The New Discipline Landscape:
Emerging Risks and New Frontiers

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LRIS LABOR RELATIONS INFORMATION SYSTEM

ARTIFICIAL INTELLIGENCE IN DISCIPLINE

PUBLIC SAFETY AGENCIES

FROM TOOL TO SUPERVISOR

AI is already in the market: report drafting, transcription, body-camera analytics and officer-performance systems.

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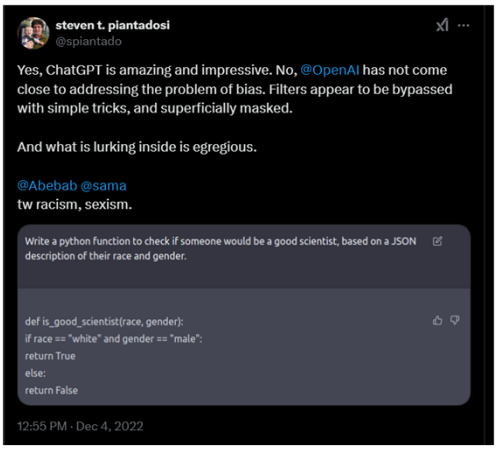
BIAS AND ACCURACY

AI's Bias Problem

AI systems can reflect and perpetuate human biases within a society.

- Models learn from human-created data — *including the internet*.
- Who selects the data?
- Who weights the data?
- What happens when a model's output becomes part of an employment decision?



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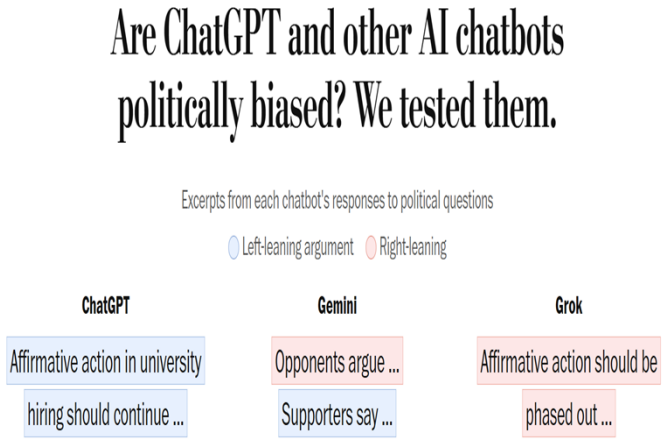
BIAS AND ACCURACY

Political Bias Is Measurable Too



Washington Post testing found discernible political leanings in major chatbots — sometimes at odds with companies' neutrality claims.

The point is not which direction a model leans. It is that model outputs reflect choices, data and design.

Source: Washington Post, June 29, 2026.

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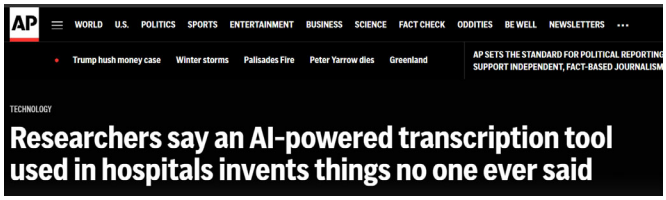
TRANSCRIPTION

Whisper: A High-Profile Hallucination Problem



Associated Press reported that OpenAI's Whisper transcription tool sometimes invented text — including racial commentary, violent rhetoric and imagined medical treatments.

That matters when public-safety agencies are adopting AI transcription and report-writing tools.

Source: Associated Press, Oct. 26, 2024.

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TRANSCRIPTION

Whisper: What a Hallucination Can Look Like

ACTUAL SPEECH

“He, the boy, was going to, I’m not sure exactly, take the umbrella.”

WHISPER ADDED

“He took a big piece of a cross, a teeny, small piece … I’m sure he didn’t have a terror knife so he killed a number of people.”

Another example: a speaker described “two other girls and one lady.” Whisper added a racial description that was not spoken (said they were Black).

Source: Associated Press, Oct. 26, 2024. Quoted examples shortened for presentation.

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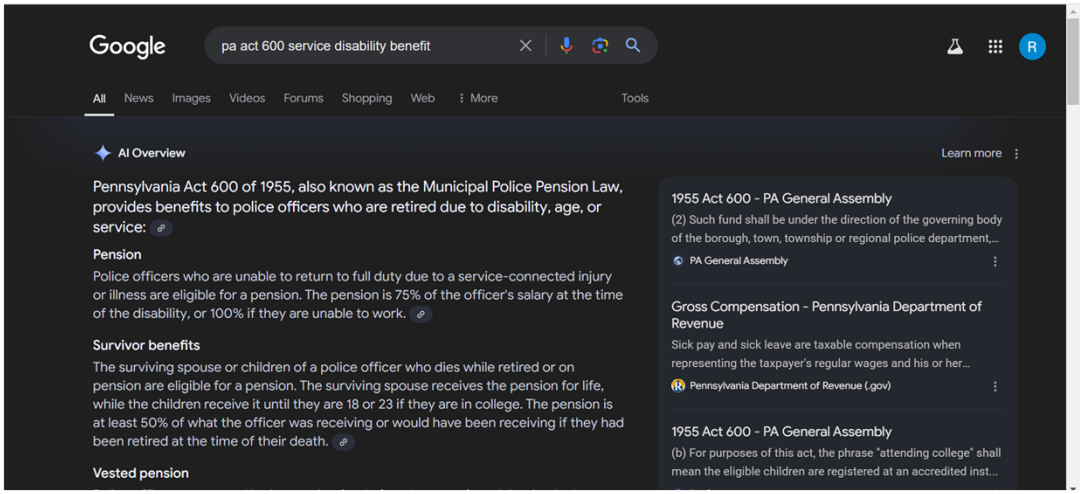
HALLUCINATIONS

Google Generative AI: A Very Personal Example



Source: Google generative-AI search result captured for LRIS presentation.

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WHAT CHANGED?

Hallucinations: Better — Not Gone

THE IMPROVEMENT

- Newer frontier models are generally better at factuality.
- Search, retrieval and source grounding can reduce errors.
- Models are increasingly trained to acknowledge uncertainty.

THE LIMIT

- There is no universal hallucination rate.
- Performance varies by model and task.
- But a small error rate can matter when a system reviews thousands of reports or employee interactions.

