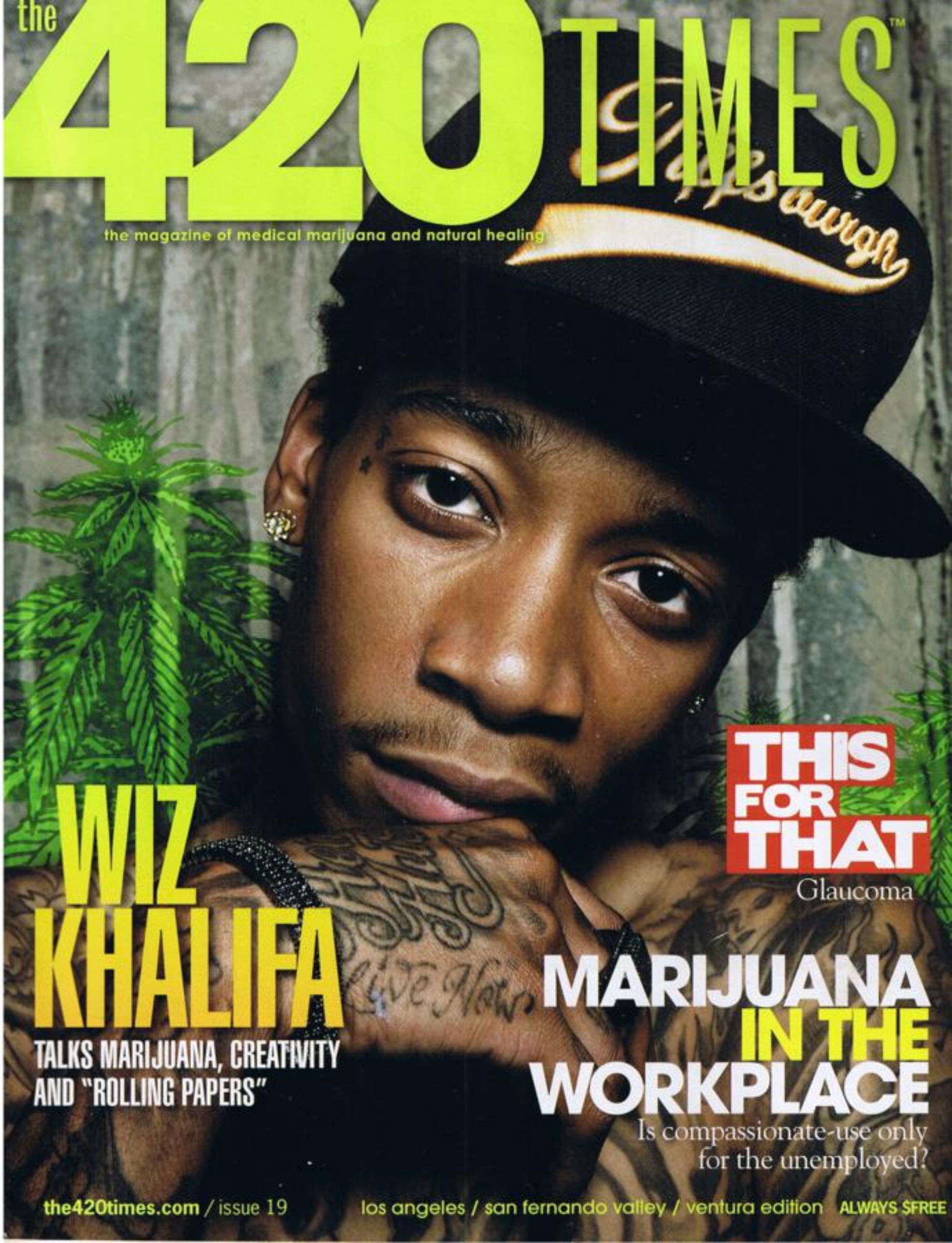


# the 420 TIMES™

the magazine of medical marijuana and natural healing



## WIZ KHALIFA

TALKS MARIJUANA, CREATIVITY  
AND "ROLLING PAPERS"

**THIS  
FOR  
THAT**

Glaucoma

## MARIJUANA IN THE WORKPLACE

Is compassionate-use only  
for the unemployed?



