

# CAN USING CBD OIL RESULT IN A FAILED DRUG TEST?

*THE ANSWER MAY SURPRISE YOU...*



By: Nadia A. Lampton

employers should take time now to review their substance abuse policies to see how those policies would treat CBD products



If you thought you had a handle on marijuana issues in the workplace, get ready for a curveball. Employers in Ohio have been grappling with marijuana-related issues for the last couple of years. Despite the time that has elapsed since medicinal marijuana was legalized in Ohio and nearby states, as well as the flood of states that have legalized the recreational use of marijuana, many questions remain unanswered and new issues have emerged. One such issue relates to the use of the seemingly innocuous line of “CBD” products, such as oils, topical lotions, bath bombs, vape pens, and even chewable gummies. These sorts of CBD products have been all the rage, with many companies selling CBD products, such as pills and oils, and marketing them with claimed medicinal properties. This hype can be described as nothing less than a national phenomenon, with CBD making headlines across national news (or commentary) outlets over the past several months:

- “Sunsoil USDA Certified Organic CBD” – Daily Beast
- “Best CBD Oil for Anxiety, Depression and Stress” – Observer
- “50 Best CBD Oil Companies of 2020” – Austin Chronicle
- “The Only 10 CBD Products That Are Worth Your Money, According to Our Editors” – Yahoo! Lifestyle
- “Here are the Best CBD Products of 2019 That Are the Real Deal” - HuffPost

But, beware of the CBD buildup! Claims such as “authentic” or “certified” CBD products are a misnomer, and marketing efforts that claim a certain oil or lotion can treat a variety of ailments, such as pain, anxiety, acne, sleep, etc. are, simply put, false – or

at the very least highly misleading. This is because the jury is still out on the actual impact and related side effects of CBD use.

**CBD**, more formally known as cannabidiol, **is actually a Schedule I drug** according to the Food and Drug Administration because any cannabis with tetrahydrocannabinol (or, THC) levels greater than 0.3% is considered to be marijuana under federal law. Thus, according to the FDA, CBD may not be added to food or drinks or marketed as a therapeutic remedy without FDA approval. As you would likely suspect, **the FDA has not approved any CBD products**, nor has it offered any guidance with respect to CBD use.

Importantly, this means that CBD products currently on the market are **unregulated** with respect to the manufacturing and sale of CBD products, which is further complicated by the fact that nearly 20 states have recently enacted laws that allow for CBD use for the treatment of certain medical conditions. Sounds a lot like the debate over medical marijuana, right? Perhaps one of the starkest differences between CBD products and marijuana, however, is the ease of use of CBD products. Because of the unregulated market, CBD products are incredibly easy to obtain – you can purchase hemp and CBD products on Amazon without any regulation or prescription requirement!

Unregulated CBD use is even further complicated by the fact that **employees who use CBD products may test positive on workplace drug tests**, particularly if they use more than the product’s suggested “serving size.” In fact, this exact scenario has already reared its ugly head in Ohio where an employer was forced to take disciplinary action against a valued employee who had failed a post-accident drug test, which, according to the employee, was the result of CBD use and not recreational or medicinal marijuana use.

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So, how does CBD impact an employer's analysis of workplace drug issues? For now, until the FDA offers guidelines or the Ohio legislature enacts legislative direction, employers should **treat CBD products just as they would marijuana** or any other Schedule I drug. For Ohio employers, this means that nothing under the law requires you to permit or accommodate an employee's use, possession, or distribution of medical marijuana (or CBD products that contain greater than 0.3% of THC), and nothing under the law prevents you from enforcing your company's drug-testing or zero-tolerance drug policy with respect to employees using CBD products.

The issue is complicated, though, when it comes to ADA reasonable accommodations. What if an employee comes to you and says that they need to use CBD oil or lotion to treat a condition, effectively asking for CBD use as a disability accommodation? If the CBD product contains less than 0.3% THC, then it would not be considered a Schedule I drug, and therefore, the employer would have to consider whether an employee's use of CBD products during working time is a reasonable accommodation that would not present a direct threat to the employee or fellow workers. However, if the CBD product contains greater than 0.3% THC levels, then the product is a Schedule I drug and the employer may ban the use of it in the workplace, even if faced with an accommodation request. Unfortunately, similar to marijuana, there is no testing apparatus on the market that can assess the exact level of CBD (or THC) or test an individual's exact level of impairment.

Given the many unknown variables and potential complications associated with CBD products, employers should take time now to review their substance abuse policies to see how those policies would treat CBD products, and they should educate employees

and supervisors on the consequences of violating those policies.



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