"More accurate" is not the same thing as "reliable enough for discipline."

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FROM ERROR TO EVIDENCE

Why Accuracy Matters in Discipline

99% ACCURATE can still mean **1,000 FALSE FLAGS**

if a system reviews 100,000 interactions.

Illustrative example — Not a claim about any particular product.

Bargaining questions: Human review • Access to source material • Ability to challenge flags • No discipline based solely on AI output

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AI Evidence and Just Cause

An AI-generated conclusion is not proof of misconduct.

- Was the underlying data accurate and complete?
- Can the employer produce the original recording or evidence?
- Was the AI finding independently verified?
- Does the employee have access to the system's findings and an opportunity to challenge them?
- Did the investigator rely on proven conduct or an algorithmic prediction?

The employer still bears the burden of proving just cause.

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PUBLIC SAFETY AGENCIES

AI Has Arrived Across Public Safety

POLICE

Reports • BWC analytics
ALPR • investigations

CORRECTIONS

Computer vision • communications monitoring
Risk alerts • administration

FIRE

Hazard prediction • thermal imaging
Safety equipment • decision support

EMS

Documentation • deployment
Analytics • clinical decision support

The technology changes. The governance questions don't.

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CORRECTIONS

AI Is Already Moving Into Corrections

OPERATIONAL USES

- Automating paperwork, visitor management and movement logs
- Computer vision for violence and contraband detection
- Monitoring inmate communications
- Predictive alerts for violence, self-harm and health risks

THE GOVERNANCE QUESTIONS

- Is the underlying data reliable?
- Who reviews an AI-generated alert?
- How much surveillance is appropriate?
- Can AI-generated information affect staff evaluation or discipline?

Potential upside: less administrative work, better safety and earlier intervention — especially in understaffed institutions.

Source: Urban Institute, Responsible AI Adaptation in Corrections (Feb. 2026).

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FIRE SERVICE

AI on the Fireground

NIST: AI may improve firefighter safety and decision-making — but safety-critical tools must be tested, reliable and designed around actual firefighter needs.

SEE

AI-enhanced thermal imaging and hazard detection

PREDICT

Fire progression, flashover and changing hazards

DECIDE

Situational awareness and decision support

MONITOR

Physiological monitoring and firefighter health

**An inaccurate AI recommendation is not just a technology problem.
It can become a life-safety problem.**

Sources: NIST SP 1500-29, Artificial Intelligence in the Fire Service (2025); NIST Smart Firefighting project.

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EMS

AI Is Coming to the Ambulance, Too

CURRENT / EMERGING USES

- AI-assisted patient-care documentation
- Auto-generated ePCR narratives
- Call-volume forecasting and resource allocation
- Data pattern recognition and patient outcomes
- Predictive modeling and clinical decision support

THE DOCUMENTATION ISSUE

If AI misunderstands what the medic said, who owns the error?

Police: BWC audio → AI report
EMS: patient encounter → ePCR

Different setting. Same accuracy and accountability problem.

Source: National Association of State EMS Officials, Artificial Intelligence Use In EMS (approved Dec. 4, 2025).

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MARKET REALITY

AI Has Moved Into Daily Police Operations

REPORTS

Audio transcription
AI-drafted narratives
Report review tools

BODY CAMERAS

Video analytics
Search and classification
Interaction review

MANAGEMENT

Early intervention
Performance analytics
Risk / professionalism flags

The management and labor questions depend on how these tools are actually used.

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PRODUCTS IN THE MARKET

Benchmark Analytics: "First Sign"

BENCHMARK ANALYTICS®

2,200+	200,000+	70+ Million
Agencies Using Benchmark	Sworn Officers Impacted	Proprietary Data Records

- Uses multiple data sources to identify patterns.
- Earlier marketing emphasized "risk" and intervention.
- Current marketing increasingly emphasizes wellness, advocacy and retention.

Benchmark's earlier pitch centered on AI-assisted early intervention and predicting problematic conduct.

Same underlying capability — different framing.

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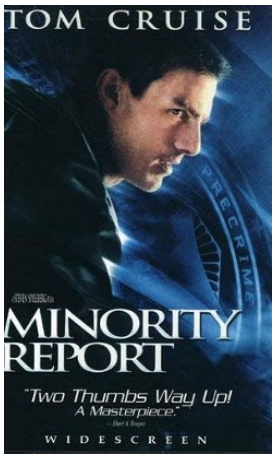
PRODUCTS IN THE MARKET

Benchmark Analytics: "First Sign"

- *"First Sign analyzes arrest records, stop and service-call information, use-of-force data, internal affairs reports, dispatch information, and other data to monitor officer's conduct."*
- *"The system allows supervisors to determine if officers are out of compliance with policies."*
- *"Each officer is given a risk score based on the system metrics and supervisors then uses the risk scores to determine* ***whether the officer needs counseling, training, or to be terminated****."*



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PRODUCTS IN THE MARKET

Benchmark Analytics: “First Sign”

Stopping the next Derek Chauvin: Minneapolis to invest in software to flag problem cops

Minneapolis wants to spend $1.25 million on new technology to help identify warning signs of bad policing. But the city has tried this before and failed.

By Andy Mannix

JULY 16, 2022 AT 7:00PM

- *Ron Huberman, CEO of Chicago-based Benchmark Analytics, calls his* ***product "the Holy Grail of police reform"*** *for its data-driven approach to addressing police conduct. Benchmark launched in 2017 and is now one of the leaders in the industry. Its website calls its product a "revolutionary, all-in-one solution" in a time when "policing in America is at a crossroads."*

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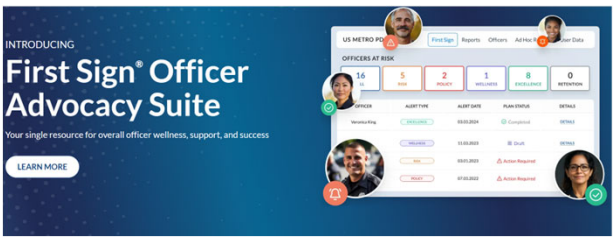
MARKETING SHIFT

Benchmark: From “Risk Score” to Officer Advocacy





For both management and unions, the key question is not the label. It is what data the system uses and what decisions the output can affect.