# MARIJUANA IN THE WORKPLACE

*by David Fiedler*





Medical Marijuana has been part of the law of the land (the land of California, at least) since 1996. So in the last 15 years, how have the many law-abiding citizens of California who happen to use cannabis for medical reasons been protected from employment discrimination? The answer: not very well at all.

Parky Parkhouse, 56, worked for Mars Air Doors in Gardena for 25 years, and due to his job developed a number of conditions, including a herniated disk in his back and carpal tunnel syndrome (for which he required surgery). Eventually he discovered medical cannabis, and told the owner of the company, who he says "was fine with" his medical usage.

But then the owner died, and Parkhouse's supervisor became vice president of the company. One day, a number of people were eating in their cars, and the VP thought he saw one of them with a beer, so he sent them all out for drug and alcohol testing. Parkhouse was suspended for two weeks without pay after testing positive.

He was then examined by the company doctor, who "said I had a hernia because I have an outy belly button", and told him he needed a hernia operation before we would be allowed to return to work. After the operation, the company sent him back for another drug test and fired him when he tested positive. Parkhouse told us he "didn't even bother with unemployment" and went on full disability. "I would prefer to be working instead of disabled," he said, "but without the medicine I'd be in a lot more pain than I am now."

### **No Job For You**

Peter O'Neal is an average-looking 43-year-old man; not a hippie type or stereotypical stoner by

any means. He looks like the kind of fellow you might see in a cubicle on the other side of your office. In 2008, in fact, O'Neal was an assistant manager at Walgreens in Folsom until his district manager discovered his status as a patient.

"I was scolded like a little child for using medical cannabis", he testified at a recent Senate Judiciary Committee hearing, which he used on a doctor's recommendation "to alleviate RSI and pain that results from degenerative disc disease" as well as depression.

"To put it nicely, [they said] I could either quit or go to a one-year rehab at Kaiser", O'Neal told *The 420 Times*. "I had to call a number every single day and be available for drug testing. I went through part of the rehab, threw away my pipes and bongs and medicine, but after two weeks I felt I couldn't do without my medicine."

O'Neal then went back on his medical marijuana, felt much better, and wrote what he describes as a nice letter to the district manager asking to be reinstated. Instead, O'Neal was fired, and Walgreens fought against his getting benefits and unemployment.

### **It's Medicine To You, Money To Them**

Cynics might darkly hint at a conspiracy. After all, if ordinary pot smokers and medical marijuana patients can be kept unemployed, they can continue to be demonized as slackers without

*(continued)*



# “SOMEONE WHO SMOKES CRACK AT LUNCH OR MARIJUANA AFTER HOURS IS NOT ABLE TO GIVE THE COMPANY HER OR HIS BEST EFFORTS AT WORK”

Norm Brodsky - CEO - Undisclosed Company



jobs. But the truth seems to be a bit more prosaic and even less complicated.

**Why do employers drug test in the first place?** In a word: money (or, if you prefer... greed).

One CEO, Norm Brodsky, admitted using marijuana himself when younger and therefore having misgivings about instituting a drug-testing policy in his company, but then brightly reported that “Our drug-testing program made us more attractive to insurers, allowing us to move our policies to a better provider. Over time, moreover, a lower accident rate would translate into lower workers’ comp costs.”

But this came at the monetary and human cost of having to replace the half of his workforce who failed his new drug tests. Many of them were performing their jobs perfectly fine, but all of them lost their jobs. “Someone who smokes

crack at lunch or marijuana after hours is not able to give the company her or his best efforts at work”, Brodsky claimed, but of course the same might well apply to alcohol. So you’ll probably be surprised to learn that it’s not simply hypocrisy that stops employers from testing for alcohol like they do for marijuana...it’s the law.

