



## Drug Use Up Among Workers

News

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Howard Mavity was quoted on *SHRM.org* on September 19, 2014. The article “Drug Use Up Among Workers” examined the increasing rate of positive drug tests among workers, which is largely attributed to the legalization of recreational marijuana in Colorado and Washington state.

The overall drug test positive rate has decreased from an all-time high of 13.6 percent in 1988 to 3.7 percent in 2013, which Howard described as “astonishing.”

While the rate ticked up only from 3.5 percent to 3.7 percent in 2013, Howard said it is “a big deal” because it hasn’t risen in more than a decade.

Drug testing first became popular in the late 1980s, Howard said. Initially, the unions pushed back, but now workers “don’t blink at pre-employment drug testing. It’s become routine,” he remarked. “It’s the same for random drug testing. It’s become an engrained part of the workforce.”

But for-cause drug testing remains contested under state drug testing laws, he added. For-cause drug tests also are the most common tests, followed by post-accident testing, then applicant testing and lastly random testing.

Howard noted that a drug test before an offer of employment is not considered a prohibited medical exam under the Americans with Disabilities Act (ADA). Where the ADA poses a challenge is screening for the use of prescription drugs. If their use poses a direct threat to safety that can’t be reduced by reasonable accommodation, their use may be a bar to employment. But the direct-threat standard is a high threshold and direct-threat determinations must be made on a case-by-case basis.

While some employers opt for a zero tolerance policy on illegal drugs, as a practical matter, other employers “do not necessarily want to catch all drug users,” Howard said. “In reality, a lot come in after the weekend after having smoked pot and do a good job. If an employer really eliminates every drug user, it may have difficulty filling openings in the workforce.”

For those that are serious about catching all drug users, particularly in safety-sensitive positions, hair tests may be preferable to urine or saliva tests, Howard observed, as hair testing shows a longer period of drug use. Hair testing may have a positive result up to four to six months after drug use, he noted.

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