

# New Jersey Cannabis Regulatory Commission's Rules and Regulations for CREAMMA Are Here: What Employers Need to Know

Article By:

Mark Diana

Michael J. Riccobono

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As we previously [reported](#), on February 22, 2021, Governor Phil Murphy signed into law the [New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act](#) (CREAMMA), which, among other things, legalized the recreational use of marijuana in New Jersey for adults age 21 and older. In addition, CREAMMA imposed on employers certain obligations with respect to marijuana and the workplace, including certain antidiscrimination and drug testing provisions.

CREAMMA provides that while its employment-related provisions became “effective” immediately upon the enactment of the law, they are not “operative” until the Cannabis Regulatory Commission (CRC) adopts its initial rules and regulations. In this regard, one of CREAMMA’s impending requirements is that an employer use a Workplace Impairment Recognition Expert (WIRE) to conduct a “physical evaluation” of an individual who is drug tested for marijuana.

CREAMMA directed the CRC to prescribe certain “standards” for the “certification” a WIRE must obtain in order to meet the qualifications for “detecting and identifying an employee’s usage of, or impairment from, a cannabis item or other intoxicating substance, and for assisting in the investigation of workplace accidents.” Employers have been hoping that these standards will also answer several questions relating to the new WIRE requirement, for instance: At what point does the WIRE become involved in the drug testing process? What is the nature and extent of the WIRE’s involvement in the drug testing process? What weight does the WIRE’s opinion or decision carry with respect to the employment decision at issue?

On August 19, 2021, the CRC published its [first set of rules and regulations](#), titled the “Personal Use Cannabis Rules,” governing recreational cannabis under CREAMMA. The Personal Use Cannabis Rules have two important implications for employers doing business in New Jersey.

First, with respect to CREAMMA’s WIRE requirement, the Personal Use Cannabis Rules unfortunately do not include the standards for WIRE certification or answer any of the open questions noted above. Instead, the CRC’s 160-page Personal Use Cannabis Rules merely state that “until

such time that the Commission, in consultation with the Police Training Commission ... develops standards for a [WIRE] certification, no physical evaluation of an employee being drug tested in accordance with [CREAMMA] shall be required.” The Personal Use Cannabis Rules also do not provide any guidance with respect to any of the other employment-related aspects of CREAMMA.

Second, the adoption of the Personal Use Cannabis Rules makes clear that, as of August 19, 2021, New Jersey employers are prohibited from taking adverse action against an individual *solely* because he or she does or does not use marijuana or because he or she fails a drug test for marijuana. In other words, an employer may not discharge or refuse to hire an employee solely because he or she fails a drug test for marijuana; instead, it appears that pursuant to CREAMMA, an employer would need to rely upon some other lawful reason, such as the employee’s having engaged in some prohibited conduct under the employer’s policies or the law, to take these actions.

New Jersey employers must now await further instruction and guidance from the CRC with respect to the WIRE requirement and the many other open questions under CREAMMA that we identified above. In the meantime, New Jersey employers will not be required to conduct a physical evaluation of an individual when drug testing for marijuana and may proceed with their normal drug-testing procedures in accordance with applicable law, including the obligations and restrictions that exist under CREAMMA, as mentioned above.

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National Law Review, Volume XI, Number 244

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