

DELAWARE STATE  
CHAMBER OF COMMERCE

# WEED AND WORK:

RECREATIONAL MARIJUANA POLICY & YOUR BUSINESS

TUESDAY, MAY 4 | 12:00 - 1:00 PM



# JOIN THE **CONVERSATION**



**D**ELAWARE STATE  
CHAMBER OF COMMERCE **E**

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**6<sup>TH</sup> ANNUAL**

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**SMALL BUSINESS DAY IN DOVER**

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# END-OF-SESSION POLICY CONFERENCE

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JUNE 8, 2021 • #EOSCONF





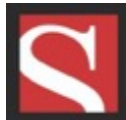
## Lessons Learned in Legalized States

*Kevin A. Sabet, PhD, President & CEO*

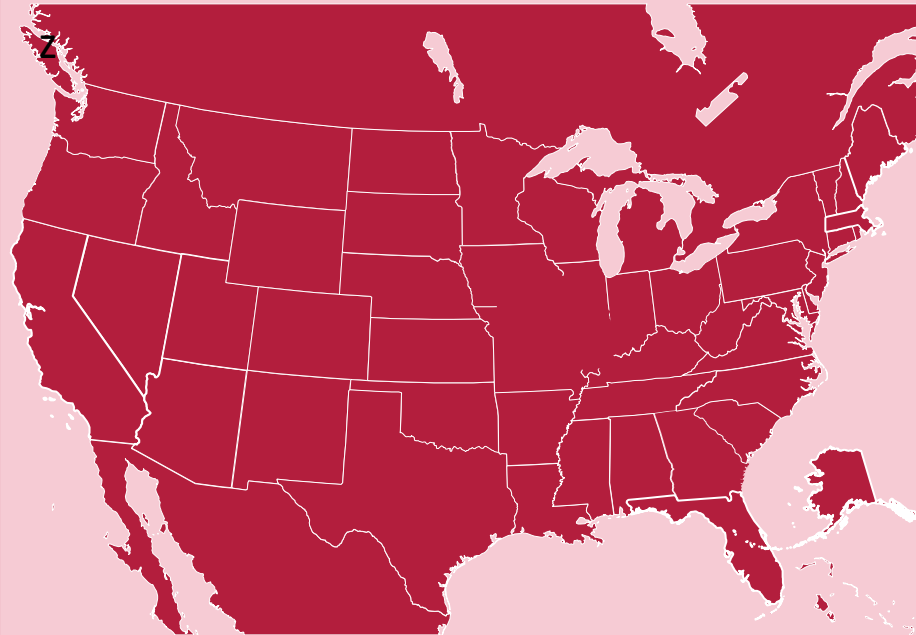
***[www.learnaboutsam.org](http://www.learnaboutsam.org)***

# SAM promotes an evidence-based approach to marijuana policy that prioritizes public health

- **Non-partisan but high-profile:** founded by former Democratic Congressman Patrick Kennedy and leading Republican pundit David Frum
- **Scientific advisory board** of more than 12 leading researchers, professors, and public health/legal experts
- **Hundreds of thousands of press mentions**, including major media outlets such as:



