



## A New Vision for Your Company's Drugfree Workplace Program

*McGriff Webinar Series – April 10, 2025*

# Meet the Presenter



**Bill Current**

Founder of the Current Consulting Group in 1998.

NDASA Board of Directors/NDASA Foundation Trustee

Former VP of Consulting at Employee Information Services.

Former Executive Director of the American Council for Drug Education.

Former Director of the Institute for a Drug-Free Workplace.

Author of 10 books on substance abuse prevention & drug testing.

# Agenda



1. MARIJUANA-WHERE WE ARE NOW
2. MARIJUANA TESTING – YES OR NO
3. CREATING A NEW VISION
4. TESTING TECHNOLOGIES THAT CAN INCREASE HIRING & RETENTION
5. MARIJUANA STATE LAWS, TESTING, EDUCATION & TRAINING
6. PUTTING IT ALL TOGETHER





# 1. MARIJUANA-WHERE WE ARE NOW



# Where Are We Now

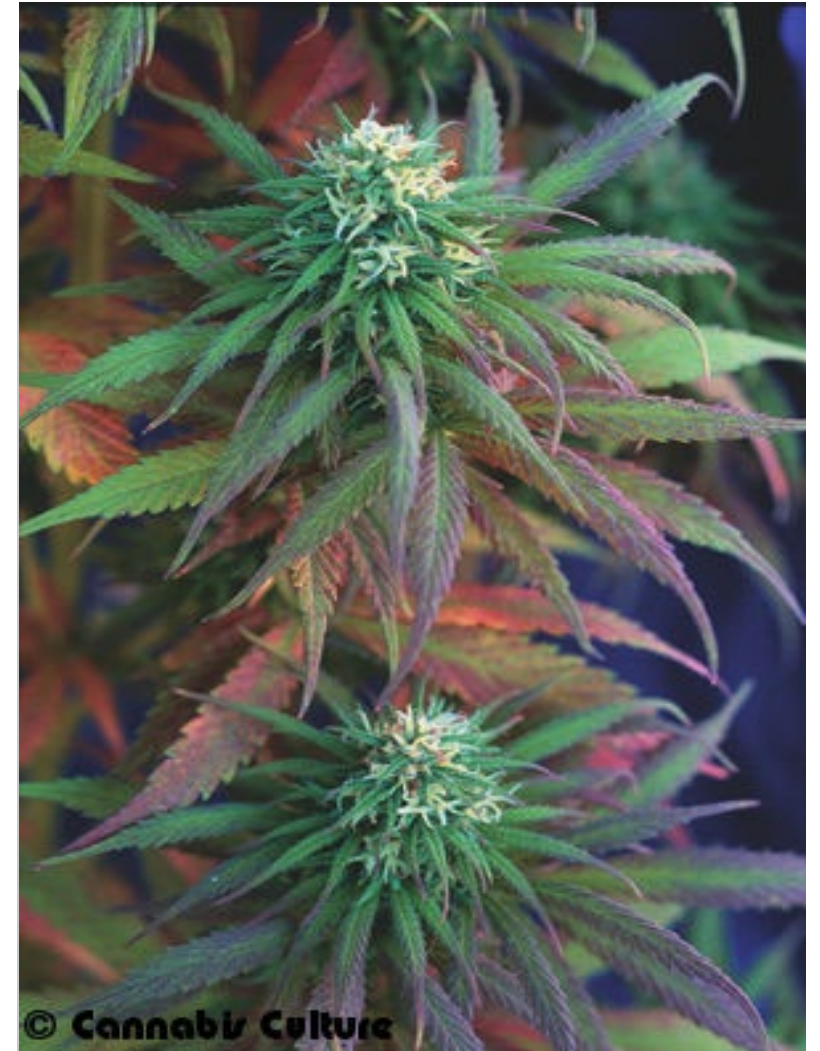
## CANNABIS USE DURING THE WORKDAY

In a recent survey of more than 500 employees who use cannabis at or before work:

