

DRUG TESTING IN THE WORKPLACE

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2023: A YEAR OF CHANGES (AND IT'S NOT OVER!)

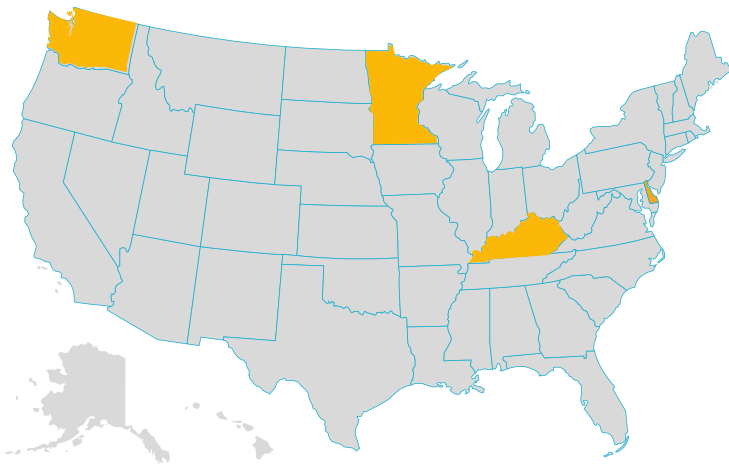
By Katherine Miller

It's hard to believe but 2023 isn't even half-way over and already we've seen major changes impacting workplace drug testing on both the state and federal levels.

Specifically, Kentucky, Delaware, Minnesota, Washington, and the federal Department of Transportation (DOT) have all announced changes that are either already effective or will be soon, many pertaining to cannabis. This article will give a brief overview of each of the state law-related changes.

Delaware Legalizes Recreational Cannabis

April 2023 brought about the legalization of recreational cannabis in Delaware via House Bill 1 (HB 1) and House Bill 2 (HB 2). Upon passage, adult-use cannabis became immediately available, though the state has yet to establish dispensaries, retail regulations, and more.



Neither HB 1 nor HB 2 provides strict guidance for employers pertaining to cannabis use in the workplace. Only HB 2 mentions employers in any capacities, stating that it is not intended to impact or impose any requirements or restrictions on employers regarding terms or conditions of employment. This includes, but is not limited to, workplace accommodations, policies, or discipline. An employer who occupies, owns, or controls a property can prohibit or regulate the possession, consumption, use, transfer, distribution, sale, transportation, or growth of cannabis on the property.

HB 2 will not take effect until such a time as either the funds required to implement the bill have been appropriated and published in the Register of Regulations or the bill is enacted.

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WHAT TO CONSIDER WHEN DETERMINING WHICH SUBSTANCES TO INCLUDE IN YOUR DRUG TEST PANEL

Drug Test Results

By Sharon Bottcher and Adam Hall

A drug test is a technical analysis of a biological specimen to determine the presence or absence of specified parent drugs or their metabolites. Drug testing does not determine impairment or current drug use. Rather, it determines if a specified amount of a drug or its metabolite is in the specimen. The U.S. Department of Transportation (DOT) regulations and various state drug testing laws specifically identify the substances and cut-off levels that employers must incorporate into their testing program. Non-DOT regulated employers or employers in states without drug testing laws may choose both the drug panel and the drug cut-off levels to best fit their company needs.

For instance, the DOT requires testing to be conducted according to SAMHSA guidelines, which mandate the five illicit drugs outlined below:

- Amphetamines (meth, speed, crank, MDMA/MDA)
- THC (cannabinoids, marijuana, hash)
- Cocaine (coke, crack)
- Phencyclidine (PCP, angel dust)
- Opiates (heroin, codeine, morphine, hydrocodone/hydromorphone, oxycodone/oxymorphone)

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This SAMHSA regulated test is commonly referred to as a 5-panel drug test. In addition, the guidelines specify the following drug cut-off levels for the primary substances:

- Amphetamines Initial: 500 ng/mL Confirmatory: 250 ng/mL
- THC Initial: 50 ng/ mL Confirmatory: 15 ng/mL
- Cocaine Initial: 150 ng/ mL Confirmatory: 100 ng/mL
- Phencyclidine Initial: 25 ng/ mL Confirmatory: 25 ng/mL
- Opiates Initial: 2000 ng/ mL Confirmatory: 2000 ng/mL

As outlined above, many private employers are not limited in the number of substances that can be tested for and some other additional categories may include but not be limited to the following:

- Barbiturates (phenobarbital, butalbital, secobarbital, downers)
- Benzodiazepines (tranquilizers like Valium, Librium, Xanax)
- Methaqualone (Quaaludes)
- Methadone (often used to treat heroin addiction)
- Propoxyphene (Darvon compounds)
- Hallucinogens (LSD, mushrooms, mescaline, peyote)
- Inhalants (paint, glue, hairspray)
- Anabolic steroids (synthesized, muscle-building hormones)
- Cotinine (the predominant metabolite of nicotine)
- Hydrocodone (prescription medication known as Lortab, Vicodin, Oxycodone)

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WHAT EMPLOYERS SHOULD KNOW ABOUT MARIJUANA IN THE WORKPLACE

By Rick Tennant

With the legalization and decriminalization of marijuana in more and more states, the way employers conduct drug testing will evolve.

This article addresses what employers should know about testing for marijuana in 2023. To begin, do not let legal marijuana laws scare you away from testing employees. In fact, there is plenty of evidence to suggest you should continue testing for cannabis.

