



VRSA

Virginia Risk Sharing Association

New Marijuana Law and the Workplace

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History of Cannabis Regulation in Virginia

1979

- The Virginia General Assembly eliminated prosecution for possession of marijuana if a recommendation was provided by a doctor for the treatment of cancer or glaucoma.
- The law, however, did not create a legal process for patients to obtain medical cannabis.

2002

- A federal circuit court ruled that doctor "recommendations" are protected by the First Amendment as a form of speech.

2015

- The Virginia General Assembly authorized possession of marijuana based on a doctor's recommendation and prohibited prosecution of patients and parents or legal guardians of patients with epilepsy who possessed cannabidiol (CBD), provided they could show a doctor's certificate for treatment.
- Neither the 1979 nor the 2015 laws legalized possession of marijuana products aside from CBD and tetrahydrocannabinol (THC) oils.

2018

- The Virginia General Assembly broadened the authorization of medical cannabis use for any medical condition.
- The law also authorized the Virginia Board of Pharmacy to license pharmaceutical processors and established procedures for the distribution of medical cannabis.
- Patients were required to obtain a registered physician's recommendation and register with the Virginia Board of Pharmacy at a rate of \$50 per year.

2019

- The Virginia General Assembly passed three laws clarifying the right to use CBD and THC oils.
- Physician assistants and nurse practitioners were authorized to register with the Virginia Board of Pharmacy to write certifications for medical cannabis patients.
- The Virginia General Assembly expanded the right to sell medical cannabis in edibles and other packaged forms, excluding marijuana flower.

2020

- Legislators increased access to medical cannabis by eliminating the requirement for patients to cultivate plants on-site for the cultivation of plants, authorized processors to establish off-site cannabis dispensary facilities in designated health service areas.
- The Virginia General Assembly changed the law regarding non-medical use of marijuana by decriminalizing marijuana possession.





Federal Contractors and Grantees

- Drug-free Workplace Act of 1988
- Under the act, a drug-free workplace policy is required for:
 - ❖ Any organization that receives a federal contract of \$100,000 or more
 - ❖ Any organization receiving a federal grant of any size

At a Minimum, Such Organization Must:

- Prepare and distribute a formal drug-free workplace policy statement. This statement should clearly prohibit the manufacture, use, and distribution of controlled substances in the workplace and spell out the specific consequences of violating this policy.
- Establish a drug-free awareness program. This program should inform employees of the dangers of workplace substance use; review the requirements of the organization's drug-free workplace policy; and offer information about any counseling, rehabilitation, or employee assistance programs (EAPs) that may be available.



At a Minimum, Such Organization Must:

- Take direct action against an employee guilty of a workplace drug violation. This action may involve imposing a penalty or requiring the offender to participate in an appropriate rehabilitation or counseling program.
- Maintain an ongoing good faith effort to meet all the requirements of the *Drug-Free Workplace Act* throughout the life of the contract. Covered organizations must demonstrate their intentions and actions toward maintaining a drug-free workplace. Their failure to comply with terms of the *Drug-Free Workplace Act* may result in a variety of penalties, including suspension or termination of their grants/contracts and being prohibited from applying for future government funding.



What Do Drug Tests Look For?

