



Medical Marijuana: Legal Considerations

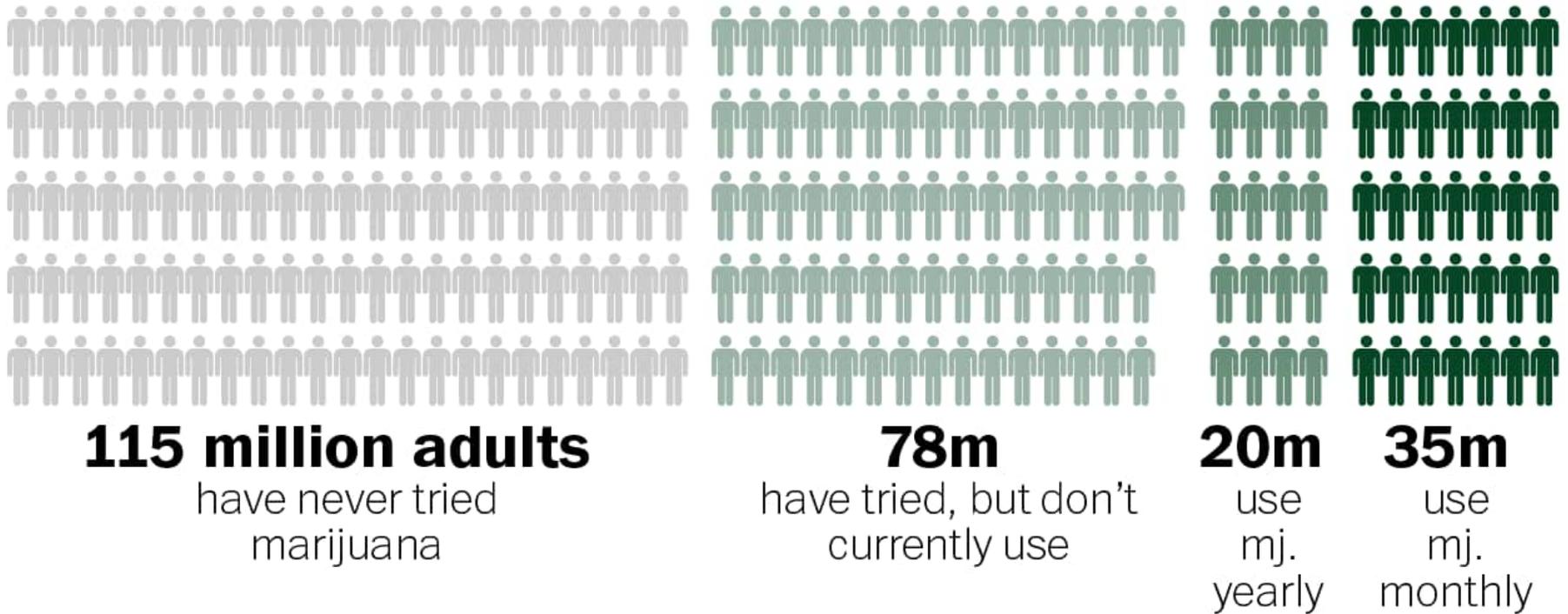
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The Challenge

- A drug-free workplace is major goal of employers
- Drug use is a significant workplace threat
- Marijuana is illegal under federal law
- Marijuana law is different in every state

