


SEPTEMBER 22, 2015 | STATE & LOCAL TRENDS

D.C. Pre-Employment Marijuana Testing – Are your Employment Applications Compliant?


BY JORDAN B. SCHWARTZ

As states continue to pass legislation legalizing medical marijuana and with nearly twenty states passing laws decriminalizing the use of marijuana in some capacity, employers often inquire as to how they should consider marijuana use during the employment screening process. Nowhere is this the case more than here in the nation's capital.

In an effort both to move forward with greater protection for marijuana users and provide employers with guidelines for protecting the rights of recreational marijuana users, the District of Columbia passed the [Prohibition of Pre-Employment Marijuana Testing Act of 2015](#) (the "Act"), which went into effect on August 14, 2015. The Act could have a significant impact on employer's drug testing practices in the District, and  could require revisions to current policies and practices.

As the name implies, the Act prohibits D.C. employers from testing prospective employees for marijuana in the "pre-employment" stage – that is, prior to the extending of a conditional job offer. As a result, it is now unlawful for an employer in D.C. to test a job applicant for marijuana use until after he or she has received a conditional offer of employment. Notably, the Act does not provide for any exceptions. Thus, an employer cannot require that an applicant submit to a drug test for marijuana even if the position that the applicant is seeking involves safety or security concerns for which the applicant's usage of marijuana could be a disqualifying factor.

The Act does not, however, prohibit employers from requiring that prospective employees submit to a drug test *after* a conditional job offer has been extended, nor does it prevent employers from mandating that employees adhere to all workplace policies – including that of a drug free workplace – after an employee has been hired. Thus, the primary effect of the Act is to delay the timing of any pre-employment drug test until later in the hiring process. Therefore, DC employers should review their application process to ensure that they are in compliance with this new law.

While the Act is in some ways groundbreaking legislation, it is important to keep in mind that it only restricts an employer's conduct prior to its extension of a conditional offer. Once such an offer is extended, the Act is no longer relevant. In other words, the Act does not purport to (i) permit the use of marijuana in the workplace; (ii) restrict an employer from taking disciplinary action if an employee appears to be "under the influence" while at work or (iii) nullify an employer's policies restricting the use of marijuana by employees. Indeed, the Act does not  create any additional protections for employees while they are at work.

Therefore, DC employers should continue to feel free to promulgate and enforce rules prohibiting employees from bringing marijuana with them to their place of work and/or being under the influence of marijuana while at work. DC Employers are also free to enforce zero-tolerance policies, and may lawfully terminate any employee or deny a position to a prospective employee based on a positive test for marijuana, so long as such a denial does not occur prior to the extension of a conditional job offer.