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November 29, 2022

VIA EMAIL

Cari Gray
Bureau of Workers' Compensation
cari.gray@bwc.state.oh.us

RE: The CAK Safety Council

Dear Cari:

Thank you for attending the CAK Safety Council on November 16, 2022. As promised, I have enclosed a copy of my PowerPoint slides from the presentation. I apologize for the technical glitches/power outage that resulted in you not being able to see these slides at the time.

In any event, I hope you enjoyed the presentation. Should you have any questions or concerns, please do not hesitate to contact me on my cell phone: 330-806-8004.

Very truly yours,

KRUGLIAK, WILKINS, GRIFFITHS
& DOUGHERTY CO., L.P.A.

Edward D. Murray

EDM/dmk

Enc.

{03536941-1 / EDM-0005}





CAK SAFETY COUNCIL

MARIJUANA – IMPLICATIONS FOR OHIO EMPLOYERS

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DRUG FREE WORK PLACE POLICIES

- Ohio law supports and rewards.



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MARIJUANA AND WORK PLACE INJURIES

- ORC 4123.54
- Injuries caused by impairment are not valid
- Proving causation



MARIJUANA AND WORK PLACE INJURIES

- Possible presumption of causation
- Requirements for presumption
 - Required posting
 - Timing/type of testing
 - Reason for testing
- Refusal to test



MARIJUANA AND WORK PLACE INJURIES

Ohio Bureau of Workers' Compensation

Required Posting

Section 4123.54 of the Ohio Revised Code requires notice of rebuttable presumption. Rebuttable presumption means an employee may dispute or prove untrue the presumption (or belief) that alcohol, marihuana or a controlled substance not prescribed by the employee's physician is the proximate cause (main reason) of the work-related injury.

The burden of proof is on the employee to prove the presence of alcohol, marihuana or a controlled substance was not the proximate cause of the work-related injury. An employee who tests positive or refuses to submit to chemical testing may be disqualified for compensation and benefits under the Workers' Compensation Act.

Ohio

**Bureau of Workers'
Compensation**

You must post this language with the Certificate of Ohio Workers' Compensation.

DP-29 BWC-1629 (Rev. Jan. 10, 2019)



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MEDICAL MARIJUANA IN OHIO

- ORC 3796 effective September 2018
- Patients with particular medical conditions can use marijuana in designated forms.
- Permitted marijuana use is based on physician recommendation. (Not RX)
- Smoking marijuana is expressly prohibited.



Eligibility



Who can use it?

- Patients must have a **recommendation** from a certified physician.
- All medical marijuana patients are required to register with the State Board of Pharmacy.
- Patient registration will be valid from the date of issuance and expire one year later.
- Patient must be diagnosed with specific condition to be eligible.





Eligible Conditions for Certification

Original Conditions

- AIDS
- ALS
- Alzheimer's
- Cancer
- Chronic Traumatic Encephalopathy (CTE)
- Crohn's disease
- Epilepsy or other seizure disorders.
- Fibromyalgia
- Glaucoma
- Hepatitis C
- Inflammatory bowel disease

- Multiple sclerosis
- Chronic, severe or intractable pain
- Parkinson's disease
- HIV
- PTSD
- Sickle cell anemia
- Spinal cord disease or injury
- Tourette's syndrome
- Traumatic brain injury
- Ulcerative colitis

Newly Added Conditions

- Arthritis
- Chronic migraines
- Cachexia
- Complex region pain syndrome
- Huntington's disease
- Spasticity
- Terminal illness
- Degenerative Disc Disease
- Lupus

[Source](#)

Physician Recommendations

- The federal government prohibits doctors from being able to “prescribe” marijuana.
- The State Medical Board of Ohio began approving Certifications to Recommend in March 2018.
- Physicians/patient relationship must be REAL.



Approved Forms of Use



- Oils, tinctures, plant material, lotions, edibles, creams and patches.
- Although the law prohibits the use of medical marijuana by smoking or combustion, it does allow for vaporization (vaping).
- Any forms attractive to children are also prohibited.



Rapid growth of medical marijuana program

	June 2019	October 2022
Physicians Certified:	374	649
Registered Patients:	74,768	309,548
Unique Patients:	51,237	286,462
Total lbs. of Plant Material:	5,925 lbs.	123,912 lbs.
Amount in Sales:	\$49.4 million	\$1.045 billion

[Source](#)



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Impact on Drug Testing

Drug Testing Policies

- ORC 3796.28(A)(3):
Nothing "[p]rohibits an employer from establishing and enforcing a drug testing policy, drug-free workplace policy, or zero-tolerance drug policy."




What Happens at Work?

- Employers are not required to permit or accommodate.
- ORC 3796.28(A)(1):

Nothing "[r]equires an employer to permit or accommodate an employee's use, possession, or distribution of medical marijuana."






What Happens at Work?

- Can employers discriminate against medical marijuana users?
- ORC 3796.28(A)(2):

Nothing "[p]rohibits an employer from refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment because of that person's use, possession, or distribution of medical marijuana."



What Happens at Work?

- Medical marijuana users are prohibited from suing employers for discrimination
- ORC 3796.28(A)(5):

Nothing “[p]ermits a person to commence a cause of action against an employer for refusing to hire, discharging, disciplining, discriminating, retaliating, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment related to medical marijuana.”

What Happens at Work?

- Impact on BWC DFWP Programs?
- ORC 3796.28(A)(6):

Nothing “[a]ffects the authority of the administrator of workers' compensation to grant rebates or discounts on premium rates to employers that participate in a drug-free workplace program ...”



Workers' Compensation



- BWC will not approve medical marijuana as treatment.
- Injuries caused by marijuana impairment are not compensable. (R.C. 4123.54)



MARIJUANA IN OHIO

→ WHERE ARE WE GOING

- Recreational use
- Attempted legalization
- Public opinion





MARIJUANA IN OHIO



WHERE ARE WE GOING

- Current Status