Marijuana Users

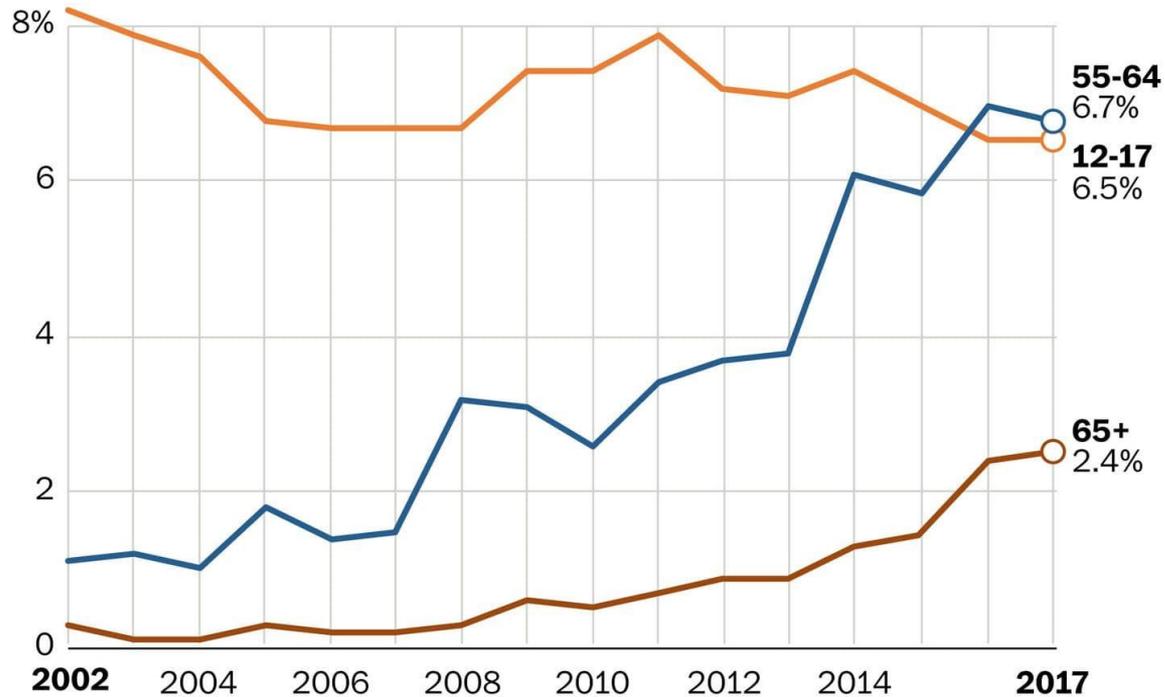


Marijuana Users

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Rate of past-month marijuana use, by age

Percent of each age group reporting use of marijuana in the past month.



Source: SAMHSA, CDC

WAPO.ST/WONKBLOG

Marijuana Users

- Marijuana is the most commonly used illegal drug in the U.S.
- 1 in 10 marijuana users will become addicted. For people who begin using before the age of 18, that number rises to 1 in 6.

Marijuana Effects

- Marijuana use directly affects the brain — specifically the parts of the brain responsible for memory, learning, attention, decision making, coordination, emotions, and reaction time.
- Tetrahydrocannabinol (THC) affects areas of the brain that control movement, balance, coordination, memory, and judgment.
- Can slow reaction time and ability to make decisions.
- Can impair coordination, distort perception, and lead to memory loss and difficulty in problem-solving.

What is Legal and Where?

- Under the federal Controlled Substances Act, it is unlawful to “manufacture, distribute, dispense, or possess any controlled substance except in a manner authorized by the [Act].”
 - Marijuana has “no currently accepted medical use in treatment in the United States.” 21 U.S.C. § 812(b)(1), (c).
 - No exception for medical marijuana.

What is Legal and Where?

- Recreational and medical marijuana use
 - Alaska, California, Colorado, the District of Columbia, Maine, Massachusetts, Michigan, Nevada, Oregon, Washington, and Vermont
- Medical marijuana
 - Arizona, Arkansas, Connecticut, Delaware, Florida, Hawaii, Illinois, Louisiana, Missouri, Montana, Maryland, Minnesota, **New Jersey**, New York, New Hampshire, New Mexico, North Dakota, Oklahoma, Ohio, **Pennsylvania**, Rhode Island, and West Virginia
- CBD/low-THC medical use
 - Alabama, Georgia, Indiana, Iowa, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia, Wisconsin, and Wyoming

Idaho, Kansas, Nebraska, and South Dakota allow for NO recreational or medical access to marijuana products in any form.

