

Are CBD Products Permitted for DOT Drivers?

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Based on a recent compliance notice from the U.S. Food and Drug Administration it appears employers of truck drivers and others performing certain safety-sensitive roles can trust a positive marijuana test for a CBD user.

Employers who employ individuals in safety-sensitive roles such as truck drivers are required to test those employees under U.S. Department of Transportation drug testing rules, and the recent rise of CBD products has created what employees could believe is a false positive marijuana test.

But a [February 18 compliance notice from the department](#) sheds light on the issue. The notice points out that under the Farm Bill, hemp-derived products containing a concentration of up to 0.3% tetrahydrocannabinol (THC) are not controlled substances under the Controlled Substances Act. However, any product - including CBD - with a concentration of more than 0.3% THC remains classified as marijuana, a Schedule I drug under the Controlled Substances Act.

Because the U.S. Food and Drug Administration does not currently certify the levels of THC in CBD products, [many CBD product labels are misleading](#) in that they may contain THC levels higher than what the product label states. The FDA has issued several warning letters to companies because their products contained more THC than indicated on the product label.

The federal transportation department requires testing for marijuana, not CBD. However, the unregulated levels of THC in CBD products may trigger a positive marijuana test. According to the department, "CBD use is not a legitimate medical explanation for a laboratory-confirmed marijuana positive result." Consequently, a medical review officer will verify a drug test as positive even if an employee claims to have only used a CBD product. Employees in safety-sensitive positions, therefore, should exercise caution when considering whether to use CBD products as they could unintentionally test positive for levels of THC that would trigger a marijuana-positive test result and render them disqualified for employment - even if they never used marijuana.

The CBD market continues to boom, creating a rash of marijuana testing inconsistencies and issues. We will keep employers updated on new laws, court decisions and guidance in this industry, and if you have any questions on CBD and marijuana testing, please contact me or anyone in the Barley Snyder Employment Group.

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