

Updated Research on drug testing / marijuana

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General Information on Marijuana:

- The chemical compound THC in the cannabinoid causes intoxication.
- When THC enters the human body it is metabolized into a form known as Carboxy-Delta-9-THC.
- Individual metabolic rates will determine how long it takes to metabolize THC.
- Traces of Carboxy-Delta-9-THC can stay in the body for a month or longer.
- Greatest marijuana impairment will occur within the first 46 hours after use.

Inability of Urinalysis to Accurately Indicate Impairment:

- Urinalysis demonstrates level of Carboxy -Delta- 9-THC in body.
- Presence of Carboxy (inactive metabolite) in urine is only indicative of past marijuana usage.
- Carboxy-Delta-9-THC is not a pharmacologically active metabolite of Delta-9-THC, and cannot produce psychomotor impairment or intoxication.
- A urinalysis reading 75-150 is indicative of either active “current” use of marijuana or regular use.
- Regular use is equivalent to 1-2 joints per week or 3-5 joints each weekend.
- Urinalysis is not equivalent to reliability of blood alcohol test. Blood test far more reliable.

Exemplary Damages for Impairment:

- Requirements to prevail on punitive damages claim under LSA-C.C. Art. 2315.4:
 1. Defendant was intoxicated or had “a sufficient quantity of intoxicants to make him lose normal control of his mental and physical faculties.”
 2. Intoxication was a cause-in-fact of the accident.
 3. The injuries were caused by a “wanton or reckless disregard for the rights and safety of others.”
- There is no presumption of impairment in a civil proceeding.

Drug Testing Procedures and Standards in Louisiana:

- Section 49:1001- 49:1015 outlines drug testing procedures.
- Louisiana legislation requires all drug testing to be performed in accordance with the Mandatory Guidelines for Federal Workplace Drug Testing programs, as issued by the National Institute on Drug Abuse.
- NIDA guidelines specify requirements for collecting, testing, reviewing, and reporting drug testing results.

Employee Drug Testing:

- Employer must have testing done at a NIDA approved facility.
- Donor required to provide split samples, so that two tests may be performed.
- Confirmed positive drug test results should be reported directly from the laboratory to a qualified medical review officer.
- Medical Review Officer should contact donor to give donor an opportunity to provide alternate medical explanations for any positive drug test result.
- MRO then determines whether or not to report the result to the employer.
- If MRO confirms positive drug screen, employee may make a written request to review the test results within 7 working days.

Employer Obligations:

- All drug screening information must be kept confidential.
- Only may disclose in disciplinary proceeding or civil litigation where drug use by tested individual is relevant.
- Employee may not raise cause of action for defamation, libel, slander, privacy, etc. unless.....
 1. Results of test were disclosed to any person other than employer or testing entity, an authorized employee or the tested employee.
 2. Information disclosed was based on false test result or failure to comply with this law.
 3. All elements of an action for defamation of character, libel, slander or damage to reputation or privacy may be established.
- Employer may choose to permit employee to maintain job and enter a rehabilitation program.

- In pre-employment drug screening, initial test results may be used as a basis for rendering permanent mandatory or discretionary consequences to the individual submitting the specimen.
- Employers with drug testing program in effect on January 1, 1991 and who annually conduct ten thousand or more drug tests are not required to utilize a medical review officer.
- There is no specified penalty for an employer's failure to comply with drug testing statute, and employee likely has no recourse due to "at-will" employment.

Possible Defenses for Improper Termination:

- Claim under Americans with Disabilities Act.
- Request removal of drug screening results for failure to comply with statutory requirements.
- Defamation / privacy action if applicable.