

# **State of Ohio Drug Free Workplace Policy (HR-39)**

## **Frequently Asked Questions about the Updated Policy**

This document is meant to provide general information and facts; therefore, it may not always address every situation. Always refer to relevant agency policies, State Human Resources policies, and any applicable collective bargaining agreement for specific information. If you are a state employee and have questions about this document, please contact your agency's Human Resources Office. State human resources and labor relations representatives, please reach out to your assigned Department of Administrative Services (DAS) Office of Collective Bargaining (OCB) Labor Relations and Human Resources Policy Analyst with questions.

### **Section 1 – General Questions**

#### **1. When did the updated State of Ohio Drug Free Workplace Policy (HR-39) become effective?**

The updated policy went into effect June 1, 2018.

#### **2. What is the purpose of the State of Ohio Drug Free Workplace Policy (HR-39)?**

The purpose of this policy is to ensure maintenance of a drug-free workplace within State of Ohio agencies, boards, and commissions under the authority of the Governor. Under the State's Drug Free Workplace Policy (HR-39), an employee cannot be impaired while in an active work status or otherwise in the workplace. To be fit-for-duty, an employee must be able to perform the essential functions of his/her job and not currently abuse a restricted substance (as defined in the policy).

#### **3. What types of testing does the policy allow for?**

The State conducts the following types of tests: applicant drug tests, random drug and/or alcohol tests, federal DOT drug and/or alcohol tests, rebuttable presumption drug and/or alcohol tests, follow-up drug and/or alcohol tests and reasonable suspicion drug and/or alcohol tests.

- Applicant drug testing applies to a final applicant for a designated "safety sensitive" position in state service that has tentatively met all relevant employment criteria but has not been officially offered employment with the State or any final applicant for a designated unclassified position.
- Rebuttable presumption drug and/or alcohol testing is conducted pursuant to the Ohio Revised Code § 4123.54 when an employee suffers a work-related injury.
- Random drug and/or alcohol testing applies to an employee who occupies a designated "safety sensitive" position that is subject to random drug and/or alcohol testing according to the requirements of any applicable collective bargaining agreement or as determined by the Director of DAS.

- Reasonable suspicion drug and/or alcohol testing applies to an employee who demonstrates signs of impairment, based on a for-cause determination by management. An employee involved in a significant incident in which the health or safety of the employee, or other individuals, is involved, or in which extensive property damage has occurred, will be subject to reasonable suspicion testing in accordance with the requirements of any applicable collective bargaining agreement or the Director of DAS.
- Follow-up drug and/or alcohol testing applies to any employee referred through administrative channels to a counseling or rehabilitation program as a result of that employee's positive test. Such an employee may be subject to follow-up testing according to specifications or provisions of an applicable collective bargaining agreement or, for employees exempt from collective bargaining, the policy of the Director of DAS.
- Federal DOT testing applies to employees whose duties require them to have a commercial driver's license (CDL) for their position with the state and are subject to federal drug and alcohol testing regulations.

#### **4. Who does the policy apply to?**

The updated policy applies to all state employees and any applicant for hire at any state agency, board, or commission under the authority of the Governor. This policy does not apply to other elected officials, local government employers or public university employers in the state of Ohio.

## **Section 2 – Policy Components**

### **1. What has changed about the State of Ohio Drug Free Workplace Policy (HR-39)?**

In addition to housekeeping and formatting changes, the policy was updated in 2018 following the legalization of medical marijuana in Ohio pursuant to House Bill 523 signed into law in September of 2016. These updates include how medical marijuana will be treated in the State's existing Drug Free Workplace Services Program (drug testing program).

This policy also includes language updates relating to blood alcohol level tests at or above .02% and below .04% which mirrors changes made to all five collective bargaining agreements in 2015.

