New York City Will Ban Pre-Employment Marijuana Testing in 2020

Friday, April 12, 2019

The New York City Council passed a law on April 9, 2019 that will prohibit employers from conducting pre-employment drug testing for marijuana. The law is expected to be signed by the mayor and will take effect one year later. This law is the first of its kind in the United States.

The new law will amend the New York City Human Rights Law and provides that: “Except as otherwise provided by law, it shall be an unlawful discriminatory practice for an employer, labor organization, employment agency, or agent thereof 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.” Tetrahydrocannabinols, or THC, is the main psychoactive component of marijuana.

The law will not apply to applicants for certain types of jobs, including:

- Police officers or peace officers, or other jobs with law enforcement or investigative functions at the department of investigation;
- Positions requiring compliance with Section 3321 of the New York City Building Code or Section 220-h of the Labor Law (pertaining to certain types of construction and maintenance jobs);
- Any position requiring a commercial driver's license;
- Any position requiring the supervision or care of children, medical patients or vulnerable persons as defined in Social Services Law Section 488(15) (certain individuals with physical and cognitive disabilities);
- Any position with the potential to significantly impact the health or safety of employees or members of the public, as determined by (i) the commissioner of citywide administrative services for the classified service of the city of New York, and identified on the website of the department of citywide administrative services or (ii) the chairperson, and identified in regulations promulgated by the commission.

There are additional exclusions. The law specifically does not apply drug testing required by:

- Any regulations promulgated by the U.S. Department of Transportation that require pre-employment drug testing, as well as any state or city regulations that adopt the DOT rules;
- Any contract entered into between the federal government and an employer or any grant of financial assistance from the federal government to an employer that requires drug testing of prospective employees as a condition of receiving the contract or grant;
- Any federal or state statute, regulation, or order that requires drug testing of prospective employees for purposes of safety or security; or
- Any applicants whose prospective employer is a party to a valid collective bargaining agreement that specifically addresses the pre-employment drug testing of such applicants.

Once the law is signed by the mayor, additional rules and regulations are expected to be implemented. Given that the law will not take effect for one year, New York City employers will have time to revise their drug testing policies, employment applications and other pertinent documents.

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