

Medical Marijuana



Marijuana



- Recreational marijuana is legal in 16 states and D.C.—not including PA.
- Medical marijuana is legal in 36 states—including PA—and D.C.
- Under federal law, marijuana remains a Schedule I controlled substance.
- Under federal law it is considered to have no medicinal value. Cannot be prescribed, possessed or sold.
- THC—produces the “high,” and medical marijuana is legal in PA with a doctor’s recommendation.

- Tetrahydrocannabinol (THC) and Cannabidiol (CBD)
- Common side effects and possible risks
- Medical Benefits
- Serious Medical Conditions
- Federal and state laws
- Safety sensitive positions
- What Employers Need to Know and Proactive Actions



Topics

- Employer Drug/Alcohol Policy
- Workplace drug testing
- Employers' vs. Workers' rights
- Predictors of what's to come
- Effects on job safety
- Marijuana use results
- Legal facts



Objectives

- Understand and define the distinction between marijuana and “medical marijuana.”
- Describe various serious medical conditions when medical marijuana is used.



- Understand the company's need to develop a drug policy to include punitive actions for those under the influence of medical marijuana.
- Implement the company drug policy to ensure equitable enforcement, as well as safety for medical marijuana users, and their coworkers.

- Name given to the dried buds and leaves of varieties of the cannabis sativa plant.
- Also called pot, grass, cannabis, weed, hemp, hash, marihuana, ganja, and dozens of others.
- Marijuana has been used in herbal remedies for centuries.

Marijuana

- Scientists have identified many biologically active components in marijuana. These are called cannabinoids.
- The two best studied components are the chemicals delta-9-tetrahydrocannabinol (THC), and cannabidiol (CBD).

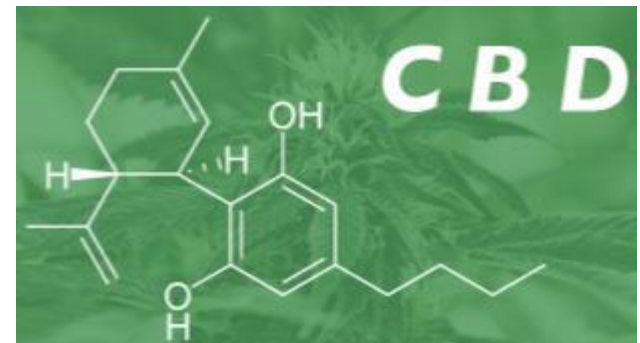


Marijuana

THC seems to cause the reported “high” and also can help relieve pain and nausea, reduce inflammation, and act as an antioxidant. It can also lead to feelings of anxiety and paranoia.



Cannabidiol (CBD) helps treat seizures, reduce anxiety and paranoia, and can counteract the “high” caused by THC.



Marijuana



How Marijuana Affects the Brain

THC, a key ingredient in marijuana, attaches to cannabinoid receptors throughout the body. Several areas of the brain have high densities of these receptors, which helps explain the different effects of the drug.

Cerebral cortex plays a role in memory, thinking perceptual awareness and *consciousness*. With marijuana use an altered consciousness; perceptual distortions; memory impairment; occasional delusions, and hallucinations may occur.

Hypothalamus governs metabolic processes such as appetite. Increased appetite is common.

Brain stem controls many basic functions including arousal, the vomiting reflex, blood pressure, and heart rate. Nausea relief; rapid heart rate; reduced blood pressure; downiness.

Hippocampus is key to memory storage and recall. Impairment in memory may occur.

Cerebellum governs coordination and muscle control. With regular marijuana use, there is a reduced spasticity and impaired coordination.

Amygdala plays a role in emotion. Marijuana can cause anxiety and panic in some cases; reduced anxiety and blocking of traumatic memories in other cases; reduced hostility.