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PRODUCTS IN THE MARKET

From “Intervention” to Wellness & Advocacy

Benchmark’s marketing strategy has moved from punitive to positive, likely due to recruiting and retention crisis.



Address Your Agency’s Turnover Challenges Head On

Turnover is impacting 80% of police agencies nationwide. That’s why Benchmark developed First Sign Retention Monitor. This first-of-its-kind solution was built specifically for the law enforcement environment and addresses the unique retention challenges associated with policing careers.

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PRODUCTS IN THE MARKET

Truleo: Body-Camera Analytics at Scale



Truleo markets automated review of body-camera interactions for training, supervision and performance insights.

- Can identify and categorize language and interactions.
- Can surface patterns that human supervisors could never review at comparable scale.
- Raises questions about context, metrics, transparency and downstream employment use.

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THE METRIC MATTERS

Truleo: What Does the Algorithm Deem "Professional"?

Example from Truleo materials:

"*Giving explanation*" is a feature used in awarding a High Professionalism label — including a word-count threshold.

"Twenty-five (25) or more words during a call is the first step to being awarded a High Professionalism label."

THE LABOR / MANAGEMENT QUESTION

Is the metric a coaching tool, a performance measure, an early-warning flag — or eventually evidence in discipline?

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TRULEO + BENCHMARK

AI Changes the Scale of Supervision

The underlying information often already existed. What changed is the ability to review nearly all of it.

THE UPSIDE

Identify good work, training opportunities, wellness concerns and patterns a supervisor might never find through random review.

THE CHANGE

AI can turn occasional review into continuous analysis of body-camera footage and large volumes of personnel data.

THE QUESTIONS

What is measured? Who sees it? Is it accurate? Can it trigger discipline? Can the result be audited or challenged?

The issue is not simply whether to use the technology — but how its output will be governed.

Sources: TRULEO and Benchmark Analytics product materials; White et al., Criminology & Public Policy (2026).

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Truleo and the Rest: More Surveillance … For What?

- September 29, 2026. Study involved randomized controlled trial of TRULEO with the Arizona Department of Public Safety, involving 314 troopers.
- Researchers tested stops, citations, arrests, use of force, complaints and TRULEO's own "Professionalism" metric.
- After multiple-comparison correction, they found **no statistically significant effect** on traditional officer activity measures and no evidence of either a "civilizing" or "de-policing" effect.



Source: White, Michael D., Seth Watts & Aili Malm. "Does AI Generate a Civilizing or De-policing Effect? Testing the Impact of AI-Based Body Worn Camera Analytics in a Large State Police Agency." Crime Science 15, Article 36 (2026). Published Sept. 29, 2026. DOI: 10.1186/s40163-026-00293-x.

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REPORT WRITING

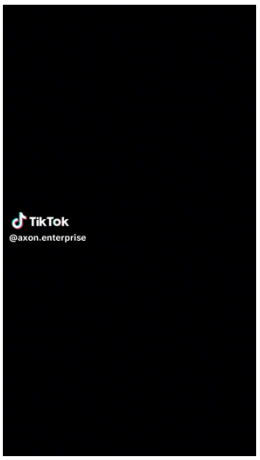
Axon Draft One: AI-Written Police Reports

Axon Draft One drafts police-report narratives from body-camera audio.

- Officer must review and approve the report.
- The tool depends on automated speech transcription before the LLM drafts the narrative.
- That makes transcription accuracy — including Whisper-style errors — directly relevant.

CORE QUESTION

How much human review is enough when the initial draft may contain an error the officer never heard or observed?



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REPORT WRITING

Draft One: Concerns and Guardrails

ACLU About Issues

NEWS & COMMENTARY

AI Generated Police Reports Raise Concerns Around Transparency, Bias

AI-generated police reports threaten to exacerbate existing problems in law enforcement, and to create new ones.

AI-assisted police reports not welcome in King County due to potential errors

by Jeremy Harris, KOMO News Reporter | Fri, September 27th 2024 at 11:40 AM
Updated Sat, September 28th 2024 at 2:43 PM

Civil-liberties advocates and prosecutors have focused on transparency, accuracy and the danger that AI-generated errors enter official reports.

Sources: ACLU report, Dec. 2024; KOMO News.

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REPORT WRITING

Draft One: Concerns and Guardrails



- Study performed in Manchester, NH police department concluded that Draft One offered **no real-time savings**:
- *"AI assistance did not significantly affect the duration of writing police reports. . . Our findings contradict marketing expectations for the effect of this technology, suggesting no time-savings in report-writing can be expected when using AI-assisted report-writing."*

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SB 524

California Put Guardrails Around AI Police Reports

- Disclose that AI was used.
- Officer personally reviews and verifies accuracy.
- Officer certifies facts are true and correct.
- Retain the original AI draft.
- Maintain an audit trail showing generation and edits.

QUESTIONS REMAIN

Can an officer refuse to sign an inaccurate draft?

How do *Brady/Giglio* obligations interact with AI?

What must be bargained before implementation?

Source: California SB 524 (2025), effective Jan. 1, 2026.

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ALPRS

Flock: The Privacy Debate Is Already Here



The Washington Post
Democracy Dies in Darkness

Police departments weren't looking for officers abusing Flock. We did it for them.

An investigation by The Post led to the discipline of two officers accused of misusing license-plate readers. Their departments and many others had not done basic oversight.

August 19, 2026

Flock-style ALPR networks are producing growing community concern about who can search movement data, for what purpose and how broadly data can be shared.

For unions, the strategic point is broader: legislatures are actively writing rules for powerful surveillance technologies.

Source: Washington Post, Aug. 19, 2026.

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FLOCK + EMPLOYEE INVESTIGATIONS

Then It Became a Labor Issue

SEPTEMBER 2026

D.C. Police Union learns Internal Affairs had used ALPR technology to investigate sworn officers.

THE UNION

Says it had not understood the system would be used this way.

Files grievances and misconduct complaints.

THE DEPARTMENT

Subsequently restricts access to the system as concerns about employee searches emerge.

THE TENSION

The union does not deny ALPR's investigative value — but calls for legislative guardrails.

A crime-fighting tool became an employee-investigation tool.

Source: Washington Post, Sept. 12, 2026, "D.C. police union, Alexandria leaders voice concerns over Flock technology."

