

NEW YORK CITY COMMISSION ON HUMAN RIGHTS ISSUES FINAL RULE ON EXCEPTIONS TO BAN ON PRE-HIRE TESTS FOR MARIJUANA

Hodgson Russ Labor & Employment Alert
July 7, 2020

Effective May 10, 2020, most New York City employers are not permitted to test job candidates for marijuana or tetrahydrocannabinols (“THC”) as a condition of employment. However, the recently amended New York City Human Rights Law contains exceptions to this general prohibition on pre-employment testing.

On June 16, 2020, the New York City Commission on Human Rights published a final rule that sets forth the parameters of the exception to the ban on such pre-hire testing that the NYC Administrative Code contains for jobs that “significantly impact the health or safety of employees or members of the public.”

Pursuant to this final rule, this exception covers a job, and thus exempts it from the pre-employment testing ban, where:

- The position requires that an employee regularly, or within one week of beginning employment, work on an active construction site;
- The position requires that an employee regularly operate heavy machinery;
- The position requires that an employee regularly work on or near power or gas utility lines;
- The position requires that an employee operate a motor vehicle on most work shifts;
- The position requires work relating to fueling an aircraft, providing information regarding aircraft weight and balance, or maintaining or operating aircraft support equipment; or
- Impairment would interfere with the employee’s ability to take adequate care in the carrying out of his or her job duties and would pose an immediate risk of death or serious physical harm to the employee or to other people.

Here is a link to text of the final rule, which will become effective on July 24, 2020:

https://www1.nyc.gov/assets/cchr/downloads/pdf/Rules_Marijuana_Final.pdf

Attorneys

Luisa Bostick
Joseph Braccio
Glen Doherty
Andrew Drilling
Ryan Everhart
Andrew Freedman
Peter Godfrey
John Godwin
Charles H. Kaplan
Christopher Massaroni
Elizabeth McPhail
Lindsay Menasco
Kinsey O'Brien
Jeffrey Swiatek
Michael Zahler

Practices & Industries

Cannabis & Hemp
Labor & Employment

NEW YORK CITY COMMISSION ON HUMAN RIGHTS ISSUES FINAL RULE ON EXCEPTIONS TO BAN ON
PRE-HIRE TESTS FOR MARIJUANA

Note that this new NYC law does not prohibit employers from drug testing current employees. Further, this new law does not constrain NYC employers from using workplace policies and discipline, up to and including discharge, to keep their workplaces drug-free.

Please contact Glen Doherty (518.433.2433), Peter Godfrey (716.848.1246) or Charles H. Kaplan (646.218.7513) with any questions on how this new rule may impact your business.

If you received this alert from a third party or from visiting our website, and would like to be added to our Labor & Employment alert mailing list or any other of our mailing lists, please visit us **HERE**.