

Re: H.R. 3884, Marijuana Opportunity Reinvestment and Expungement Act of 2019

Representative Jerry Nadler,

The undersigned organizations are writing regarding the MORE Act (H.R. 3884, Marijuana Opportunity Reinvestment and Expungement Act of 2019).

While our respective organizations may or may not have taken a position in favor or against the legalization of marijuana for recreational use, we are jointly concerned about the current and potential implications for workplace health and safety absent careful consideration.

Like alcohol, marijuana can impair judgment and performance. However, impairment levels for marijuana have not yet been scientifically defined. Thus, unlike alcohol, safe levels for marijuana have not been delineated, standardized, or established by statute or regulation. Similarly, functional marijuana sobriety or impairment tests and cut-off levels are not generally available.

There are many occupations and work tasks where marijuana impairment poses significant risks to workers, their co-workers, customers, and the public. Perhaps the most recognized examples of potential mishaps involve “driving under the influence,” not just hazards of impaired driving of the family car, but also operating commercial trucks, trains, buses, cranes, and forklifts. Potential mishaps can also result from impairment of a worker on the floor of a chemical plant, at a construction site, or in a warehouse.

We urge that any steps toward legalization include a consideration of the impact on transportation and workplace safety and to ensure that there is an evidence-based standard for detecting marijuana-impairment in driving and other safety sensitive operations. For example, it is unclear if the U.S. Department of Transportation (DOT) could continue to mandate drug testing for marijuana for safety-sensitive transportation positions, as governed by the Omnibus Transportation Employee Testing Act of 1991, if marijuana is removed from Schedule I of the Controlled Substances Act.

Employers have a legal responsibility to protect employees from workplace illness or injury through the “general duty clause” (Section 5(a)(1)) of the Occupational Safety and Health Act of 1970. Employers also have an ethical obligation to prevent impaired workers from exposing themselves, their co-workers, and the general public to risk of harm. To meet these legal and ethical responsibilities, employers should be allowed and encouraged to maintain a substance-free workplace, regardless of the legal status of marijuana.

Those in safety-sensitive positions should be held to a higher standard until a scientifically valid method to identify impairment has been developed. There is a lack of consensus among those states that have legalized marijuana for adult recreational use on what occupations are considered to be safety-sensitive positions and when

employers may conduct drug testing or institute a zero-tolerance drug policy for those positions. Employers are the ones best suited to determine if a job is safety sensitive and, until the science of impairment is resolved, an employer should not be expected to manage a risk until that risk can be measured.

Marijuana is an impairing substance, and its legalization has substantial public health implications. We request that the House of Representatives hold hearings on the workplace safety implications of legalizing cannabis without any mechanism to determine legal impairment. We stand ready to assist in these hearings.

Thank you for your consideration of our comments and concerns.

Sincerely,

AIHA

Air Evac Lifeteam

American Board for Occupational Health Nurses

American College of Occupational and Environmental Medicine

American Property Casualty Insurance Association

American Public Gas Association

American Short Line and Regional Railroad Association (ASLRRA)

American Supply Association

American Trucking Associations

Associated General Contractors

Association of American Railroads

Board for Global EHS Credentialing® (BCG)

Commercial Vehicle Safety Alliance

Commercial Vehicle Training Association

NAFA Fleet Management Association

National Association of Chemical Distributors

National Drug & Alcohol Screening Association

National Energy & Fuels Institute

National Safety Council

National Waste & Recycling Association

The Trucking Alliance

Truckload Carriers Association