



AFSCME Facts

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DOT Testing Requirements and State Marijuana Laws | Sept. 8, 2022

Q: I need to maintain a Commercial Driver's License (CDL) or to operate a Commercial Motor Vehicle (CMV) for my job. I am currently required by the U.S. Department of Transportation (USDOT) to take drug and alcohol tests either randomly or scheduled. My state has decriminalized (or legalized) marijuana for recreational or medical use. Am I now exempt from drug tests that detect marijuana?

A: No, you are not exempt.ⁱ Several states have decriminalized or legalized marijuana in recent years, but the federal requirements for drug and alcohol testing supersede any state law. No matter what your state now allows, nothing has changed from the perspective of USDOT.

Q: My personal doctor prescribed me medical marijuana for treatment. Does that mean I am exempt from DOT testing requirements?

A: No. USDOT makes no distinction between marijuana use for recreational or medicinal purposes.

Q: I used marijuana during my vacation two weeks ago. Will that still show up on my drug test?

A: It could. The urine test currently required can detect THC – the main active ingredient in marijuana – from 1-30 days after use.ⁱⁱ

Q: I use CBD products. Does that mean I could fail my drug test?

A: It is possible.ⁱⁱⁱ USDOT requires a test to detect THC, not CBD, but THC is present in some CBD products. Unfortunately, CBD product labels might not accurately identify or disclose the presence of THC. Since the FDA does not regulate these products, it is very difficult to know for certain. There is a risk that you could unknowingly consume THC through CBD oils and other products in big enough amounts to be detected by the current test.^{iv}

Q: Is there an alternative to the urine test that allows me to use marijuana when I am not at work, but is accurate enough to test drivers for drug use on the job?

A: Not currently. Urinalysis is the only test that USDOT accepts. It is possible, however, that USDOT will change this. It is considering allowing an oral fluid test as an alternative to the urinalysis test.^v The oral fluid test detects marijuana only within a 24-hour window, rather than a 30-day window. If the rules are changed, employers might be given the option to require either a urinalysis or oral fluid test. We do not know if or when USDOT will decide to do this.

ⁱ 49 CFR 382.109(a)

ⁱⁱ Hadland SE, Levy S. Objective Testing: Urine and Other Drug Tests. Child Adolescent Psychiatry Clin N Am. 2016 Jul;25(3):549-65. doi: 10.1016/j.chc.2016.02.005. Epub 2016 Mar 30. PMID: 27338974; PMCID: PMC4920965.

ⁱⁱⁱ Compliance Notice, Office of Drug and Alcohol Policy, U.S. Department of Transportation, February 18, 2020.

^{iv} "Some CBD products could lead to positive urine test for pot." Reuters, November 6, 2019.

^v "Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Addition of Oral Fluid Specimen Testing for Drugs", Docket # DOT-OST-2021-0093, Notice of Proposed Rulemaking, Office of the Secretary, US Department of Transportation, February 28, 2022.