



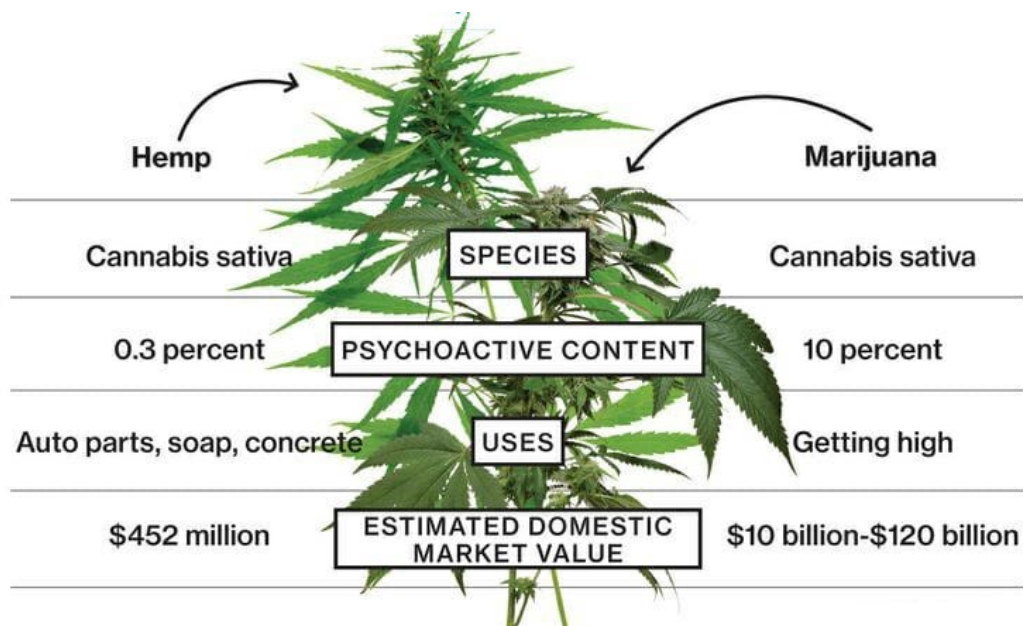
## Cannabidiol (CBD) and Employment Drug Testing

One of the single hottest selling items in our country today would unarguably be Cannabidiol (CBD) products. If you've ever spent time surfing the internet, watching T.V., scrolling through social media or visiting your local gas station or drug store; you've likely seen a promotion for a CBD product. It's entirely unavoidable – this stuff is everywhere. Is CBD the next miracle drug? Snake oil? Where does it come from and what does it do? Most importantly, how does CBD impact workplace drug screening programs? We will answer those questions for you and more.

### What is Cannabidiol?

Cannabidiol comes from the Cannabis plant, which is a very complex plant that contains around 400 different compounds of which more than 60 of them are cannabinoid compounds, tetrahydrocannabinol (THC), terpenes, flavones and hundreds more, but by far the second-most popular of which is Cannabidiol. CBD is most commonly extracted from Hemp but can also be produced in some marijuana strains. You may have heard in the media about the popularized strain "Charlottes Webb, which is a specific strain of marijuana that mostly contains CBD compared to THC.

CBD products are easily found online and on the shelves of dispensaries, smoke shops, local and national drug stores and retail locations across the country. You can find CBD in everything from balms, rubs, topicals, coffee, gummies, chocolates, ice cream, protein powders, and other edibles, you can find it in concentrated 'wax' form, in the ever-so-popular vapor cartridges, capsules, tinctures, intimate products, anti-wrinkle creams, bath bombs, a variety of pet products and much more.



## **Does CBD get users high?**

CBD is often referred to in popular media and marketing materials as being “non-psychoactive,” like that of THC, and this is a bit of a misnomer. While it’s true that CBD is more or less non-intoxicating and will not get you “high” in the same way THC does, it crosses the blood-brain barrier (your endocannabinoid system) and has some pronounced pharmacological impacts causing what is commonly described by users as a mild “body high” or a “warm bath” soothing effect.

A quick science lesson, the endocannabinoid system or (ECS) is common to all mammals, and it consists of neurotransmitters and receptors found throughout the nervous systems. It acquired its name because it is explicitly affected by cannabis, but the body naturally contains endocannabinoids, which are released through voluntary exercise—it’s what runners experience (the “runner’s high”).

THC through marijuana ingestion affects the endocannabinoid system receptors, leading to euphoric effects “the high,” in addition to impacting appetite and reducing nausea. CBD, on the other hand, facilitates the activity of the body’s endocannabinoids with more of a body ‘high’ than a psychoactive-head ‘high.’