- Altered senses (i.e. seeing brighter colors)
- Altered sense of time
- Changes in mood
- Impaired body movement
- Difficulty with thinking and problem-solving
- Impaired memory
- Hallucinations (when taken in high doses)
- Delusions (when taken in high doses)
- Psychosis (when taken in high doses)

Possible Risks

Immediate and Long-Term possible risks include:

- Increased heart rate
- Bloodshot eyes
- Dizziness
- Impaired concentration and memory
- Slower reaction times
- Negative drug-to-drug interactions



- Most frequently used **illicit** drug of abuse in the U.S.
- Most often drug detected in workplace testing.
- Approximately 6.8 million adults (18 to 25 years old) 19.6% and about 13.5 million adults (26 and older) 6.6% used marijuana.

Medical Marijuana Defined

- Medical marijuana is used to treat pain, nausea and other side effects of medical treatments and some disease symptoms.
- It may benefit adults and children with certain **serious medical conditions**.



A "serious medical condition" under the law is any one of the following **(23 in total)**:

- Amyotrophic lateral sclerosis;
- Autism;
- Cancer, including remission therapy;
- Crohn's disease;
- Damage to the nervous tissue of the central nervous system (brain-spinal cord) with objective neurological indication of intractable spasticity, and other associated neuropathies;



Serious medical conditions continued:

- Dyskinetic and spastic movement disorders;
- Epilepsy
- Glaucoma
- HIV / AIDS;
- Huntington's disease;
- Inflammatory bowel disease;
- Intractable seizures;
- Multiple Sclerosis;



EPILEPSY



Serious medical conditions continued:

- Neurodegenerative diseases;
- Neuropathies;
- Opioid use disorder for which conventional therapeutic interventions are contraindicated or ineffective, or for which adjunctive therapy is indicated in combination with primary therapeutic interventions;
- Parkinson's disease;



Serious medical conditions continued:

- Post-traumatic stress disorder;
- Severe chronic or intractable pain of neuropathic origin or severe chronic or intractable pain;
- Sickle cell anemia;
- Terminal illness;
- Anxiety Disorders; (Effective July 20, 2019)
- Tourette Syndrome (Effective July 20, 2019)

Federal Laws

- Marijuana is a federally controlled substance illegal to sell, possess or use.
- Now medical marijuana is legal in 36 states including PA and Washington, D.C., despite the federal ban.
- The federal government has said it will not prosecute people who abide by their state's marijuana laws.

US Controlled Drug Schedule

Drug Schedule	Abuse Potential	Physical Dependence	Psychological Potential
I	Highest	High	High
II	High	High	High
III	Moderate	Moderate	High
IV	Lower	Lower	Lower
V	Lowest	Lowest	Lowest

Policy Analysis

No. 744 December 11, 2012

On the Limits of Federal Supremacy When States Relax (or Abandon) Marijuana Bans

by Robert A. Mikos

Executive Summary

The American Constitution divides governmental power between the federal government and several state governments. In the event of a conflict between federal law and state law, the Supremacy Clause of the Constitution (Article VI, Clause II) makes clear that state policies are subordinate to federal policies. There are, however, important limitations on the doctrine of federal supremacy.

First, there must be a valid constitutional basis for the federal policy in question. The powers of the federal government are limited and enumerated, and the president and Congress must always respect the boundary lines that the Constitution imposes.

Second, even if the constitutionality of a federal law is clear, that law may not be the state's enforcement of federal government. This and other longstanding limitations upon federal power are often overlooked by the Supreme Court as it enforces that principle in appropriate cases.

Using federal supremacy as a tool, state attorneys have the noncontroversial principle of federal supremacy to legitimize action in that Congress has the federal government has limited resources available, and for years federal officials have lobbied against local efforts to legalize medical use of the drug. However, an ever-growing number of states have adopted legalization measures. I explore why these state laws, and more relaxed regulations, have not been, and cannot be, preempted by Congress. I also describe a new framework for analyzing the boundary between the prerogative of federal supremacy and prohibited commandeering.

Although I focus on medical marijuana, the legal analysis applies to any state policy providing relief from a state's existing federal regulations. Recent rulings in Colorado and Washington that legalize the recreational use of marijuana for adults will likely prompt federal efforts to respond by creating the supremacy of the federal law and challenging the constitutionality of state legislative action. Such state actions should come the day of such a legal challenge.

