

MSF CLIENT ALERT

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No Marijuana Testing for Prospective Employees in New York City

Effective May 10, 2020, most New York City employers will no longer be able to test prospective employees as a condition of employment for the presence of tetrahydrocannabinols (“THC”), the psychoactive ingredient in marijuana, in the prospective employee’s system.

May 13, 2020

On May 10, 2019, New York City enacted legislation that prohibits New York City employers from requiring prospective employees to submit to testing for the presence of THC in the prospective employee’s system as a condition of employment. This law comes after New York State legalized medical marijuana in 2014 by enacting the Compassionate Care Act. Recreational marijuana remains illegal in New York State.

There are exceptions to the ban on pre-hire testing for the presence of TCH including safety and security sensitive jobs and employment tied to federal or state contracts or grants. Exceptions to the local law include:

- Police officers, peace officers, or a position with a law enforcement or investigative function at the department of investigations;
- Laborers, workers, and mechanics employed in the performance of a contract on a public work site who are required to complete an Occupational Safety and Health Administration (OSHA) construction safety and health course pursuant to the New York Labor Law § 220-h;
- Permit holders at a building site for which a construction superintendent, site safety manager, or site safety coordinator is required pursuant to the New York City Building Code § 3321;
- Any position requiring a commercial driver’s license;
- Any position requiring the supervision or care of children, medical patients, or vulnerable persons; and

- Any position with the potential to significantly impact the health or safety of employees or members of the public.

The law will also not apply to drug testing required pursuant to:

- Regulations promulgated by the federal Department of Transportation that require testing of a prospective employee or any rule promulgated by the Departments of Transportation of the State or City of New York adopted to enforce requirements of that regulation with respect to intrastate commerce;
- Any contract entered 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
- A valid collective bargaining agreement to which the prospective employer is a party that specifically addresses the pre-employment drug testing of a prospective employee covered by such agreement.

New York City employers should begin complying with the law beginning on its effective date, May 10, 2020 even though required guidance has not been issued. The law called for the New York City Commission on Human Rights to promulgate rules relating to the implementation of the law. However, proposed rules have not yet been

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finalized by the Commission. The deadline to submit written comments on the proposed rule was extended to April

27, 2020 due to the COVID-19 pandemic. As of May 12, 2020, the proposed rule is closed for comments.

For more information or if you have any questions about how these new developments may affect your business, please contact a member of our Employment team.



Andrea B. Neuman
Partner | Chair, Employment
212.655.3513 | abn@msf-law.com



Gregg M. Kligman
Counsel | Employment
(646) 273 8209 | gmk@msf-law.com



Samantha L. Frenchman
Associate | Employment
(212) 655-3580 | slm@msf-law.com



Cassidy Mara
Associate | Employment
(646) 273 8204 | cm@msf-law.com

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