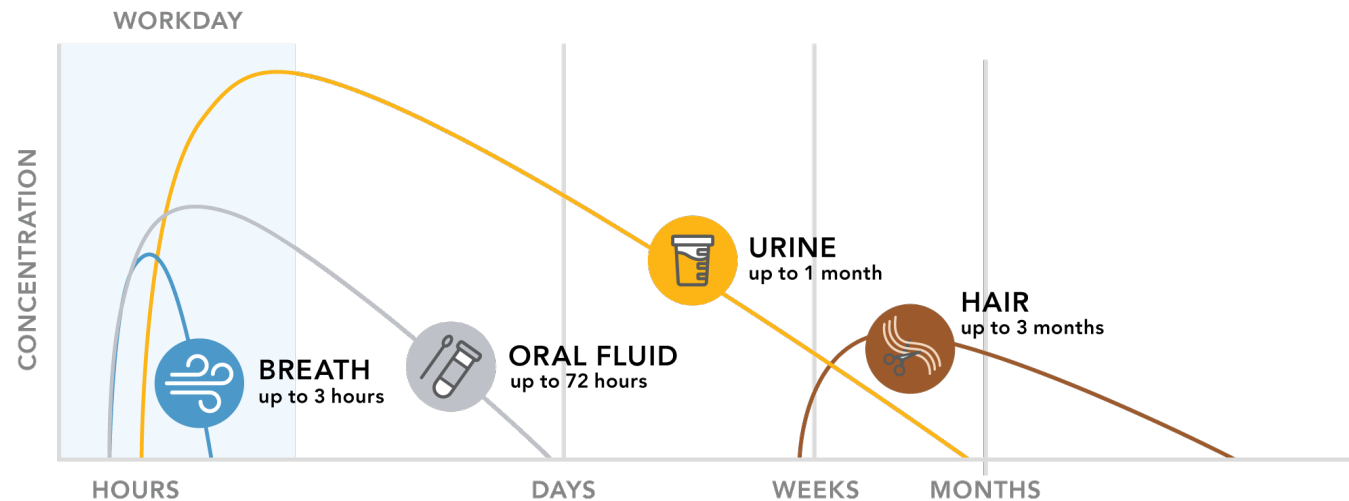
- Drug tests are designed to detect THC (parent) or its metabolite.
 - ❖ Urine tests only for metabolites
 - ❖ Oral Fluid tests for the parent drug
- A drug test cannot differentiate between THC from marijuana, hemp or a CBD product



THC Detection

- THC is detected in breath, oral fluid, and blood.