Robert A. Mikos is professor of law and director of the Program in Law and Government at Vanderbilt University. His article "The Limits of Federal Supremacy" is a recent and updated version of an earlier article published in the *Franklin Law Review*.



Medical Marijuana Program

Under Act 16 of 2016, “medical marijuana” refers to marijuana obtained for a certified medical use by a Pennsylvania resident with a serious medical condition limited by statute in Pennsylvania to the following forms:

- Pill
- Oil
- Topical forms, including gel, creams or ointments
- A form medically appropriate for administration by vaporization or nebulization (including dry leaf/plant form)
- Tincture
- Liquid



- PA Medical Marijuana Law prescribes how a person obtains a certificate for use from their physician; how the physician obtains the ability to issue such certificates.
- Medical marijuana is a **physician recommended** legal medication for the treatment of a serious medical condition.
- A PA resident who wishes to use medical marijuana must possess a valid Medical Marijuana (MM) Card.



The Process of Obtaining a MM Card

HOW PATIENTS CAN GET MEDICAL MARIJUANA IN PENNSYLVANIA WHEN THE PROGRAM IS FULLY IMPLEMENTED

1



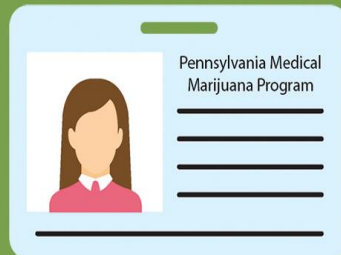
REGISTER for the Medical Marijuana Program at medicalmarijuana.pa.gov.

2



OBTAIN a physician's certification that you suffer from one of the 17 serious medical conditions.

3



COMPLETE registration by paying for a medical marijuana ID card.

4



VISIT a dispensary in Pennsylvania to obtain medical marijuana.

- “Nothing in this act shall require an employer to commit any act that would put the employer or any person acting on its behalf in violation of federal law.” Section 2103(b)(3).



Act 16 Limitations

- “Under the Influence” is determined by a blood content of more than 10 nanograms of active tetrahydrocannabinis (THC) per milliliter of blood in serum.
- A patient may be prohibited by an employer from performing any task which the employer deems life-threatening—to either the employee or any of the employees of the employer—while under the influence of medical marijuana.



- A patient may be prohibited by an employer from performing any duty which could result in a public health or safety risk while under the influence of medical marijuana.
- The prohibition shall not be deemed an adverse employment decision even if the prohibition results in financial harm for the patient.

- Discrimination against an employee certified to use medical marijuana is prohibited.
- MMA provides that no employer “may discharge, threaten, refuse to hire or otherwise discriminate or retaliate” against an employee solely on the basis of that employee’s status as an individual who is certified to use medical marijuana.

- MMA states that an employer is not required to accommodate the use of medical marijuana “on the property or premises of any place of employment.”



Under the MMA, an employer can discipline an employee for the following reasons:

1. Being under the influence of medical marijuana in the workplace.
2. Working while under the influence of medical marijuana when the employee's conduct and/or performance falls below the standard considered normally acceptable for their position.

In order to discipline an employee pursuant to this provision, the employee must both be under the influence of medical marijuana while at work and have their job performance fall below an acceptable level.

- If your business is subject to federal laws or regulations mandating a marijuana-free workplace, continue to abide by those requirements.
- Certain safety-sensitive duties and positions are specifically addressed.



- MMA provides that no one under the influence of medical marijuana may engage in the following job tasks: control of chemicals, which require a permit issued by federal/state government; control of high voltage electricity, any other public utility employment duties at heights or confined spaces including mining.
- Under federal law, some healthcare, all transportation, and all federally regulated employees, are banned from the use of medical marijuana.

What is a Safety Sensitive Job Position?

The following state and federal departments are examples of *Federal Safety Sensitive Industries* that abide by *Federal Regulations* and **DO NOT** recognize the use of Medical Marijuana as a valid reason for a positive drug screen.