### **2. What is House Bill 523?**

House Bill 523, passed in 2016 during the 131<sup>st</sup> General Assembly, legalized the use of tetrahydrocannabinol (THC) or "medical marijuana" as a treatment option for certain conditions (as listed in the law) based on the recommendation of a physician. Under the law, a patient only qualifies to use medical marijuana if he/she is diagnosed with one of the conditions listed in the law. The patient must be registered with the Ohio State Board of Pharmacy, which

is evidenced by an approved valid Patient Registration/Identification Card, and the use must be pursuant to a recommendation issued by a physician. Physicians can only issue a recommendation if the physician is registered by the Ohio Medical Board. Medical marijuana can only be utilized in certain, legalized forms (Ohio law currently prohibits the smoking of medical marijuana) and must be obtained from a licensed dispensary. The law also places restrictions on the content of THC in medical marijuana.

### **3. Is a recommendation for medical marijuana the same as a prescription for medication?**

No. Medical marijuana is not a prescription medication and a recommendation for medical marijuana is not a prescription. A prescription is a written or oral order for a controlled substance for use by an individual given by a practitioner in the course of professional practice and in accordance with the regulations promulgated by the director of the United States Drug Enforcement Administration pursuant to federal drug abuse control laws. Marijuana is a Schedule I controlled substance and is not recognized as a prescription drug by the Federal Drug Administration (FDA).

### **4. How does the legalization of medical marijuana impact the State's Drug Free Workplace Policy (HR39)?**

Before medical marijuana was legalized, an applicant or employee who tested positive for THC would have a positive drug test. An employee with a positive drug test would be subject to the provisions of the policy and any applicable collective bargaining agreement, including participation in the Employee Assistance Program and a Last Chance Agreement for first time positive tests or potential removal for some situations. Under the updated policy, most applicants or employees who are subject to drug and/or alcohol testing are not prohibited from using medical marijuana, provided the employee's use complies with Ohio law and the limitations established in the policy. Due to legal restrictions, certain groups of employees (see below) will continue to be prohibited from using medical marijuana even if the employee has a valid recommendation for medical marijuana.

### **5. What happens under the State's Drug Free Workplace Policy (HR-39) if an applicant or employee's test results shows the presence of THC?**

Most employees or applicants can offer an explanation or submit medical documentation of a legally issued medical marijuana recommendation or exposure to toxic substances which may explain a positive test result. Such information shall be reviewed only by the medical review officer (MRO) in his/her determination of the validity of a positive test and shall be released to the employer only to explain a test result. This process is nearly the same process as used for prescription drugs. Applicants or employees who are unable to produce evidence of a valid recommendation, which includes both a valid Patient Registration/Identification Card and recommendation for medical marijuana issued by a physician pursuant to Ohio law, will have a positive test and applicable policy and/or collective bargaining agreement provisions shall apply. Due to legal restrictions, certain groups of employees (see below) will continue to be

prohibited from using medical marijuana even if the employee has a valid recommendation for medical marijuana. For positions subject to federal DOT testing regulations, the MRO will report a positive test. For all other test results that show the presence of THC from the use of medical marijuana, the MRO will contact the DAS Drug-Free Workplace Program to verify whether the applicant or employee is in a position prohibited from using medical marijuana. If so, the MRO will report a positive test. In addition, the use of hemp or hemp-derived cannabidiol (CBD) products is not a valid reason to explain a positive drug test for THC under HR-39. (See section 7 of this FAQ document for additional information regarding hemp and hemp-derived CBD products).

**6. Does the State’s Drug Free Workplace Policy (HR-39) prohibit the use of medical marijuana in accordance with Ohio law for any employees?**

Yes, there are two exceptions under the State’s Drug Free Workplace Policy (HR-39). The policy prohibits marijuana use, including medical marijuana, for employees or applicants in positions subject to the Federal Omnibus Transportation Test Act of 1991 and applicable United States Department of Transportation regulations (collectively, “DOT drug testing laws”), and employees or applicants in positions that require them to carry, transport, or otherwise possess firearm(s) or ammunition (“ATF federal regulations”). State employees with questions about whether these exceptions apply to them should contact their agency human resources representative. For example, employees who are required to maintain a commercial driver’s license (CDL) are subject to the federal DOT testing laws, and employees that are required to carry a firearm for their job are subject to the ATF federal regulations.

