

Marijuana Legalization and Workplace Risk: What New Jersey Employers Need to Know

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According to a 2024 published study, the legalization of recreational marijuana use has resulted in an increase of workplace accidents among younger workers. In comparing injury data in states before and after legalization, the study revealed that states legalizing recreational marijuana saw a 10% increase in workplace accidents for workers aged between 20 and 34. (Recreational Marijuana Legalization and Workplace Injuries Among Younger Workers by Li L, Liang Y, Sabia JJ, Dave DM.)

While the study did not give specifics with regard to New Jersey, its findings would indicate an increase in accidents for younger workers following the state's legalization of recreational marijuana in 2021 with the passage of the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMMA).

In New Jersey workers' compensation law, the intoxication defense is very weak. This is because New Jersey belongs to a minority of states which find intoxication is only a valid defense if the intoxication is the sole cause of injury. To place this in context, there is only one New Jersey case in the last 50 years where an employer was successfully able to have a case dismissed based upon the injured workers'

intoxication. While every employer handling a claim involving intoxication should examine this potential defense, for practical purposes, it often will not be applicable. Accordingly, employers should focus on preventative measures to stop these injuries from occurring.

In combating the rise of impairment-related accidents and claims, New Jersey employers can make use of the following tools:

- Education
- Clear drug policies
- Employee Assistance Programs

Education

Employers can play a vital role in making their employees aware of the occupational hazards that come with recreational drug use on the job. While employees may have a general sense that recreational marijuana usage can cause some lack of sharpness, further education could cover the multiple physical aspects which could lead to accidents, such as impairment of judgment, delayed reaction, and poor bodily coordination. It is also possible that employees may believe they could take an edible marijuana gummy a few hours before work and be completely sober by the start of their shift. Company training could make them aware that some edibles are highly potent and can still impact the

body 7-8 hours after usage. Employees armed with this knowledge can make better decisions regarding their behavior.

Drug Policies

Employers should institute clear and specific policies relating to drug use by employees. These should be clearly outlined in new employee training with updated training at regular intervals. All employees should be required to acknowledge the contents of these trainings.

Such drug policies would be primarily limited to what happens during work hours and/or on work property. Under CREAMMA, no adverse action can be taken against an employee for off-duty use of marijuana. There is an exception for workers whose work falls under federal guidelines, such as those in the trucking or aviation industry. In those cases, CREAMMA is pre-empted by federal law and employers can fully ban off-duty use of marijuana. Many states have also recognized an exception for “safety sensitive” jobs, defined as jobs where an employee’s impairment could cause harm to themselves, their co-workers, or the public (e.g. driving commercial vehicles, operating heavy equipment, handling hazardous materials). However, New Jersey recognizes no such exception, so if the job does not fall under federal jurisdiction, the employers are unable to prohibit off-duty marijuana use.

While most employers cannot ban the use of recreational marijuana while employees are off-duty, there are still policies they can enact to limit impairment-related accidents. Employers should institute a zero-tolerance policy regarding the possession or use of

recreational drugs on work property and during work hours. Employers can also prohibit an employee from arriving on the job in an impaired state.

How are these policies to be enforced? Under CREAMMA, employers are free to perform drug tests on their employees (randomly, at set times, or based upon suspicion). However, since a positive drug test cannot establish that an employee either took drugs or was impaired by them during work hours, this alone cannot be the basis for any adverse action taken against an employee.

CREAMMA references certification of a WIRE (Workforce Impairment Recognition Expert) who would be specially trained to identify signs of impairment caused by substance use. However, while CREAMMA was passed in 2021, as of time of printing, New Jersey has not yet finalized a formal certification program for such experts. In the interim, employers still can and should arrange for training for their supervisors or retain a third-party vendor to act in such capacity. These individuals would be trained for how to identify signs of impairment, including but not limited to:

- Delayed reaction time
- Red eyes
- Negligence with job duties
- Poor muscle or limb coordination
- Changes in speech
- Panic or anxiety

In determining whether there are objective signs of impairment, the State of New Jersey has created a sample [Reasonable Suspicion Observed Behavior Report](#) that can be utilized by employers.

Employee Assistance Programs

In addition to training and enforcement of drug use policy, employers can reduce the likelihood of marijuana-related accidents by implementing an Employee Assistance Program (EAP). Such programs provide a free and confidential space for employees to seek help with problems, including substance abuse and/or addiction. These programs have proven beneficial as they potentially help prevent accidents before they take place. EAP's have also been shown to address the effects of employee addiction that go beyond impairment-related accidents, such as increased absenteeism, greater health insurance costs, reduced productivity, etc.

While the legalization of recreational marijuana usage poses a risk of increased work-related accidents for younger workers, employers can work to curb this increase by investing in education, effective drug policies, and employee assistance programs.



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