

Media Mention: Ward and Smith Attorneys Featured in Remedy Review

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Employers could face a new challenge now that hemp and hemp-derived CBD are legal.

That challenge was the focus of an article written by labor and employment attorneys Emily Massey and Devon Williams and hemp law attorney Allen Trask. "Tearing Up the Litmus Test: Potential Problems with Testing Employees for Marijuana Use," first published by the

Remedy Review, explains the complex issue of drug-testing policies for businesses. From the article:

Picture this: You are a law-abiding citizen. You observe the speed limit (or, at least, stay within five MPH of it), you don't cheat on your taxes, and you most certainly do not take illegal drugs. Those values permeate your business and you expect the same of your employees. You've done your homework and you know that maintaining a drug and alcohol-free workplace is the way to go, which is why you have a zero-tolerance drug and alcohol testing policy. Your drug and alcohol testing policy requires that your employees regularly submit to drug tests and all applicants must pass a post-offer, pre-employment drug test before beginning work at your company. What can go wrong, right?

Let's imagine you learn that Henry Hempster, your most trusted machine operator, tested positive for tetrahydrocannabinol ("THC"), the psychoactive component found in marijuana, during a recent random drug testing. Not only are you shocked (and perhaps disappointed), but you believe you have no choice but to terminate Mr. Hempster in accordance with your zero-tolerance policy. You calmly call Mr. Hempster into your office to break the news.

At first Mr. Hempster is similarly shocked by the positive THC test result and denies any illicit drug use. Although you are fond of Mr. Hempster, you are unconvinced and you become further annoyed that he would lie to your face (or so you assume). Confident you are holding the "smoking gun" (a.k.a. the drug testing results), you ask Mr. Hempster, "well, then, how do you explain these results", pointing to the paper of course. Mr. Hempster calmly informs you that he has been regularly taking a hemp-derived cannabidiol ("CBD") product to ease his chronic knee pain caused by osteoarthritis. He also is quick to inform you that it is legal.

You are left puzzled and befuddled. What do you do next? In a game of jeopardy, you might choose "Call My Attorney for \$400, please Alex." In the game of navigating employment law minefields, you likely should pick the same answer.

Joking aside, this situation is poised to become all too common and is indicative of a gap between

various laws (and a grey area where there are established laws). As we've written before, hemp and hemp-derived CBD products are now legal. Hemp and its derivatives are being used in a wide variety of products that range from basic tinctures and creams, to mainstream medicines. But because hemp, by legal definition, can contain trace amounts of THC (0.3% delta-9 THC or less to be considered lawful), it is possible that people who lawfully use these hemp products may fail drug tests. Let's examine a few employment-related scenarios that can arise with CBD.

[Click here](#) to can read the entire article on Remedy Review.