Department of Defense (DOD)

Nuclear Regulatory Commission (NRC)

Department of Transportation (DOT)

Individuals employed federally who work for these departments or in positions of law enforcement, national security, the protection of life and property, public health or safety—or other positions that requires a high degree of public trust—are subject to mandatory drug testing. In turn, you can expect that most states require testing for these positions as well.



It is Not Just Federal Jobs Assigned Safety Sensitive

Any employer—whose business is regulated by one of the industries below—is covered by the *Omnibus Employee Drug Testing Act of 1991*. **What does this mean?** It means these employers **MUST** follow federal guidelines for maintaining a drug free workplace policy, which does not recognize the use of Medical Marijuana as a valid reason for a positive drug test.



Federal Aviation Administration (FAA)



Federal Motor Carrier Safety Administration (FMCSA)



Federal Railroad Administration (FRA)



Federal Transit Administration (FTA)



National Highway Traffic Safety Administration (NHTSA)



Pipeline and Hazardous Materials Safety Administration (PHMSA)



United States Coast Guard

Examples of Safety Sensitive Positions



An employer whose business is not regulated by federal guidelines may still have safety sensitive positions to consider when it comes to PA Act 16 and medical marijuana. A prime example would be any employee who operates machinery.



Labeling a job as “safety sensitive” should be always be considered when the employees job performance could directly affect the safety and welfare of the employee—or ANY other employee(s).



Keep in mind when assigning safety sensitive jobs, The burden of proof falls on the employer to demonstrate that an employee’s inability or impaired ability to preform job duties would result in a direct threat to the employee or others.



To learn more about safety sensitive positions and ensure your job descriptions are on target, visit the official websites below.



Occupational Safety and Health Administration
<https://www.osha.gov/>



Substance Abuse and Mental Health Services Administration
<https://www.samhsa.gov/workplace/legal/federal-laws/safety-security-sensitive>



- Employees with a MM card should be treated like any other employee with prescription medication that could affect their ability to carry out their duties of employment.
- The regular principles around duty to accommodate apply.
- Accommodation does not mean allowing an employee to carry out his or her duties while impaired.

- An employer must carry out its health and safety due diligence at the same time it accommodates an employee.
- Safety-sensitive positions, may mean reassigning an employee to a non-safety-sensitive position.
- Employers can set limits if the employee says they need to smoke on the job, such as where and when they can smoke.

Employer Proactive Actions

- Re-examine workplace drug and alcohol policies. Focus on prescription and non-prescription medication segments.
- Require an employee drug prescription disclosure, which may impair their safe work performance.
- Prohibit employee in a safety-sensitive position from working while impaired.

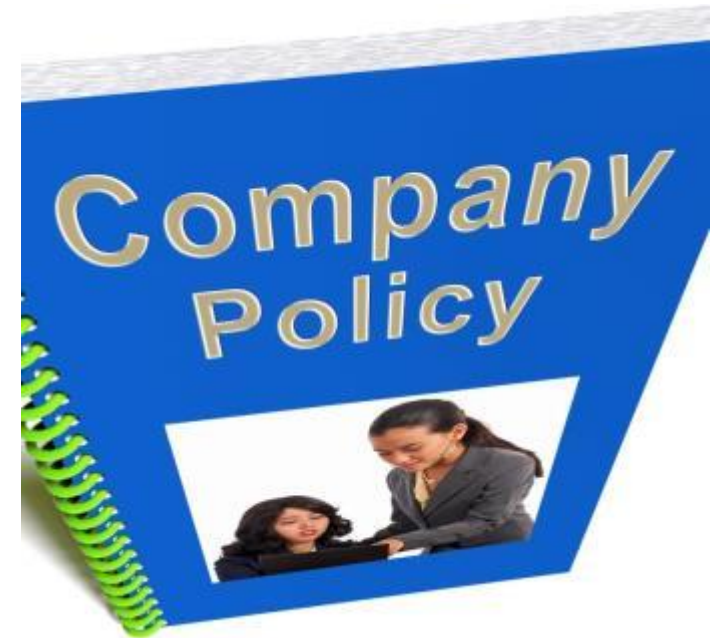


- Set a process for obtaining additional medical information to facilitate accommodation.
- Those involved in the accommodation process:
 - Employer
 - Employee
 - Union



Company Drug/Alcohol Policy

- Identify restrictions on use of medical marijuana in the workplace (e.g., where and when).
- Identify breach of the policy actions i.e., discipline.
- Employers should advise employees and candidates that such medical opinions will be required prior to the worker's taking on safety sensitive work.