From the limited research that's been conducted, beneficial effects have been shown with conditions such as pain relief, anti-inflammation, anxiety, acne, insomnia, epilepsy, addiction, Alzheimer's, PTSD and other mental illnesses, including schizophrenia and depression, potentially cancer and much more. As with most drugs, it is known that not everyone who uses CBD is affected adversely or even in the same way, but it is undeniable that more research is needed.

## **Will CBD use cause a positive drug test result?**

Let's first remember that standard employment drug tests screen for tetrahydrocannabinol (THC), and NOT for cannabidiol (CBD). The majority of CBD products are marketed to be “PURE CBD” or “Containing less than .3% of THC”, the actual levels of advertised concentrations vary greatly and by product.

While CBD products started in the market within the grey area federal and state legality, it is now the wild west, and CBD companies face very little oversight on their claims and to the actual contents of a product with the lack of required product testing. With the approval of the recent Farm Bill the groundwork has begun, but there is a lot of work ahead.

As it stands today, CBD products could contain elevated levels of THC that could potentially be found in an employment drug test. Also likely with excessive use of CBD products containing levels of THC. It is undoubtedly buyer beware; employees are cautioned to do their homework, especially if their livelihood could be impacted by failing a drug test.

## **Is CBD legal?**

There are currently 33 states and Washington D.C. that authorize the medical use of marijuana, including CBD. An additional 16 states that allow cannabis only as CBD oil, with restrictions on the levels of THC & for the treatment of specific medical conditions. That leaves only three states where all marijuana and marijuana-derived products are illegal (Idaho, Nebraska, and South Dakota).

Medical authorizations aside, there are currently ten states that allow the personal use of marijuana and related products, including CBD. The 2018 Farm Bill, titled the "Agricultural Improvement Act of 2018" which was signed into law by the president on December 20<sup>th</sup>, 2018. The Farm Bill removes Hemp from the Controlled Substances Act (CSA) thus legalizing the cultivation distribution and sale of hemp across the U.S. Around the same time, the Food and Drug Administration (FDA) approved the first ever cannabis-derived CBD product, Epidiolex, for medical use by those with specific medical conditions. The Drug Enforcement Agency (DEA) was then mandated to reschedule CBD and followed with a final Order that, "places certain drug products that have been approved by the Food and Drug Administration (FDA) and which contain cannabidiol (CBD) in Schedule V of the Controlled Substances Act (CSA). Specifically, this order places FDA-approved drugs that contain CBD derived from cannabis and no more than 0.1 percent tetrahydrocannabinol in schedule V."

So, the DEA has not rescheduled CBD across the board. Essentially, the only CBD medicine considered to have a medicinal function, according to the FDA, is Epidiolex. The federal government still considers all other cannabis-derived CBD products (which do not have FDA approval) to be a violation of federal law.

### **What's next?**

The FDA and the Department of Agriculture are now tasked with creating the framework of rules and regulations for legal hemp product production, distribution, and sale. This process could take many years. Meanwhile many states in the U.S. are crafting laws regarding CBD. As just a few examples, Alabama's law says all CBD is illegal, except for Epidiolex. California permits CBD products, but only if they are derived from marijuana – NOT hemp. Iowa allows CBD, but only if it is purchased through one of its five state-run stores. The state of Washington permits CBD sales so long as the product contains less than .03% THC. Consumers can easily find hundreds of CBD providers online that ship to "anywhere in the U.S." Even the big-box drug stores have signed distribution agreements for CBD products. The FDA is starting to strike back, as of recent, sending out hundreds of warning letters to product manufacturers that sell CBD-infused products or that claim any kind of health or dietary benefits that all of which are currently unproven.

### **Takeaways for Employers**

To recap, CBD use could potentially cause a positive drug test result for THC depending on the actual contents of the product being consumed. Employers in all 50 states are still permitted to enforce a zero-tolerance drug-free workplace program. CBD use would not be a justifiable reason for an employee or applicant to argue in response to a positive test result for THC. Employers are cautioned with any adverse action taken when dealing with a state-authorized medical marijuana user (or someone who has been prescribed Epidiolex) who is not working in a safety sensitive environment.

Employers should take this opportunity to review and revise their workplace policies to ensure the language in the policy is up-to-date with the wave of new laws impacting the workplace. Sample, *"the purchase or use of any unauthorized CBD product from any unauthorized source could result in a positive drug test for marijuana subjecting the employee to disciplinary actions according to this policy/collective bargaining agreement."*