## Several state and national affiliates

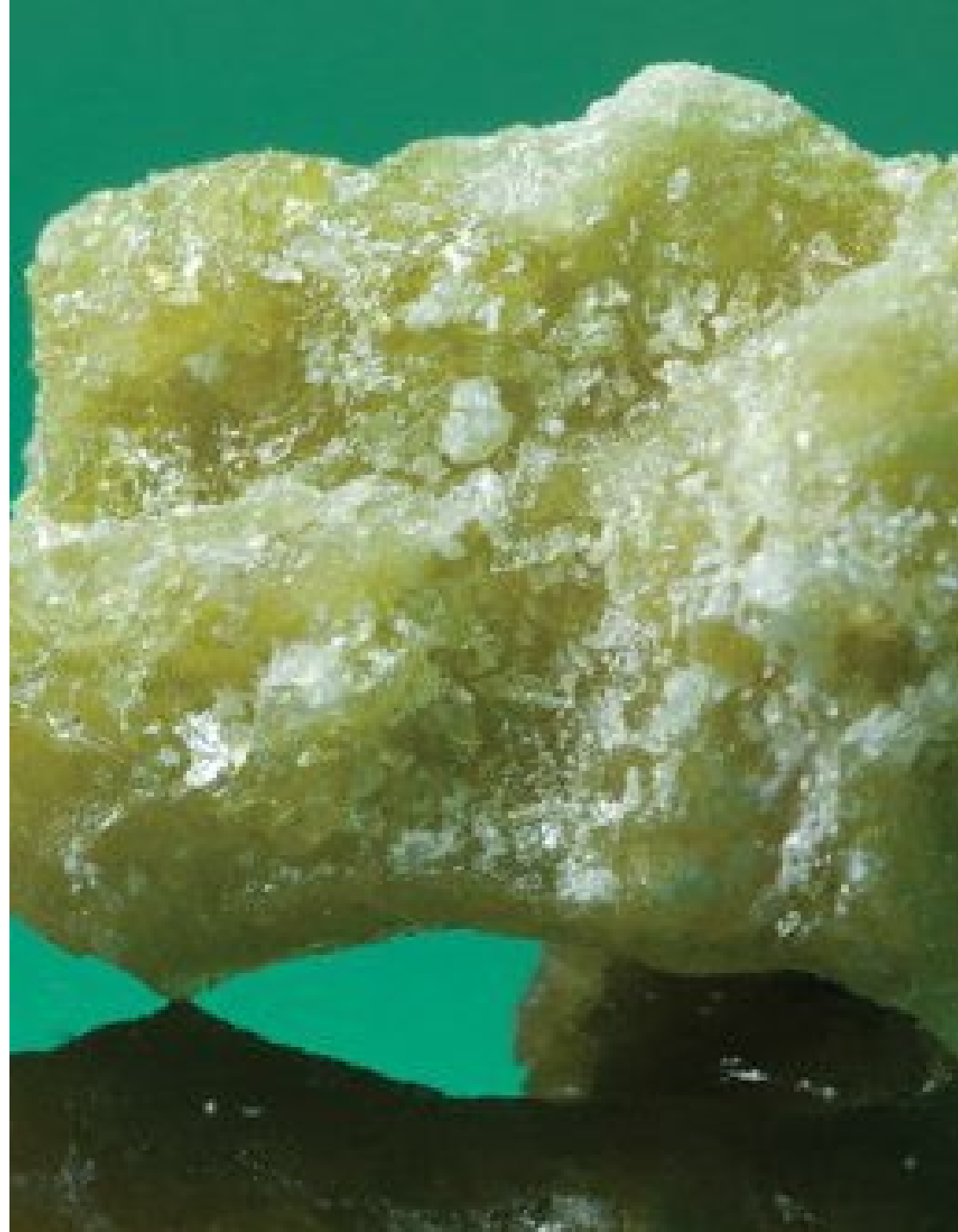


# Groups SAM has collaborated with

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- **American Medical Association**
- **American Academy of Pediatrics**
- **National Business Group on Health**
- **American Academy of Child and Adolescent Psychiatry**
- **Other leading public health authorities**
- **Over 30 state affiliates, including:**
  - Treatment centers
  - Recovery groups
  - Prevention organizations
  - Law enforcement
  - Leading medical authorities
  - Volunteer citizens
  - Business groups

