

New Jersey Cannabis Regulatory Commission’s Rules Do Not Address Standards For Workplace Marijuana Testing

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The New Jersey Cannabis Regulatory Commission (the “Commission”) published the first set of rules and regulations on August 19, 2021 governing recreational cannabis use in New Jersey (“Personal-Use Cannabis Rules”) under the Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (“CREAMMA”). Those regulations do not include standards for employers to utilize a Workplace Impairment Recognition Expert prior to conducting marijuana drug testing.

Marijuana was legalized for recreational purposes in New Jersey in February 2021. (See our earlier blog post [here](#)). Under CREAMMA, adult use of marijuana is legal and New Jersey employees are afforded certain protections with regard to off-duty use. While employers are permitted to test for marijuana under certain circumstances, the CREAMMA imposes a new requirement that work-related marijuana testing include a physical examination conducted by an expert – a Workplace Impairment Recognition Expert (“WIRE”) – trained to recognize drug impairment. CREAMMA further directs the Commission to establish a certification program for those experts.

The Commission’s 160-page Personal-Use Cannabis Rules largely address the cannabis industry and remain virtually silent as to employer drug testing. However, the Personal-Use Rules do temporarily waive CREAMMA’s “physical examination” requirement until the Commission, in consultation with the Police Training Commission, “develops standards for a Workplace Impairment Recognition Expert certification.” § 17:30-2.1 (e) of the Personal-Use Cannabis Rules. Until then, employers are not required to conduct a physical evaluation of an employee for drug testing purposes.

The Commission did not indicate how long it will take to develop the certification standards or when employers can expect regulations addressing marijuana testing. In the meantime, New Jersey employers who test or wish to test applicants and employees for marijuana use should consult with counsel to review their drug testing policies and procedures.

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