

## **Re: Raised Bill 1089 AN ACT CONCERNING CANNABIS AND THE WORKPLACE**

MTAC is not necessarily opposed to the legalization of recreational marijuana. However, Commercial Driver's License holders operating Commercial Motor Vehicles (CMVs) are required by federal regulation to be tested for controlled substances (drugs and alcohol), per 49 CFR Part 382 - CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING. This will still be the case even if Connecticut legalizes recreational marijuana.

Commercial truck drivers based in Connecticut who are required to obtain a Commercial Driver's License will still be subject to all of the following testing, even if Connecticut legalizes recreational marijuana:

- Pre-employment drug testing
- Random testing
- Post-accident drug testing (if applicable)
- Reasonable suspicion testing (if applicable)
- Return to duty testing (if applicable)
- Follow up testing (if applicable)

### EMPLOYER PROTECTION NEEDED

Accordingly, employers should not be penalized by the state in any way if they are forced to take action against an employee for simply acting in accordance with federal regulations. Any legislation to legalize recreational marijuana should, at a minimum, refer to federal regulations and provide protection for the employer who complies as required.

### TERMINATION IS POSSIBLE

There is no guarantee that a driver who tests positive for drugs or alcohol will retain their job. Federal regulation does not require this protection. An employer may set an internal policy that a positive drug test results in termination. In fact, many motor carriers have a zero tolerance policy where termination is immediate upon positive tests results.

### PROCESS FOR RETURNING TO WORK AFTER POSITIVE TEST

The process for a driver to Return to Duty (RTD) is expensive, time consuming, and somewhat complicated for carriers to successfully bring a driver back into compliance. The federal law is silent on payment, but virtually all require the driver to foot the bill. Again, a motor carrier may terminate a driver because of a positive drug test.

If a driver tests positive for drugs as part of a random, post-accident, or reasonable suspicion test, they must be referred to a Substance Abuse Professional (SAP) before they can return to duty. A



driver who tests positive is not allowed to perform a “safety sensitive function” until they are fully cleared by the SAP. The driver remains in a positive drug test status until they clear the SAP program.

A driver who has tested positive for marijuana (or any controlled substance) and subsequently returns to work AFTER being cleared by the SAP is subject to additional testing. A minimum of 6 tests in the year are required, but the Substance Abuse Professional (SAP) may require more than the minimum 6 tests, and they could require ongoing testing for a much longer period.

#### ABOUT THE RANDOM DRUG TEST RATE

The random drug testing rate is set annually by the Federal Motor Carrier Safety Administration (FMCSA). It is currently 25%, but was 50% in 2015. It was lowered because federal regulations require that if for two consecutive calendar years the positive rate as estimated by a Management Information System data survey for controlled substances is less than 1%, the agency has the discretion to lower the annual testing rate to a minimum of 25% of a carriers’ driver positions. If the positive test rate is higher than 1%, the testing rate will automatically revert to 50%. Virtually all motor carriers pay for the cost of random testing. If the random rate rises per the FMCSA, companies will have increased cost to comply with the federal random testing requirements.

#### DRIVERS OF LIGHTER VEHICLES

Individuals operating vehicles with a Gross Vehicle Weight Rating of more than 10,000 pounds, but under 26,000 pounds GVWR (CDL not required to operate under 26K GVWR), are not mandated by federal regulation to be drug tested. HOWEVER, they can’t use marijuana because it is a schedule 1 drug under federal code, which would prevent them from legally passing a DOT-required physical due to use of the drug, per 49 CFR 391.41(a)(12). But since the federal regulation does not require testing for drivers operating vehicles with a GVWR of less than 26,000 pounds, the only way the employer (and the medical examiner) would know is if the employee simply admitted it during their medical examination or to the employer. However, CT law should protect an employer who learns of marijuana use by an employee in this category and takes appropriate action. FMCSA will take enforcement action against any carrier knowingly allowing the use of a controlled substance banned as a schedule 1 drug as defined by federal code.

#### REASONABLE SUSPICION DRUG TESTS – CDL DRIVERS

Any legislation to legalize recreational marijuana should ensure that employers can continue to order “reasonable suspicion” drug tests with no repercussions, in order to ensure safety on the roads and in the workplace. In fact, Federal Motor Carrier Safety regulations (49 CFR Part 382.603) mandate that all persons designated to supervise CDL drivers receive at least 60 minutes of training on alcohol misuse and receive an additional 60 minutes of training on controlled substance misuse. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

#### REASONABLE SUSPICION – NON-CDL AND “SAFETY SENSITIVE FUNCTION”

This training applies to supervisors of drivers of trucks with a GVWR of more than 26,000 pounds. Some companies with drivers who operate trucks with a GVWR of less than 26,000 pounds also choose to set a policy that their supervisors can order reasonable suspicion drug tests if indicators are present.

The ability to order reasonable suspicion tests with no repercussions needs to be protected for not only supervisors of CDL drivers, but also for those businesses who set a policy for drivers of vehicles with GVWR of less than 26,000 pounds, and those employees who perform safety sensitive functions as described in 49 CFR 382.107.

#### ATRI RESEARCH ON KEY ACTIONS FOR KEEPING ROADWAYS SAFE FROM MARIJUANA-IMPAIRED CAR DRIVERS

The American Transportation Research Institute (ATRI) released a study on March 13, 2019 detailing issues with and solutions related to marijuana-impaired driving. ATRI's research sought to document the most promising methods to identify and deter marijuana-impaired driving. The study recommends: increased data collection on the frequency and impacts of marijuana-impaired driving; public education and information on the risks of impaired driving; better equipping law enforcement and the court system to intercept and ultimately prosecute impaired drivers; and targeting tax revenue generated from marijuana sales to fund these activities.

The complete ATRI report can be downloaded at this link: <https://truckingresearch.org/2019/03/12/marijuana-legalization-and-impaired-driving-solutions-for-protecting-our-roadways/#.XIINKPZFxPY>

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#### ABOUT CT TRUCKING INDUSTRY:

**85.8%:** number of Connecticut communities that depend exclusively on trucks to move their goods

**94%:** percent of manufactured tonnage transported by truck in Connecticut

**\$3.2 billion:** total trucking industry wages paid in Connecticut (2017)

**58,400:** trucking industry jobs in Connecticut (2017)

**\$53,3500:** average annual salary in Connecticut (2017)

**\$8,610:** average annual CT-imposed highway user fees paid by tractor trailers (as of 4/1/2018)

**\$8,906:** average annual fed-imposed highway user fees paid by tractor trailers (as of 4/1/2018)