# Ultra Potent Marijuana





# Not This...

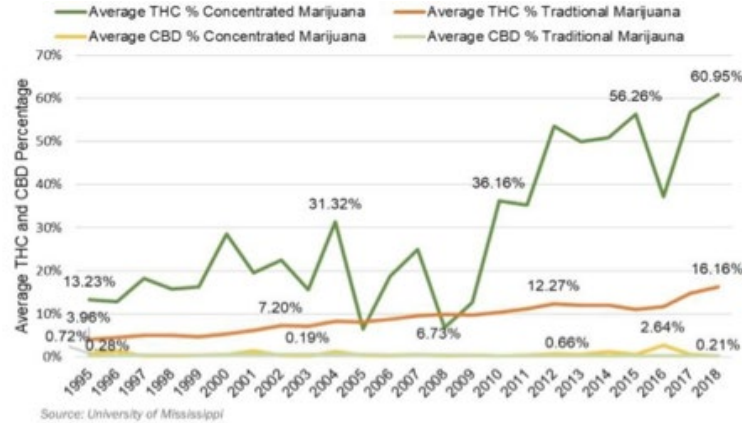




# ...But This

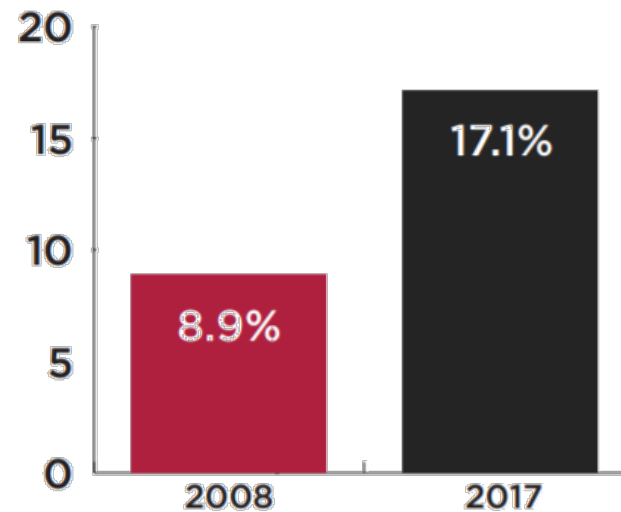


# Marijuana Has Become Significantly More Potent Since the 1960s, 70s, 80s, and 90s

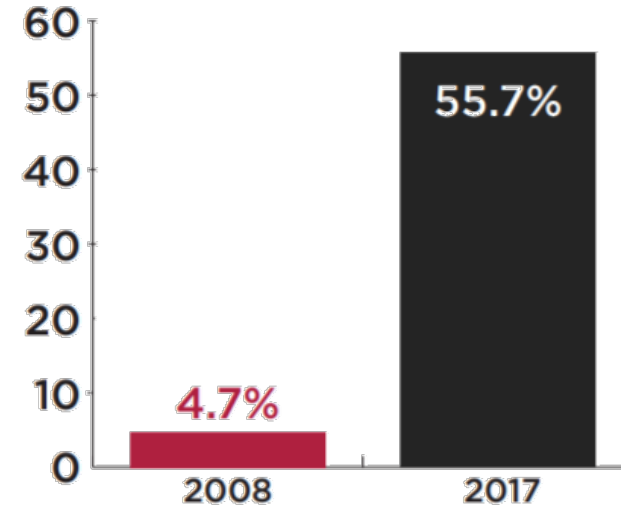


From an average of 3% to an average of nearly 20% THC

MARIJUANA PLANT POTENCY



CONCENTRATE POTENCY



(Chandra et. al., 2019)

# Marijuana is Not “Just a Plant” Anymore – Derivatives Contain up to 99% THC



*“Green Crack”  
wax*



*“Ear Wax”*



Butane Hash Oil  
(BHO)



Hash Oil Capsules



*“Budder”*

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*“Shatter”*

# Lancet 2019 Population-Level Study Conclusions

5x

- Regular high potency marijuana users are 5 times **more likely to develop psychosis.**
- Compared to 3 times more likely for regular users of lower potency marijuana of the past.

# Association of High-Potency Cannabis Use With Mental Health and Substance Use in Adolescence (May 2020)

Study of 1,087 twenty-four-year-olds who reported recent marijuana use, found that users of **high potency marijuana** were:

