

PHILADELPHIA SET TO BAN PRE-EMPLOYMENT MARIJUANA TESTING: WHAT EMPLOYERS NEED TO KNOW

Insights
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Philadelphia is set to join a small but growing list of jurisdictions (including Nevada and [New York City](#)) that prohibit employers from testing prospective employees for marijuana. The proposal, which was recently approved by city council and is expected to be signed by the mayor, will prevent most employers from rescinding a candidate's job offer due to the presence of marijuana in a pre-employment drug test. Nothing within the bill, however, would forbid an employer from disciplining an employee for impairment or marijuana use in the workplace. If approved by the mayor, the legislation would go into effect on January 1, 2022.

[Ed. Note: As expected, Mayor Jim Kenney signed this law into effect on April 28.]

Although the bill would apply to many employers in the Philadelphia region, it carves out certain positions from the prohibition on pre-employment marijuana testing: (1) law enforcement; (2) those that require a commercial driver's license; (3) positions requiring the supervision of children, medical patients, or other vulnerable individuals; and (4) certain jobs identified by the city that could significantly impact the health or safety of other employees or members of the public.

Additionally, the testing preclusion would not apply where testing is required by state or federal law, a contract or grant for financial assistance between the employer and the federal government, and/or a valid collective bargaining agreement.

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The Philadelphia Commission on Human Relations would enforce these regulations.

What Should You Do?

Assuming the proposal is signed into effect by the mayor, you do have the rest of the year to prepare for this change – but you shouldn't wait to the last minute to take action. You will need to adjust your hiring practices to ensure compliance, which could include both job postings, written documents associated with the application process, and interviewing protocols. You should also coordinate with any third-party service that assists you with hiring to ensure they fall into line with the new law when it comes to positions related to your workplace. Finally, you should coordinate with your legal counsel to determine if any of your positions are exempt from this ban and if you should take any further steps to ensure compliance.

We will continue to monitor the situation and provide updates as developments occur, so make sure you are subscribed to [Fisher Phillips' Insight system](#) to get the most up-to-date information. If you have questions about how to ensure that your drug testing policies comply with workplace and other applicable laws, contact your Fisher Phillips attorney or any attorney in [our Philadelphia office](#).