- 53% admit to daily cannabis use
- 77% use at home before work
- 30% admit to using on their way to work
- 48% admit to using at work, either during breaks or actively working
- 86% smoke or vape
- 49% use edibles

Sources:

- Cannabis Use During the Workday. Hound Labs. April 2023. <https://houndlabs.com/2024/02/29/survey-offers-new-insights-about-cannabis-use-at-work/>
- The Prevalence of Substance Abuse in the Workplace. American Addiction Centers March 2023. <https://drugabuse.com/addiction/substance-abuse-workplace/>



# Where Are We Now

## RECENT NSC NATIONWIDE EMPLOYER SURVEY

- 52% of respondents stated that impairment is decreasing the safety of their workforce
- 43% claimed that impairment has increased worker's compensation
- 45% say impairment is causing more misses
- 39% say impairment is causing more injuries
- 36% or respondents indicated that impairment is a problem in their workforces



# Where Are We Now



- **Drug Abuse Costs Employers \$81 Billion Per Year**
  - Researchers estimate that lost work, healthcare costs, and lost productivity cost businesses \$81 billion every year
- **Lost Productivity Costs**
  - Lost productivity and absenteeism at work due to drug abuse cost employers an estimated \$25.5 billion each year
- **Healthcare Costs**
  - Healthcare costs associated with drug abuse are an estimated \$25 billion every year
- **Workplace Theft**
  - About 80% of drug abusers supported their drug use by stealing from their work
- **How Common is Drug Abuse at Work?**
  - It's estimated that 70% of Americans who use illegal drugs are currently employed in the workforce

Source: [usdrugtestcenters.com/cost-of-drug-abuse](https://usdrugtestcenters.com/cost-of-drug-abuse)

# Where Are We Now



## OVERALL EMPLOYER'S REACTIONS

- Harder to find people
- Concern over possible lawsuits or legal liability for marijuana testing
- Mistakenly believe it is not legal to test for marijuana in their state
- Believe it is not worth the trouble and drop marijuana testing or testing altogether
- Overwhelmed with what to do & become frozen



# Where Are We Now



## LEGAL DOCTRINE - RESPONDEAT SUPERIOR NEGLIGENT HIRING & RETENTION PRINCIPAL

A company and its management are held responsible and therefore implied vicarious **liability for the actions of an employee** in the course of their duties

### *How Does This Relate To Workplace Substance Abuse?*

If an **employer knows or should have known** that an employee was under the influence of drugs or alcohol at work, the employer is liable for the employee's actions

# Where Are We Now Simply



Marijuana is here to stay

It's not a moral issue – It's not an ethical issue

It's simply a business decision

It is negatively impacting your operations and employees

The sound approach is to understand how to manage it



## 2. MARIJUANA TESTING – YES OR NO?



# Testing – Yes or No?



## LIMITING OR DROPPING TESTING

### PROS

1. No marijuana positives (modified panel costs)
2. No drug positives
3. No costs due to testing (direct & indirect)
4. Expedites the hiring process
5. Increased retention of employees
6. Not have to worry about state laws (marijuana/testing, etc.)

# Testing – Yes or No?



## LIMITING OR DROPPING TESTING

### CONS

1. Still illegal on a federal level
2. Still drug with significant costs and ramifications
3. Lack of acceptable safety
4. Increased errors in judgement, mistakes and quality
5. Increased worker's comp claims
6. More likely for negligence suits/litigation
7. Risk to reputation from a high-profile accident or incident

# Testing – Yes or No?



**NOT TESTING FOR MARIJUANA  
OR  
NOT TESTING AT ALL  
IS  
SIMPLY  
BAD BUSINESS**





## 3. CREATING A NEW VISION

# Creating a New Vision



Let's think about it differently ...

It's not about testing - yes or no ...

