

Reacting to Marijuana Legalization and Workplace Safety Policies – FAQ

Q: What about post-accident?

A: Yes, MN employers may test for Cannabis in post-accident

See slide 27

Q: Yes, we are DOT, but over 10K under 26 so no CDL, is that considered DOT for safety sensitive?

A: If your trailers or vehicles have a DOT number on them and registered with DOT even if under 26,000, your drivers will need a medical card to drive. Whether they fall under DOT rules and drug testing in general are if the vehicle:

Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 10,001 pounds or more.

Is designed or used to transport more than 8 passengers (including the driver) for compensation, or more than 15 passengers (including the driver) without compensation.

Is used to transport hazardous materials that require a safety permit.

Additionally, some states may have their own requirements for intrastate drivers to be under DOT rules. You can check with your responsible state agency for more information.

If you are not sure if you are under DOT rules, you can use the online tool provided by the FMCSA to determine your registration requirements. You can also contact the FMCSA for further assistance.

Driving is considered a safety sensitive position.

Please check with your state Department of Transportation Office. Your company has specific criteria that will determine the answer. For example, do your drivers cross state lines?

CMV is defined in 49 CFR Part 383 § 382.107

<https://jkkellercompliancenet.com/news/workplace-vs-fmcsa-what-is-a-safety-sensitive-position>

Q: Will the MRO talk to an employee that has a positive test for marijuana and take into consideration a medical marijuana card? Or will they just report the test as positive and up to employer to talk to employee about a medical marijuana card?

A: *See slide 4*

Yes, the MRO will conduct reviews for positive THC and Medical Marijuana card holders.

The MRO will still report THC as positive even if the employee proved verification of the Card.

DOT this is a positive test because it violates the Federal rule 49 CFR part 40

NONDOT your company policy should address positive tests and Medical Marijuana card holders

Q: Pre-employment testing - Is this for MN employers only? We are a ND employer with MN resident employees/candidates.

A: If the MN resident works in ND, please follow your ND workplace policy for testing.

Q: How do we handle candidates that are pre-employment testing in a different state with different laws to work in ND? Do we have to comply with that states laws if they test in that state?

A: Employees tested out of state, but will come and work in ND, follow your ND workplace policy for testing.

Q: What is that injury in a nutshell?

A: A workplace injury is an event that happens during work duties that either causes a new injury or illness—or makes an existing condition worse. It is can also be defined as a bodily injury caused by an accident that occurs while the employee is at his or her workplace and performing his or her regularly scheduled work or serving in an official capacity for his or her labor organization. A workplace injury may also include injuries that occur while traveling from or to the workplace for work purposes.

According to the Occupational Safety and Health Administration (OSHA), an employer must consider an injury or illness to be work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness. OSHA defines the work environment as “the establishment and other locations where one or more employees are working or are present as a condition of their employment. The work environment includes not only physical locations, but also the equipment or materials used by the employee during the course of his or her work”.

There are some situations where an injury or illness occurs in the work environment and is not considered work-related, such as when the injury or illness involves signs or symptoms that surface at work but result solely from a non-work-related event or exposure or when the injury or illness is solely the result of personal consumption, grooming, self-medication, or self-infliction, or when the injury or illness is solely the result of personal tasks unrelated to employment.

Sanford OccMed recommends you to please visit with your WSI or Work Comp point of contact for criteria of an injury.

Q: Operating an employer's vehicle - is this just Federal Motor Carrier or any company provided vehicle operation?

A: Any vehicle, the employee/ driver is not allowed to use, possess or be under the influence of Cannabis, Drugs, or Alcohol. FMSCA or Non-Commercial Motor Vehicles.

Q: Is there a resource for example cannabis, drug, and alcohol policies?

Always consult your legal advisors for Drug, Cannabis and Alcohol policy building.

SHRM Society for Human Resources Management is a reliable source for information.

<https://www.shrm.org/resourcesandtools/tools-and-samples/policies/pages/drug-and-alcohol-policy.aspx>

American Alliance Drug Testing

<https://aadrugtesting.com/services/create-your-own-drug-alcohol-testing-policy/>

Q: You mentioned while answering we'll need to look into that. Will you following up with further information to us on that topic or can you point us in the right direction of how to find a clear answer to this and how to handle. Safety sensitive can be anything under 26 ton? Not CDL class but below.

A: I believe this is similar Question number 2

Please check with your state Department of Transportation office. Your company has specific criteria that will determine the answer. For example, do your drivers cross state lines?

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<https://jjkellercompliancencetwork.com/news/workplace-vs-fmcsa-what-is-a-safety-sensitive-position>

Q: Will we get the DISA site info?

A: All references listed below

<https://disa.com/marijuana-legality-by-state>

<https://cannabis.mn.gov/>

<https://cannabis.mn.gov/consumers.html>

<https://dps.mn.gov/divisions/ots/drugged-driving/Pages/default.aspx>

https://www.revisor.mn.gov/laws/2023/0/Session+Law/Chapter/63/?keyword_type=all&key

<https://www.revisor.mn.gov/statutes/cite/181.950#:~:text=Safety%2Dsensitive%20position.,or%20safety%20of%20any%20person>

<https://www.house.mn.gov/hrd/pubs/MCTRA.pdf>

Current Cannabis Laws as of Nov 1, 2023

STATE	CANNABIS LEGAL STATUS	MEDICINAL	DECRIMINALIZED
North Dakota	Mixed	Yes	Yes
South Dakota	Mixed	Yes	No
Minnesota	Yes, Fully Legal	Yes	Yes
Iowa	NO	CBD Oil Only	No
Montana	Yes, Fully Legal	Yes	Yes

<https://www.mpp.org/states/north-dakota/north-dakotas-marijuana-reclassification-bill-h-1050/>

<https://www.mpp.org/states/south-dakota/overview-of-amendment-a-and-measure-26/>

<https://www.mpp.org/states/iowa/summary-iowas-medical-cannabidiol-program/>

<https://www.mpp.org/states/montana/summary-of-i-190-implementation-bill/>

<https://www.mpp.org/states/minnesota/minnesota-legalization-law-2023-detailed-summary/>

Q: What is OSHA's definition of Safety Sensitive?

A: Many safety professionals tie the term to OSHAs General Duty Clause (GDC)

<https://www.osha.gov/laws-regs/standardinterpretations/1998-05-02>

For the general workforce, the term safety sensitive is not exactly defined by OSHA (Occupational Safety and Health Administration). Many safety professionals tie the term to OSHAs General Duty Clause (GDC), which requires that employers provide all workers with a safe and healthful workplace. Specifically, the GDC requires employers to recognize hazards that cause or likely will cause death or serious physical harm. Any job title that is likely to cause death or serious harm to someone including the employee, coworkers, or the general public is usually put on a list of safety-sensitive positions. The employer must look at each job hazards and decide if the position is classified by its organization as safety sensitive. Examples may include: Forklift drivers, Heavy machinery operators and Crane operators. Even someone who works as a roofer may be considered a safety-sensitive position because the employee could trip and fall from a high elevation, causing serious personal harm.