

The Continuing Story of Marijuana in the Workplace

By: Steve Smith on June 3, 2021 on graydon.law

Counseling companies on issues related to marijuana in the work place is tricky. What companies want is a good, safe, and stable workforce. Laws vary from state to state despite the federal prohibition. Like alcohol, marijuana presents the possibility of impaired workers, and that is a threat. Unlike alcohol, there is no real time test for marijuana, that is, a company can't give an employee a breath test to determine if they are "high" right now, or after an accident.

That is one reason that Amazon's decision to treat marijuana like alcohol is making large waves, [as seen in this recent article](#). Positions designated as safety oriented by the USDOT notwithstanding, Amazon states that it supports federal legalization, and that it will treat marijuana the same as alcohol in the workplace. This includes removal of marijuana from pre-employment drug screens.

The difficulty is to come. Amazon has built a massive distribution center in Northern Kentucky, for instance, and will employ thousands. If there is a workplace incident such as a fork-lift accident, the testing will be done afterward. In the case of alcohol, a blood alcohol content level will result from testing, indicating whether the employee was impaired. With marijuana, the test will only reveal that the employee has a level of THC in their system from sometime during the past month or so. Repeat testing can only determine if an employee is using more or less THC over a period of time, but not exactly when they were THC impaired.

Without a zero tolerance policy for THC, what is the resulting employment outcome in the case of an accident? An alcohol impaired employee is likely terminated if drunk while working and involved in an accident. If an employee has a level of THC in their system, on the other hand, but there is no method to determine "when", then what? It will be very interesting to watch Amazon's posture evolve moving forward.

Amazon is a giant, and has no doubt vetted this position to the granular level internally and externally. This will certainly make hiring easier for Amazon, and will likely attract good workers who use marijuana responsibly, the way others use alcohol. The excitement will be when Amazon shows the world that the wheels didn't fall off, attracting more companies to

join Amazon's position. In turn, when enough large companies push the federal government to remove marijuana's Controlled Substances Act listing as a Schedule I narcotic, it might happen.