It about HOW and WHO and WHEN you test

It's About Realigning Your Thinking, Your Policy &  
Your Testing Program

# A New Vision Can Support These Six Program Objectives





# Components of a Sound Program



# Components of a Sound Policy

- Purpose
- Who is Covered
- When Policy Applies
- Availability of Treatment
- Help & Intervention-Voluntary & Non-Voluntary
- Prohibited Conduct
- Permitted Conduct (Alcohol)
- Drug & Alcohol Testing-Kinds of Tests
- Consequences
- List of Safety Sensitive Positions
- State Amendments
- Procedures & Forms



# Creating a New Vision



## 5 OPTIONS TO REALIGN YOUR POLICY

1. Forms of tests to conduct
2. Who to test
3. Consequences
4. What panels to test for
5. Which testing technologies to use





## 4. TESTING TECHNOLOGIES

# Testing Technologies That Can Increase Hiring and Retention



Choosing The Right Testing Technologies

# Sample types



- Urine
- Hair
- Blood
- **Oral fluid**

## Test types

- Instant or rapid on-site tests sometimes called POCT
- Laboratory-based testing



# Three most commonly used methods



	Urine	Oral Fluid	Hair
<b>Lab-based or Rapid / POCT</b>	Both	Both	Lab-based (Rapid option coming)
<b>Scientifically accepted</b>	Yes	Yes	Yes
<b>Window of detection</b>	3-7 days (can be longer for chronic marijuana use)	Immediately after use to 24/36 hours for lab-based test*	Lag time 7-10 days; then up to 90 days
<b>Value to detect recent use</b>	medium	highest	lowest
<b>Detects Marijuana "parent THC"</b>	NO	YES	NO
<b>Legal by States</b>	Lab: 50 states POCT: where permitted	Lab: 47 states POCT: where permitted	Lab: most states
<b>SAMHSA Regs</b>	YES	YES	PROPOSED

\*same for rapid oral fluid tests except for marijuana which is shorter (6-10 hours)



# Top 10 Advantages of Oral Fluid (all lead to increased hiring)



1. Oral fluid testing **overcomes the “yuck” factor** often associated with urine testing
2. Oral fluid testing is **less invasive**
3. Oral fluid samples are **easy to collect**
4. Oral fluid collections are **100% fully observed**
5. Oral fluid samples are **virtually impossible to adulterate**
6. Oral fluid samples can be used to test for virtually **any drug**
7. Oral fluid testing reveals **recent use**
8. Oral fluid testing is **more union friendly**
9. Oral fluid testing eliminates cross **“gender” concerns** between collector and donor
10. Oral fluid testing can **save you money**

“The only guarantee of passing [an oral fluid] drug test is refraining from drug use during the detection period, 1-4 days prior to the test”