**4x**

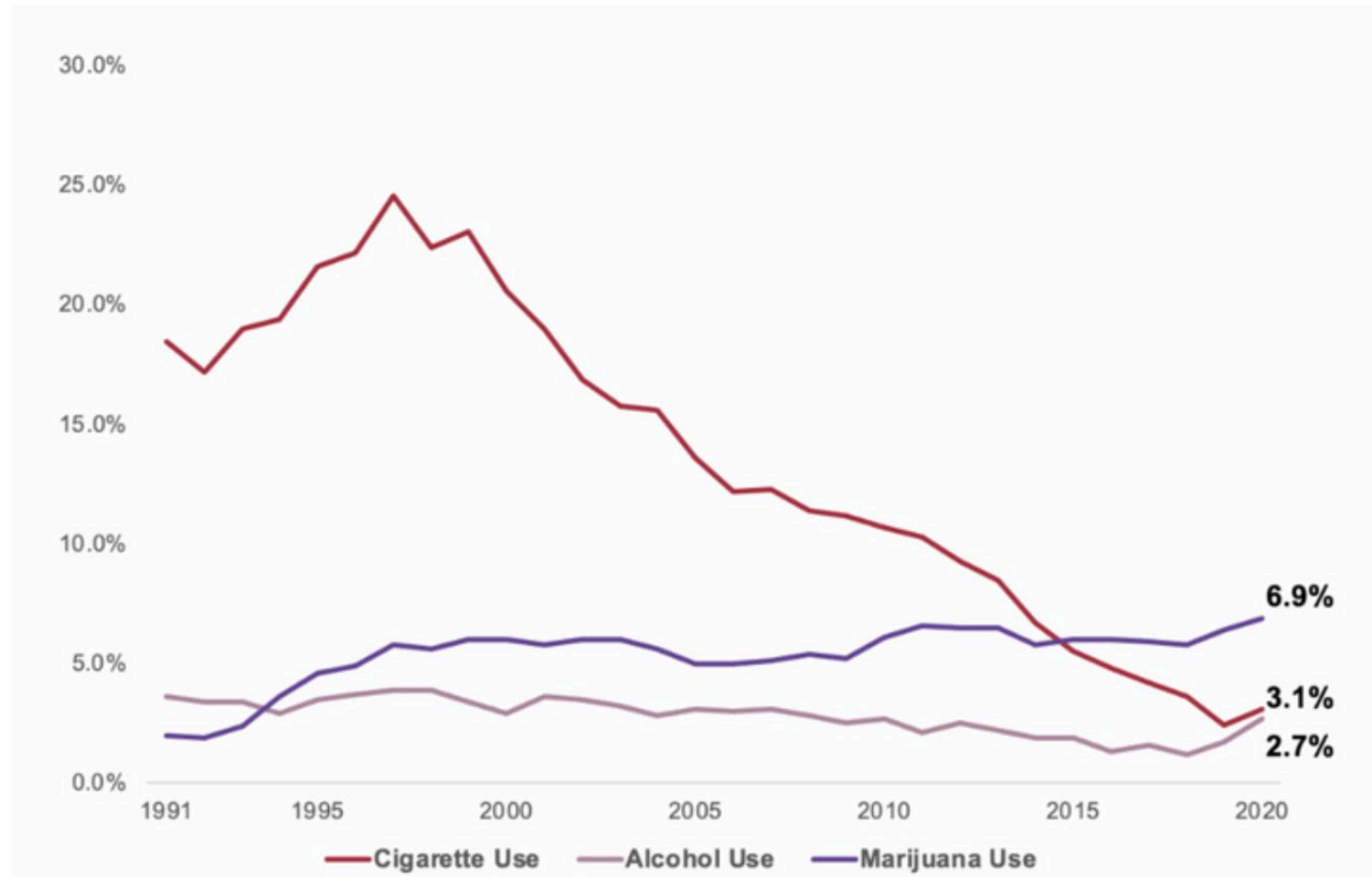
more likely to abuse marijuana

**2x**

as likely to develop anxiety disorders

In addition to increases in anxiety, the study also found that users of high potency were twice as likely to have used other substances in the past year and more than three times as likely to be tobacco users.