**7. How should agencies determine which positions fall under federal DOT testing regulations and/or ATF federal regulations?**

Agencies should work with their agency legal counsel to conduct a position by position analysis to determine which positions fall under the exceptions in HR-39. This should include an evaluation of the position description and the ATF regulations. The DAS Office of Talent Management and the DAS Office of Legal Services are available to answer questions if needed.

**8. Are the two exceptions under the State’s Drug Free Workplace Policy (HR-39) (positions subject to federal DOT drug testing laws and ATF federal regulations) the same as a “safety sensitive” designation?**

No. Under the State’s Drug Free Workplace Policy (HR-39) and applicable collective bargaining agreements, certain positions within state agencies, boards, and commissions have been designated as “safety sensitive” based on their job duties and are therefore subject to random drug and alcohol testing. Being in a safety sensitive position does NOT necessarily mean that the position is subject to federal DOT testing or ATF federal regulations. Although there may be some safety sensitive positions that also fall into these two exceptions, the safety sensitive designation alone does not mean that the employee holding that position is within one of these

exceptions and therefore prohibited from validly using medical marijuana. Employees with questions should contact their agency human resources representatives.

**9. What happens under the State’s Drug Free Workplace Policy (HR-39) if an applicant or employee who is subject to federal DOT drug testing laws or ATF federal regulations has a test result showing the presence of THC due to use of medical marijuana?**

The MRO will report the positive drug test results for these positions. The employee will be in violation of the Drug Free Workplace Policy (HR-39) and may be subject to discipline up to and including termination, even if the employee or applicant has a valid recommendation for medical marijuana. Any disciplinary procedures are subject to provisions in both the policy and any applicable collective bargaining agreement. For applicants in positions that the MRO reports as positive, any agency, board, or commission covered by the State’s policy shall decline to extend a final offer of employment to an applicant with a verified positive test result and such applicant will not be reconsidered for state employment for a period of one year, pursuant to Ohio law.

**10. Does the legalization of medical marijuana change anything about the types of drug and alcohol testing (applicant, random, reasonable suspicion, follow-up, and rebuttable presumption) that the State of Ohio may perform?**

No. The legalization of medical marijuana does not change the State’s ability to perform drug and alcohol testing in accordance with HR-39 and any applicable collective bargaining agreement. The updated version of HR-39 does not change any of the types of testing that are performed. For example, the types of applicants that submit to a drug test have not changed nor have the situations that might trigger a rebuttable presumption test under Ohio law. The legalization of medical marijuana has no impact on when the State can require an employee to submit to a drug and alcohol test

**11. What if an employee refuses to submit to a drug test because they have a valid recommendation for medical marijuana?**

Any refusal to submit to a drug test, regardless of the reason, will be treated as a positive test. Employees who have a valid recommendation for medical marijuana are not exempted from submitting to a test given in accordance with HR-39 or applicable collective bargaining agreements.

**12. Does the State’s Drug Free Workplace Policy (HR-39) apply to contractors or vendors working on state property?**

Under the State’s Drug Free Workplace Policy (HR-39), agencies shall require contractors and vendors to comply with applicable state and federal laws regarding a drug-free workplace. Contractors and vendors shall be required to make a good faith effort to ensure that their employees, while working on state property, will not manufacture, distribute, dispense, purchase, transfer, use, or possess a restricted substance in violation of this policy. Agencies

should consult with their legal counsel to develop appropriate language to include in contractor or vendor contracts.

