

## Employer Drug Testing Policies Remain In Plaintiffs' Cross-Hairs

---

*Peter Gillespie*  
**09.27.2018**

As restrictions on recreational use of cannabis and cannabinoids loosen across the country, employer drug testing policies continue to come under fire. Employers should be concerned that the U.S. Equal Employment Opportunity Commission (EEOC) has taken an interest in whether employers are engaging in an “interactive process” or assessing whether an employee’s inability to pass a drug test could be accommodated under the Americans With Disabilities Act (ADA).

For example, the EEOC recently filed suit alleging that an employer may have violated the ADA for rejecting a job applicant who had disclosed that he was under treatment for drug addiction and had been prescribed methadone. That case remains pending. In addition, employers should recognize that some courts have rejected the argument that state laws permitting employees to use cannabis for medical reasons are preempted by federal law or are trumped by drug-free workplace policies.

For example, a federal court in Connecticut recently found that an employer violated state law by refusing to hire an applicant who had tested positive for marijuana. In the face of these types of challenges, employers should carefully assess their legitimate business and safety reasons for maintaining drug testing policies, and be prepared to defend drug testing policies when necessary. Employers should also recognize, however, that employee drug policies should not be enforced in an inflexible, “one size fits all” manner.

### Attorneys

Peter J. Gillespie

### Practice Areas

Counseling and  
Transactional

Employee Benefits and  
Executive Compensation

Labor Management  
Relations

## Employer Drug Testing Policies Remain In Plaintiffs' Cross-Hairs

---

Laner Muchin will be providing a breakfast seminar covering the latest issues involving employee drug testing and workplace violence concerns on November 7, 2018. Please [click here](#) for more information and to register.