Written Testimony of Anthony Taylor, Compassionate Oregon,
before the House Committee on Business and Labor in support of HB 2655

Wednesday, February 13, 2019

Good Morning Chair Barker, members of the Committee. My name is Anthony Taylor, and I am here today representing Compassionate Oregon, an Oregon non-profit organization advocating for Oregon's medical cannabis patients. I also serve at the pleasure of the Governor as the Vice-Chair of the Oregon Cannabis Commission. My comments today do not represent those of the Cannabis Commission.

Thank you for the opportunity to provide the Committee with some comments in support of HB 2655. In support of HB 2655, I have submitted some items for your consideration including the Drug-Free Workplace Act[1], an analysis of the nine states with medical cannabis and a report by Michael C. Subit describing those states and the challenges they are facing along with some of the outcomes[2], and lastly, an excerpt[3] from the study, *Medical marijuana laws and workplace fatalities in the United States,* D. MarkAnderson[a]Daniel I.Rees[b]ErdalTekin[c]

The issue of drugs in the workplace is tricky because in Oregon, cannabis is a legal substance. Cannabis has been in the workplace as long as I have been. I have seen it used while in the military after hours by air traffic controllers and I have seen it in the workplace in every job I have held since 1977.

Ironically, unless you are in safety sensitive jobs, the Drug-Free Workplace Act[1] does not require an employer to mandate drug testing, only that the employee must be aware of the drug-free policy and what to do if the employee violates that policy. It does not even require you to terminate an employee for testing positive while at work. In fact SAIF does not require drug testing after an injury unless the employer requests it (and that must be delineated in company policy), or a fatal injury has occurred.

I am a patient and I have a certain amount of cannabis in my system at all times. Should I be disqualified from working in a non-safety sensitive job because I have cannabis in my system? No. Should my employment be terminated because I had to take my medication with lunch? No. What about top performers? I have excelled at nearly every job I have held and been promoted often and invariably with enough cannabis in my system to test positive. Only once did I ever test positive while employed and I was not terminated but rather put on administrative leave until I could provide a clean UA.

I have written workplace drug policies for several companies during my career and not one of them required immediate termination for a positive drug screen. I have, however, seen co-workers discharged on the spot for being intoxicated on the job and for the use, possession or distribution of other illicit substance including cannabis while at work but I have never seen anyone terminated simply for the use of cannabis unless it related to a safety sensitive job.

As a quick side note: A former employers had a no nonsense drug policy but one day while directing a semi-driver back up to the loading dock, was caught between the dock and the truck and was nearly

crushed to death. Broken arms, punctured lung, and other injuries, but the irony is my former employer has never used controlled substances of any kind and I am quite sure the driver, operating under a CDL was stone-cold sober.

Accidents happen but the crux of this issue and what this bill tries to address is that by prohibiting the use of cannabis while not on the job, something that is not only legal in Oregon but that also ***must*** also be treated as a medicine you limit the number of people in the workforce that you can draw from. Unless the job is super safety sensitive, cannabis should not be a disqualifier. This issue looms large for Silicon Valley and, although half in jest, Former FBI Director Comey was quoted as saying, "I have to hire a great work force to compete with those cyber criminals and some of those kids want to smoke weed on the way to the interview,"

Other factors can play into employers' calculations. For example, a manufacturer in a state with legalized recreational marijuana found it couldn't hire enough workers when it was screening for marijuana use, said Michael Clarkson, an attorney with Ogletree Deakins Nash Smoak & Stewart. "My advice was to stop pre-employment testing and ratchet up testing for cause," Clarkson told Bloomberg Law.

There are those that will say certain jobs require extra attention and a clear head but studies that show little difference when it comes to performing most tasks, including driving, between cannabis users and those that do not.

Every place I have ever worked has had a policy whereby you were using pain meds or any other medication that may affect your ability to perform your duties, you were to notify your immediate supervisor and they would determine if you could work or if you needed different duties for some period of time or if you needed to go home until you were able to come back and perform your duties at full capabilities.,

Finally, it should not be lost on anyone on this committee nor go without saying that the only way, **the only, way an employer can determine if an employee is working with cannabis in their system** either from the weekend before or more importantly using it medicinally, **is by testing their urine.**

Thank you for your attention in this matter and we urge you to support HB 2655.

[1]**Requirements of the Drug-Free Workplace Act**

(1) Persons other than individuals.—A person other than an individual shall not be considered a responsible source (as defined in section 113 of this title) for the purposes of being awarded a contract for the procurement of any property or services of a value greater than the simplified acquisition threshold (as defined in section 134 of this title) by a Federal agency, other than a contract for the procurement of commercial items (as defined in section 103 of this title), unless the person agrees to provide a drug-free workplace by—

(A) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's workplace and specifying the actions that will be taken against employees for violations of the prohibition;
(B) establishing a drug-free awareness program to inform employees about—
(i) the dangers of drug abuse in the workplace;
(ii) the person's policy of maintaining a drug-free workplace;
(iii) available drug counseling, rehabilitation, and employee assistance programs; and
(iv) the penalties that may be imposed on employees for drug abuse violations;
(C) making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph (A);
(D) notifying the employee in the statement required by subparagraph (A) that as a condition of employment on the contract the employee will—
(i) abide by the terms of the statement; and
(ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after the conviction;
(E) notifying the contracting agency within 10 days after receiving notice under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of a conviction;
(F) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is convicted, as required by section 8104 of this title; and
(G) making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (A) to (F).