- THC-COOH is detected in urine and hair.

CANNABIS DETECTION WINDOWS



THC, the psychoactive compound in cannabis, is detected in breath, oral fluid, and blood. THC-COOH, a metabolite of THC, is detected in urine and hair.

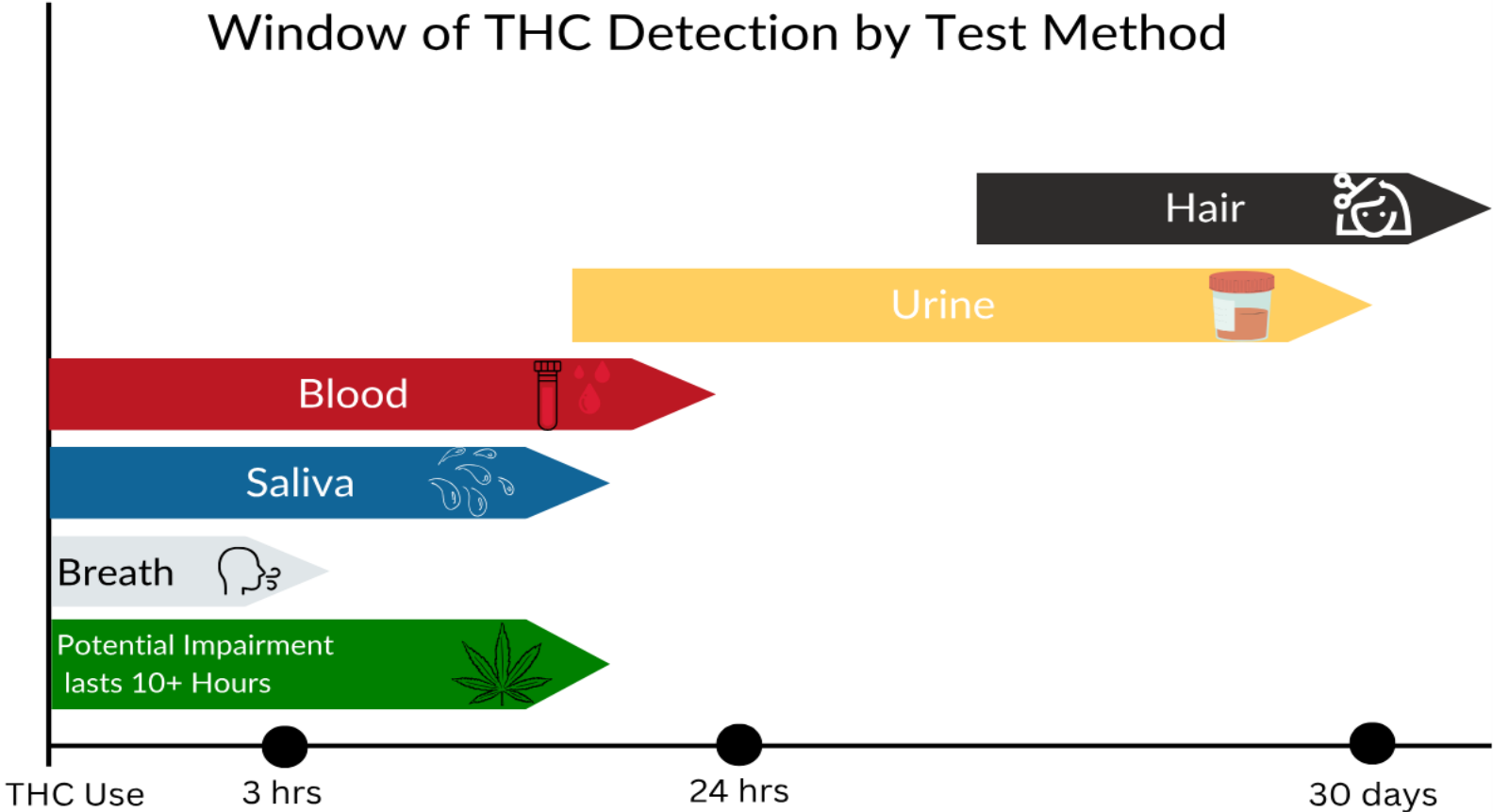
Cannabis detection window using oral fluid: <https://www.govinfo.gov/content/pkg/FR-2019-10-25/html/2019-22684.htm>

