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## NYC Council Approves a Bill that Would Prevent Employers from Testing for Marijuana

The New York City Council took progressive steps recently to protect those who use marijuana either for medical or recreational use (despite marijuana not yet being recreationally legal in NY). The Council passed a bill in a 40 to 4 vote that would prevent employers from testing prospective employees for marijuana in pre-employment drug screenings. This bill will affect both private and public employers but does not provide protections for those who come to work under the influence. The bill also has exceptions for employers who hire people to work in safety-sensitive positions, such as law enforcement, construction, position's requiring a commercial driver's license, positions requiring supervision of children and medical patients or people with disabilities. The bill also provides the Commissioner of Citywide Administrative Services the ability to make exceptions for positions "with the potential to significantly impact the health or safety of employees or members of the public." Collective bargaining agreements with drug testing provisions will remain unaffected, as will testing that is required by those who have to follow state and federal law that requires same and those who have state or federal contracts or grants.

Marijuana is legal in New York for medical use, but not for recreational use. Governor Cuomo has committed to legalizing marijuana as part of his 2019 agenda. However, as Governor Murphy in the State of New Jersey learned, this may be easier said than done, as recreational marijuana has not become legalized in the State of New Jersey as of yet. Mayor de Blasio has said he will sign the New York City legislation, and once he does, it will take effect one year thereafter.

**Comment:** Now that 33 states have legalized marijuana for medical use and ten states have legalized it for recreational use, more employers are facing the issues associated with drug testing for marijuana. According to a recent Quest Diagnostics Lab Study, the rate of marijuana positives in urine-based drug tests in the American workforce hit 2.8% in 2018, up from 2.4% in 2014.

As a result, some employers in states with "adult use" laws have made the decision to remove marijuana from their pre-employment drug screening in order to stay competitive in hiring. Also, the drug testing for marijuana may show use but cannot determine intoxication, which was a driving force behind this new legislation in NYC. The Committee Chair of the NYC Council, Mathieu Eugene, said in his opening statement before passage of the bill, "unlike alcohol or other recreational drugs, the active ingredients in marijuana can linger in the system for weeks," and "this potentially leaves New Yorkers vulnerable to failing a work-related marijuana drug test, even if they were legally consuming marijuana."

A number of states, including New York, have legalized marijuana for medical use and already provided protections for employees prohibiting discrimination based on their status as a medical marijuana user. The New York City Council is taking these protections a step further which could very well set a trend around the country.

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