# Sample Type and Detection of Parent THC Drug vs. Metabolites



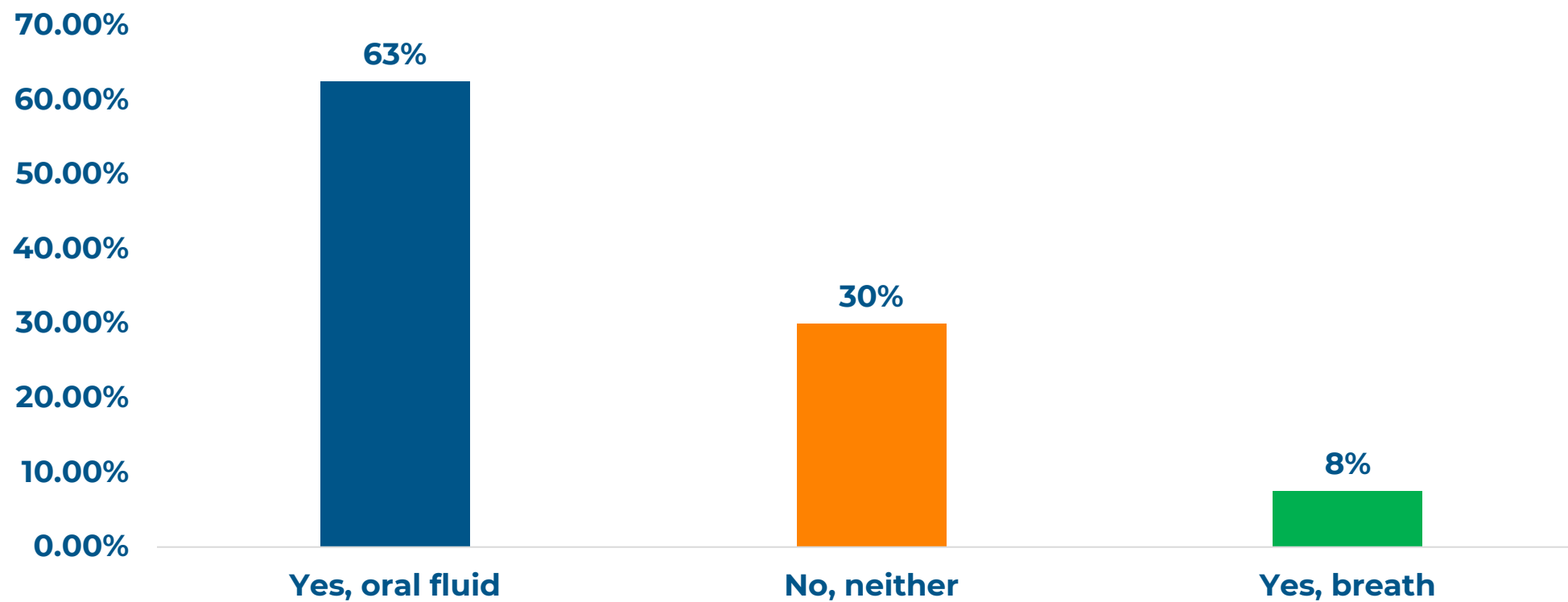
THC Type	Psychoactive/Non-Psychoactive Form	Sample Type
Metabolite THC-COOH	Non-psychoactive form	Urine, hair
Parent THC or Delta-9	Psychoactive form	<b>Oral fluid, breath</b>

**Becoming important in states like CA & WA with state laws prohibiting the use of marijuana tests that detect THC metabolites since they test for PAST USE**



# Making the Switch

In CCG's 2024 survey, we asked providers if clients in CA and WA have switched to oral fluid or breath drug testing



# SAMHSA and DOT approved the use of lab-based Oral Fluid to be used for federal and DOT testing\*



- **May 2, 2023** - the Department of Transportation (DOT) decided to **permit lab-based oral fluid testing for DOT-regulated positions**
  - ✓ Combatting **adulteration/substitution**
  - ✓ All collections are **directly observed**
  - ✓ Potential **cost savings**
  - ✓ **Quick** and **easy** specimen **collections**
  - ✓ **Fewer** collection facility **requirements**
  - ✓ Tighter **window of detection**
  - ✓ **Recent-use detection**



\*Cannot use until two labs are HHS certified which is expected in early 2025



# Key Differences Between Lab-based and POCT



## Lab-based Oral Fluid Testing

- Results within **24-72 hours**
- Laboratory read
- **Initial screening** and **confirmation testing**
- **Long history** to draw from
- Cut-off levels vary
- **Simple collections**
- **THC detection - longer than POCT**

## POCT (Rapid Oral Fluid Testing)

- Near **immediate results**
- (Generally) human read
- Best for **initial screening**
- FDA clearance is relatively new
- Cut-off levels vary
- **Simple collections**
- **Quick** speed to hire
- **THC detection shorter than lab-based OF**

State laws may affect the use of oral fluid as a sample and/or the use of rapid testing.  
**Make sure you are informed about the laws of the state(s) in which you operate.**