Cannabis detection window using urine and hair: <https://www.questdiagnostics.com/content/dam//unrestricted/documents/business-solutions/Quest%20drug%20testing%20solutions%20at-a-glance.pdf>

Cannabis detection window using breath: <https://academic.oup.com/clinchem/article/65/9/1171/5608513>

Testing For Impairment

Window of THC Detection by Test Method





§ 40.1-27.4. Discipline for employee's medicinal use of cannabis oil prohibited.

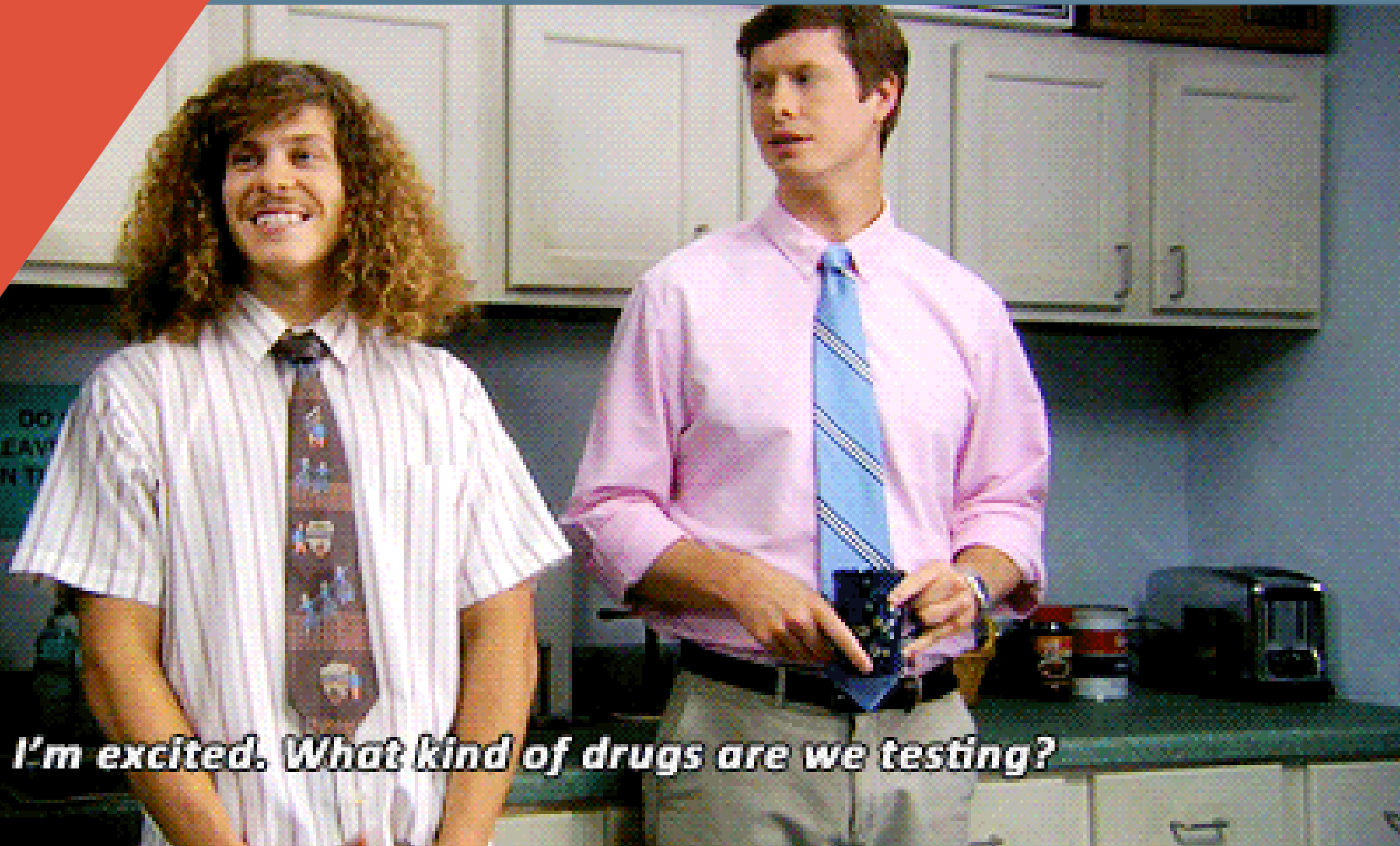
- "Employee" means the same as that term is defined in § 40.1-2, except that for the purposes of this section, "employee" does not include any law-enforcement officer, as defined in § 9.1-101.
- "Employer" means the same as that term is defined in § 40.1-2, except that for the purposes of this section, "employer" also includes the Commonwealth, any county, city, town, or other political subdivision thereof, and any agency of the Commonwealth or such county, city, town, or political subdivision.

§ 40.1-27.4. Discipline for employee's medicinal use of cannabis oil prohibited.

- B. No employer shall discharge, discipline, or discriminate against an employee for such employee's lawful use of cannabis oil under the laws of the Commonwealth pursuant to a valid written certification issued by a practitioner for the treatment or to eliminate the symptoms of the employee's diagnosed condition or disease pursuant to § 4.1-1601.
- C. Notwithstanding the provisions of subsection B, nothing in this section shall (i) restrict an employer's ability to take any adverse employment action for any work impairment caused by the use of cannabis oil or to prohibit possession during work hours, (ii) require an employer to commit any act that would cause the employer to be in violation of federal law or that would result in the loss of a federal contract or federal funding, or (iii) require any defense industrial base sector employer or prospective employer, as defined by the U.S. Cybersecurity and Infrastructure Security Agency, to hire or retain any applicant or employee who tests positive for tetrahydrocannabinol (THC) in excess of 50 ng/ml for a urine test or 10 pg/mg for a hair test.



Understanding the Threshold



I'm excited. What kind of drugs are we testing?

Understanding the Threshold

- Initial vs. Confirmatory: A result above 50 ng/ml is considered a "presumptive positive". It usually triggers a second, more precise "confirmatory" test (like GC/MS) that uses a lower threshold, often 15 ng/ml, to confirm the initial finding.
- Measurement: 50 ng/ml means there are 50 billionths of a gram of THC metabolites per milliliter of urine.
- Detection Windows: How long someone stays above this 50 ng/ml level depends on their usage frequency:
 - ❖ Single Use: Typically stays above 50 ng/ml for 3 to 7 days.
 - ❖ Regular Use: May take 2 to 4 weeks to drop below this level.
 - ❖ Chronic/Daily Use: Can remain above the threshold for more than 30 days.