Medical Department Actions

Obtain guidance from physicians:

- How to treat medical marijuana cases
- Understands the possible effects of its use versus workplace safety
- Assist in guideline creation



- **Occupational Health physician:** acts as liaison between your organization and the employee's family doctor to understand the condition prescribed for, the dosage, side effects, etc.
- Provide expert advice and support in developing a comprehensive and effective drug and alcohol policy and when dealing with complex cases.
- Set a means to obtain additional medical information to facilitate accommodation.

- To promote safety
- Required for safety-sensitive positions
- Develop a clear drug and alcohol policy to maintaining a safe working environment and limit legal liability
- Non-discrimination: employees who are registered marijuana patients can generally only be terminated for using marijuana if they use or possess marijuana while they are at work or come to work under the influence

Does CBD Show Up in a Workplace Drug Test?

- No. Drug tests check for THC. Most CBD products only contain trace amounts of THC. It will not show up on standard drug screens companies perform, as this cannabinoid is not an indication of impairment.
- At most companies, the use of CBD for medical purposes is not grounds for dismissal or workplace discipline.
- Employees should thoroughly acquaint themselves with their Workplace Drug Policy.

OSHA regulations should be reviewed since those regarding drug testing and how it can be accomplished have been recently updated.

October 11, 2018: OSHA does not prohibit post-incident drug testing. Employers who conduct post-incident drug testing do so to promote workplace safety and health. Action taken under post-incident drug testing would only violate 29 C.F.R. §1904.35(b)(1)(iv) if employer took the action to penalize the employee for reporting the injury or illness.

Most instances of workplace drug testing are permissible under 29 C.F.R. §1904.35(b)(1)(iv). Examples of permissible drug testing include:

- Random drug testing
- Drug testing unrelated to reporting of work-related injury or illness
- Drug testing under state workers' compensation law
- Drug testing under federal law, such as a U.S. Department of Transportation rule

Examples of permissible drug testing include:

- Drug testing to evaluate the root cause of a workplace incident that harmed or could have harmed employees. If the employer chooses to use drug testing to investigate the incident, the employer should test all employees whose conduct could have contributed to the incident, not just the employees who reported injuries.

EXCEPTIONS

- Employers cannot discriminate against workers for using medical marijuana in their off hours.
- Companies may bar workers from bringing marijuana to the office or worksite, and they can ban them from coming to work under the influence.
- Employees with federally regulated jobs—like commercial driver or pilots—can be terminated (or never hired) for failing drug tests, even if they are legal medical marijuana users.
- Another exception is that employers can still maintain a sober work environment.

Safety Concerns

- Marijuana is a mind-altering drug that contains more than 400 chemicals, according to the Drug Enforcement Administration (DEA).
- For those in a safety-sensitive position, the drug can pose dangers, both short-term and long-term.
- Also the potency levels may not be known or have adverse effects.



- If an employer can prove a worker is impaired on the job, then that employer can take action regardless of the residing state.
- No impairment, but tests positive? Does the employer have the right to fire that worker as part of its drug-free workplace policy?
- Colorado's *Coats v. Dish Network* may provide guidance or set precedent.
- In some states, judges have ruled on the side of employers.

- In 2015, the Colorado Supreme Court decided that the termination of an employee using medical marijuana was justified because marijuana is still illegal under federal law.
- In states that have made medical marijuana legal, employees are finding protection under the state disability laws. The courts were initially in favor of the employer; however, the courts are quickly shifting decisions in favor of the employee.

