



# STEWARDS CORNER

Monthly Newsletter for Union Stewards

## MARIJUANA, SAFETY, AND FAIRNESS: PART 1

### Evolving Legal Landscape Reshaping Opinions on Marijuana Use and Workers' Rights

Marijuana was criminalized in the United States in 1937. For 75 years, that was the law of the land, but in 2012, a wave of decriminalization in the US began when voters in Washington state legalized recreational use. [Since then 24 states and Washington D.C.](#) have followed suit. Meanwhile, 40 of the 50 states have enacted laws that allow for the use of marijuana for medicinal purposes.

Although federal prohibition remains in effect, like the prohibition of alcohol from 1919 to 1933, the reality is that the open use of marijuana is quickly becoming culturally normalized. According to research by Colorado University, in states where marijuana is legalized, residents use it 24% more frequently, and in the U.S. as a whole, about one in five adults have used cannabis in the last year.

### WHY DOES THIS MATTER TO UNION MEMBERS?

Reefer's retail revolution is taking place against a backdrop of record lows in unemployment. In order to hire, some employers waived drug testing of incoming employees. Others may be willing to adjust policies. It's an opportunity for unions to drive change in a fashion that provides job protections while maintaining union safety standards.

A major issue for our members who legally partake in recreational marijuana use when they're off duty is that there is no reliable drug testing technology that can identify whether a worker is under the influence at the time of testing. In fact, a person can test positive for marijuana use 30 days or more afterwards. **Since only a few of the states that legalized marijuana embedded employment-related protections in their marijuana statutes, it falls to us to bargain for language that reflects the shop floor reality:** workers who use marijuana away from work are still at risk of testing "hot" for drug use should an accident occur.

This, in turn, creates a danger of members trying to hide workplace accidents to avoid drug testing even in states where marijuana is legal, a situation we can work to avoid. Important too is that we bust the myth that drug testing is a sufficient response to workplace accidents. Drug testing is not an adequate substitute for comprehensive root cause accident investigations.

### MODEL LANGUAGE

*Disclaimer:* Sometimes, trying to plug model language into an existing Collective Bargaining Agreement (CBA) or drug-testing policy is like trying to fit a square peg into a round hole. The

following "model principles" may need to be reshaped to fit a particular workplace or CBA. When you are in bargaining or dealing with a grievance and you need assistance addressing drug-testing issues, **please contact your Staff Rep who can help you get advice from the USW Legal Department that is tailored to your situation.**

**"PROBABLE CAUSE."** This is a standard that can be used under a drug-testing policy as a threshold requirement before testing is permitted. It requires that an employer document objective observed symptoms of impairment that align with symptoms associated with drug and alcohol intoxication.

**Language:** Probable cause is based upon an observation and good faith belief that an employee is under the influence of drugs or alcohol while on the job. Such belief may be based upon the smell of alcohol, slurred speech, staggering gait, and/or other abnormal physical or psychological behavior typically associated with drug or alcohol intoxication or impairment. Whatever the observation, it shall be made by two management persons and documented in writing. Probable cause may be based upon an employee's involvement in an accident/incident on company premises only where, as part of an immediate observation, there is probable cause as described above to believe that drugs or alcohol may have contributed to the cause of the accident or incident. If probable cause is not determined, the employee shall not be subjected to testing. Where hospital treatment is required for an injury, the test, if applicable, will be performed at the hospital.

**"POST-ACCIDENT TESTING."** It's worth noting that employers are obligated to allow [union representation upon request ahead of drug-testing](#).

**Language:** An employee may be tested after an accident which resulted, or could have resulted, in an injury. However, a test may only be administered where the accident resulted from an error by the employee being tested, and where a supervisor describes the accident and the employee's potential error in writing prior to the test. A union representative shall be notified in advance of the test. If the employee was injured in the accident, the testing must not delay treatment.

**"OPTIONS AT THE FIRST POSITIVE TEST"** can be solutions-based instead of strictly disciplinary.

**Language:** If an employee tests positive for the first time, the employee will be offered the chance to enter a rehabilitation program or to continue working without rehabilitation. If the individual chooses to continue working, they will be subject to random testing for no more than one year. If the individual chooses rehabilitation, they may be randomly tested for up to



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one year at the discretion of the rehabilitation provider.

**“MEDICAL MARIJUANA.”** Remember that in addition to recreational use, some workers are prescribed marijuana by a doctor, and therefore can warrant additional and substantial job protections.

**Language:** For individuals who are medical marijuana patients under the laws of the state in which they reside, neither marijuana nor any other substance derived from marijuana, the use of which is permitted by the laws under which they are a patient, shall not be regarded as a “controlled substance” or

“illegal substance” under this policy.

Language like the above creates procedures that the employer must follow. Whether that language was followed may become the determining question at arbitration. Indeed, negotiated language will be applied more strictly than policies that are unilaterally implemented by the employer.

If you or someone you know needs help with drug-related issues, please know that staff reps can get information about programs to help those struggling with addiction.

**Part 2 will cover marijuana in arbitration (May issue).**

## Stronger than Steel

Whether you're in town for union business or just in the neighborhood, be sure to visit the **USW History Exhibit at the International Headquarters in Pittsburgh, Pennsylvania**. This museum, curated by our sister Steffi Domike just before her retirement, represents a small slice of a proud history that has roots in the late-1800s. The USW turns 82 next month; we were founded on May 22, 1942 in Cleveland, Ohio. The artifacts, images, and texts in this exhibit tell the story of our union and its members from its early years working to organize the steel sector to our founding during World War II, and the postwar decades. It also features objects and stories from our victories and challenges across the years; you will be proud to see the battles we fought and victories won. We are a union of mergers and that “family tree” is proudly displayed in the stories we tell.



### Who We Are

To be a Steelworker is to be a member of a powerful national and international network of leaders and activists fighting for social and economic justice for working people. Workers in every industry and sector of the economy make up the USW membership. The full USW name – *United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union* – reflects this diversity. We are, indeed, Everybody's Union. As a Local Union steward, you are an inheritor and guardian of this legacy.

**The following pictures show some of this history. We hope you stop by to check it out someday!**

**To schedule a visit or if you have artifacts you believe should be a part of the museum, email [leadership@usw.org](mailto:leadership@usw.org).**