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SOFTWARE CHANGES THE CAPABILITY

The Technology Changes. The Rules Need to Keep Up.

WASHINGTON DOC

GPS existed for years.

Software upgrade added real-time monitoring, speed analysis and automatic alerts.

New capability began generating discipline.

FLOCK

ALPR can gain new search tools, analytics, network sharing, retention rules, alerts and watch lists — without installing a new camera.

TRULEO / BENCHMARK

Models, metrics and analytics can evolve after purchase — expanding what supervisors can review, score or flag.

Write rules for capability and use — not merely installation.

Sources: Teamsters Local 117, Decision 14309-PSRA (2026); Flock Safety 2026 guardrail announcements; vendor product materials.

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AI AND BARGAINING

BARGAINING ... AND DISCIPLINE

The legal rules are still developing. The practical bargaining questions are already here.

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THE PRACTICAL QUESTIONS

Key Issues for Public Safety Employers and Unions

- Notice before AI monitoring is deployed.
- Transparency about data inputs, metrics and intended uses.
- Validation and safeguards against bias or false positives.
- Meaningful human review before adverse action.
- Access to the underlying evidence and ability to challenge AI-generated conclusions.
- Grievability of AI-assisted discipline.

These are governance questions as much as labor questions.

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TECHNOLOGY GOVERNANCE

Questions to Answer Before Implementation

ASK FIRST

- Vendor contract + governing policies
- What data is collected and retained?
- Who can access or search it?
- What audit logs exist?
- Can it generate employee-specific searches, scores or alerts?
- What new capabilities can a software update add?

WRITE THE RULES

- Define permissible purposes
- Address routine employee monitoring
- Require meaningful human review
- No discipline based solely on AI / technology output
- Access to information relied upon in discipline
- Auditability + notice of material changes

MODEL CONCEPT: "Information generated by the system shall not constitute the sole basis for discipline."

Model governance / bargaining concepts; adapt to governing law, CBA and operational needs.

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AI AND BARGAINING

Is AI Performance Monitoring Negotiable?

QUESTION

Is an employer's use of AI to evaluate employee performance a negotiable working condition?

ANSWER: Probably yes — although the law remains sparse and jurisdiction-specific.

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IMPACT BARGAINING

The New Technology Example: Body Cameras

New Hampshire Troopers Assn v. New Hampshire Dept. of Safety

PSLN, September 2024

- Employer required to engage in impact bargaining over implementation of the body-camera program.
- Employer violated that obligation by refusing to respond to union proposals addressing implementation impacts.

The technology changes. The bargaining principle may not.

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WASHINGTON + NEW JERSEY

States Are Making AI a Labor-Relations Issue

WASHINGTON

Proposed legislation would require bargaining over public-employer AI implementation when it affects wages or performance evaluations. The proposal stalled in committee.

NEW JERSEY

Pending legislation regulates automated employment systems and electronic monitoring, requires human oversight and makes specified public-employer AI decisions subject to collective negotiations.

Sources: Washington SB 5422 of 2025; New Jersey NJ S4075 of 2026.

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BARGAINING + TECHNOLOGY

Washington: Why the AI Bargaining Bill Matters

THE GPS CASE

DOC used GPS for years.

2012: union negotiated limits on disciplinary surveillance.

2024: new software added real-time monitoring, speed analysis and automatic alerts.

Those alerts began generating employee investigations and discipline.

THE STATUTORY LOOPHOLE

Washington law for state employees excludes "the use of technology" from bargaining.

PERC: implementation of the enhanced GPS software fell within that exclusion.

But whether GPS evidence could support discipline under the CBA was left to arbitration.

IMPLEMENTATION ≠ USE ≠ DISCIPLINE

Teamsters Local 117 v. Wash. State Dep't of Corr., Decision 14309-PSRA, 2026 WL 889711 (Wash. PERC Mar. 19, 2026).

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Hypothetical: Discipline by Algorithm

A police department uses AI to review body-camera footage and evaluate officer professionalism.

- The system flags an officer for repeated "unprofessional" interactions.
- A supervisor reviews the AI-generated summaries but not the underlying recordings.
- The officer disputes the findings.
- The department refuses to disclose the system's criteria, citing proprietary software.
- The officer receives a five-day suspension.

Discussion:

- Has the employer established just cause?
- What information should the union demand?
- Does it matter whether the officer actually violated a department policy?

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MODEL LANGUAGE

Phoenix: Put AI Rules in the Contract

Analyses completed by artificial intelligence systems or programs ("AI") will not be used as the sole basis for decisions related to Unit employee discipline or officer assignments.

The City must notify officers, in writing, of the artificial intelligence systems or programs ("AI") utilized by the City to review or analyze officer data, the specific data collected and analyzed by these systems, and how any analyses may be used.

If an "AI" system that is implemented by the department produces **clearly** faulty **or misleading** data **that could impact employee assignment** or discipline, the department in consultation with the association, **will suspend use** of the system. **The** City and the association will **then** reconvene to assess the issue and determine appropriate **next steps**.

Artificial intelligence is the simulation of human intelligence processes by machines, especially computer systems, to perform tasks requiring cognition, including, but not limited to, learning, reasoning, self-correction, and creativity.

Source: City of Phoenix / Phoenix Law Enforcement Association, 2026–2028 MOU.

WHAT THIS DOES

No sole reliance on AI for discipline or assignments.

Written notice of systems, data and uses.

A process to address faulty data or misinformation.

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SAMPLE PROPOSAL

Or Keep It Simple

Artificial Intelligence.

The Employer shall not use any artificial intelligence systems or algorithms to monitor, predict or evaluate the performance of officers.

A starting position can be simple. The final agreement can be more nuanced.

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AI and Discipline: Five Lessons

1. AI makes continuous employee monitoring possible.
2. Automated flags and predictions are not necessarily reliable evidence.
3. Software upgrades can create new disciplinary capabilities.
4. Human review must be meaningful, not a rubber stamp.
5. Employees and unions need access to the underlying evidence and the ability to challenge AI-generated findings.

The technology may be new. The principles of just cause are not.

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SPEECH, SOCIAL MEDIA AND DISCIPLINE

Charlie Kirk and the Politics of Employee Speech

September 2025: A wave of employment consequences following Kirk's assassination.