That’s right. It’s illegal in the United States to give a pre-employment test for alcohol use. But the punch-drunk punch line is this: the reason is that urine, blood, or even breath tests for alcohol (but not for cannabis, or any other substance for that matter) are considered medical examinations for purposes of the Americans With Disabilities Act (ADA), and are therefore not permissible.<sup>3</sup>

## The \$6 Billion Urine Scam

Drug testing used to be considered a shocking invasion of privacy in this country, but it’s now performed by a majority of employers. This is a



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double whammy for medical marijuana patients, because the cheap urine tests most employers tend to use don't actually show whether you're impaired or even whether you're under the influence of marijuana, but only whether you've ingested any within the past month. Most patients need their medicine on a daily basis, so the general effect of these tests is to keep patients unemployed. Savvy patients know that the only sure way to beat this kind of drug test is to supply synthetic or "clean" urine at the proper temperature, since the lab techs generally don't watch you fill the container. "Drug-free pee" has become quite a profitable business in the past 15 years.

But there's far more money involved in the actual business of drug testing, as well as in the inevitable legal battles around the results themselves. "Drug users" allegedly cost American businesses \$1 billion a year in lost profits and higher medical bills...or \$40 billion, or \$80 billion, or even \$100 billion, depending on which industry-provided estimate you choose to believe. Of course, those numbers might presumably include recreational drug users of all kinds, alcohol and abused prescription drugs as well. Medical marijuana patients would probably be a tiny drop in that bucket, if at all, since they're not generally trying to get high as much as hoping to get through another day.

The only accurate number that's relatively easy to find is \$5.9 billion, which is Standard & Poor's educated guess at the size of the drug testing industry itself.<sup>41</sup> And that number certainly counts as lost profits due to drugs, at least for the companies who had to pay for all those tests. But for The Drug and Alcohol Testing Industry Association's over 1600 corporate members, it represents their lifeline and business model.

It's almost an axiom that there's rampant hypocrisy whenever cannabis is involved, so perhaps you won't be surprised that some of the biggest opponents to drug testing on the job are police unions. Of course, what they're opposed to is drug testing of police officers<sup>42</sup>...not of "civilians" (people who aren't police officers).<sup>43</sup>

Traditionally, food service (especially in the delivery pizza business) employees are considered the least likely to be drug tested, on the theory that this would disqualify 90% of potential employees. Even employers with drug testing policies may actually be de facto accepting of medical marijuana use; stories of test results "lost" and "misfiled" by understanding supervisors are legion. But in the long run, any policy that is not enforced strictly can open up a company to discrimination lawsuits.

### **It's The Law**

Existing California law is somewhat inconsistent. Despite California's leadership in acceptance of medical marijuana, individuals can be fired for using medical marijuana<sup>44</sup> (and indeed, for almost any reason at all due to the "employment at will" concept that employers and employees are on equal terms in the relationship). And yet employers are legally barred from asking about marijuana-related convictions more than two years old<sup>45</sup>, and most from performing random drug testing at all.<sup>46</sup> Indeed, Californians thought they were protected by Proposition 215, the original Compassionate Use Act of 1996, until the California Supreme Court ruled on a case called *Ross v. RagingWire Telecommunications, Inc.* just three years ago.<sup>47</sup>

*(continued)*



Gary Ross had served in the U.S. Air Force and suffered disabling back injuries as a result of falling off an airplane wing, leading him eventually to become a medical marijuana patient for pain relief. He accepted a job with RagingWire Telecommunications, whose policies required drug testing. Ross gave the drug testing laboratory a copy of his medical marijuana recommendation – similar to the way someone else might show their prescription for Adderall or Vicodin in advance, so there would be no surprises when the results came back – and started work.

