



How High Can You Go at Work? Effects of Cannabis Legalization in Workers' Compensation

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How did we get here?

- Pure Food and Drug Act 1906
- Marihuana Tax Act of 1937
- Controlled Substances Act (1970)
- Comprehensive Drug Abuse Prevention and Control Act (1970)
- Anti Drug Abuse Act (1986)
- Proposition 215 (CA, 1996)

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Where are we at?

- 38 states have at least Medical Cannabis Laws
- 21 states, DC, and Guam have legalized adult use
- Only one state has not done anything – decriminalize, legalize medically, legalize adult use

- Congress is giving serious consideration to the SAFE Banking Act which will go a long way towards legalization – ironically reversing the path it took to criminalize cannabis in the first place.
- The DEA is considering the recommendation to reschedule cannabis and remove it from Schedule 1 – a move that would effectively legalize cannabis for medical purposes.

- The world of supplements, hemp, and Delta-8 have opened up a whole new avenue of getting the benefits of cannabis

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What are we talking about when we talk about cannabis?

- Cannabis
- CBD
- Hemp

- Vapes
- Hash
- Joint

- Gummies
- Capsules
- Gel

And more....

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Varieties of Cannabis in 2023

- Actual plants
- Edibles
- Gels
- Oils
- Vapes
- Cannabinoids
- Synthetics – Delta 8
- Supplements
- And more

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How does cannabis fit into workers' compensation?

- Cause of an accident
- Defense to an accident
- Cause of confusion
- Treatment
- Alternative

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Cause of an Accident

- Has legalized cannabis increased the number of workplace accidents?
 - Employees who tested positive for marijuana had 55% more industrial accidents and 85% more injuries compared to those who tested negative. Journal of the American Medical Association
 - Workers' comp claim frequency and benefits paid declined 20% in workers aged 40-62 in response to recreational marijuana laws. *The National Bureau of Economics Research*
 - Insufficient clinical evidence to support or refute an association between cannabis use and occupational accidents or injuries. *National Academies of Sciences, Engineering, and Medicine*
 - A systematic review of 16 studies that examine the relationship between cannabis use and occupational injury, saw mixed results¹ *Substance Use & Misuse*
- Caveat: Hazardous and ultrahazardous activities

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Defense to an accident

- Intoxication defense
 - Explicit or so intoxicated as to be outside the scope of employment
 - Can explicit be a detriment?

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Cause of confusion

- When intoxication of any kind makes a difference in an accident
- The difference between an accident that happens to someone and an accident when someone happens

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Measuring Intoxication

Testing considerations

- Method
- Evidence
- Region
- False positives
- Time

Underlying science

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Treatment During a Workers' Compensation Claim

- So what if your injured worker wants to use medical cannabis for treatment?
 - Six states require payment or reimbursement: NY, NJ, NH, NM, CT, MN

Could it be a good thing?

- 2017 CDC study found that opioid healthcare and recovery cost just shy of \$35 billion dollars
- 2016 John Hopkins study – 25% reduction in overdose deaths
- In 2022, NIOSH found 32% of workers' compensation claims had at least one prescription for opioids

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Catastrophic Claims and Pain Management

- Based on the NCCI data, claims in the top three expense brackets have risen in the last three years.
- Death claims have remained steady
- As part of a managed treatment plan, cannabis can be used to mitigate costs

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Alternative for the Long Term in workers' compensation claim

- Long term chronic pain management
- Psychological ramifications of injury
- MSA barriers

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So what does this mean for Insurance?

- Changes for Employers
- Changes in claim investigation
- Changes for insurers

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What do carriers need from Employers

- Duty to keep HR Policies up to date and within legal bounds
- Drug testing
- Intoxication training
- Workplace management
- Duty to investigate

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Changes in Investigation

- What information do you need to gather?
- What documentation?
- Types of testing?

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What do Insurance Companies need to start considering

- Policy issues
- Investigation support
- Payment issues

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Areas of Future Regulation

- Age issues
- Dosage and Delivery system
- Payment issues

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Questions?

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