



This section is set up to provide a ready-made Brown Bag Session for you to use with employees and/or managers. Use as is, or adapt this information for a general employee group. You may reproduce as many copies as needed.

Marijuana Policy Needed

Part of a Drug-Free Workplace Policy

Notice: The information provided in this training is designed for educational purposes only, and should not be construed as a substitute for legal advice or as an actual drug-free workplace (DFW) policy. The U.S. Department of Labor (DOL) strongly recommends that any business has its policy reviewed by a legal consultant, such as a labor/employment attorney, prior to distribution and implementation. In addition since laws related to substance use vary from state to state, the employer should be sure to keep abreast of what these laws are where they live.

“**I**n the United States there has been a growing movement to relax state laws prohibiting the possession and use of marijuana. These controversial reforms are beginning to impact employee assistance professionals,” state the authors of this month’s cover story in *Employee Assistance Report*.

Interestingly marijuana may be legal in a growing number of states, but employees can still be fired for using it. EA professionals in these states are now learning how to assist businesses and individuals in a challenging intersection of federal and state laws, local practices, and company policies.

Establish a Marijuana Policy

As part of that assistance regardless of whether marijuana is legal in your state, experts are recommending that companies establish marijuana policies in their particular workplaces.

“Whether it is legal or not,” Dr. Dale Masi, a noted EA professional and researcher told the *Bermuda Royal Gazette*, “you have to have a policy protecting the rights of the employer and the employee regarding marijuana in the workplace. People don’t realize that they can still be fired or referred to the EAP if medical marijuana affects their job.”

Here is the ten-point point policy as presented by Dr. Masi.

1. The company will inform all of its employees on its marijuana policy.
2. The company will insure that the policy on marijuana has included input from its various stakeholders.
3. The company will train supervisors on their responsibility in implementing the policy on marijuana in the workplace.
4. The company will educate its employee assistance program on its policy.
5. The employer can request evidence of a prescription for marijuana if an employee states he/she is taking cannabis for a medical reason.
6. The company may have a zero-tolerance policy for marijuana use by employees during work hours. “*Medical marijuana may be legal, but workers should beware that employment protections may not extend to marijuana use in the workplace.*” (Bononi Law Group, LLP)
7. The company has zero-tolerance if an employee chooses to utilize prescription medical marijuana during work hours, resulting in impaired job performance.
8. The company has a zero tolerance for positive marijuana drug-test results.
9. The company holds the right to have a mandatory EAP referral or “last-chance agreement” if the manager deems necessary.
10. The employer needs to determine the role of the EAP in working with employees with marijuana use and/or abuse.

Dr. Masi can be reached at dalemasi@eapmasi.com.

Developing a Drug-free Workplace Policy

A marijuana policy is a natural adjunct to a drug-free workplace policy. If the corporate client has a DFW policy, it's a good idea to review it to see if it addresses each of the questions below. If the business does NOT have a DFW policy, the following is a great place to start.

- What is the purpose/goal of your policy?
- Who will be covered by your policy?
- When will your policy apply?
- What behavior will be prohibited?
- Will employees be required to notify you of drug-related convictions?
- Will your policy include searches?
- Will your program include drug testing?
- What will the consequences be if your policy is violated?
- Will there be Return-to-Work Agreements?
- What type of assistance will be available?
- How will employee confidentiality be protected?
- Who will be responsible for enforcing your policy?
- How will your policy be communicated to employees?

Common Components of a DFW Policy

Effective program planning and philosophy are critical to success. Employers and employees should work together to examine each component and design a balanced, fair program suited to the unique needs and challenges of their workplaces. Although programs can be effective without all of these components, it is recommended that all be at least explored when developing a program.

❖ **Supervisor training** – After developing a drug-free workplace policy statement, the organization should train those individuals closest to the workforce – *supervisors*. Training supervisors is an integral part of every drug-free workplace program. Supervisors should be provided with basic information about the drug-free workplace program and their role in its implementation.

At a *minimum* supervisor training should include a review of:

- The drug-free workplace policy;
- The supervisor's specific responsibilities in implementing the policy; and
- Ways to recognize and deal with employees who have job performance problems that could be related to alcohol and other drugs.

❖ **Employee education** – This is a very important element of a drug-free workplace program. Areas typically covered by an EA and/or HR professional include the impact that alcohol abuse and drug use has on the workplace as well as factual information about addiction and the major drugs often abused. Accompanying handouts and/or slide presentations are often used as part of training programs. However, it's important to review any presentation and, if necessary, modify the materials as needed to best accomplish training goals.

❖ **Employee assistance** – As noted an EAP is a valuable resource for both employees and managers and can play an important role in developing and/or maintaining a drug-free workplace program. Questions to consider include:

- How does the EAP support the drug-free workplace program?
- How is confidentiality protected?
- What are the goals of the EAP in terms of the DFW program?

❖ **Drug testing** – This is without a doubt the trickiest part of any DFW policy and program. However it's a vital action that any employer can take to determine if employees or job applicants are using drugs. It can identify evidence of recent use of alcohol, prescription drugs and illicit drugs. Currently drug testing does not test for *impairment* or whether a person's behavior is, or was, impacted by drugs.

Generally speaking most private employers have a fair amount of latitude in implementing drug testing as they see fit for their organization, unless they are subject to certain Federal regulations, such as the U.S. Department of Transportation's (DOT) drug-testing rules for employees in safety-sensitive positions. However Federal agencies conducting drug testing must follow standardized procedures



established by the Substance Abuse and Mental Health Services Administration (SAMHSA), part of the U.S. Department of Health and Human Services (DHHS).