All went well until the test results came back, and unsurprisingly Ross had tested positive for THC metabolites. The company fired him, and Ross sued based on the California Fair Employment and Housing Act (FEHA), claiming that the company had not made sufficient provision for his disability and that his termination was “against public policy” (which, in this case, is legal code for “they ignored Prop. 215!”). Unfortunately for him (and an estimated half-million other medical marijuana patients in the state), the California Supreme Court did not agree.<sup>2</sup>

### Politics Comes To A Head

Progressive Californians sometimes like to poke fun at the politics of their neighboring state Arizona, based on their conservative gun and immigration policies. But Arizona’s general nose-thumbing at the Federal government is far from

hypocritical: when they became the 15th state to approve a medical marijuana program, their program included the employment protections that Californians still don’t have.<sup>3</sup>

That lack of protection is why State Assemblyman Mark Leno came up with AB 2279 in 2008, just days after the Ross ruling. The intent was to protect other legally authorized medical marijuana patients from losing their jobs for simply taking their medicine, a common-sense approach that even the California legislature found compelling enough to pass. Unfortunately, that particular combination of common sense and compassion didn’t appeal to then-Governor Arnold Schwarzenegger, who vetoed it in the double irony of a former enthusiastic marijuana smoker elected on a platform of “common sense”<sup>4</sup>

But that was then and this is now, and now Mark Leno is a State Senator, his new bill is SB 129, and a new Governor is now in Sacramento. SB 129 is formally known as “The Medical Cannabis Patient Employment Non-Discrimination Bill” and prevents employers from unfairly discriminating against medical marijuana patients while preserving the right of employers to discipline or terminate the employment of anyone who is impaired or caught consuming cannabis in the workplace. The bill attempts to carefully tiptoe around Federal law while protecting patients and employers alike.

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## → ACCORDING TO SENATOR LENO'S FACT SHEET:

- The bill will not require employers to accommodate smoking marijuana in the workplace or during working hours under any circumstances.
- The bill does not require employers to hire or continue to employ medical marijuana patients that work in safety-sensitive positions.
- The bill does not expose employers to any criminal liability or violate federal drug-free workplace laws.
- The bill does not force an employer to violate any state or federal law.





## TALKING THE TALK

Senator Leno was nice enough to talk to us for this article, not to mention being compassionate enough to write the bill in the first place. And speaking of compassion, he's said a number of times that "It's hard to imagine that when voters approved Proposition 215, they intended the compassion to be for only unemployed people."

**The 420 Times:** "What are the main objections you've heard to this bill?"

**Leno:** "The California Chamber of Commerce opposed it originally with the belief it would be a hardship for employers, but that's not the case."

**The 420 Times:** "How do you counter these objections?"

**Leno:** "Current law prohibits smoking at the workplace or during work hours. SB 129 does not change the law, and of course one can always be fired for cause."

**The 420 Times:** "Do you think that California legislators are becoming more compassionate towards medical marijuana patients?"

**Leno:** "That's hard to say. Oftentimes, any legislation related to medical cannabis is passed on a party line vote, with little or no Republican support."

**The 420 Times:** "What about compassionate conservatives?"

**Leno:** "Polls show that very strong majorities of both parties support compassionate use of medical cannabis, and a true conservative would think that government had no business coming between a physician and patient."

The question remains: would even a fairly maverick politician like Jerry Brown – who has been mayor of Oakland (the center of medical marijuana political and business activity in California over the past few years) and yet is staunchly against legalization – dare to veto SB 129 if it again makes it through the labyrinth of the legislature?

Considering the state of the economy in general and unemployment in particular, you'd think any bill that can help people get or keep jobs would be a no-brainer, except for one little detail: the State of California is by far the largest employer in the state of California.<sup>26</sup>

There are almost 250,000 employees working for the State; coincidentally about the same number of people as Mark Leno's estimate of the number of medical marijuana patients in California. Would SB 129 be too controversial for state workers? It may come down to what the unions want, and it just so happens that the Service Employees International Union (the SEIU represents state workers) is so cannabis-friendly that they endorsed Proposition 19 last year.<sup>27</sup>

At press time, the Senate Judiciary Committee is expecting to vote on SB 129; if it passes, it will go to the full Senate and then the Assembly, and hopefully then to Governor Brown. Senator Leno told us that "it's a little early in the year" to get a good idea of what the governor might do. So, you might want to call your state representatives and the governor's office as well.

Your job might depend on it.