

# RISK Alert

ACTIONABLE INSIGHTS FOR BOND POLICYHOLDERS.



Alert Type

Awareness

Watch

Warning

## Navigating State Marijuana Laws Can Be a Hazy Issue

A growing number of states and municipalities have introduced medical and recreational laws for marijuana use, with some jurisdictions now regulating an employer's ability to test for marijuana while providing protections for users. With these laws evolving across the country, credit unions operating across multiple jurisdictions may be neglecting the need to review existing drug testing and substance abuse policies. This is particularly relevant for credit unions that employ "safety-sensitive" positions.

While generally defined as a position that involves some aspect of a heightened danger that requires an employee's full and unimpaired skills and judgment, "safety-sensitive" varies by state, and not all states have such exemptions.

### Details

As employers, credit unions should note that increased legislative and regulatory support around medicinal and recreational marijuana use can lead to more questions than answers about legal and reputational risks.

Historically, credit unions have adhered to federal law related to marijuana's status as an illegal controlled substance. This made it easy to establish a zero-tolerance approach in the workplace. However, with a tight labor market, many credit unions are considering no longer testing for the presence of cannabis in applicants. Navigating multiple state laws and their various exemptions can create a legal compliance risk for your organization.

Credit unions should carefully reassess their workplace drug testing policies to be sure they follow existing and/or soon-to-be-effective state and local laws. Several of these laws prohibit employers from taking adverse action against applicants who test positive for marijuana, with exceptions for, "safety-sensitive" positions.

The term "safety-sensitive" is defined by federal or state statute relative to the position, and at other times it is left to the employer's discretion or "common sense." While there is no standard duties test for what constitutes a safety-sensitive position, there is a general theme that a position should be considered so if the employee occupying the position we're impaired, they could likely cause substantial bodily injury, property damage or death.

Compounding the issue, some jurisdictions protect registered medical marijuana patients but not recreational users. Generally, off-duty medical marijuana use is protected in these areas and applicants / employees cannot be discriminated against for being a registered medical marijuana cardholder or because they test positive for marijuana on a drug test.

**Date:** April 12, 2022

**Risk Category:** Employment Practices; Drug Testing; Marijuana Use

**States:** All

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## Risk Mitigation

Credit unions that do not invest the required time and effort to understand their obligations under these laws may make employment decisions that lead to lawsuits that bring financial and reputational harm.

Credit unions should consider these mitigation tips:

- Ensure any employment polices addressing marijuana, cannabis-related products, and drug testing are reviewed by employment legal council. Particular attention should be given to carve-outs or protections afforded to recreational vs. medicinal users, as well as conflicting language in any state or municipal laws where the credit union has a presence, including remote employees.
- Evaluate the nature of their workforce and the potential presence of “safety-sensitive” work positions as defined by state or municipal law.
- Clearly communicate decisions to your workforce that relate to workplace polices, enforcement and testing. Employees should be familiar with all workplace polices, if there are needs for accommodation, and how to request an accommodation.

## Risk Prevention Resources

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### Employment Practices Risk Management Hub

Designed to help reduce exposure to employee practice liability claims, the insights, resources, model policies / procedures, and training modules at [www.epl-risk.com](#) are exclusively available for CUNA Mutual Group Employment Practices Liability policyholders.

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