New York City and New Mexico Protect Employees Who Are Medical Marijuana Users (US)

Thursday, May 16, 2019

**New York City**

New York City has enacted a first-of-its kind law ([Intro. No. 1445-A](#)) prohibiting pre-employment drug testing for the presence of marijuana or tetrahydrocannabinols.

The law makes it 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.”

As always, the law affords certain exemptions. The law will not apply to persons applying to work in certain safety-sensitive positions, including:

- Positions in law enforcement;
- Certain construction positions;
- Positions requiring a commercial driver’s license;
- Positions requiring the supervision or care of children, medical patients or vulnerable persons; or
- Positions with the potential to significantly impact the health or safety of other employees or members of the public.

Additionally, the law will not apply to drug testing required pursuant to regulations promulgated by the federal, state or city departments of transportation; federal contracts; any federal or state law that requires drug testing of prospective employees for safety or security purposes; or a valid collective bargaining agreement.

The law goes into effect on May 10, 2020.

**New Mexico**

Expanding New Mexico’s medical marijuana law (the Lynn and Erin Compassionate Use Act), New Mexico’s Governor signed [Senate Bill (SB) 406](#) into law on April 4, 2019, creating substantial employment protections for medical marijuana users. The law prohibits employers from taking any “adverse employment action against an applicant or an employee based on conduct allowed under” the Act. This includes declining to hire, terminating, or taking any other adverse action against an individual solely based on the individual having a prescription for and/or using medical marijuana.

However, there are some exceptions to the law. These employment protections do not apply in the following situations:

- If the employer could lose monetary or licensing-related benefits under federal law or federal regulations for hiring or employing individuals who use marijuana or test positive for marijuana use; and
- If the employee works in a “safety-sensitive position,” defined as “a position in which performance by a person under the influence of drugs or alcohol would constitute an immediate or direct threat of injury or death to that person or another.”

The law also does not afford protections to employees who use or are impaired by medical marijuana while
working, during “hours of employment,” or while on the premises of the employer. As such, employers may still take adverse action against employees for use of, or being impaired by marijuana “on the premises of the place of employment or during the hours of employment,” regardless of whether the employee has a prescription for medical marijuana.

Employers in both New York City and New Mexico should review and update their drug testing policies for applicants and employees to comply with these new laws.

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