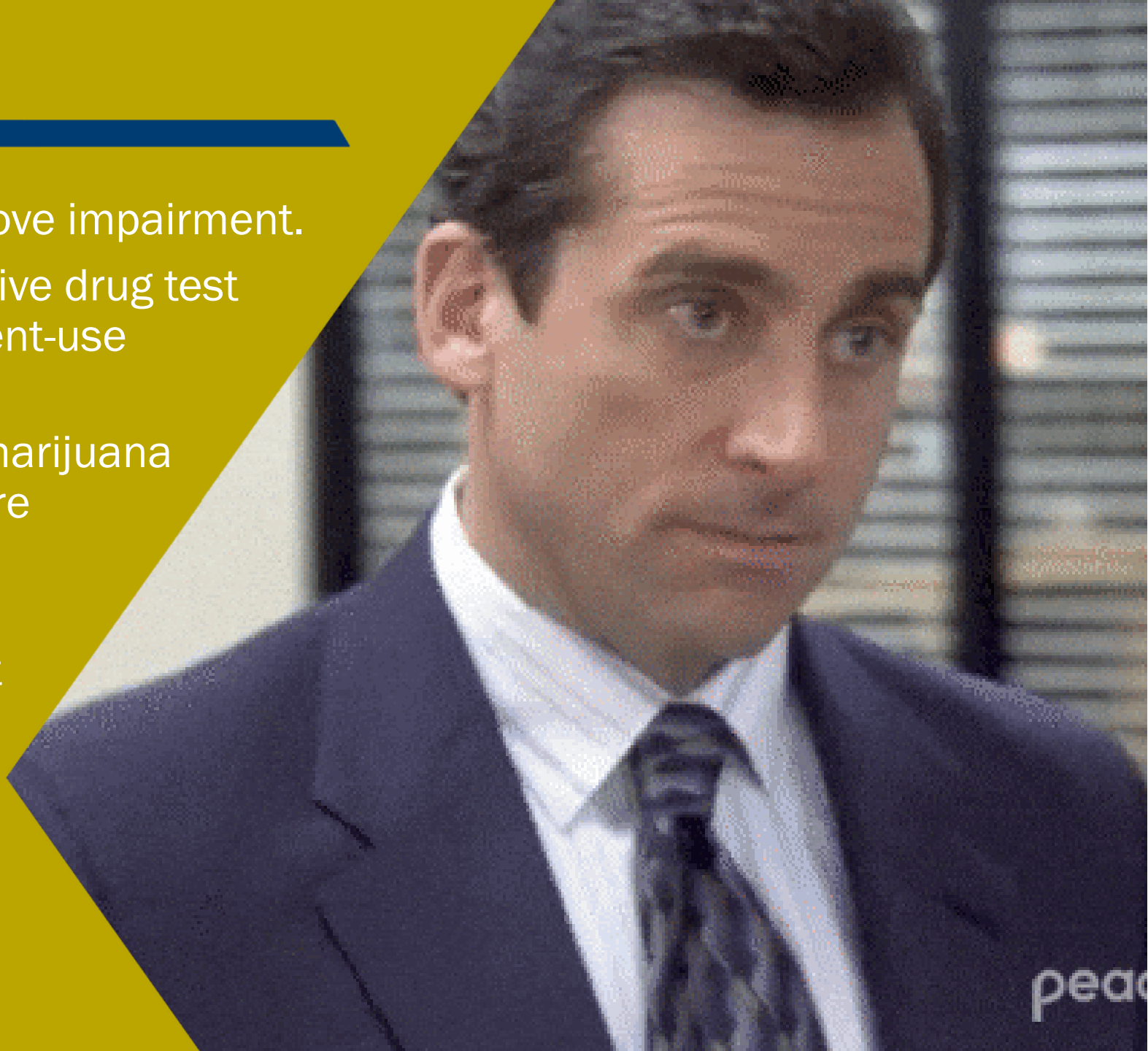


Types of Drug Testing

- Pre-employment
- Random
- Post-accident
- Reasonable suspicion or reasonable cause
- Return-to-duty testing or follow-up testing

Remember...

