



**DOOBIE,
DOOBIE DO**



Marijuana in the Workplace

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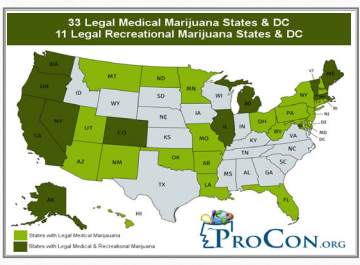
**Marijuana in the Workplace
Little Bit of History...**

- Been around for awhile
- Was legal for awhile
- REEFER MADNESS!!

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Marijuana in the Workplace

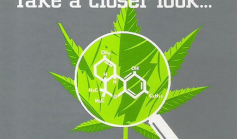



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Marijuana in the Workplace
Is Marijuana really so bad?

- I'm a lawyer, not a doctor
- I'm an old hippie
- I never inhaled


Take a closer look...





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Marijuana in the Workplace
How did we get here?




- 33 States and DC have some legalized form
 - South Carolina one of them? NO
- How can it be legal under State law if illegal under Federal law?
- Rohrbacher-Farr Amendment

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Marijuana in the Workplace
Is it legal in South Carolina?

- Marijuana is not legal in South Carolina
- Marijuana is legal in South Carolina
- Compassionate Care Act
- What if I just grow it?




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Marijuana in the Workplace

Yea! So I can smoke dope at work, right?

- May be legal in some states but these laws often do not extend into the workplace
- Even where it is legal, there are workplace restrictions
- Some guidance from the Courts...only not from South Carolina!



WINSOR

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Marijuana in the Workplace

LEAVE YOUR JOINTS AT HOME!!!!

- State law does not force employers to tolerate the use of marijuana at work
- Just like alcohol, it may be legal but employers can prohibit the use at work
- Can I fire employees for using marijuana?

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Marijuana in the Workplace

What about medical marijuana under the Americans with Disabilities Act?

HERE IS WHERE FEDERAL LAW SIGNIFICANTLY BUMPS INTO THE STATE LAWS

ADA PREVENTS EMPLOYERS FROM DISCRIMINATING AGAINST "QUALIFIED INDIVIDUALS" DUE TO A DISABILITY


ZERO TOLERANCE POLICIES

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**Marijuana in the Workplace
MEASURE FOR IMPAIRMENT**

- Occupational Health & Safety concerns
- Lack of clear evidence on impairment
- Medical marijuana – always in the employee’s system because of regular use



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**Marijuana in the Workplace
Carve-Outs (Defenses)**

- DOT Regulations
 - Safety Sensitive Positions
- OSHA Regulations
- Controlled Substance Act
- Employment policies
- Additional Safety Sensitive Positions (careful with these classifications)

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Marijuana in the Workplace
What is NOT a defense...

“All of our employees are safety-sensitive!”





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Marijuana in the Workplace Drug Testing in the Public Sector

- Public sector employers are restricted on the reasons for drug testing of employees
- **NOT EVERYONE IS SAFETY SENSITIVE**
- Have a carefully crafted policy and stick to it
- Decide how positives will be handled
- Second chance? Third chance?
- Employee Assistance Program

Damn.
Random drug testing day.



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Marijuana in the Workplace General Testing Methods

- Urine
- Hair follicle
- Gut feeling
- Presence v. impairment
- Breathalyzer...wait, that's for alcohol

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Marijuana in the Workplace Vaping

- Many employees are vaping marijuana
- No odor
- What does your smoking policy prohibit? **ADD VAPES!**

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Marijuana in the Workplace
And then there's CBD Oil...

- What is CBD Oil?
- What does it contain?
- Can I prohibit the use?
- How can I determine a positive drug test for THC as to whether it's from marijuana or CBD Oil?







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Marijuana in the Workplace

Where does that leave us?

OK. Who decided to call it "possession of marijuana" and not "joint custody?"







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Marijuana in the Workplace

SMOKE BREAK!!!

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