### **13. How is medical marijuana different from prescription medications under the State's Drug Free Workplace Policy (HR-39)?**

For most employees, the treatment of medical marijuana is very similar to the treatment of prescription medications. A prescription medication may be (and often is) a restricted substance (i.e. a controlled substance under the law) for purposes of the State's Drug Free Workplace Policy (HR-39). For example, Vicodin is considered a controlled substance under the Controlled Substance Act which means that while it can be addictive, it is recognized as a prescription drug by the FDA.

Although an employee is prohibited from abusing a prescription medication while in an active work status or otherwise in the workplace (see below for definitions), an employee is generally permitted to possess and/or use their prescription medication in the workplace, pursuant to their agency-specific policies regarding such medications. However, medical marijuana cannot be used, consumed, or possessed in the workplace or while in active work status.

In relation to drug and alcohol testing, for most employees the two are treated the same. The presence of marijuana will be shown in a drug test the same way as certain prescription medications. Employees can work with the MRO to present a valid prescription for the medication or a valid recommendation for medical marijuana. This is NOT the same for employees subject to federal DOT testing or ATF federal regulations as discussed above. For employees under these exceptions, the presence of THC, due to medical marijuana, will not be a valid reason for a positive test.

## **Section 3 – Prohibitions on Possession/Use of Medical Marijuana**

**1. If an employee has a valid recommendation for medical marijuana, can he/she bring their medical marijuana to the workplace?**

**No. Under both the State's Drug Free Workplace Policy (HR-39) and the federal Drug Free Workplace Act of 1988, employees are prohibited from having (possessing) medical marijuana in any form while in an active work status or otherwise in the workplace.** This also includes a prohibition on unlawfully manufacturing, distributing, dispensing, purchasing, or transferring medical marijuana while in active work status or otherwise in the workplace. This includes times that an employee is on their paid breaks or unpaid lunch breaks.

**2. What is considered "the workplace" under the State's Drug Free Workplace Policy (HR-39)?**

The workplace is any state owned or utilized premises (including rented space) for official state business, or any place where official state business is being conducted, including but not limited to, grounds, buildings, state owned or leased parking lots, vehicles, and any other equipment and any site where an employee performs work.

### **3. What is “active work status” under HR-39?**

Active work status means the conditions under which an employee is actually in a work status and is eligible to receive pay. Active work status includes stand-by status or any other circumstances where the employee is notified by his/her employing agency to be available during off-duty hours for a possible call to report to work and the employee receives compensation for all such hours. An employee who is authorized to telework (perform work from an alternate location) is in active work status for purposes of the State’s Drug Free Workplace Policy (HR-39) during working hours. An employee who is teleworking is still prohibited from using medical marijuana while in an active work status even if the work is being performed somewhere other than the workplace (e.g. employee’s home). The State’s Drug Free Workplace Policy (HR-39) does not prohibit employees from keeping legal substances in their home (e.g. alcohol or medical marijuana obtained legally under Ohio law), but the employee must be fit-for-duty and free from impairment while in an active work status.

Active work status does not include leave usage, including but not limited to, vacation leave, sick leave, bereavement leave, compensatory time, holidays, personal leave, or disability leave.

### **4. Can an employee with a valid recommendation for medical marijuana keep medical marijuana in their personal vehicle that is parked at the worksite?**

No. A personal vehicle that is parked at any location defined as the “workplace” (see above) under the State’s Drug Free Workplace Policy (HR-39) would fall under the prohibition for possession under the policy. An employee parking their personal vehicle within those defined locations cannot have medical marijuana in their car, even if they have a valid recommendation.

### **5. Can an employee be disciplined for possessing and/or using medical marijuana while in active work status or otherwise in the workplace?**

Yes. The State’s Drug Free Workplace Policy (HR-39) prohibits possession and/or use of medical marijuana in the workplace or while in active work status even if the employee has a valid recommendation for medical marijuana. Discipline, up to and including removal, could be pursued in accordance with Ohio law, statewide policy, agency policy, and applicable collective bargaining agreements. Note, this is the same for any other restricted substance under HR-39 (e.g. alcohol). The prohibition on the possession and use of restricted substances while in active work status or otherwise in the workplace has been and continues to be prohibited under the State’s Drug Free Workplace Policy (HR-39).

