



NYC Bans Pre-Employment Marijuana Testing

Insights

4.10.19

The New York City Council just passed legislation which will prohibit employers from requiring a prospective employee to submit to drug testing for the presence of tetrahydrocannabinols (THC), the active ingredient in marijuana, as a condition of employment. The law, which is expected to soon be signed into effect by the mayor, will amend the New York City Human Rights Law and make it a discriminatory practice to require a job applicant undergo pre-employment marijuana testing. **[Ed. Note: The mayor took no action on the bill, which means it was officially enacted on May 10, 2019.]** What do New York City employers need to know about this latest development?

Background On New Law

In a committee report on the legislation, state legislators noted that 34 states have some form of marijuana legalization, and that New York City residents can freely travel to those states and engage in legal marijuana consumption. Accordingly, the committee report posits that “those persons should not be penalized for their legal use of a product in another state, especially when such product can remain detectable in bodily fluids for up to 30 days after last use.”

The legislation comes amid stalled efforts to legalize recreational marijuana statewide. Medical marijuana has been legal since New York enacted the Compassionate Care Act in 2014, which allows certified patients suffering from certain serious health conditions to obtain marijuana for medicinal use. However, recreational marijuana remains illegal. Last year, Governor Cuomo called upon the state legislature to legalize recreational marijuana, but the success of these efforts remains uncertain.

Details And Exceptions: Specifics On The New Law

According to the legislation’s sponsor, the new law will scale back a practice that serves as a barrier to employment for many. However, NYC Public Advocate Jumanne Williams said it will not permit employees to show up to work high or otherwise impaired. Instead, it will specifically ban most public and private employers from requiring potential employees to take a test for the presence of THC in their system.

The new law will not apply to certain safety-sensitive positions, however, such as police officers, jobs requiring a commercial driver’s license, or any role requiring the supervision of children, medical patients, or other vulnerable persons. Additionally, the law will not apply to any drug testing required pursuant to (i) regulations promulgated by the federal department of transportation; (ii)

federal contracts; (iii) a federal or state law that requires drug testing of prospective employees for purposes of safety or security; or (iv) a collective bargaining agreement.

What's Next?

The law was passed by the City Council yesterday, and now awaits the mayor's signature—which, [according to a mayoral spokesperson](#), is forthcoming. Once it becomes law, it will take effect one year after enactment, giving employers plenty of time to prepare to comply. All New York City employers must stay tuned and be prepared to adjust their hiring practices once an effective date is established. **[Ed. Note: Because the law as officially enacted on May 10, 2019, the prohibition on pre-employment drug testing for marijuana and THC becomes effective on May 10, 2020.]**

We will continue to monitor further developments and provide updates once the law is signed and an effective date is in place, so you should ensure you are subscribed to [Fisher Phillips' alert system](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney or any attorney in our [New York City office](#).

This Legal Alert provides information about a specific proposed city law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

Related People



Melissa Camire
Partner
212.899.9965
[Email](#)

Service Focus

Employment Discrimination and Harassment
Counseling and Advice

