



PLUMBING CONTRACTOR ANSWERS



REASONABLE SUSPICION IN RESPONSE TO THE ILLINOIS RECREATIONAL MARIJUANA LAW



The PCA is interested in providing our contractors with as much useful information as possible now that the Illinois recreational marijuana law has gone into effect as of January 1, 2020, particularly with the reasonable suspicion procedures. To help explain what our contractors should follow in order to make the process of reasonable suspicion work efficiently, the PCA asked Bill Hefferman, co-founder and co-president of Employee Resource Systems (ERS), which is the Membership Assistance Program (MAP) provider to our Local 130 members who are employed by our contractors, and also for the Employee Assistance Program (EAP) that can be used for our contractors and their non-bargained staff (if they opt-in to the program) the following series of questions.

The PCA's Drug Free Program, tied directly to our Local 130 CBA and administered by ScreenSafe, Inc., continues to prohibit the use of marijuana. So, what happens to an employee bound to our CBA if they test positive for marijuana during our random drug testing?

If someone is non-compliant because of a positive result for marijuana, they will be referred to the ERS/EAP Member's Assistance Program. They will be seen by an ERS/EAP counselor within a day or two, who will assess their situation. Based on that assessment, they will make a recommendation for some level of intervention. It may be a simple educational program, an online educational program, outpatient counseling or intensive outpatient counseling. The goal is to connect them to the best and most appropriate in-network provider care so they can get the assistance they need to return to work and diminish the problems they might be having.

How does the Illinois law address how contractors are to deal with employees who come to work impaired and who are reasonably suspected of being under the influence of marijuana on the job?

The basics are simple: reasonable suspicion, according to the rules of evidence, is more than a hunch. If I come back from lunch and I stagger when I walk or I slur my speech or I behave in a way that is not customary for me, that, for my supervisor would constitute a hunch. Based on that hunch, that supervisor should talk to me, and based on that conversation, discern whether or not that triggering event lead them to conclude that there might be an impairment. If there is a triggering event (slurred speech for example) and something more than a triggering event (something said or done in the conversation out of the norm), then you have reasonable cause to send someone for the test. At that point, you can work with ScreenSafe to get the process in motion where you document what has happened, document what you saw, the workplace behavior and the workplace performance. Contact ScreenSafe (800-292-2780) and identify the closest and appropriate collection facility. Then transport the employee to that collection facility for a test. Wait for them to be done and transport them either back to the workplace or to their home, or arrange for them to get home. The company should never allow an impaired person to leave the job site on their own.

What if the employee resists your efforts to transport them home if you think they are impaired?

If your request to transport is denied by the employee, as a last resort tell the employee that you will call the local police department and describe his or her car to them including the license plate number. In addition, you will let the police know when the employee will be leaving the job site because he or she was confronted about being impaired and you are concerned about him or her driving home. The reason you call local law enforcement is because that phone call is recorded. If that employee gets in an accident on his or her way home, you will have evidence that you made every reasonable effort to prevent him or her from driving their car. Also, if your employee comes to work and is impaired, he or she has probably had a problem with drinking and/or drug use for a period of time. They may have received a DUI in the past. A DUI in DuPage or Cook County will cost them around \$5,000 or \$10,000 for the first one. The second one is more. So, when you tell the employee that "you have to understand that if you leave our property, I am going to have to call the police." That person will be strongly de-incentivized to leave the property in his or her own vehicle.

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REASONABLE SUSPICION IN RESPONSE TO THE ILLINOIS RECREATIONAL MARIJUANA LAW *(continued from other side)*

Now that our contractors have reasonable suspicion, how do they go about documenting those facts?

PCA contractors can obtain a sample documentation form from our website (www.ers-eap.com). One side of the form is a checklist and the second side of the form is a narrative summary. We want to be really careful with supervisors, managers, foremen and superintendents on jobs. They should go through the checklist form and check off the things that apply in terms of what they observed with regard to the employee's behavior and/or performance. On the back, they should document what they have seen using the narrative form. We never want supervisors to draw conclusions, or to make assessments or to make a diagnosis. For example, if I come back from lunch and I am high and you write on the form that "I'm a real stoner," that is going to be a problem, especially if the case is taken to arbitration or litigation. You or your supervisor should only focus on documenting workplace behavior and workplace performance. Leave out any assessment, any diagnosis, and any conclusion based on what you have seen.

Now you've taken the necessary steps as a contractor. You've documented your reasonable suspicion. What are the next immediate steps here to take as a contractor?

The next step if you've documented your reasonable suspicion, is to call ScreenSafe (800-292-2780) and let them know where you're at, what's happening, and ask them where the closest collection site is located. Then arrange to get that person with a companion to the collection site so they can provide their sample. Assuming that the results come out positive, the employee will get referred to the ERS/EAP assistance program. An evaluation will be performed and after following the prescribed recommendations, we will clear them through ScreenSafe so that they can return to work as quickly as possible.

What can our PCA contractors (or their supervisors) do and not do with respect to disciplinary action?

If an employer disciplines or terminates an employee for being under the influence of or impaired by cannabis, the employer must provide the employee a reasonable opportunity to contest the basis of the determination. Of course, they must follow the PCA/Local 130 Drug Policy first before taking any disciplinary action. As far as what not to do, if I come to work and I'm a little impaired and you sit down with me, we discourage you from having some long discussion where you act as my counselor. As my boss, supervisor, foreman or superintendent, you should focus only on my workplace behavior or my workplace performance. I am either meeting your expectations or I am not. Your job is to hold me accountable. We discourage supervisors or foremen from being in a position where they are counseling people about what's going on, or trying to make up for them, or trying to hide them. Years ago, when I first started working with the trades, it wasn't uncommon if someone showed up to work a little bit hung over, a little drunk, or a little high. The foreman or superintendent would put them off in a corner or have them sweep the floor. If I'm a skilled tradesman, I make a lot of money and I need to perform in a way that makes me earn my pay. Those days of hiding people who are skilled tradesmen with alcohol or drug abuse issues are no longer very prevalent.

If our PCA contractors have additional questions, where do you recommend they go?

I would hope that if PCA contractors have any questions about the ERS/EAP assistance programs, or drug or alcohol information, that that they give us a call. I can be reached at 1-800-292-2780 or they can visit our website at www.ers-eap.com. The username is PCA and the password is PCA. Here, you can find a vast amount of information and resources on drug and alcohol use and impairment and assessments. You can also find information on dealing with a troubled or difficult employee. Questions concerning the drug testing process or testing locations should be directed to ScreenSafe at 800-292-2780 or by visiting its website at screensafeinc.com. Finally, if they have specific concerns about the PCA Drug Free Program or need to obtain a copy of the policy, they should call the PCA office at 312-563-9526 or visit its website at plumbingcouncil.org/pca.