### **6. Can an employee still possess or use their valid prescription medications in the workplace?**

Generally, yes. However, employees must continue to follow their agency-specific policy relating to validly prescribed prescription and/or over-the-counter medications.

## **Section 4 – Fitness for Duty Requirements**

Note—There are no changes to the requirement that employees must be fit-for duty at the time they report for work and any time they are in active work status or otherwise in the workplace. The legalization of medical marijuana does not allow an employee to be impaired while in active work status or otherwise in the workplace.

### **1. What is “fit-for-duty” under the State’s Drug Free Workplace Policy (HR-39)?**

To be fit-for-duty an employee must be able to perform the essential functions of his/her job and not currently abuse a restricted substance (as defined in the policy).

### **2. Is an employee who is using medical marijuana with a valid recommendation considered to be fit-for-duty?**

Under the State’s Drug Free Workplace Policy (HR-39), an employee cannot be impaired while in an active work status or otherwise in the workplace. To be fit-for-duty an employee must be able to perform the essential functions of his/her job free from impairment. Like some validly prescribed prescription medications, employees who are using medical marijuana in accordance with Ohio law and the State’s Drug Free Workplace Policy (HR-39) may become impaired and may not be considered fit-for-duty. There is no change to the fit-for-duty requirement under the State’s Drug Free Workplace Policy (HR-39); it has only clarified that the same requirements apply to employees who have valid recommendations for medical marijuana. Agencies, boards, or commissions, who have reason to believe an employee may not be fit-for-duty should follow their normal processes and procedures for making this determination.

### **3. How to determine impairment?**

The determination of impairment is case specific and depends on the situation and the employee. If an employee is determined by management to be exhibiting signs of impairment, the employee should be sent for a reasonable suspicion drug test. Management should also take any necessary precautions for ensuring the safety of the employee, coworkers, and members of the public (e.g. prohibit the employee from driving).

### **4. Can an agency, board, or commission still send an employee for a reasonable suspicion test based on signs of impairment?**

Yes. The reasonable suspicion testing procedure remains unchanged in the updated version of the State’s Drug Free Workplace Policy (HR-39). Agencies, boards, and commission should continue to follow the procedures set forth in the policy and any applicable collective bargaining agreement based on the specific set of facts before them.

### **5. Is there a certain “level” of THC that would indicate an individual is “impaired” for purposes of the State’s Drug Free Workplace Policy (HR-39)?**

No. Currently there is no particular level of testing for THC that can discern a level of impairment. However, this does not mean that an agency, board, or commission is prohibited from acting upon visible signs of impairment. As stated above, an employee exhibiting signs of impairment should be sent for a reasonable suspicion test under policy and applicable collective bargaining agreement procedures. Employees sent for a reasonable suspicion drug test that indicates the presence of marijuana (THC) will have an administrative negative result if they have a valid recommendation for medical marijuana (except for employees subject to federal DOT testing and ATF regulations). Even though an employee with a valid recommendation will have an administrative negative test result, the agency, board, or commission, may still take necessary steps to ensure an employee is not impaired in the workplace. This may include, but is not limited to, an independent medical exam, updated evaluation from the employee's physician, or modification of duties (although not necessarily required). There are no changes to HR-39 that modify this process nor is this impacted by the legalization of medical marijuana.

**6. What happens if an employee subject to testing under this policy presents a valid recommendation for medical marijuana following a drug test but is not "fit-for-duty" in accordance with the State's Drug Free Workplace Policy (HR-39)?**

Agency human resources personnel should continue to follow their standard procedures for determining if an employee is fit-for-duty. The process is the same as someone who shows signs of impairment while appropriately taking a valid prescription. Based on the agency's procedures, this may include, but is not limited to, an independent medical exam, updated evaluation from the employee's physician, or modification of duties (although not necessarily required).