Pennsylvania Law

- Pennsylvania enacted the Medical Marijuana Act in 2016.
- The Act provides that use or possession of medical marijuana is lawful within this Commonwealth so long as the “patient” meets certain requirements.
 - Seventeen serious medical conditions are noted in the Act.

Pennsylvania Law

- The Act requires a certification from a practitioner for the patient to obtain an identification card issued by the PA Department of Health which allows the patient to acquire marijuana from an approved dispensary.
- Medical marijuana only may be dispensed in the following forms: pill, oil, topical forms (including gel, creams or ointments), vaporization or nebulization, tincture or liquid.

Unlawful Use

- Incorporating medical marijuana into edible form (certain exceptions apply).
- Growing medical marijuana without a permit.
- Growing or dispensing medical marijuana unless authorized as a health care medical marijuana organization.
- Dispensing medical marijuana unless the dispensary has received a permit.

Smoking marijuana is not permitted under the law.

Anti-Discrimination Provision

- Prohibited from discharging, threatening, refusing to hire, or otherwise discriminating against an employee solely based on certification to use medical marijuana.
 - Includes compensation, terms, conditions, location or privileges.

Employers are...

- Not required to make accommodations for use of medical marijuana on the property.
- Allowed to discipline employee for being under the influence of medical marijuana in the workplace or for working while under the influence when employee's conduct falls below the standard of care normally accepted for that position or when in certain safety-sensitive jobs.
- Not required to commit any act that would put the employer or any person acting on its behalf in violation of Federal Law.

Other Laws

- OSHA: Requires employers to keep the workplace free of recognized hazards.
- DOT: Drug and Alcohol Testing Regulation does not authorize the use of Schedule 1 drugs, including marijuana, for any reason.

Americans with Disabilities Act

- “Disability” is defined broadly under the 2008 amendments to the ADA, and so the use of legally prescribed drugs will usually fall under the protection of the ADA.
- ADA has a specific carve out exempting drugs that are illegal under federal law from its protections.

Drug Testing

- Detectible levels of THC can remain in an individual's system for days or even weeks after consuming marijuana.
- Advocates argue that medical marijuana users are unfairly targeted at work for purely off-duty medical use.
- Private employers are not required to test employees for drugs or alcohol.

Drug Testing

- States prohibiting employers from terminating or rescinding a job offer solely for a positive marijuana test: Arizona, Arkansas, Connecticut, Delaware, Illinois, Maine, Minnesota, Oklahoma, **Pennsylvania**, Rhode Island, and West Virginia
- States imposing significant restrictions on an employer's ability to terminate or rescind an offer for a positive test, such as Nevada, New York, and Massachusetts
- States allowing employers to terminate employees for testing positive for marijuana even though medical marijuana in some form is available for prescription in the state: California, Colorado, Michigan, Montana, **New Jersey**, New Mexico, Oregon, Washington, Florida, and Ohio

Drug Testing

- States employers can likely terminate employees for testing positive for marijuana use since the states either have no marijuana access program or because only CBD/low-THC products are permitted: Alabama, Georgia, Indiana, Iowa, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia, Wisconsin, Wyoming, Idaho, Kansas, Nebraska, and South Dakota
- States without definitive position on whether employers are permitted to terminate an employee or rescind a job offer for a positive marijuana test in the following states: Alaska, District of Columbia, Hawaii, Louisiana, Maryland, Missouri, New Hampshire, North Dakota, Utah, and Vermont

Drug Testing in Pennsylvania

- Pennsylvania has not yet banned pre-employment marijuana testing but it provides protection against discrimination for employees that are registered medical marijuana patients, declaring that they may not be fired or rescind a job offer only because they fail a drug test as a result of their medical status.

Recommendations

- Update drug-free workplace policy.
- Update job descriptions for safety-sensitive positions.
- Update drug testing policies.
- Ensure processes are in place to prevent a claim of discrimination, from hiring, current employment and termination.



Thank you!

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