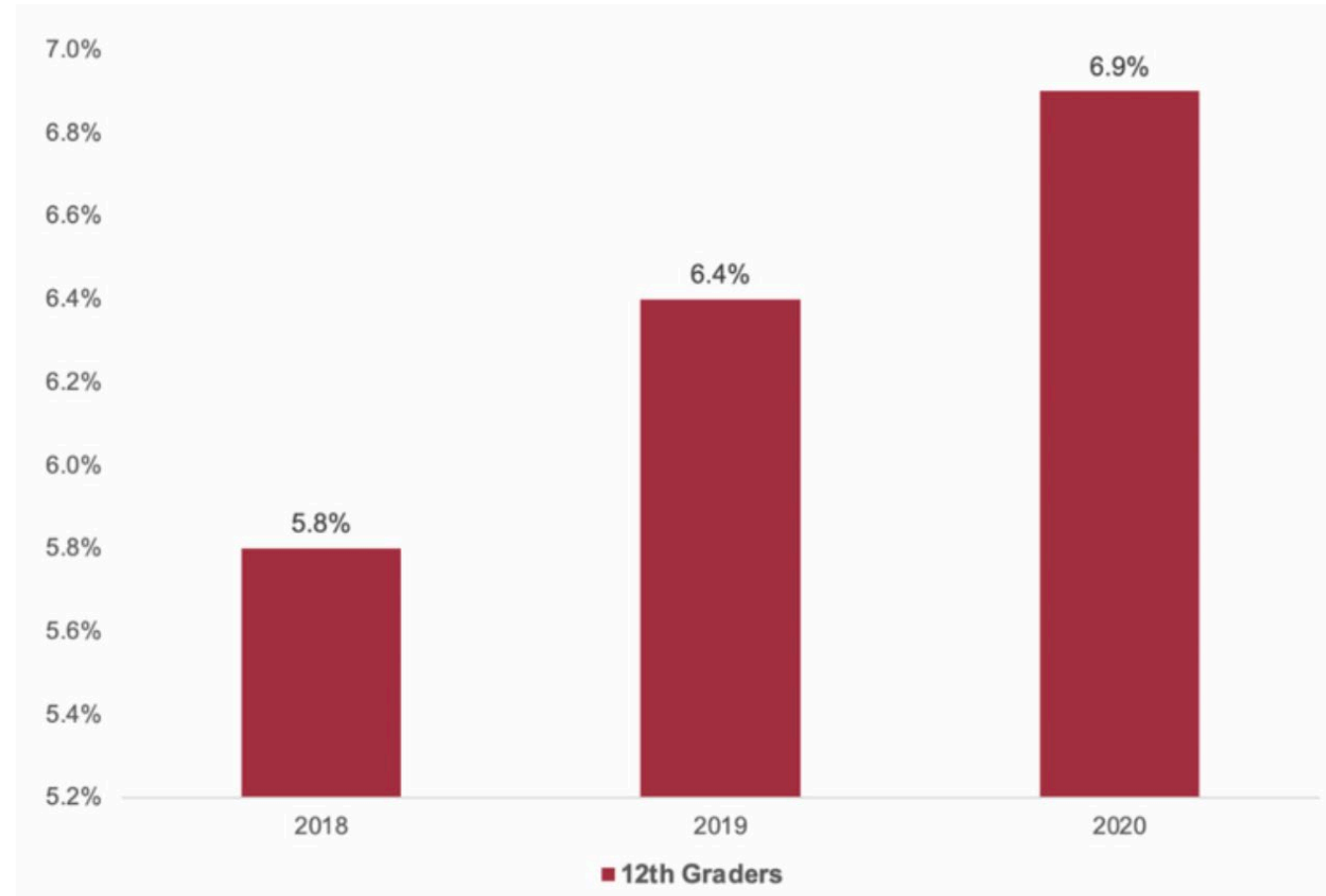
# Daily use among 12<sup>th</sup> graders is rising dramatically