(2) Individuals.—
A Federal agency shall not make a contract with an individual unless the individual agrees not to engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of the contract.

(b) Suspension, Termination, or Debarment of Contractor.—
(1) Grounds for suspension, termination, or debarment.—Payment under a contract awarded by a Federal agency may be suspended and the contract may be terminated, and the contractor or individual who made the contract with the agency may be suspended or debarred in accordance with the requirements of this section, if the head of the agency determines that—
(A) the contractor is violating, or has violated, the requirements of subparagraph (A), (B), (C), (D), (E), or (F) of subsection (a)(1); or
(B) the number of employees of the contractor who have been convicted of violations of criminal drug statutes for violations occurring in the workplace indicates that the contractor has failed to make a good faith effort to provide a drug-free workplace as required by subsection (a).
(2) Conduct of suspension, termination, and debarment proceedings.—
A contracting officer who determines in writing that cause for suspension of payments, termination, or suspension or debarment exists shall initiate an appropriate action, to be conducted by the agency concerned in accordance with the Federal Acquisition Regulation and applicable agency procedures. The Federal Acquisition Regulation shall be revised to include rules for conducting suspension and debarment proceedings under this subsection, including rules providing notice, opportunity to respond in writing or in person, and other procedures as may be necessary to provide a full and fair proceeding to a contractor or individual.
(3) Effect of debarment.—

A contractor or individual debarred by a final decision under this subsection is ineligible for award of a contract by a Federal agency, and for participation in a future procurement by a Federal agency, for a period specified in the decision, not to exceed 5 years.

Of the 31 states that have legalized medical marijuana, only nine have some form of explicit employment protection for qualified medical cannabis patients. Those states are: Arizona, Connecticut, Delaware, Illinois, Maine, Minnesota, Nevada, New York, and Rhode Island.

[2]Arizona

B. Unless a failure to do so would cause an employer to lose a monetary or licensing related benefit under federal law or regulations, an employer may not discriminate against a person in hiring, termination or imposing any term or condition of employment or otherwise penalize a person based upon either:
1. The person's status as a cardholder.
2. A registered qualifying patient's positive drug test for marijuana components or metabolites, unless the patient used, possessed or was impaired by marijuana on the premises of the place of employment or during the hours of employment.

Delaware

Delaware prohibits employers from discriminating against or terminating a qualified patient for a "positive drug test for marijuana components or metabolites" unless the employee used, possessed, or was impaired by marijuana on the job or if it would cause the employer to lose a benefit under federal law. Del. Code Ann. tit. 16, § 4905A(a)(3)(a**).**

Minnesota

A positive cannabis drug test cannot automatically be grounds for a refusal to hire or any other adverse employment action. Employers must give employees the opportunity to explain the positive test prior to taking any adverse action. Minn. Stat. § 181.953.

Nevada

Nevada requires employers to reasonably accommodate the medical needs of an employee who uses medical marijuana, provided that such accommodation would not pose a threat of harm or danger to persons or property, impose an undue hardship on the employer, or prohibit the employee

New York

An employer may not discriminate against a certified patient solely for the certified medical use or manufacture of marijuana. A "certified patient" is deemed to have a disability, as defined by the New York Human Rights and Civil Rights Laws, and employers must reasonably accommodate the underlying disability associated with the legal marijuana use. New York Health Law, Title V-A, § 3369(2).

[3]Medical marijuana laws and workplace fatalities in the United States

Author links open overlay panel D. MarkAnderson[a]Daniel I.Rees[b]ErdalTekin[c]

Legalizing medical marijuana was associated with a 19.5% reduction in the expected number of workplace fatalities among workers aged 25–44 (incident rate ratio [IRR], 0.805; 95% CI, .662–.979). The association between legalizing medical marijuana and workplace fatalities among workers aged 16–24, although negative, was not statistically significant at conventional levels. The association between legalizing medical marijuana and workplace fatalities among workers aged 25–44 grew stronger over time. Five years after coming into effect, MMLs were associated with a 33.7% reduction in the expected number of workplace fatalities (IRR, 0.663; 95% CI, .482–.912). MMLs that listed pain as a qualifying condition or allowed collective cultivation were associated with larger reductions in fatalities among workers aged 25–44 than those that did not.

Conclusions

The results provide evidence that legalizing medical marijuana improved workplace safety for workers aged 25–44. Further investigation is required to determine whether this result is attributable to reductions in the consumption of alcohol and other substances that impair cognitive function, memory, and motor skills.