# A few oral fluid collection/testing products

**Intercept® Oral Fluid  
Drug Test (LAB) – phasing out**



**Quantisal I (LAB)**



**Quantisal II (LAB)**



**OralTox® Rapid Oral  
Fluid Drug Test**



**Healgen Rapid Oral  
Fluid Drug Test**



**T-Cube/Square Rapid  
Oral Fluid Drug Test**



# What is Oral Fluid Testing Best Suited For?



States where testing for marijuana with urine is not allowed

Companies concerned about **marijuana use on the job**

Programs that **test regularly**

**Post-accident** testing

**Pre-access** testing

**Random** testing

**Reasonable suspicion** testing

**Follow-up** testing

# Oral Fluid Testing May Be The Best Testing Option To Address Recent Trends In Drug Abuse. Why?



Detects  
**recent use**



Covers the entire  
**window of  
impairment** from  
marijuana use



**Easy to administer**



Virtually  
**eliminates  
cheating** on  
drug tests



# Getting Started With Oral Fluid: Things to Consider for Implementation



- Speak with **your provider** to help you with the following:
  - 1) **Identify** your drug-testing objectives
  - 2) **Update** your policy with specific rapid-result and/or lab-based oral fluid testing language
  - 3) **Determine** how you will collect oral fluid samples (on-site using your own trained employees and/or professional technicians or at an off-site collection facility)
  - 4) **Prepare** supervisors/managers
  - 5) **Ensure** all vendors are ready to provide their services
  - 6) **Announce** the program to your employees





## **5. MARIJUANA STATE LAWS, TESTING, TRAINING & EDUCATION**

# Marijuana State Laws & Testing



One size fits all no longer works.

Imperative to be educated on state and local laws regarding marijuana and workplace testing.

One policy + separate state amendments to comply with state restrictions.



NOT LEGAL No Accommodation (9 states)	MEDICAL USE LEGAL No Accommodation (20 states + 2 city ords.)	MEDICAL USE LEGAL No Discrimination Solely w/ Card (22 states + DOC + 5 city ords)	LEGAL MEDICAL & RECREATIONAL Mostly No Accommodation (24 states + DOC)	
<div>NOT APPROVED(3)</div> <div>Idaho</div> <div>Kansas</div> <div>Nebraska</div> <div>APPROVED CBD/LOW CBD (6)</div> <div>Indiana</div> <div>North Carolina</div> <div>South Carolina</div> <div>Tennessee</div> <div>Wisconsin</div> <div>Wyoming</div>	Alabama	Arizona	Alaska	
	Alaska	Arkansas	Arizona	
	Colorado *	California*	California	
	Florida	Connecticut	Colorado	
	Georgia*	Delaware	Connecticut	
	Hawaii	District of Columbia	Delaware	
	Iowa	Illinois	District of Columbia	
	Kentucky	Minnesota	Illinois	
	Louisiana	Missouri	Maine	
	Maine	Montana	Maryland	
	Maryland	Nevada*	Massachusetts	
	Massachusetts	New Jersey	Michigan	New York
	Michigan	New Mexico	Minnesota	Ohio
	Mississippi	New York*	Missouri	Oregon
	New Hampshire	Oklahoma	Montana	Rhode Island
	North Dakota	Pennsylvania*	Nevada	Vermont
	Ohio	Rhode Island	New Jersey	Virginia
	Oregon	South Dakota	New Mexico	Washington
	Texas	Virginia		
	Vermont	Utah		
	Washington*    West Virginia			



# Marijuana State Laws – Medical Marijuana with Required Accommodations



Approximately **22 states, District of Columbia, and 5 city ordinances**

- **Examples: Arizona, Arkansas, Pennsylvania, Virginia,**
  - "No employer may discharge, threaten, refuse to hire or otherwise discriminate or retaliate against an employee...**solely on the basis of such employee's status as an individual who is certified to use medical marijuana**"
- Cannot take employment action on a **positive marijuana test for a certified patient** without additional factors such as evidence of impairment
- Can take employment action for individuals who are not medically certified

# Marijuana State Laws – Recreational Marijuana with Accommodations



- About **10 states and District of Columbia**, but the laws can **vary widely**.
- **Example: Connecticut, Illinois, Montana, New Jersey** "It shall be unlawful for an employer to refuse to hire or to discharge any individual...**because the individual uses lawful products off the premises of the employer during nonworking and non-call hours**"
  - **Recreational marijuana is specifically included** in the definition of "lawful products"
- **Cannot take employment action on any positive marijuana test** without additional factors such as evidence of impairment