- A positive drug test does not prove impairment.
- The best way to connect a positive drug test with impairment is through recent-use detection.
- Recent-use detection catches marijuana use quickly and does not capture historical use.
- Detecting the parent drug is essential. Urine does not detect the parent drug, oral does.



Marijuana Impairment is Difficult to Measure

- Alcohol is quickly metabolized and eliminated from the body.
- It took years of studies before a definitive number to determine alcohol impairment was established.
- Marijuana metabolites remain in the body's fat cells much longer after use. Additionally, metabolites may remain with no impairing effect.
- THC can affect individuals differently depending on factors such as:
 - ❖ Frequency of use
 - ❖ Method of consumption
 - ❖ Individual metabolism



Scenario 1

- Employee fails a drug test for marijuana. They are an exemplary employee and promise that they were just taking a topical CBD product.

Medical Marijuana Cards



Getting a Medical Marijuana Card - VA



- You must be 18 years or older (or have a parent/guardian caregiver).
- You need a Virginia address (permanent or temporary).
- You need a medical condition that might benefit from medical marijuana.

Virginia Medical Marijuana Card Qualifying Conditions

- Alzheimers
- Amyotrophic Lateral Sclerosis (ALS)
- Anxiety
- Arthritis and rheumatoid arthritis
- Autism
- Cachexia and wasting syndrome
- Cancer
- Chronic pain and fibromyalgia
- Crohn's Disease and Inflammatory Bowel Syndrome (IBS)
- Eating Disorders
- Endometriosis
- Epilepsy and other seizure disorders
- Glaucoma
- Hepatitis C
- Insomnia
- Lyme's Disease symptoms
- Migraines and chronic headaches
- Multiple Sclerosis (MS)
- Muscle Spasms
- Neurofibromatosis
- Neurological conditions
- Pain
- Parkinson's Disease
- Peripheral neuropathy
- Post-Traumatic Stress Disorder (PTSD)
- Post-concussion syndrome
- Sickle Cell Anemia
- Spinal cord injury
- Symptoms from AIDS/HIV
- Tourette's Syndrome
- Traumatic brain injury
- Women's health issues

