

Marijuana Testing in Employment

As of May 10, 2020, covered employers are not permitted to test job candidates for marijuana or tetrahydrocannabinols (THC) as a condition of employment. There are several exceptions, discussed further below, where testing job applicants for marijuana or THC for specific kinds of jobs is still permitted.

Q. May an employer still test *current* employees for drug use, despite the prohibition on pre-employment testing for marijuana?

A. Yes. The law prohibits employers from testing job applicants for marijuana or THC, with some exceptions. However, it does not change employers' ability to drug test current employees.

Q. May an employer discipline its employees for bringing drugs to the workplace or for coming to work under the influence of marijuana or THC?

A. Yes. The law does not limit employers' ability to ensure that their workplaces remain drug-free through policies, discipline, and other measures.

There are some exceptions to this law. Employers may require tests for job applicants applying for specific types of jobs. Testing is permissible where:

1. Required by the U.S. Department of Transportation under 49 C.F.R. Part 40 or related state and local rules (e.g., flight crew and train dispatchers)¹;
2. Required by the federal government as a condition of receiving a contract or grant;
3. Required by federal or state law "for purposes of safety or security";
4. A collective bargaining agreement includes terms related to pre-employment drug testing of job applicants;
5. The position falls into one of these categories:
 - Police officers
 - Peace officers²
 - Law enforcement or investigative positions at the NYC Department of Investigation
 - Positions covered by New York City Building Code § 3321, which covers certain workers at building sites
 - Positions covered by New York Labor Law § 220-h, which covers certain workers at public work sites
 - Positions requiring a commercial driver's license
 - Positions supervising or caring for children
 - Positions supervising medical patients

¹ For a list of employees covered by 49 C.F.R. Part 40, see the U.S. Department of Transportation website:

https://www.transportation.gov/odapc/employees_covered_under_DOT_testing_regulation_49_CFR_Part_40.

² As defined in New York Criminal Procedure Law § 1.20.

- Positions supervising vulnerable persons³

The Commission adopted rules, effective July 24, 2020, that expand the list of exceptions to include the following positions:

- Positions that regularly work on active construction sites
- Positions that regularly operate heavy machinery
- Positions that regularly work on or near power or gas lines
- Positions that drive motor vehicles on most work shifts
- Positions that fuel an aircraft, provide information regarding aircraft weight and balance, or maintain or operate aircraft support equipment
- Positions where drug impairment would pose an immediate risk of death or serious physical harm to the employee or to other people

For claims arising between May 10, 2020 and July 24, 2020, the Commission will not be filing enforcement actions related to the above-listed positions.

If you believe you have been asked to undergo testing for marijuana or THC in violation of the law, we can help. Contact the NYC Commission on Human Rights by calling 311 or call the Commission's Infoline directly at (212) 416-0197. For more information, visit [NYC.gov/HumanRights](https://www.nyc.gov/HumanRights).

³ As defined in New York Social Services Law § 488(15).