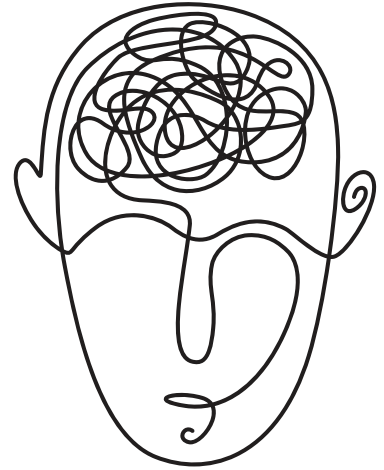


EMERGING DRUGS

BY YVETTE FARNSWORTH BAKER, ESQ.



Psilocybin
legalization
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Illegal drug use will always remain a top concern for the workplace. Yet the use and abuse of legal or quasi-legal drugs is also something that employers should understand. For some legal substances, drug testing is effective, while for others, watching for signs of impairment is the key. This article briefly examines several emerging drugs rising in use and popularity that are legal in some jurisdictions or under some circumstances.

Psychedelics

Legalization and decriminalization of psychedelic drugs such as psilocybin is a growing trend across the United States. Nine states as diverse as Kansas and Hawaii currently have proposed legislation that would legalize or decriminalize psilocybin. While not all nine states will pass these bills, it is likely that psilocybin legalization is the next wave of drug legalization.

What is psilocybin? Psilocybin is a hallucinogenic substance found in more than 200 species of mushrooms. Its psychedelic effects are in some ways like LSD. It can induce a wide range of subjective effects, from feelings of disorientation to lethargy, giddiness, euphoria, joy and depression.

As we saw with marijuana legalization, advocacy for psychedelic legalization has at first focused on advocacy for medical use rather than recreational. Evidence is growing that psilocybin can reduce chronic, clinical depression and anxiety, particularly in patients with life-threatening medical conditions.¹ Most psychedelic legalization advocacy so far has focused on the benefits of medical use in partnership with psychotherapy. For example, Oregon's psilocybin legalization act lists as its purposes:

"To educate the people of this state about the safety and efficacy of psilocybin in treating mental health conditions;

...To reduce the prevalence of mental illness among adults in this state, and to improve the physical, mental, and social well-being of all people in this state;

...To develop a long-term strategic plan for ensuring that psilocybin services will become and remain a safe, accessible and affordable therapeutic option for all persons 21 years of age and older in this state for whom psilocybin may be appropriate...."²

While advocacy has focused on therapeutic use of psychedelics, most legalization thus far has decriminalized or deprioritized possession of the substances. Full-blown legalization generally provides a framework for legal possession and legal use, including methods of safe and lawful purchase. Decriminalization, on the other hand, does not provide a legal framework but simply removes criminal punishment for possession. Deprioritization does not legalize or even decriminalize possession, but officially pronounces that enforcement of those criminal laws will not be a priority in the jurisdiction.

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If proponents have learned anything from cannabis legalization, they have learned to start small with state and local governments rather than focusing on federal legalization. Advocates for legalization bet on the federal government's reluctance to enforce federal drug law when it conflicts with state legalization. Following the model of marijuana, several localities and one state have legalized, decriminalized or deprioritized possession of psilocybin since 2019 despite the fact that it remains an illegal drug under federal law. These jurisdictions include Denver, Colorado; Oakland, California; Washington, DC; Seattle, Washington; and the state of Oregon. While it is unlikely that the federal government will take up psychedelic legalization anytime soon, state and local legislation is where the action is currently happening.

Kratom

Opposite of psilocybin, kratom is a substance that is on trend for regulation and criminalization. Six states currently ban possession of kratom and seven states have pending legislation to do so.³ However, most states do not currently have any restriction on the use or abuse of kratom.

Kratom is a plant from Southeast Asia that has opioid-like properties and a stimulant effect. It is used by some to treat chronic pain, to alleviate opioid withdrawals or as a recreational substance. In 2019, the United States Food and Drug Administration (FDA) issued a warning to consumers that kratom "appears to have properties that expose users to the risks of addiction, abuse, and dependence."⁴ The FDA has kratom on "import alert" due to concerns about its safety and effectiveness as a drug.⁵

One study estimated that use of kratom in the United States rose sharply from 2011 to 2017.⁶ With its potential harmful effects, kratom use and regulation is something to watch as an emerging trend.

Opioids

Opioid abuse continues to increase in the United States.⁷ While it appeared that abuse was beginning to decrease in 2019, the pandemic sent 2020 usage to its highest levels.^{8,9} Opioid deaths are at startling highs, topping 100,000 deaths annually and increased 28.5% from 2020 to 2021.¹⁰

Handling opioid use in the workplace can be complicated, as many opioid users, and even abusers, can produce a valid prescription. Restrictive guidelines that the CDC issued in 2016 led to a drastic decrease in the amount of opioids prescribed to patients. Those restrictions are set to be relaxed this year, however, to give doctors more flexibility in prescribing opioids to patients with acute or chronic pain. What effect this will have on opioid abuse remains unclear. Even employees who use opioids in accordance with a valid prescription should be closely monitored for signs of impairment, overuse or addiction.

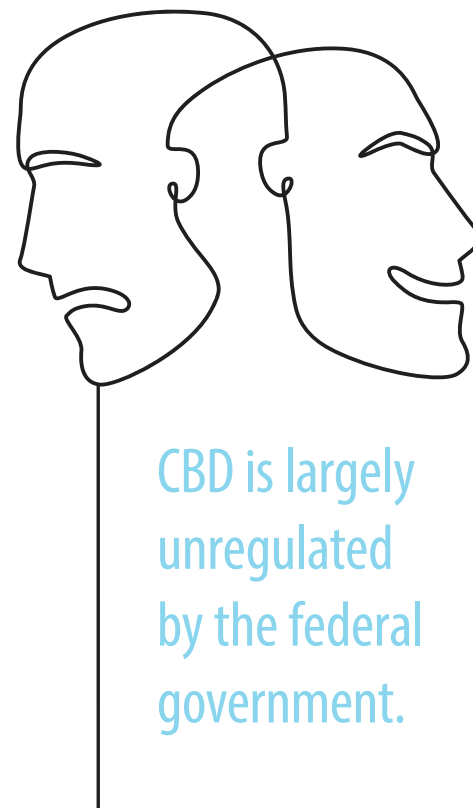
Cannabidiol (CBD)

Cannabidiol, or CBD, is a substance found in the cannabis plant believed to have therapeutic qualities. CBD itself does not cause a "high," as it is a distinct and different chemical from THC, the psychoactive chemical in cannabis. CBD is now legal in some form in about 46 states. While CBD is legal in most states under state law, the complicated nature of federal cannabis law means that CBD is largely unregulated by the federal government, including the Food and Drug Administration (FDA).

Because CBD is not subject to the strict regulations of medical therapeutics or even food products, what is contained in a marketed CBD product is questionable. Many CBD products claiming to not contain THC do in fact contain THC.¹¹ Some people have reported testing positive for THC even though they consumed only CBD products and not marijuana.¹² Employees receive no legal protection from workplace discipline and termination if they consume a prohibited substance ignorantly.

Conclusion

Employers should watch the trends of emerging drugs, particularly those that inhabit a legal or quasi-legal status. Their effects on users may still be unpredictable, and as a result could have an unpredictable effect on the safety, security and productivity of the workplace.



CBD is largely unregulated by the federal government.

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