While private employers are not required to follow these guidelines, doing so can help them stay on safe legal ground. Court decisions have supported following these guidelines, and as a result, many employers choose to follow them. Questions to consider include, but are not limited to the following:

- How accurate is drug testing?
- Who is allowed access to the results?
- When are drug tests conducted?
- What are the different methods of drug testing?
- What drugs do tests detect?
- How long are drugs in a person's body?
- How does a drug test determine if a person has been using substances? What are cut-off levels and what do they determine?

Several of these questions are addressed below:

How accurate is drug testing?

Below are certain procedures required by SAMHSA's guidelines to ensure accuracy and validity of the testing process:

❖ **Chain of custody:** A chain-of-custody form is used to document the handling and storage of a sample from the time it is collected until the time it is disposed. It links an individual to his or her sample and is written proof of all that happens to the specimen while at the collection site and the laboratory.

❖ **Initial screen:** A single test is not always accurate or reliable; there is a possibility of a mistake. Thus, in the event that the initial screen is positive, a second confirmatory test should be done.

❖ **Confirmation test:** A second confirmation test is highly accurate and helps rule out any mistakes from the initial screen. For a test result to be reported as positive, the initial screen and confirmation test results must agree.

❖ **Split sample:** This is created when an initial urine sample is split into two. One sample is used for the initial screen and, if positive, the second sample is used for the confirmation test. If there is a positive result, the individual being tested

may request the confirmation test be performed at a different laboratory. DOT's alcohol and drug-testing regulations require all tests be performed using a "split sample" collection process.

In the event that the initial screen and confirmation test are both positive, a medical review officer (MRO) – a licensed medical doctor with special training in substance abuse – then views the results. The MRO makes sure the chain-of-custody procedures were followed, and contacts the individual to make sure there are no medical or other reasons for the result. It is only at this point that the MRO may report a positive test result to the employer.

Who is allowed access to the results?

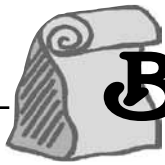
The result of a drug test may be considered personal health information. Consequently there may be restrictions on how and whether such information can be shared with others. This is why employees who undergo a drug test generally must sign a release (usually at the time of the test) in order for their employer to receive the results. For more information about issues related to the release of health information, refer to the Health Insurance Portability and Accountability Act (HIPAA).

Regardless of specific questions and how they are addressed this much is clear: *Drug testing works best when it is implemented based on a clear, written policy that is shared with all employees, along with employee education about the dangers of alcohol and drug abuse, supervisor training on the signs of alcohol and drug abuse, and an EAP to provide help for employees who may have an alcohol or drug problem.*

Summary

It is important to help employers and employees understand the risks and address common questions asked about drugs in the workplace. The EAP is in a perfect position to help. ■

Sources: Institute for a Drug-Free Workplace (www.drugfree workplace.org), and U.S. Department of Labor elaws® – Drug-Free Workplace Advisor (<http://webapps.dol.gov/elaws/asp/drugfree/menu.htm>).



Ten Facts about Marijuana

Fact #1: Legalizing marijuana is bad for the workplace.

The impact of employee marijuana use is seen in the workplace in lower productivity, increased workplace accidents and injuries, increased absenteeism, and lower morale. This can and does seriously impact the bottom line.

Fact #2: Marijuana use is rising.

Marijuana is the most common illegal drug used in the U.S. There were 6,600 first-time marijuana users each day in America in 2012, and that number is trending significantly upward.

Fact #3: Marijuana is much more potent – and addictive – today.

The levels of THC in marijuana have never been higher, and samples seized by law enforcement have reached a new average high of 10.1% compared to less than 3% in the 1980s.

Fact #4: Marijuana use has long-term negative effects.

In a recent study of college students, regular marijuana smokers were found to have impairment of critical skills connected to concentration and recall. Compared with infrequent users, regular marijuana users had difficulty in sustaining their concentration, and/or organizing and using information.

Fact #5: Marijuana is bad for your health.

Years of research indicate substantial concern for marijuana's impact on health, more specifically a person's lungs, heart and liver.

Fact #6: Marijuana is not medicine.

Marijuana does not fit the basic definition of a medicine and since it is self-delivered, the dosages frequently are random and inconsistent, as are the effects on the human body. It is well-documented that marijuana impacts people in different ways and at different rates. While one user may feel mild effects from smoking marijuana, others who

smoke the same dosages report disorientation, loss of coordination, and severe symptoms lasting for varying amounts of time.

Fact #7: The record on marijuana legalization in other countries provides a sound basis to reject legalization in the U.S.

As but one example marijuana has been legal in the Netherlands for a long time – and the number of cannabis addicts receiving treatment there jumped 25% in 1997 alone. The international track record on drug legalization does not support legalization in the U.S. Their experiences show us that legalizing drugs does not have the effects advocates claim.

Fact #8: Marijuana is a gateway drug.

Adults who begin using marijuana early are five times more likely to become dependent on a drug, eight times more likely to become cocaine users, and 15 times more likely to use heroin in their lifetimes.

Fact #9: Motor vehicle crashes are rising as a result of marijuana use.

There has been a 49% increase in the rate of positives for marijuana among drivers stopped by state troopers for suspicion of driving under the influence in the first six months of 2013 in the State of Washington.

Fact #10: Most Americans do not want marijuana use to become commonplace.

We have been successful in getting out the message about cigarettes and alcohol use being harmful, and their use is declining. Marijuana is an increasingly dangerous and addictive drug, and its health risks for the individual and detrimental impacts for American society are very frequently misstated, misunderstood, and/or underestimated. ■

Source: Mark A. de Bernardo, founder and executive director of the Institute for a Drug-Free Workplace.