**7. Is an employee required to notify their agency, board, or commission that they have a valid Patient Registration/Identification Card and/or recommendation for medical marijuana?**

Ohio law does not require an employee to notify their employer that they have a valid Patient Registration/Identification Card or recommendation for medical marijuana; however, an agency, board, or commission may have a specific policy that requires notification. Employees should continue to follow their agency's specific policy regarding any type of notification that is required for use of a controlled substance. Employees with questions on whether any type of notification is required should contact their agency's human resources representative.

## **Section 5 – Policy Administration**

**1. Are there any changes to the agency, board, and commissions (management) responsibilities under the State's Drug Free Workplace Policy (HR-39)?**

No. The management responsibilities under the State's Drug Free Workplace Policy (HR-39) have not changed. All state agencies, boards, and commissions under the authority of the Governor are responsible for implementing and enforcing the terms of this policy and ensuring

that this policy is administered consistently and fairly. Any agency, board, or commission with their own policy must update their policy in accordance with the updates contained in HR-39.

There has been no change to HR-39 following the legalization of hemp and hemp-derived CBD products in August 2019.

## **2. Are the training requirements still the same under the State's Drug Free Workplace Policy (HR-39)?**

Yes. The training requirements have not changed under the State's Drug Free Workplace Policy (HR-39). All State of Ohio employees will continue to receive periodic training on HR-39. For agencies, boards, and commissions, it is highly recommended that employees be educated on the 2018 updates to the State's Drug Free Workplace Policy (HR-39) prior to September 2018. Agencies can use this FAQ document to help educate employees about the policy changes and how those changes apply to them.

## **3. When should agencies with specific policies have their policies modified?**

Agency policies should be in compliance with the 2018 changes to the State's Drug Free Workplace Policy (HR-39) as soon as possible. Agencies, boards, and commissions should consider having agency-specific policies updated with enough time to provide the updated version of the statewide and agency-specific policies to their employees and to provide education prior to September 1, 2018.

## **4. What are the policy distribution requirements under the State's Drug Free Workplace Policy (HR-39)?**

The distribution requirements under the State's Drug Free Workplace Policy (HR-39) have not changed. All current state employees under the authority of the Governor must receive a copy of the policy and need to complete an acknowledgement that they have read and understood the policy. This should be accomplished through an agency's usual and customary means of policy distribution. Agencies must ensure there is a record of receipt and acknowledgement. Any updated agency specific policy should also be distributed to current employees. Agencies are encouraged to distribute HR-39 (and any agency specific policy) to new employees as soon as possible.

All new employees must be provided with a copy of the State's Drug Free Workplace Policy (HR-39) (and agency specific policy if applicable) within 30 calendar days of initial employment. New employees are typically provided this information during the orientation/onboarding process. Agencies should make any necessary updates to their orientation/onboarding material consistent with HR-39.

## **5. Should employees be notified that they hold a position that falls within one of the exceptions under the State's Drug Free Workplace Policy (HR-39) (federal DOT testing or ATF regulations)?**

Yes. Agencies should notify the employees in writing before September 2018 that they hold a position which constitutes an exception under the State's Drug Free Workplace Policy (HR-39). New employees should be notified at the time of hire.

#### **6. What documentation must be provided to the MRO in order to prove that an employee or applicant has a valid recommendation for medical marijuana?**

If an applicant or employee tests positive for THC due to medical marijuana, the MRO will notify the applicant or employee that the MRO will contact the DAS Drug Free Workplace program to verify whether the applicant or employee is applying for or is in a position prohibited from use of medical marijuana (e.g. positions that require them to carry or otherwise possess firearms(s) or ammunition). If an applicant or employee tests positive for THC as part of a federal DOT test, the MRO may not accept medical marijuana as a valid reason for a positive test and will report the test as positive, in accordance with federal DOT regulations. If the applicant is in a position prohibited from use of medical marijuana (i.e. positions that require them to carry or otherwise possess firearms(s) or ammunition) the MRO will report the test as positive.