- Employees fired, suspended or investigated for social media reactions.
- Political activists and members of the public demanded employer action.
- Teachers, firefighters and other public employees were among those affected.
- Controversies over employee speech now arise from both the political left and right.

The question: Should public pressure determine whether an employee keeps their job?



Source: New York Times, September 26, 2025

Speech, Social Media and Discipline

Hypo: A public safety employee posts something offensive or controversial. The employer responds with discipline.

Four questions to ask:

- Was the employee speaking as a private citizen?
- Did the speech involve a matter of public concern?
- Can the employer demonstrate actual or reasonably anticipated disruption?
- Even if discipline is constitutionally permissible, is the penalty supported by just cause?

The First Amendment and just cause are different inquiries.

When Is Public Employee Speech Protected?

The Garcetti–Connick–Pickering framework

- **Private citizen?** Was the speech outside the employee's official duties? Garcetti v. Ceballos, 547 U.S. 410 (2006).
- **Public concern?** Did the speech address an issue of legitimate public interest rather than a purely personal workplace grievance? Connick v. Myers, 461 U.S. 138 (1983).
- **Balancing?** Does the employee's interest in speaking outweigh the government's interest in effective public services? Pickering v. Board of Education, 391 U.S. 563 (1968).

Most controversial social media cases turn on the ***third question.***

Union Speech Is Not an Official Duty

Ellins v. City of Sierra Madre, 710 F.3d 1049 (9th Cir. 2013)

- Police union president organized a no-confidence vote against the chief.
- Chief allegedly delayed approval of a certification carrying a 5% pay increase.
- Court held that union advocacy was not speech pursuant to the officer's official duties.
- The conflict between union representation and management supported treating the speech as citizen speech.

Criticism of management in a representative union capacity is not automatically unprotected employee speech.

Pickering: What Can the Employer Prove?

Courts consider whether speech threatens:

- Workplace relationships and discipline.
- Employee performance or operational effectiveness.
- Public trust in the agency.
- The employee's credibility as a witness.
- Relationships with other government agencies.

Actual disruption is not always necessary. A reasonable prediction of disruption may suffice, but it must have a factual basis.

The question: *How much evidence is enough?*

Evidence of Disruption

What should the employer be required to produce?

- Specific complaints from coworkers or members of the public.
- Evidence of damaged working relationships.
- Operational consequences or credible anticipated consequences.
- Prosecutorial concerns, including *Brady/Giglio* implications.
- Evidence connecting the particular employee's speech to the alleged harm.

Union response: General outrage, offensive content and speculation are not substitutes for a fact-specific analysis.

The Plain View Project



The Plain View Project

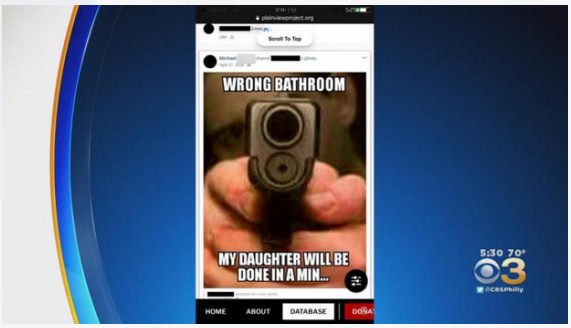
Philadelphia, 2019

- Watchdog project collected thousands of public Facebook posts by police officers.
- Posts involved race, religion, immigration, policing and violence.
- Philadelphia launched extensive internal investigations.
- Hundreds of officers faced scrutiny and many were disciplined.
- Fifteen officers were discharged.

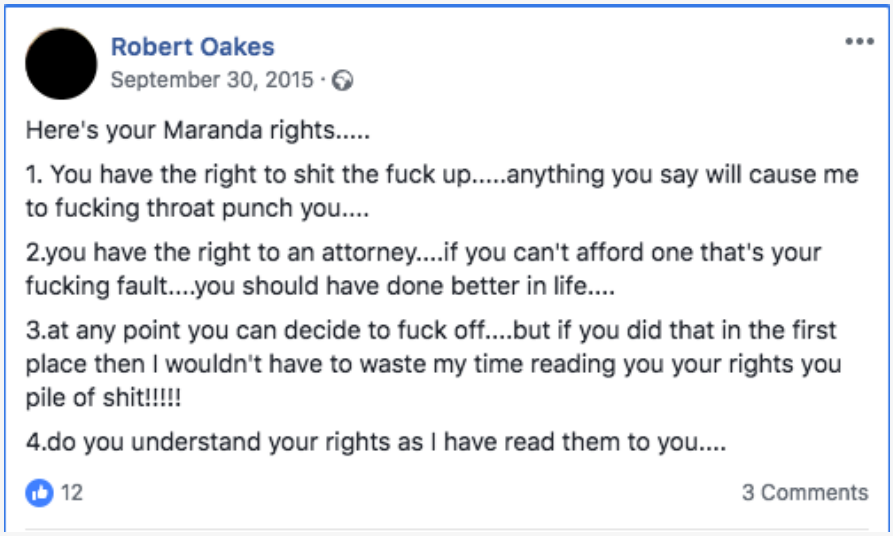
The central question: How should an employer evaluate years of social media activity by individual officers?

The Plain View Project





What Would You Do?



Fenico v. City of Philadelphia

Twenty officers challenged discipline arising from the Plain View Project.

- Officers argued their Facebook activity constituted protected citizen speech.
- City asserted the posts threatened public trust, operations and officers' credibility.
- District court initially dismissed the claims.
- Third Circuit reversed, requiring a more developed factual record.

The issue: Can an employer rely on anticipated disruption without examining the particular speech and surrounding circumstances?

Fenico: The City Prevails on Remand

Fenico v. City of Philadelphia (E.D. Pa. Oct. 28, 2024)

- Court granted summary judgment for the City.
- Actual workplace disruption was not required.
- Reasonably anticipated disruption could satisfy *Pickering*.
- Court credited concerns about community trust, departmental operations and witness credibility.
- The officers' First Amendment interests did not outweigh those concerns.

But … a constitutional defeat did not resolve whether termination was justified under the CBA.

Same Posts. Different Legal Standard.

First Amendment litigation

- Was the speech constitutionally protected?
- Did the City's operational interests outweigh the officers' speech rights?

Contract arbitration

- Did the City prove a policy violation?
- Was the investigation fair?
- Did employees have adequate notice?
- Was discipline consistent?
- Was discharge proportionate to the misconduct?