Monitoring the Future, 2020



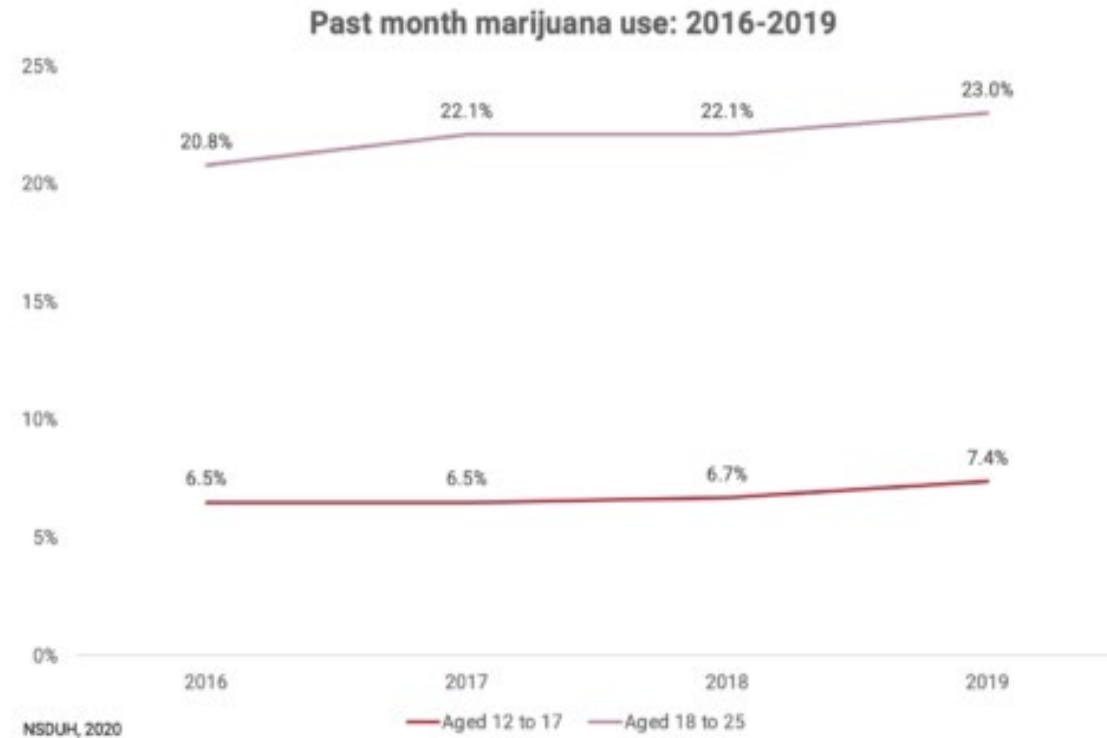
# Near-Daily Use of Marijuana by 12th Graders Continues to Increase



Monitoring the Future, 2020

# Past-year and Past-Month Marijuana Use

Past month use among youth aged 12-17 increased 14 percent since 2016 while past-year use among the same age group rose 10 percent.



Substance Abuse and Mental Health Services Administration

# Marijuana & The Workforce

## According to SAMHSA:

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- 9.1% of full-time employees are illicit drug users
- Full-time employees aged 18-49 who use illicit drugs report they have:
  - Worked for 3 or more employers in the past year
  - Voluntarily left an employer in the past year
  - Were fired by an employer in the past year
  - Taken an unexcused absence in the past month
  - Had absences of 8 days or longer & significantly increased tardiness

## Economic Impact:

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HEALTH

# Drug Abuse Costs Employers \$81 Billion Per Year

Occupational health associations studying impact of drugs on the workplace. Drugs cost business \$81 billion. Most drug users are employed. Recent changes to marijuana laws have employers concerned.

# Marijuana Workplace Positivity

Quest Diagnostics found that rates of marijuana positivity in the workforce has risen sharply in recent years with the top increases in workplace marijuana positivity occurred in states with "legal" marijuana markets.

Marijuana continues to be the most common drug found across all workforce categories, including the federally mandated safety-sensitive workforce.

Nevada: **142% increase** since 2016 (1.9% vs. 4.6%)

Oregon: **136% increase** since 2014 (1.9% vs. 4.5%)

Massachusetts: **113% increase** since 2016 (2.7% vs. 3.8%)

Washington: **86.3% increase** since 2014 (2.2% vs. 4.1%)

Colorado: **63% increase** since 2013 (1.9% vs. 3.1%)

California: **45% increase** since 2016 (2.2% vs. 3.2%)

Michigan: **44% increase** since 2017 (2.7% vs. 3.9%)

Massachusetts: **40% increase** since 2016 (2.7% vs. 3.8%)



# Employees who test positive for marijuana have:

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- 55% more industrial accidents
  - 85% more injuries
- 75% higher absenteeism rates

Additional absenteeism costs due to marijuana use may cost employers up to:

- \$3,260/year for each full-time hourly employee
- \$2,407/year for each full-time salaried employee

# Use Doesn't Only Affect Users...

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Employees with family members dealing with addiction may face issues including:

- Financial problems
- Legal consequences
- Time spent caregiving
- Lost productivity at work because they are distracted by problems at home (otherwise known as "presenteeism")