If the applicant or employee is not in a position prohibited from the use of medical marijuana, the applicant or employee shall be given an opportunity to submit medical documentation of a legally issued medical marijuana recommendation. The MRO will ask the applicant or employee to provide a copy of his/her Patient Registration/Identification Card and to coordinate the release of information from his/her recommending physician directly to the MRO verifying that they have a valid recommendation for medical marijuana. The MRO may follow-up with the recommending physician to verify and/or confirm the validity of the information provided by the recommending physician. The employee or applicant is responsible for signing any releases of information required by his/her recommending physician which would allow the MRO to verify and/or confirm the validity of information provided. It is the responsibility of the applicant or employee to ensure that a copy of his/her Patient Registration/Identification Card and information from his/her recommending physician is provided to the MRO within five business days. If the applicant or employee fails or elects not to provide this information to the MRO within five business days, the MRO will report the drug test result as a positive test.

### **Section 7 – Hemp and Hemp-Derived CBD Products**

#### **1. What is Senate Bill 57?**

Senate Bill 57, passed by the 133<sup>rd</sup> General Assembly in 2019, legalized the growth of industrial hemp and the sales of hemp and hemp-derived cannabidiol oil (CBD) products in the State of Ohio. The Director of Agriculture has authority to establish a program to monitor and regulate hemp cultivation and processing. Senate Bill 57 also distinguished hemp and hemp-derived products from marijuana by specifically excluding hemp and hemp-derived products from the ORC 3719.01 list of controlled substances.

## **2. What is the difference between hemp and hemp-derived CBD products, and medical marijuana and marijuana-derived CBD products?**

Hemp and marijuana are both derived from the cannabis plant and contain hundreds of chemicals or natural compounds known as cannabinoids. The most common cannabinoid in marijuana is tetrahydrocannabinol (THC). THC is the chemical cannabinoid associated with the plant's psychoactive effect and is responsible for the "high" that can be obtained from using marijuana. A second common chemical is cannabidiol (CBD). CBD is a non-psychoactive cannabinoid. Hemp is defined as a Cannabis plant that contains a THC level of 0.3% or less. Any cannabis plant containing THC levels higher than 0.3% is considered to be marijuana. Both THC and CBD can be found in hemp and marijuana.

Hemp and hemp-derived CBD products are those goods derived from the hemp plant that contain less than 0.3% THC. Senate Bill 57 legalized the sale of hemp and hemp-derived CBD products in Ohio. These products can include cosmetics, personal care products, dietary supplements, food, cloth, cordage, fiber, fuel, paint, particleboard, and any other product containing one or more cannabinoids derived from hemp. Hemp and hemp-derived CBD products can be purchased over-the-counter and do not require a recommendation or prescription.

## **3. Are hemp and hemp-derived CBD products accepted as a valid medical explanation for a positive THC drug test?**

No. The use of hemp and hemp-derived CBD products will not be accepted as a valid medical explanation for a positive THC drug test. The MRO will report the test as positive. Under the State's Drug Free Workplace Policy, the only possible exception to a positive THC drug test is if an employee or applicant provides sufficient information to the MRO of a valid medical marijuana recommendation or valid prescription drug by FDA.

## **4. Can an employee bring their hemp or hemp-derived CBD products into the workplace?**

It is recommended that agencies prohibit employees from bringing hemp or hemp-derived CBD products into the workplace. Hemp and hemp-derived CBD products are not currently regulated by the FDA and, as a result, there is no existing regulatory method to verify, limit, or control the level of THC contained in these products. It is also recommended that agencies prohibit employees from using, possessing or transporting hemp and hemp-derived CBD products in state vehicles. This may also apply to personal vehicles that are parked or located on state property.