Scenario 2

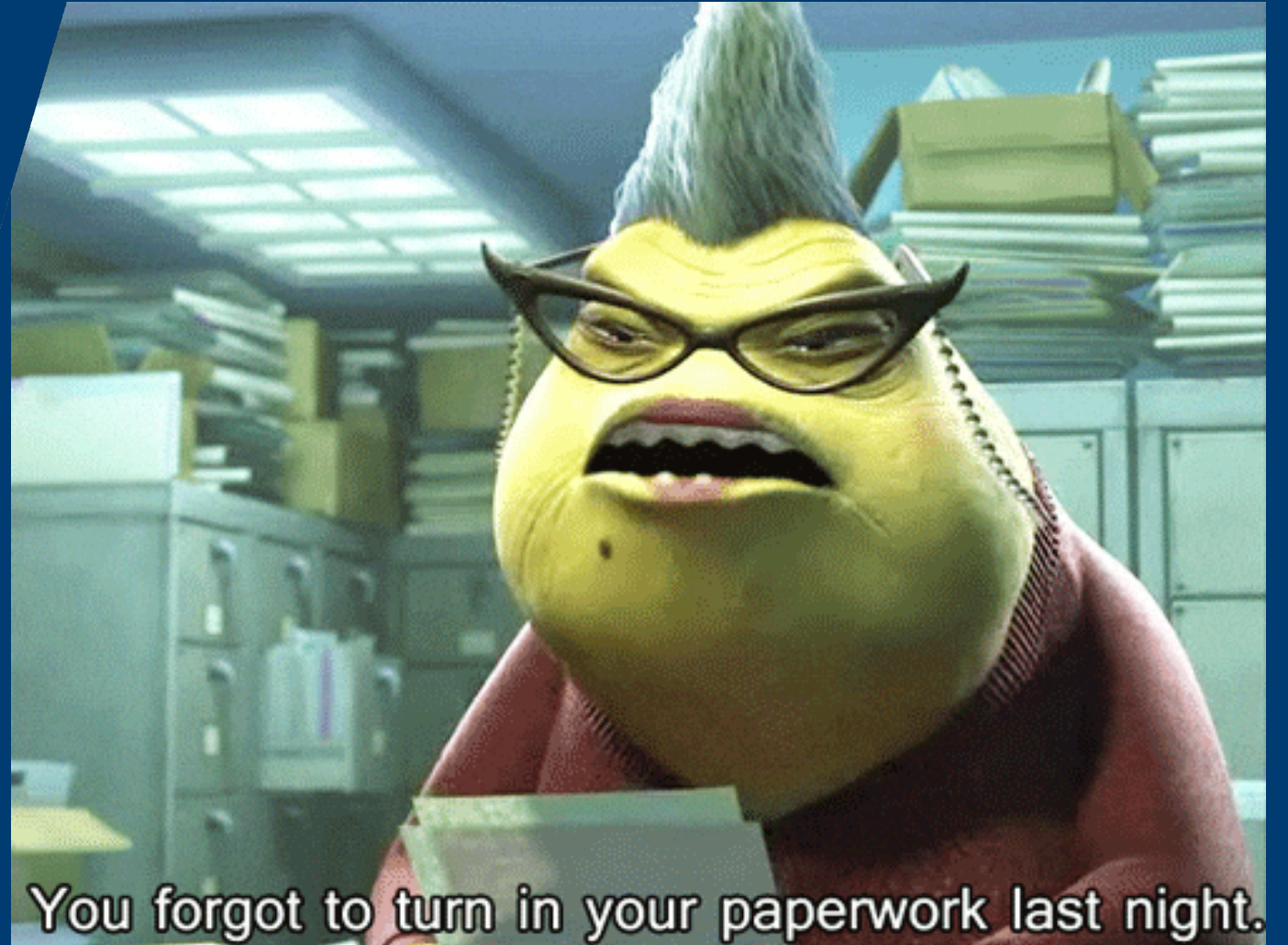
- A fire marshall presents a medical marijuana card. In this case, yes, they carry a gun.



I have a permit

Scenario 3

- An employee is a trash truck driver which requires a CDL. They present a medical marijuana card to HR.



The Bottom Line

- Don't come to work impaired by alcohol or any drug.
- Ensure your locality has a robust reasonable suspicion drug testing program.
- If de-scheduled from a Schedule I to Schedule III, this impacts nothing regarding legality. It does, however, open doors for research opportunities and allows companies to use tax write-offs.
- 18 U.S.C. § 922(g)(3) forbids any person "who is an unlawful user of or addicted to any controlled substance" from possessing a firearm or ammunition
- Document everything!

Employee and Supervisor Education

- The requirements of the policy
- The facts about alcohol & drug abuse
- The impact alcohol & drugs have on the workplace
- How to recognize the link between poor performance and alcohol/drug abuse
- The progression of addiction
- What types of assistance may be available
- VRSA can assist



