

NEWS ALERT**LABOR & EMPLOYMENT****New York City Bans Pre-Employment Testing for Marijuana Use**

By Salvatore G. Gangemi | May 13, 2019

Effective May 10, 2020, New York City's Human Rights Law will prohibit employers from requiring job applicants to submit to a marijuana or THC drug test as a condition of employment, with some limited exceptions. The NYC law is the first to ban pre-employment testing, but likely not the last in light of increasing momentum to legalize the recreational use of marijuana.

Even states that permit medical or recreational use of marijuana have not enacted laws that prohibit employers from testing job applicants. New York City has opted to ban pre-employment testing even though recreational use of marijuana is not yet legal under New York State or City law. Information about the new law can be accessed by clicking [here](#).

Exceptions to the law will still permit testing on individuals applying to work:

- as police or peace officers, or any position with a law enforcement or investigative function;
- in positions for which testing is mandated under federal contract or law;
- as construction or demolition workers;
- as commercial drivers;
- in positions requiring the supervision or care of children, medical patients, and persons with physical or cognitive disabilities; and
- in any position that would significantly impact the "health or safety of employees or members of the public."

New York City will issue regulations clarifying the exceptions, particularly the "health or safety" exception, which will likely be construed narrowly so the pre-employment testing ban covers as many prospective employees as possible.

Employers that operate in New York City should consider the effect the law will have on its positions and hiring practices. Although the law does not address the testing of current employees, employers should consider the extent to which it will continue to test its employees for marijuana use, particularly because the law will likely be interpreted broadly by courts.

As always, we are available to discuss New York City's marijuana testing prohibitions, and assist employers in reviewing their policies and job descriptions to identify which positions fall within the exceptions to testing and related issues.

*If you have any questions regarding the information included in this bulletin, please contact:
Salvatore G. Gangemi at 203.653.5436 or sgangemi@murthlaw.com*

Patricia E. Reilly, Chair
203.772.7733
preilly@murthalaw.com

Melanie N. Aska
617.457.4131
maska@murthalaw.com

Dana R. Bucin
860.240.6081
dbucin@murthalaw.com

Chelsea K. Choi
860.240.6061
cchoi@murthalaw.com

Matthew K. Curtin
860.240.6065
mcurtin@murthalaw.com

Salvatore G. Gangemi
203.653.5436
sgangemi@murthalaw.com

Martha M. Royston
203.772.7720
mroyston@murthalaw.com

Erek M. Sharp
203.772.7772
esharp@murthalaw.com

Mindy S. Tompkins
860.240.6063
mtompkins@murthalaw.com

Barry J. Waters
203.772.7719
bwaters@murthalaw.com

Kristen L. Zaehring
203.653.5406
kzaehring@murthalaw.com

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