Employers still have the right in all 50 states to expect employees to follow policies, including safety policies that prohibit employees from being at work under the influence of drugs and alcohol.

While marijuana is legal in some states, that does not mean everything an employee does while high on marijuana is legal. Legalization has not suspended the laws of negligent hiring or respondeat superior that hold employers legally liable for accidents, property damage, fatalities, theft, fraud, and other bad acts caused by or committed by employees who are under the influence of marijuana at the time of the incident. But you have to test for marijuana to know if the individual was using cannabis.

As employers make the decision to either continue testing for marijuana or drop it from their drug-test panel, there are several key things to understand.

First, is marijuana use increasing? The answer is simply, yes, marijuana use is increasing dramatically. In 2021 marijuana detection rates jumped 17.5% compared to 2019 and over the past year marijuana positive drug-test results hit an all-time high, (pun intended). There are many reasons for this, the most recognizable are state laws changing (legalization & decriminalization) and employers removing marijuana from their drug-test panels.

Additionally, public perception has changed since the anti-drug campaigns of the 1980s. Nowadays, the pro-legalization movements have successfully softened if not eliminated any negative stigma surrounding the drug. All these factors have led to more people smoking pot and eating marijuana-laced edibles. In short, marijuana use is up, fear of it is down, and millions of people are trying marijuana for the first time every year.

Second, how long will marijuana impairment last after usage? Impairment is defined as the period of time in which an individual suffers diminished cognitive and psychomotor ability.

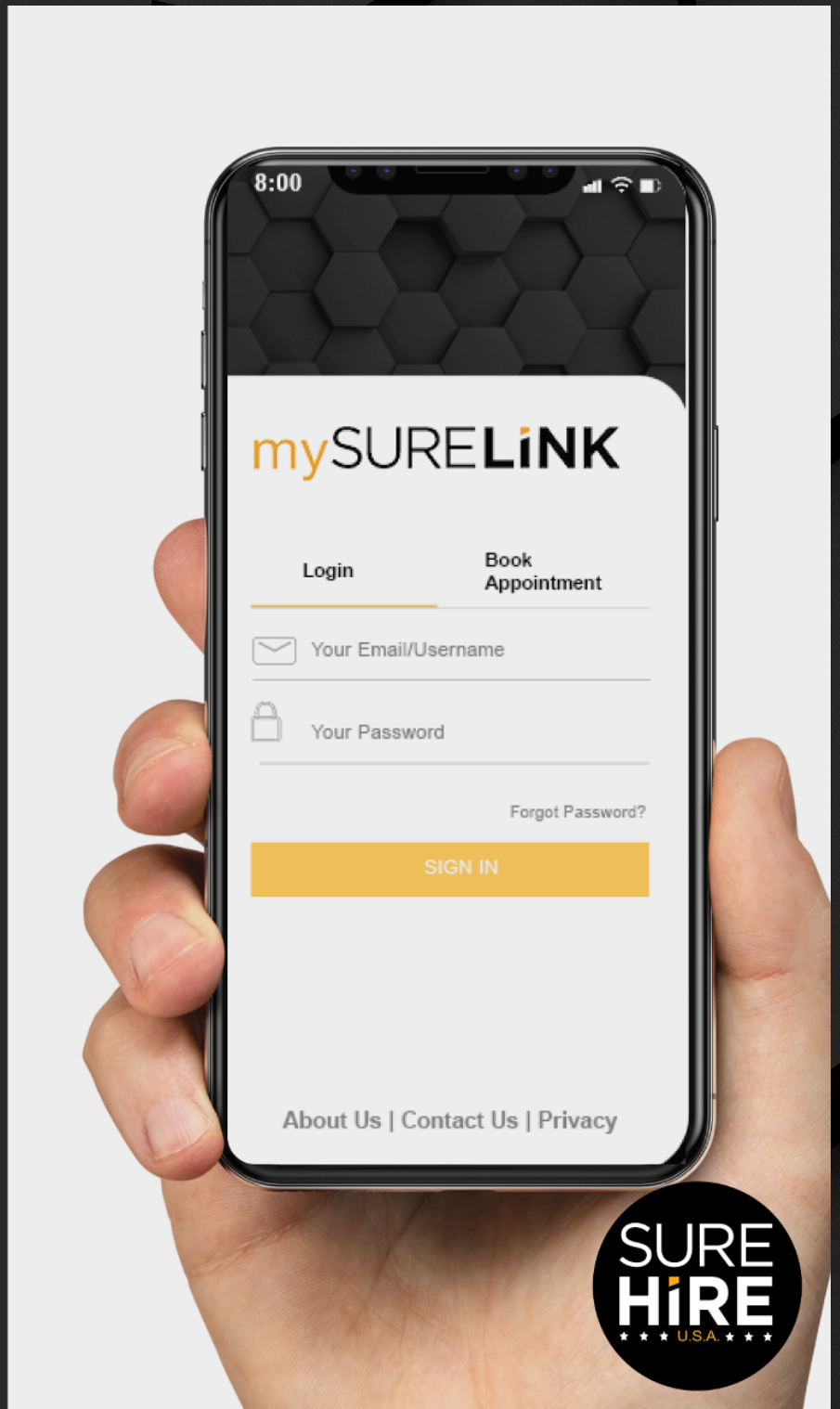
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