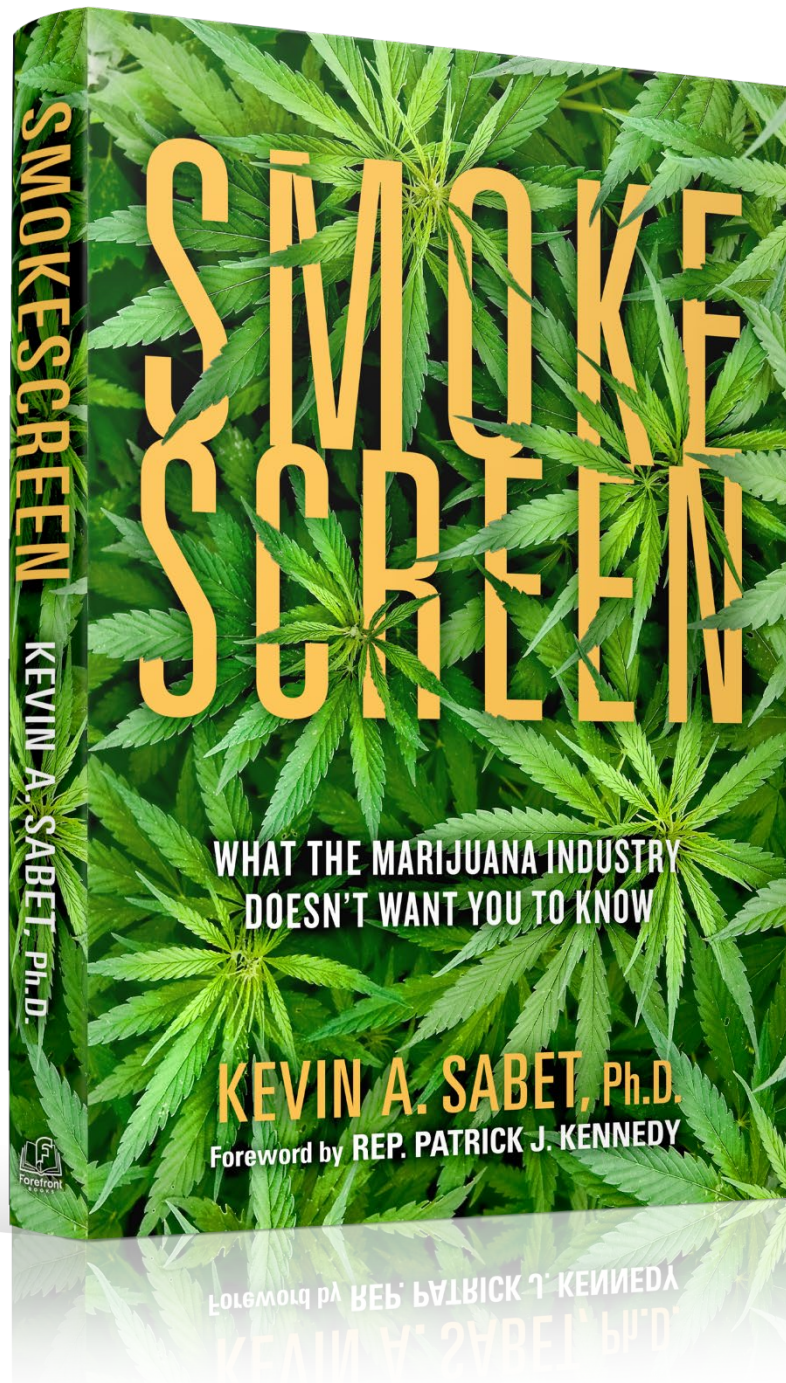
# Lawsuits, Lawsuits, Lawsuits

Marijuana legalization opens the door to myriad lawsuits against employers. The marijuana industry has vowed to make employee “rights” to pot use a priority. The head of NORML stated that firing pot users is “is simply unfair, and it cannot be allowed to stand.”