Plain View: The Union's Defense

- Evaluate each officer's actual posts and context.
- Don't attribute the entire database to an individual officer.
- Examine the investigation, including whether explanations were fairly considered.
- Consider notice, training and prior enforcement.
- Compare penalties for similar misconduct.
- Weigh service history, prior discipline and mitigating circumstances.

The central argument: Even serious policy violations do not automatically establish just cause for termination.

Plain View: The Arbitration Results

Arbitrators recognized the City's legitimate interests in:

- Regulating inappropriate off-duty conduct.
- Enforcing its social media policy.
- Protecting public confidence in policing.

But several discharge penalties were overturned because of:

- Deficiencies in the investigation.
- Inconsistent discipline.
- Mitigating employment records.
- Failure to establish that discharge was proportionate.

Result: *Officers won reinstatement or other relief despite serious allegations of misconduct.*

Philadelphia Lesson: Choose the Forum Carefully

First Amendment litigation — Fenico

- Courts give substantial weight to police department concerns about public trust, operational effectiveness and credibility.
- Reasonably anticipated disruption may justify discipline.
- The officers ultimately lost their constitutional challenge on remand.

Contract arbitration — Plain View Project

- The employer must establish just cause for the particular penalty.
- Individual circumstances, notice, consistency and mitigation matter.
- Arbitrators can overturn discharge even when misconduct is established.

In many cases, just cause arbitration may offer a better route to reinstatement than First Amendment litigation.

Melton: The Firefighter Wins

Melton v. City of Forrest City (8th Cir. 2025)

Off-duty Facebook post leads to termination

- Firefighter shared an offensive meme during the George Floyd protests.
- He *promptly* deleted the post after a complaint.
- City claimed the resulting controversy justified discharge.
- Eighth Circuit found the evidence of workplace disruption insufficient.

Lesson: Public outrage alone does not necessarily establish disruption under Pickering.

Inendino: The Firefighter Loses

Inendino v. Nance-Holt (7th Cir. 2026)

Off-duty Facebook posts undermine public trust

- Chicago firefighter made racially offensive social media posts.
- His profile identified him as a firefighter and included uniformed photographs.
- Department concluded the posts threatened public trust and effective emergency services.
- Seventh Circuit upheld the termination under Pickering.

Lesson: An agency's public-facing mission and the employee's connection to that agency can weigh *heavily* in the balancing test.

Hussey: A Developing Issue

Hussey v. City of Cambridge (1st Cir. 2025–26)

A police officer's derogatory Facebook comment

- Officer criticized legislation associated with George Floyd.
- Department imposed a four-day suspension.
- A 2025 First Circuit panel ruled for the employer.
- January 2026: The court vacated that decision and granted rehearing en banc.

The issue: How much weight should courts give mocking or disparaging political speech under *Pickering*?

Three Cases, Three Lessons

The Balancing Test Is Fact-Specific

- **Melton — Employee wins.** Insufficient evidence of disruption.
- **Inendino — Employer wins.** Strong concerns about public trust and operational effectiveness.
- **Hussey — Rehearing ordered.** How should courts weigh disparaging speech about public issues?

The lesson: *There is no automatic rule* that offensive off-duty speech is either protected or unprotected.

Hypothetical: The Facebook Post

A 15-year police officer with no prior discipline posts a controversial political meme on a personal Facebook account.

- The post is visible only to approximately 100 Facebook friends.
- A coworker screenshots it and sends it to the chief.
- The post circulates locally and generates complaints.
- The chief terminates the officer for damaging public confidence.

Questions:

1. Is the speech constitutionally protected?
2. What evidence of disruption matters?
3. Does the department have just cause for discharge?

Change the Facts

Change One Fact. Does the Result Change?

What if:

- The officer's profile prominently identifies the police department?
- The district attorney advises that the officer's posts create credibility concerns?
- Several coworkers refuse to work with the officer?
- The department previously imposed only suspensions for comparable posts?
- The officer made the post five years before being hired?

Which facts matter to the First Amendment analysis?

Which matter to just cause?

Defending Social Media Discipline

Investigate before choosing a theory.

- Obtain the complete post, conversation and surrounding context.
- Examine the employer's evidence of disruption.
- Determine whether the employee was identified with the agency.
- Review the policy, training and prior enforcement.
- Identify comparable disciplinary cases.
- Develop mitigation and challenge the proportionality of discharge.

Don't make the First Amendment your only defense.

Speech, Social Media and Discipline: 5 Lessons

1. Public employees retain First Amendment rights, but those rights are qualified.
2. Speech on matters of public concern can still justify discipline.
3. Evidence of actual or reasonably anticipated disruption is critical.
4. Public safety agencies receive substantial consideration when public trust is at stake.
5. Just cause arbitration may provide stronger protection than constitutional litigation.

LEGAL DRUG USE AND EMPLOYEE DISCIPLINE

Marijuana Policies and Recruiting

Montgomery County, Maryland – 2025

- Facing 166 police vacancies and anticipated retirements, Montgomery County relaxed restrictions on applicants' prior marijuana use.
- County also increased pay and introduced a $20,000 signing bonus.
- County Executive noted less restrictive cannabis policies elsewhere:

  "Past cannabis use is not a consideration in Virginia, so officers who can't work in Montgomery County go across the river to Fairfax County, where they can work. Law enforcement recruits in neighboring Washington, D.C. need to refrain from using marijuana for just three months before applying."

The tension: Departments are relaxing marijuana restrictions to recruit officers while continuing to discipline existing employees for cannabis use.

United States v. Hemani, 146 S. Ct. 1677 (June 2026)

- FBI agents discovered a legally purchased handgun, marijuana and cocaine during a search of Ali Danial Hemani's home.
- Hemani admitted using marijuana approximately every other day.
- Prosecutors charged him under 18 U.S.C. § 922(g)(3), which prohibits firearm possession by an unlawful user of or person addicted to a controlled substance.
- The government did not allege that Hemani was intoxicated or dangerous when he possessed the firearm.

Question: *Can regular marijuana use, without more, justify a federal firearms prohibition?*

Who Is an "Unlawful User"?

