



APRIL 12, 2019

## New York City Council Approves Ban on Marijuana Testing for Job Applicants

The New York City Council has passed a bill that would prevent employers from requiring pre-employment marijuana testing during the hiring process. The legislation, [Intro. No. 1445-A](#), which was passed on April 9, 2019 on a 41-4 vote, prohibits employers from requiring a job candidate to submit to testing for tetrahydrocannabinols (THC), the active ingredient in marijuana, as a condition of employment. Exceptions are provided for jobs that are safety and security sensitive, and those tied to a federal or state contract or grant.

The law, which currently awaits the mayor's signature, will take effect one year after enactment. Upon enactment, the law would amend the New York City Human Rights Law ("NYCHRL").

### **Background**

In a Committee Report on the bill, Council members cited to the history of disparate impact based on race in the enforcement of marijuana prohibition. The report explained that positive results of THC can occur weeks after use and do not necessarily indicate that a person is impaired at the moment of testing. According to the report, as New York City residents freely travel to the 34 states that have some form of marijuana legalization, those who engage in legal marijuana consumption should not be penalized for legal use of a product in another state.

Although the possession and sale of recreational marijuana is currently illegal under New York State Penal Law Article 221, there has been a push by Governor Andrew Cuomo, Mayor Bill De Blasio, and state legislators to legalize recreational marijuana. Medical marijuana has been legal in New York since the enactment of the Compassionate Care Act in 2014.

## **Exceptions**

The bill would not apply to a job candidate applying to work in the following positions:

- police officer or peace officer;
- positions with a law enforcement or investigative function at the department of investigation;
- certain positions in the construction industry;
- positions requiring a commercial driver's license;
- positions requiring the supervision or care of children, medical patients or certain vulnerable persons;
- positions that impact the health or safety of employees or the public;
- positions tied to a contract entered into between the federal government;
- positions in which testing is required by the departments of transportation of the federal, state, or city government; or
- positions that require drugs testing for purposes of safety or security under federal or state statute, regulation, or order.

Additionally, the ban on pre-employment marijuana testing would not apply to any position with the potential to significantly impact the health or safety of employees or the public, as determined by the commissioner of citywide administrative services or the chairperson. The bill also would not apply to drug testing required by a collective bargaining agreement between an employer and a union.

## **Takeaway for Employers**

As a reminder, the NYCHRL currently prohibits most employers, labor organizations, and employment agencies from inquiring about or considering the criminal history of job applicants, including prior convictions related to marijuana possession, until after a conditional offer of employment is extended. If this new bill is enacted, New York City employers would be further prohibited from submitting job applicants to a drug test for marijuana use as a condition of employment. Once enacted, employers will have one year to modify any existing hiring practices to comply with the law. Employers should stay tuned to whether the bill is signed and the effective date of compliance.

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If you have any questions regarding the new legislation or pre-employment practices, please do not hesitate to contact us.

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