

A Sticky Situation for Employers: New York City Council Passes Bill Restricting Marijuana Drug Testing

Monday, April 22, 2019

New York City employers will need to reconsider their drug testing policies. On April 9, 2019, the City Council passed a [bill](#) that would prevent most employers from requiring job applicants to submit to drug tests for tetrahydrocannabinols (THC), the active ingredient in marijuana. The bill easily passed by a 40-to-4 vote. If, as expected, Mayor de Blasio signs it, it will become an unlawful discriminatory practice for an employer to require a job applicant to submit to marijuana testing as a condition of employment.

There will be exceptions for several categories of employment, including law enforcement, construction, and positions involving supervision of children or medical patients. In addition, prospective employees for jobs under state or federal jurisdiction would be exempt, including federal and state employees or contractors and truck drivers and pilots. Once hired, an employee could also be required to undergo drug testing if he or she appears to be under the influence of marijuana at work.

Proponents of the legislation argue that testing for marijuana is unnecessarily invasive and creates a barrier to employment when there is little support for the notion that passing a drug test is a predictor for future employee performance. Opponents consider the legislation to be an overreach by the city government, one which they see as unreasonably interfering in the relationship between employers and employees and the private sector's hiring discretion. There is also concern among global employers that compliance with the legislation will increase costs by requiring changes to existing policies.

With this bill, New York is poised to join Washington, D.C., which also prohibits employers from testing for marijuana before a job offer is extended. The New York City bill, however, appears to go a step further than any other state or local government, including those that have legalized recreational marijuana use, because it prohibits marijuana testing at any point before hiring. If signed into law by Mayor de Blasio, the legislation will take effect one year following its enactment.

Employers everywhere – and not just in New York and Washington, D.C. – should take note of these developments. As we [have reported](#) previously, more and more states are passing marijuana legalization or decriminalization laws – both medical and recreational. And states are [grappling with](#) the workplace effects of legalization. It stands to reason that other jurisdictions may join New York City in passing similar legislation with respect to workplace marijuana testing. We'll be here to report on such developments as they occur.

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