

New York City Employers Are Barred from Testing Job Applicants for Marijuana Use

By Richard I. Greenberg and Kathryn J. Russo

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New York City has enacted a law prohibiting New York City employers from requiring prospective employees to submit to testing for the presence of tetrahydrocannabinol (THC), the active ingredient in marijuana. The new law, the first of its kind in the United States, became effective on May 10, 2019. The obligations under Intro 1445-A are applicable to employers beginning May 10, 2020.

Background

In 2014, New York State legalized medical marijuana by enacting the Compassionate Care Act. In 2018, both New York Governor Andrew Cuomo and Mayor Bill de Blasio released reports finding the benefits of a regulated recreational marijuana market outweighed the potential negative aspects. Since then, Governor Cuomo continues to call upon the state legislature to legalize recreational marijuana in New York before the June conclusion of the 2019 legislative session. Seeing the potential state legislative activity on cannabis near, the New York City Council in February introduced, and held a hearing on, its own package of bills regarding cannabis, including Intro 1445-A.

Highlights of Intro 1445-A

The first part of Intro 1445-A amends section 8-102 of the Administrative Code of the City of New York by adding new definitions for the terms “marijuana” and “tetrahydrocannabinols” to mirror the public health law.

The second part of the bill amends section 8-107 of the Administrative Code of the City of New York by adding a new subdivision: “Employment; pre-employment drug testing policy.” This new subdivision makes requiring a prospective employee to submit to testing for the presence of marijuana or THC as a condition of employment an unlawful discriminatory practice for an employer, labor organization, employment agency, or agent.

Exceptions

Intro 1445-A also lists exceptions for which pre-employment drug testing for marijuana and THC will be permitted. It carves out specific city employment and addresses preemption by state and federal regulations.

Administrative Code of the City of New York section 8-107 subsection b of the new subdivision 31 does not apply to individuals applying to work:

1. As police officers or peace officers;
2. In any position requiring individuals who require OSHA 10 training to work on construction sites pursuant to section 3321 of the New York City building code or section 220-h of the labor law;
3. In any position requiring a commercial driver's license;
4. In any position requiring the supervision or care of children, medical patients, or vulnerable persons as defined in paragraph 15 of section 488 of the social services law;
5. In 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;
6. Where any regulation promulgated by the federal department of transportation requires testing of a prospective employee in accordance with 49 CFR 40 or any rule promulgated by the departments of transportation of this state or city adopting such regulation for purposes of enforcing the

Meet the Authors



[Richard I. Greenberg](#)

Principal
New York Metro
New York City 212-545-4080
Email



[Kathryn J. Russo](#)

Principal
New York Metro
Long Island 631-247-4606
Email

requirements of that regulation with respect to intrastate commerce;

7. Where any contract entered into between the federal government and an employer or any grant of financial assistance from the federal government to an employer requires drug testing of prospective employees as a condition of receiving the contract or grant;
8. Where any federal or state statute, regulation, or order requires drug testing of prospective employees for purposes of safety or security; or
9. Where any applicants whose prospective employer is a party to a valid collective bargaining agreement specifically addressing the pre-employment drug testing of such applicants.

Next Steps

The City Commission on Human Rights will promulgate rules for the implementation of the new law.

New York City employers should review their drug testing policies and practices, employment applications, offer letters, and other documents pertaining to pre-employment drug testing. The Jackson Lewis Drug Testing and Substance Abuse Management Practice is available to assist.

The Jackson Lewis Government Relations practice monitors and tracks all legislation introduced in the New York City Council and State Legislature and advocates for client positions at all levels of government.

Please contact a Jackson Lewis attorney with any questions about this bill or compliance with current industry requirements.

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