- In May of 2017, in Rhode Island, a job candidate was not hired because she disclosed to her potential employer that she was a legal MM cardholder. She informed the employer that she would not pass a pre-employment drug screen. When she was not hired, she sued the employer for discrimination. The court found in favor of the potential employee.



- In July of 2017, the Massachusetts High Court heard the case of an employee who sued her employer for discrimination under the states discrimination laws. She had been fired for failing a drug test while being legally registered as a medical marijuana user.
- In turn, the employer argued that this was an unreasonable accommodation request as all marijuana use is illegal under federal law and is, therefore, a federal crime. The court disagreed with the employer and sided with the employee.
- The court held that under the state's disability discrimination law, employees have the right to seek a reasonable accommodation for MM use. The employer did not appeal the decision.

- In August 2017, in Connecticut, a similar situation was heard. The employer appealed the decision of state court to federal court. The Federal District Court rejected the employers Federal Pre-Emption Argument.
- The court said the Federal Controlled Substance Act does not regulate employment and therefore does not make it illegal to employ a medical marijuana user.

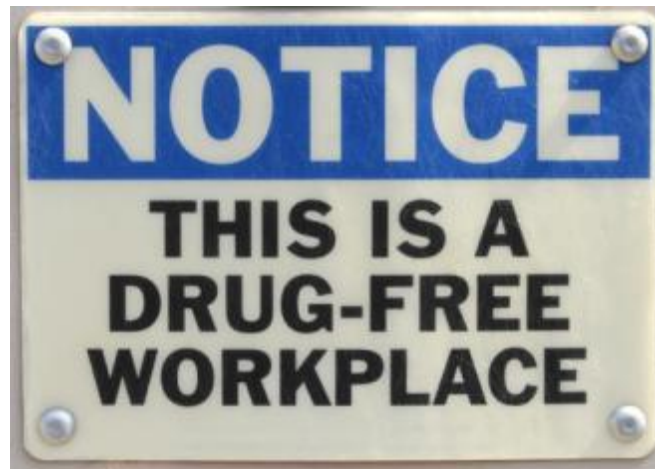


Federal DOT Stance

“ We want to make it perfectly clear that the Department of Justice guidelines will have no bearing on the Department of Transportation's regulated drug testing program. We will not change our regulated drug testing program based upon these guidelines to federal prosecutors... ”



“State laws vary, but employers still have the right to enforce drug-free workplace policies and dismiss workers if they can prove impairment on the job, experts say.”



Julie Carter, Director of Environmental, Health and Safety,
Roy Anderson Corp, Gulfport, MS

- “Marijuana is 10 to 20 times stronger today than in the 1960’s and 1970’s.”
- “The THC component affects depth perception, reaction time, coordination and other motor skills and creates sensory distortion.”
- “Those who tested positive had 55% more industrial accidents, 85% more injuries and 75% more absenteeism compared to those who tested negative.”
- “It’s an addictive drug.”
- “Car crashes involving marijuana increased 300% between 2010 and 2013 and continue to rise.”

Christine Clearwater, president of Drug-free Solutions Group in a webinar for the National Safety Council

- Productivity – decreased
- Workers comp and unemployment comp claims-increased
- High turnover
- Lawsuits
- “Expect to pay \$7,000 a year on an employee who uses drugs. About one in six has a substance abuse problem. Example: A company with 500 employees the expenditure would be about \$600,000 a year.”



Christine Clearwater, president of Drug-free Solutions Group in a webinar for the National Safety Council

- ADA sides with employer regarding medical marijuana.
- Most states will not pay workers comp to an employee under the influence at the time of an incident.
- Most state health insurance programs will not pay for medical marijuana.

Christine Clearwater, president of Drug-free Solutions Group in a webinar for the National Safety Council

- Management training to make managers more likely to enforce the policy
- Access to support for employees with drug problems (formal assistance or referral to local resources)
- Clearly define use and possession meanings for employees
- Establish rules for post-accident testing
- Indicate how you will handle an employee's conviction or arrest

Drug Policy

- Supported by workplace procedures.
- Very specific to reduce chances of litigation.
- Ensure compliance with federal and state laws as well as other regulations which pertain, i.e. DOT and federal contract requirements.
- Reviewed by the company's legal counsel.