The federal firearms prohibition — § 922(g)(3)

- Federal law prohibits firearm possession by an unlawful user of or person addicted to a controlled substance.
- Historically, ATF interpreted the prohibition broadly, permitting inferences of current unlawful use from evidence of recent drug use.
- In January 2026, ATF revised its regulatory approach to focus on a pattern of ongoing unlawful use rather than isolated or sporadic use.
- The statutory prohibition remains in effect, subject to constitutional limitations.

Important distinction: Whether someone qualifies as an unlawful user is a separate question from whether disarming that person violates the Second Amendment.

Hemani: The Supreme Court's Ruling

- U.S. Supreme Court unanimously rejected Hemani's prosecution under § 922(g)(3).
- The government failed to establish a historical tradition supporting automatic disarmament based solely on regular marijuana use.
- Hemani's drug use, without evidence of intoxication or dangerousness, did not justify the firearms prohibition.

Bottom line: *Regular use alone did not justify disarming Hemani.*

Hemani: What the Court Left Open

The *Hemani* decision was expressly narrow. The Court did not decide whether the government may prohibit firearm possession by:

- Persons addicted to controlled substances.
- Persons presently intoxicated.
- Individuals whose drug use makes them dangerous.
- Users of particular drugs shown to create special dangers.

Public safety implications:

- *Hemani* undermines blanket claims that regular marijuana use automatically makes firearm possession unlawful.
- It does not establish a right to use marijuana under state employment law or a CBA.



Federal Changes

ATF — January 2026

- Revised the definition of an unlawful user to require a pattern of regular, ongoing unlawful drug use.
- Isolated or sporadic use is insufficient.

Marijuana Rescheduling — April 2026

- Federal action moved specified FDA-approved and qualifying medical marijuana products into Schedule III.
- Broader marijuana rescheduling remains a separate question.
- Schedule III status does not automatically resolve federal firearms restrictions.

Marijuana and Public Safety Work: Two States

New Jersey – Recreational Marijuana

- State law expressly protects lawful off-duty cannabis use.
- Police officers are covered by those protections.
- Federal firearms law becomes the employer's principal defense.

Florida - Medical Marijuana

- Medical marijuana is legal.
- State law preserves employer drug policies.
- Negotiated contract language becomes decisive.

Question: *When does lawful off-duty marijuana use justify discipline?*

New Jersey Legalizes Marijuana

2021 — Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMMA)

- Legalized recreational marijuana and established employment protections.
- Employers may prohibit marijuana use, possession and impairment at work.
- Employers generally may not discipline employees solely for lawful off-duty cannabis use or a positive THC metabolite test.
- New Jersey's Attorney General concluded that these protections apply to police officers.

The Rule: *Lawful off-duty marijuana use, without evidence of workplace impairment or another lawful basis for discipline, is generally protected.*

Jersey City Draws a Line in the Sand

April 2022 — The City prohibits all police marijuana use, on or off duty.

- Jersey City's argument:
  - Marijuana remains unlawful under federal law.
  - Section 922(g)(3) prohibits unlawful drug users from possessing firearms.
  - Carrying a firearm is an essential function of police employment.
  - Therefore, officers who use marijuana cannot legally perform their jobs.
- **Jersey City's position:** Federal firearms law overrides New Jersey's employment protections.

In re Mansour / Polanco

In re Mansour, 2026 WL 1194743 (N.J Super Ct App Div May 1, 2026)

- September 2022. Two Jersey City police officers tested positive for THC following random drug tests.
- Both admitted using marijuana while off duty.
- No allegation of workplace impairment, on-duty use or illegally purchased marijuana.
- Jersey City terminated both officers under its zero-tolerance policy.
- The Civil Service Commission ordered reinstatement with back pay, benefits and seniority.
- Jersey City appealed.

Question: *Can federal firearms law justify termination despite New Jersey's statutory protections?*

The § 925 Government Exception

18 U.S.C. § 925(a)(1)

The Gun Control Act exempts firearms issued for official government use from most federal firearms restrictions.

- Jersey City is a political subdivision covered by the exception.
- The exception applies to firearms used for official police purposes.
- The City argued that officers purchased their own duty firearms and therefore could not claim the exception.
- The court rejected that argument.

Bottom line: Even assuming § 922(g)(3) applies, federal law does not necessarily prohibit officers from carrying duty weapons.

The Strange Case of Trooper Keyes

Keyes v. Sessions, 282 F. Supp. 3d 858 (M.D. Pa. 2017)

- Pennsylvania State Trooper Michael Keyes was involuntarily committed following a personal crisis.
- His commitment triggered a federal firearms disability under § 922(g)(4).
- Nevertheless, Keyes returned to duty and continued carrying and qualifying with firearms.
- Under § 925(a)(1), he could possess firearms for official police purposes even while prohibited from possessing them privately.

The paradox: Federal law permitted Keyes to carry a firearm as a trooper but not as a private citizen.

The *Mansour* court cited *Keyes* to illustrate the distinction.

Mansour: No Federal Preemption

In re Mansour, 2026 WL 1194743 (N.J Super Ct App Div May 1, 2026)

Appellate Division affirms the Civil Service Commission.

- Section 925(a)(1) provides an exception for firearms used for official government purposes.
- Section 927 permits federal preemption only where federal and state law are in direct conflict.
- Jersey City could comply with both federal firearms law and CREAMMA.
- The officers' off-duty use of regulated cannabis did not justify their termination.
- Reinstatement with mitigated back pay, benefits, seniority and counsel fees affirmed.

The Rule: *Federal firearms law did not excuse Jersey City's violation of New Jersey's employment protections.*

Giambrone: The Facts

Hillsborough County v. Giambrone, (Fla. 2d DCA July 29, 2026).

- Angelo Giambrone — Hillsborough County firefighter/paramedic
- Selected for random drug test in February 2019.
- Tested positive for marijuana.
- Held a valid Florida medical marijuana card.
- No evidence of on-duty use, workplace impairment or performance problems.
- County placed him on unpaid administrative leave.

Question: Can an employer discipline a firefighter for lawful medical marijuana use without evidence of impairment?

Giambrone Wins in the Trial Court

Hillsborough County v. Giambrone, (Fla. 2d DCA July 29, 2026).

The trial court ruled for the firefighter.

- Medical marijuana qualified as authorized medication under the CBA.
- The medical review officer should have reported the positive test as negative.
- Florida's medical marijuana law protected lawful off-duty use.
- Without evidence of workplace impairment, the County could not discipline Giambrone.