# Marijuana State Laws – Atypical State Laws



- **California** and **Washington**

- Differentiate between tests that detect **non-psychoactive metabolites** versus tests that detect the **parent drug**
- Tests that detect the parent drug permit employment action
- Reasoning is **shorter window of detection = very recent use**
- **Oral fluid testing is preferred method in these states**
- Washington only applies to pre-employment

- **New York**

- **Prohibits marijuana testing** except in limited circumstances

- **Nevada**

- Prohibits **refusal to hire** based on marijuana positive
- Employee testing not impacted

# Marijuana State Laws



**All states allow an employer to prohibit:**

- Employees **working while impaired** by marijuana
- Employees **possessing or using** marijuana at work

This should be the bare minimum of any workplace policy!



# Where Are We Now

**DUE TO LACK OF FEDERAL CLARITY - FOLLOW STATE LAW<sub>s</sub>**



**SINGLE STATE OPERATIONS** - Establish policy based on the state laws in which the company operates

**MULTI-STATE OPERATIONS** - Establish policy based on:

- Company's stance on the issues
- Where employees work
- Where corporate operates
- Multi-companies--one policy

Key is to always include a State Amendments for each state in which the company operates

## **FEDERAL:**

Establish DOT/FMCSA policy:

- separate policy for compliance required
- regulated to follow both regulated and non-regulated policies

# Training & Education

## Why do I need this??



Basis of a well-run drug and alcohol testing program:

- Training helps deter the use of drugs and alcohol in the workplace
- Promotes a safe working environment
- Keeps employees and the public safe
- Reduces workplace accidents and injuries
- Provides helpful and required information related to drug and alcohol testing
- DOT requires Supervisor Training and Employee Education as well as many states where companies conduct drug & alcohol testing require it



# 6. PULLING IT ALL TOGETHER





# Putting it All Together



## LIKE IT OR NOT, MARIJUANA IS HERE TO STAY

*As a reminder, employers have the right in most all states to prohibit the use, possession & being under the influence at work*

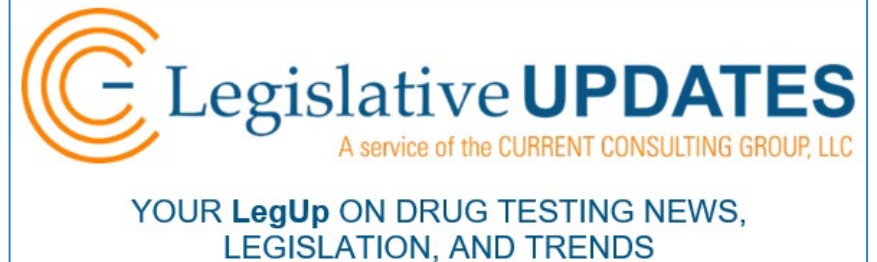
- Be clear - discontinuing marijuana testing **is bad business**
- **Understand your rights as it relates to marijuana**
- **Consult with professionals** on policy & drug laws in state(s) you operate in
- Get on board with **oral fluid testing** – it's the future – it's to your benefit
- **Educate** your employees and train your managers.
- Keep your **policy up to date**

## What We Do: Compliance Services

- State Law Database (Current Compliance)
- Legal & Regulatory Reports, Memos, White Papers
- Legislative Updates
- Policy Development & Annual Compliance Services
- On-Line Training Courses
- In-Person Training
- DOT Program Audits
- Drug and alcohol testing product/provider consultation
- Oral fluid collections, product selection & expertise



[Passed Legislation](#) | [Progressing Legislation](#) | [Failed Legislation](#) | [Drug Testing in the News](#)







Expert Drug Testing  
Industry Consultants  
Compliance & Marketing Support

## Questions

**Current** (noun): a body of water moving in a definite direction, especially through a surrounding body of water in which there is less movement.

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