Accomplishes Two Major Things

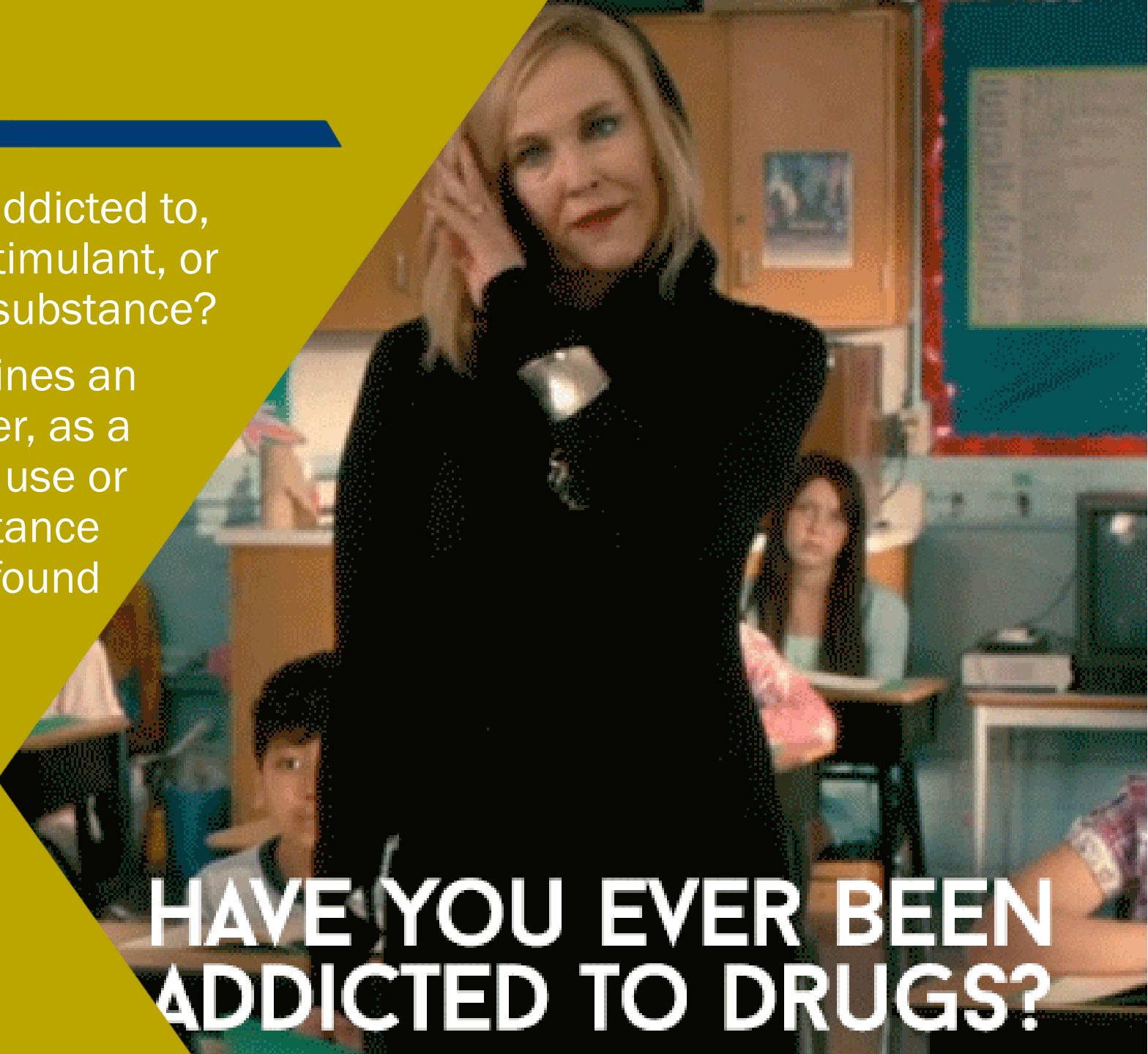
Sends a clear message that use of alcohol and drugs in the workplace is prohibited

Encourages employees who have problems with alcohol and other drugs to voluntarily seek help



Federal Gun Control Act

- Are you an unlawful user of, or addicted to, marijuana, or any depressant, stimulant, or narcotic drug, or any controlled substance?
- The Federal Gun Control Act defines an addicted person, or unlawful user, as a person who has a conviction for use or possession of a controlled substance within the past year or persons found through a drug test to use a controlled substance unlawfully, provided that the test was administered within the past year.

A woman with blonde hair, wearing a black turtleneck sweater, is standing in a classroom and talking on a cell phone. She is holding the phone to her ear with her right hand. In the background, other students are seated at desks, and a teacher is visible. The scene is lit with warm, indoor lighting.

**HAVE YOU EVER BEEN
ADDICTED TO DRUGS?**

