

Employer Toolkit: How to Handle the Legalization of Recreational Marijuana in the State of Michigan

Recreational marijuana became legalized in the State of Michigan the first week of December 2018. In reviewing the impact of legalization in other states, we expect this to significantly increase the number of individuals who fail employment drug screens due to a misconception of

Despite state legalization, recreational marijuana is still illegal federally. Employers are still ultimately responsible for to ensure the safety and health of their workers and must make the best decision for them, their business and their employees.

What is the Law in Michigan?

- Adults 21+ can purchase or possess up to 10 oz. of marijuana
- Individuals can grow up to 12 plants (technically still illegal to purchase seeds)
- Retail shops will be allowed to open in 2020
- No public consumption allowed

Regardless of the law, employers are *still* able to restrict the use of marijuana by employees or job applicants and should make that clear.

What was the Impact in Other States?

Employment-Based Testing:

States with legalized recreational marijuana have found that employers are modifying their policy based on their industry and the nature of the work required of their employees.

- Increase in testing for federally regulated industries, healthcare and construction
- Reduced testing requirements in small business, hospitality and information technology.

Drug Screens:

Prior to legalization, Michigan had higher positive test results for *marijuana* than the nation, with Detroit having a slightly higher rate than both (2017 rates):

- Detroit: 3.1% positive rate
- Michigan: 2.8% positive rate
- USA: 2.0% positive rate

Newly legalized states saw a significant jump in positive testing rates for marijuana. We expect this to be the case in the state of Michigan, particularly without broad public education:

- Nevada (legalized 2017): 43% positive rate
- California (legalized 2018): 11% positive rate
- Massachusetts (legalized 2018): 14% positive rate

Source: Quest Diagnostics, urine testing for all types of employment-based screens (including pre-employment, post-accident, or random screens)



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What Can Employers Do to Address Legalization within the Employment Process?

1. Make drug testing policy more obvious in job postings and employee materials

Unfortunately, there will be residents of Michigan who assume employers cannot screen for marijuana usage now that recreational use is legal. We encourage employers to highlight their drug testing policy in job postings and **specifically** call out their prohibition of marijuana usage.

2. Allow re-application after a failed drug test

Some employers do not allow individuals to reapply to their company after a failed drug test, essentially imposing a lifetime ban on employment opportunities for that individual. We encourage employers to create a policy that allows individuals to reapply to the company after a failed drug screen.

For employers who do allow applicants to reapply after a failed drug screen, consider reducing the wait period for individuals to 6 months.



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