- Medical marijuana has the potential to relieve pain for a variety of serious medical conditions.
- The use at the workplace has potential for safety issues.
- Create workplace policies addressing the parameters for use.
- Support by workplace procedures.
- Ensure compliance with federal and state laws as well as other regulations which pertain, i.e. DOT and federal contract requirements.
- Have your legal representation review all program aspects.

- Employers need to stay aware of recent court decisions and legislative developments as they create and implement their workplace drug use policies.
- Employers should appreciate the limitations of marijuana testing and how those limitations affect their practices and policies.
- In the meantime, judges are siding with employees who use medical marijuana, outside of work, in conformance with local law.

Health & Safety Training Specialists

(717) 772-1635

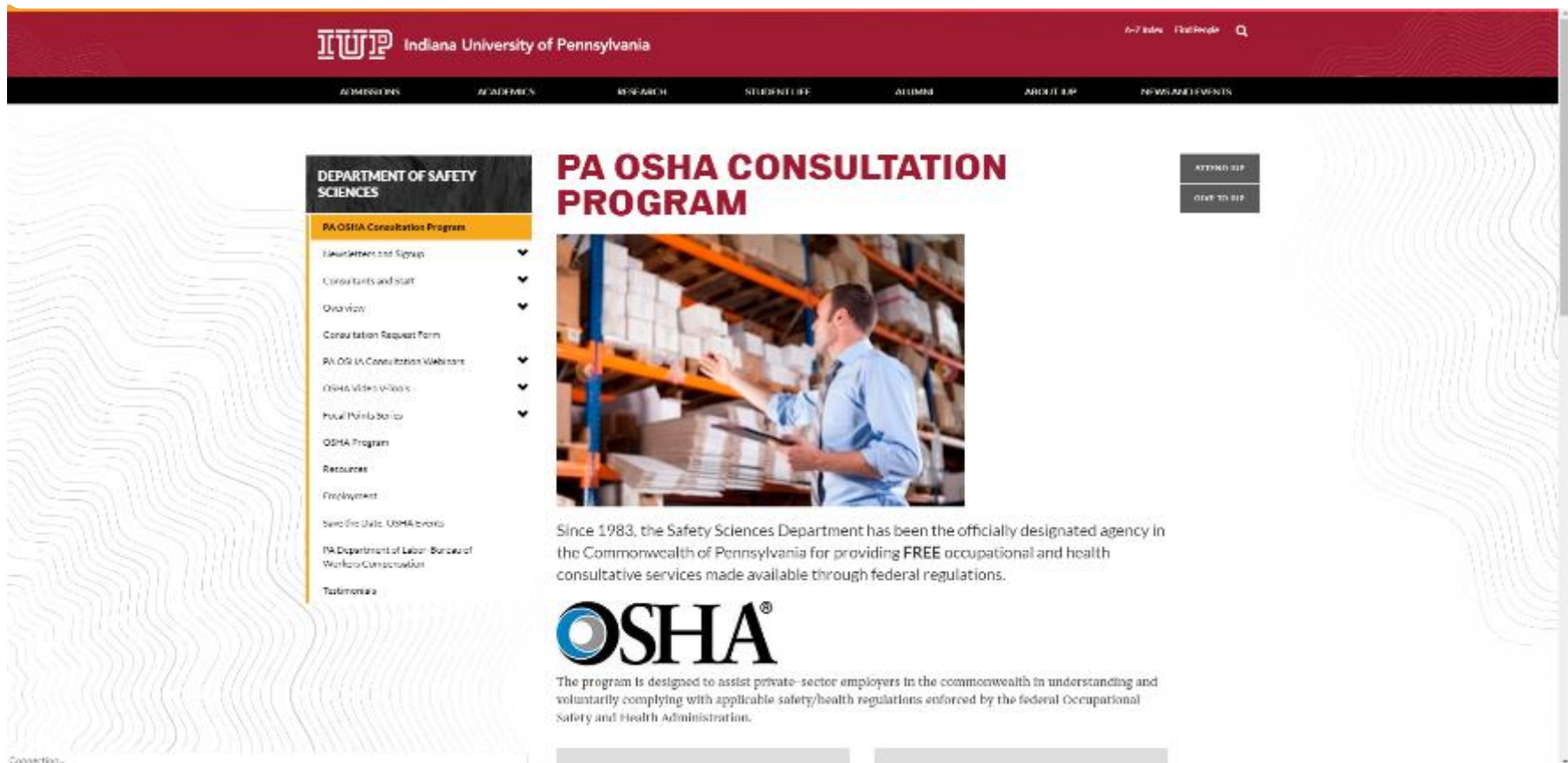
RA-LI-BWC-PATHS@pa.gov



Questions



Telephone Number 1-800-382-1241



The screenshot shows the website for the PA OSHA Consultation Program. At the top is a red navigation bar with the IUP logo and the text "Indiana University of Pennsylvania". Below this is a black navigation bar with links for ADMISSIONS, ACADEMIES, RESEARCH, STUDENT LIFE, ALUMNI, ABOUT IUP, and NEWS/EVENTS. The main content area has a white background with a decorative wavy pattern on the left and right sides. On the left, there is a dark grey sidebar for the "DEPARTMENT OF SAFETY SCIENCES" with a yellow highlight on "PA OSHA Consultation Program". The sidebar lists various links: "Email Letters and Signage", "Consultants and Staff", "Overview", "Consultation Request Form", "PA OSHA Consultation Webinars", "OSHA Video Library", "Practical Info Series", "OSHA Program", "Resources", "Employment", "Send me Alerts: OSHA Events", "PA Department of Labor: Bureau of Workers Compensation", and "Testimonials". The main content area features the title "PA OSHA CONSULTATION PROGRAM" in large red letters. Below the title is a photograph of a man in a light blue shirt working in a warehouse. To the right of the photo are two buttons: "ATTEND IUP" and "GET TO IUP". Below the photo is a paragraph of text: "Since 1983, the Safety Sciences Department has been the officially designated agency in the Commonwealth of Pennsylvania for providing FREE occupational and health consultative services made available through federal regulations." Below this text is the OSHA logo and another paragraph: "The program is designed to assist private-sector employers in the commonwealth in understanding and voluntarily complying with applicable safety/health regulations enforced by the federal Occupational Safety and Health Administration." At the bottom of the page, there are two grey rectangular boxes.

Pennsylvania Occupational Safety & Health Surveillance (PennOSHS) Program



Collaborates with workers, employers, & occupational health stakeholders to build a sustainable statewide occupational health network



Prioritizes data-driven research and characterizes factors associated with occupational injury and disease to produce and distribute occupational safety and health information



Monitors adult lead exposure to promote the reduction of lead poisoning, particularly among workers



Partners with employers to review safety policies, create relevant educational material, and improve worker wellbeing

Visit our website
to learn more:



Interested in partnering with us?

CONTACT US:

Phone: 717-787-3350

Email: dehe@pa.gov



Pennsylvania Department of Health
Bureau of Epidemiology

Division of Environmental Health Epidemiology

<http://www.mayoclinic.org/healthy-lifestyle/consumer-health/in-depth/medical-marijuana/art-20137855?pg=2>

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[Journal of Occupational Environmental Medicine, "Medical Marijuana in the Workplace"](#)

How to get Medical Marijuana:

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Clarification of OSHA's Position on Workplace Safety Incentive Programs and Post-Incident Drug Testing

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Cohen Seglias Pallas Greenhall & Furman, P.C.

The following presentations are also available to supplement your in-house program:

- Drug & Alcohol Awareness-Employee
- Drug & Alcohol Awareness-Supervisors
- Opioid Addiction

Please contact us for a full list of other programs available to you free of charge.