

# Employment Update: City of Pittsburgh Protects Medical Marijuana Card Holders from Discrimination and Certain Drug Tests

On September 24, 2024, the City of Pittsburgh amended its Discrimination Ordinance to add that a medical marijuana patient is considered a protected class from discrimination<sup>1</sup>. The Ordinance further prohibits employers from discrimination in hiring or employment because of the employee's status as a medical marijuana patient which includes requiring "pre-employment testing for marijuana and such testing during the course of employment as a condition of the employee's employment."

This means that most City employers cannot test for marijuana during pre-employment testing and can only test during employment when an exception applies.

The prohibitions on testing for medical marijuana do not apply to:

- 1) any position subject to the drug testing regulations of the U.S. Department of Transportation or the PA Department of Transportation;
- 2) any position that requires an employee to carry a firearm;
- 3) those positions subject to a collective bargaining agreement that specifically addresses pre-employment drug testing.

Employers may still test for marijuana and take disciplinary action when an employee is under the influence of marijuana while working where the conduct falls below the standard of care for the position. Further, employers may test when a supervisor has reasonable cause to suspect an employee of being under the influence at work and after a workplace accident.

Adopting provisions of the Pennsylvania Medical Marijuana Act, the Ordinance prohibits patients from dealing with chemicals or high-voltage electricity, or to perform duties at heights or confined spaces while under the influence. In addition, an employer can prohibit a medical marijuana patient from performing "any duty which could result in a public health or safety risk while under the influence of medical marijuana." Under the Ordinance, employers are not required to allow employees to use medical marijuana while at work. Additionally, the Ordinance shall not require an employer to commit any act in violation of Federal or Pennsylvania laws.

City employers should revise their discrimination and drug testing policies to add medical marijuana patients as a protected class from discrimination and revise their drug testing policies to eliminate testing for marijuana except in the circumstances provided for under the Ordinance.



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## Questions

If you have questions you would like to discuss with respect to exemptions or any other employment issue, please contact one of the employment attorneys listed below.

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<sup>1</sup> “It shall be the public policy of the City to prohibit discrimination because of race, color, religion, ancestry, national origin, place of birth, sex, sexual orientation, gender identity, gender expression, familial status, status of a victim of domestic violence, age, nonjob-related handicap, or disability in employment, or status as a medical marijuana patient.”