

June 17, 2019

**New York City to Limit Prehire Marijuana Testing in May 2020**

Effective May 10, 2020, the New York City Human Rights law will prohibit employers from requiring prospective employees to undergo marijuana testing as a condition of employment, absent a specific exemption. The exceptions to the new law are primarily position-specific or apply when the employer is legally required to test new hires for drug use. In particular, the prohibition on marijuana screening will not apply to drug testing that is:

- Required by a federal contract or grant;
- Required by federal or state statute, regulation, or order for purposes of safety or security;
- Required by federal department of transportation regulations or certain related state and city regulations; or
- Specifically provided for in an applicable collective bargaining agreement.

In addition, employees in specific roles will be exempt from the marijuana testing prohibition, including:

- Positions that require the supervision or care children, medical patients, or certain vulnerable patients;
- Positions that require a commercial driver's license;
- Most construction and demolition work; and
- Specified law enforcement positions.

The New York City Commission on Human Rights and Department of Citywide Administrative Services are authorized to create additional exceptions for positions with the potential to significantly affect the health or safety of employees or the general public.

The Commission on Human Rights will be responsible for interpreting the law and its exceptions, and the Firm will be closely monitoring the agency's publications and rulemaking action for regulations and additional guidance in this regard. Pending further guidance and rulemaking from the City, employers who require applicants and employees to undergo drug testing would be well served to prepare for the new law.

*747 Third Avenue  
New York, N. Y. 10017  
Tel: 212-758-7600  
[www.cfk-law.com](http://www.cfk-law.com)*

For example, employers who wish to continue testing employment candidates for the use of other illegal drugs should consult their drug testing vendors to ensure that marijuana screening is only conducted where permitted under the new law.

If you have any questions, please contact Nick Bauer or any other attorney at the Firm at (212) 758-7600.

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