

Practice Update

New York City Employers Barred From Testing Prospective Employees for Marijuana Use

May 23, 2019

Beginning on May 10, 2020, absent specific exceptions, covered New York City employers will be prohibited from testing prospective job applicants for the presence of tetrahydrocannabinol (THC), the active ingredient in marijuana, as a condition of employment. This ban is the first of its kind in the United States, and requires covered New York City employers to review their hiring practices, applications, offer letters, and drug testing policies to ensure compliance with the new law.

Under the Compassionate Care Act, medical marijuana has been legal in New York since 2014. Testing for THC in job applicants as a condition of employment, however, has not been prohibited. On May 10, 2019, the city amended the New York City Administrative Code to add a section that maintains it shall be an unlawful discriminatory practice for an employer to “require a prospective employee to submit to testing for the presence of any tetrahydrocannabinols or marijuana in such prospective employee’s system as a condition of employment.”

The statute defines “marijuana” as “all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant,

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its seeds or resin” and defines THC as the “[s]ynthetic equivalents of the substances contained in the plant, or in the resinous extractives of cannabis, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity.”

The statute, however, carves out certain exceptions to the new restriction for (i) specific job positions, and (ii) circumstances where testing is mandated. For example, covered New York City employers can test for THC as a condition of employment where (a) the prospective employee is applying to work in certain occupations involving the public health and safety, or (b) such testing is mandated as a condition of receiving a contract or grant with the federal government.

While the New York City Commission on Human Rights likely will issue rules for the implementation of the new law, New York City employers should begin reviewing their hiring policies and procedures to ensure compliance with the new law.

Disclaimer:

Possessing, using, distributing, and/or selling marijuana or marijuana-based products is illegal under federal law, regardless of any state law that may decriminalize such activity under certain circumstances. Although federal enforcement policy may at times defer to states’ laws and not enforce conflicting federal laws, interested businesses and individuals should be aware that compliance with state law in no way assures compliance with federal law, and there is a risk that conflicting federal laws may be enforced in the future. No legal advice we give is intended to provide any guidance or assistance in violating federal law.