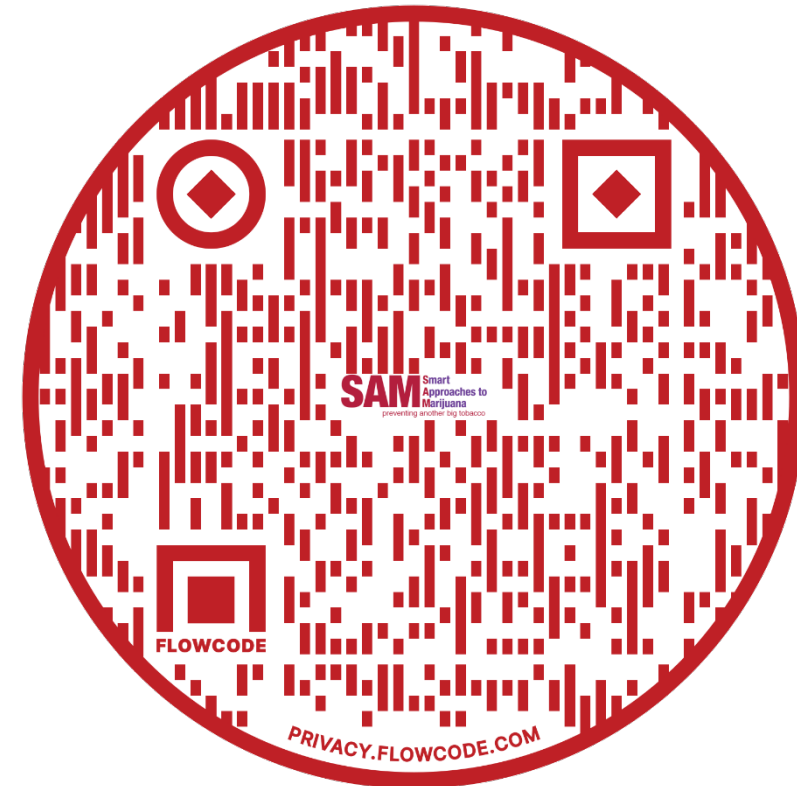
They've won in some courts:

- Massachusetts’ handicap discrimination law protects an employee that uses marijuana to treat a “debilitating medical condition” and has a MA medical marijuana card.
- New Mexico courts force companies to pay for employees’ marijuana use.

The outlawing of pre-employment drug tests is on the horizon, having already been passed into law in Nevada.



Scan with your phone to buy now:



*Order now and get some digital freebies including a PDF of my previous book, **Reefer Sanity: Seven Great Myths About Marijuana.***

Thank You!

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[www.learnaboutsam.org](http://www.learnaboutsam.org)

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Stoel Rives<sup>LLP</sup>

# It May be Legal, but They Still Have to Pay for It

A labor lawyer looks at weed and workers

Presented by Timothy J. O'Connell  
Weed and Work Webinar, DSCC  
May 4, 2021



# Agenda

- Workplace Drug Policies?
- Preemployment Testing?
- Limitations on Discipline/Discharge?
- Reasonable Accommodation?

# What About My Policy on Drugs in the Workplace?

- Must you have a policy?
  - Federal Drug Free Workplace Act, 41 U.S.C. § 81
  - FMCSA Regulations for CDL holders
  - Contract?
- May you have a policy?
- Do you need to review previous policy?
  - Almost assuredly

# Pre-Employment Drug Testing?

- Still a good idea, but...
- Check state/local law
- “Zero Tolerance”?

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## Discipline & Discharge

- Proof of Impairment?
- Just cause protection?
  - Most union contracts
  - Some public sector employment
  - Individual employment contracts
- Discrimination law
- Wrongful discharge in violation of public policy
- Imaginative claims: e.g., 'invasion of privacy'

# Reasonable Accommodation of a Disability

- More than just avoid discrimination
  - An affirmative obligation
- ADA/state law
- Medical use vs. recreational use
- Analysis
  - Disability?
  - Is some accommodation necessary?
  - Is proposed accommodation reasonable?
  - Individualized & interactive



## Tim O'Connell

Partner

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**Tim is Stoel Rives' senior labor & employment lawyer. He has been advising employers in the Pacific Northwest for more than 35 years**

He advises management on all aspects of labor and employment law, with a particular emphasis on labor-management relations, wage & hour law, workplace safety, and significant litigation. He is also active in the legislative and rule making process.