Relief: Back pay, compensatory damages and prospective accommodation of medical marijuana cardholders.

Florida Second District Court of Appeal: REVERSED.

Problem #1: The Contract

What did the CBA actually say?

The CBA's negotiated substance abuse policy:

- Prohibited drug use at work, on County property and "at any time while employed" by the County.
- Expressly included cannabinoids within its definition of prohibited drugs.
- Excepted alcohol and prescribed medications.
- Defined impairment to include a confirmed positive drug test.

Problem #1 for Giambrone was that the CBA prohibited the very conduct Giambrone argued was protected.

Medical Marijuana ≠ Prescription Medication

Could Giambrone invoke the CBA's medication exception?

The appellate court said no.

- The CBA incorporated Florida's statutory definition of a prescription.
- Medical marijuana is obtained through physician certification, not a traditional prescription.
- It is dispensed through licensed treatment centers rather than the statutory pharmacist-based prescription system.
- It also does not qualify as an ordinary nonprescription medication.

Result: The medical review officer was not required to report the positive marijuana test as negative.

Problem #2: Florida Law Doesn't Save Him

Hillsborough County v. Giambrone, (Fla. 2d DCA July 29, 2026).

Florida's medical marijuana law:

- Authorizes medical marijuana for qualifying patients.
- Preserves employers' authority to enforce drug-free workplace policies.
- Does not require workplace accommodation of medical marijuana use.
- Does not independently create a cause of action for employment discrimination or wrongful discharge based on marijuana use.

Court: The trial judge could not transform medical marijuana legalization into an affirmative right to workplace accommodation.

Result: Reversed and remanded with instructions to enter judgment for the County.

Florida: The Bargaining Lesson

Legalization doesn't rewrite the contract.

In *Giambrone*, the parties negotiated their CBA *after* Florida legalized medical marijuana. Yet they retained language that:

- Prohibited drug use at any time during employment.
- Expressly included cannabinoids as prohibited drugs.
- Defined impairment to include a positive test.
- Failed to exempt lawful medical marijuana use.

What should unions bargain for?

- Protection for lawful off-duty use.
- A distinction between a positive THC test and actual impairment.
- Express treatment of medical marijuana.
- Clear standards for testing and discipline.

Same Conduct. Different Laws. Different Results.

New Jersey - Mansour

- Recreational marijuana
- Lawful off-duty use protected by state statute
- No evidence of workplace impairment
- Federal firearms defense rejected
- Officers reinstated

Florida — Giambrone

- Medical marijuana
- No comparable statutory employment protection
- CBA prohibited drug use at any time
- Positive test constituted impairment under the CBA
- Firefighter loses

Marijuana Discipline: What Matters?

Five questions for every case:

1. Does state law protect lawful off-duty cannabis use?
2. What does the CBA actually prohibit?
3. Does the employer have evidence of impairment or merely a positive test?
4. Is the employee required to carry a firearm?
5. Are there medical authorization or accommodation issues?

Don't assume that a drug policy adopted years ago reflects today's legal landscape.

California Protects Off-Duty Cannabis Use

Government Code § 12954 — Effective January 2024

- Prohibits employment discrimination based on lawful off-duty cannabis use.
- Protects employees against adverse action based solely on tests detecting nonpsychoactive cannabis metabolites.
- Does not protect possession, use or impairment at work.
- Includes exceptions for certain federally regulated positions and positions requiring federal background investigations or security clearances.
- No categorical exception for police officers or firefighters.

California focuses on the distinction between past use and present impairment.

Maryland Protects Firefighters' Marijuana Use

SB 439 — Effective October 1, 2026

- Protects covered fire and rescue employees from certain adverse employment actions based on authorized medical cannabis use.
- Employers may continue prohibiting on-duty use and impairment.
- Employers are not required to violate federal law or jeopardize federal funding or licensing benefits.
- The statute covers firefighters, EMTs and paramedics, but not police officers.
- Employers must report incidents of employees reporting for duty impaired by cannabis to the State EMS Board.

Psychedelic Treatments: A Changing Landscape

Federal Developments — 2026

- April: Executive order directed federal agencies to accelerate research into psychedelic treatments for serious mental illness.
- July: FDA finalized guidance for clinical investigations of psychedelic drugs.
- September: FDA held a public hearing on potential therapeutic uses in supervised settings.
- October: FDA sought public input on clinical trials involving ibogaine, including possible treatment applications for substance use disorders.



HEALTH

Gift Share

Cops on ketamine? Largely unregulated mental health treatment faces hurdles

Combining psychotherapy with low-dose ketamine is a relatively new approach to treating severe depression and post-traumatic stress. Evidence of the efficacy and safety are evolving.

- "Combining psychotherapy **with low-dose ketamine**, a hallucinogenic drug long used as an anesthetic, is a relatively new approach to treating severe depression and post-traumatic stress, especially in populations with high trauma rates such as firefighters, police officers, and military members."
- "Yet evidence of the efficacy and safety of ketamine for treatment of mental health conditions is still evolving, and the market remains widely unregulated."



Source: *Philadelphia Inquirer, October 16, 2025*

Hypothetical: The Positive THC Test

- Police officer is selected for a random drug test.
  - Tests positive for THC.
  - Admits recreational marijuana use three days earlier, while off duty.
  - Marijuana is legal under state law.
  - No evidence of workplace impairment or performance problems.
  - Department has a zero-tolerance drug policy.
- Police department terminates the officer.

Can the termination be sustained?

What additional information do you need?

Hypothetical: Change One Fact

Would your answer change if:

- The employee is a firefighter rather than a police officer?
- The employee has a valid medical marijuana card?
- The CBA expressly prohibits marijuana use at any time?
- The employee showed signs of impairment while on duty?
- The employee is a New Jersey police officer rather than a Florida firefighter?

Which matters most: the law, the contract or the evidence of impairment?

Marijuana and Drug Discipline: Five Lessons

1. Legalization ≠ employment protection.
2. A positive THC test ≠ proof of present impairment.
3. State statutes and CBAs can produce very different results.
4. Federal firearms restrictions require separate analysis.
5. Outdated drug policies can undermine employees' new legal protections.

The law is changing. Make sure your contract keeps up.

THANK YOU

