescription cannot be considered in the review of a positive drug test.

By creating a medical disclosure policy, employees are required to notify you if they’re taking an impairing substance.
Creating a Medication Disclosure Policy

1. Explain employee’s responsibility to report medications and discuss job with their doctor.

2. Require the employee to provide a “medication clearance” form signed by their doctor, where they certify the medication and the employee’s job functions have been reviewed and the employee can safely perform their duties while taking the medication as prescribed.

3. Provide list of permitted, prohibited, and approval-required medications to employees.

4. Require medication fitness for duty exams when safety-concern is reported by the MRO.

5. Mandatory medication disclosure to medical director to determine work clearances.
Pitfalls to Avoid in a Medication Disclosure Policy

1. Supervisors should not be the recipients of medication or medical diagnoses information.

2. Dosage, timing of medication use, medical conditions being treated should only be disclosed to or reviewed by qualified medical personnel.

3. Drug testing should not be used as a method to monitor medication compliance.

4. Selective application of the policy is an invitation to litigation or complaint.

5. Your policy should be reviewed by a physician with occupational medicine expertise.
If there is reason to believe through observation, that an employee’s appearance, behavior, speech or body odor indicates alcohol or drug use, then the employer should proceed with a reasonable suspicion drug and/or alcohol test.

Why Are Supervisors Reluctant To Test For Suspicion?

- Worried they might be wrong
  - If the test is negative – fear of litigation
- Hassle, too much trouble
- Shortage in labor force, no one else can do his/her job
- Employee a friend (co-worker)
- Person might get fired
- Don’t feel properly trained
Valid Reasons for a Reasonable Suspicion Test

The following are valid reasons to conduct a reasonable suspicion test:

❖ Physical signs
  ❖ Bloodshot eyes/dilated pupils, slurred speech, unsteady walk, shakes or tremors, unexplained sweating or shivering, fidgeting/inability to sit still, sleeping at work or difficulty staying awake

❖ Behavioral signs
  ❖ Attendance problems/tardiness, a pattern of absences or excessive absenteeism, a decline in performance/productivity, acting withdrawn from others

❖ Psychological signs
  ❖ Unexplained changes in personality or attitude, sudden mood changes, angry outbursts or inappropriate laughing, inability to focus or concentrate
Best practices when implementing reasonable suspicion drug testing in the workplace:

❖ Include and implement reasonable suspicion drug testing in a clear and concise company drug testing policy.
❖ Notify all employees they are subject to reasonable suspicion drug testing according to the company policy.
❖ Ensure the right personnel at your company receives reasonable suspicion drug testing training.
❖ Always document all signs and symptoms leading up to and during a reasonable suspicion drug test.
❖ If an employee is sent off-site for a reasonable suspicion drug test, do not allow them to drive themselves (especially a company car).
   ❖ This increases your liability because you already believe they may be under the influence.
Building and Implementing an Effective Policy
# Understanding State Laws

## Medical and Recreational Marijuana
- 33 states, 1 territory, and D.C. have medical marijuana laws
- 9 states and D.C. have recreational marijuana laws
- Do not always address workplace use

## Industry Specific
- Impact to certain industries
- Mining, public works, childcare, etc.

## Case Law
- 7 states, some with multiple cases
- Employer’s risk adversity helps determine policy
- May still have local laws that must also be taken into account

## Workers’ and Unemployment Compensation
- Unemployment comp denial – 49 states, 1 territory, D.C.
- Workers’ comp denial – 46 states, 1 territory, D.C.
- Workers’ comp premium discount – 12 states
- Legal Liability Protection, (LLP)
Step 1 – Determine Drug Testing

❖ Determine the methodology for testing (urine, hair, oral) and document the appropriate drug test panel

❖ Determine and document when you’re going to test (pre-employment, random, etc.), which panels you’re using for each test, and which job roles you’re testing

❖ Do you have safety-sensitive carve outs?

❖ Recommend using SAMHSA certified laboratory and an MRO

❖ Develop a policy for fitness for duty and return to work.

❖ Laws vary by state, unions agreements, etc.

❖ Use standard legal language to define safety sensitive positions and testing conditions
Step 2 – A Clearly Written Policy

- Be clear in the company policy regarding:
  - Prohibited behaviors
  - Drug testing (how, when and for what)
  - Consequences for policy violations
  - Be clear that an employee cannot possess or use marijuana in the workplace nor be at work under the influence
  - Define “under the influence” in the policy
  - Detection of any amount is a violation of company policy
  - Take measures based upon actions rather than drug test results (reasonable suspicion)
  - Determine if you need a medical disclosure policy
Step 3 – Employee Education & Training

- Train employees on the policy:
  - The prohibited behavior
  - The consequences of use, refusal to test and positive drug tests
  - Test circumstances
- If you have a medical disclosure policy, train employees on their obligation to report:
  - Which medications require reporting
  - Not to report information about the specific drug or medical condition only that they are taking a drug that requires reporting
  - And who they are to report the information to the program administrator or program supervisor

- Train management and supervisors on the policy:
  - Workplace policy for illicit and prescription drug use
  - Signs and symptoms education
  - Post-accident and reasonable suspicion drug testing
  - Documentation and procedures
  - What to do if notified of a disability or medical condition, request for substance abuse treatment, or assistance
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