

# California Enacts Law Prohibiting Employment Discrimination Based On Off-Duty Marijuana Use, Effective 2024

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Governor Gavin Newsome signed into law September 19, 2022 several measures relating to marijuana, including [one that prohibits employment discrimination](#) based on off-duty use of marijuana. The law takes effect on January 1, 2024.

The law will prohibit an employer from discriminating against a person in hiring, termination, or any term or condition of employment, if the discrimination is based on:

- The person's use of cannabis off the job and away from the workplace. This paragraph does not prohibit an employer from discriminating in hiring, or any term or condition of employment, or otherwise penalize a person based on scientifically valid preemployment drug screening conducted through methods that do not screen for nonpsychoactive cannabis metabolites.
- An employer-required drug screening test that has found the person to have nonpsychoactive cannabis metabolites in their hair, blood, urine, or other bodily fluids.

The law further notes that:

Tetrahydrocannabinol (THC) is the chemical compound in cannabis that can indicate impairment and cause psychoactive effects. After THC is metabolized, it is stored in the body as a nonpsychoactive cannabis metabolite. These metabolites do not indicate impairment, only that an individual has consumed cannabis in the last few weeks. . . . While there is consensus that an employee should not arrive at a worksite high or impaired, when most tests are conducted for cannabis, the results only show the presence of the nonpsychoactive cannabis metabolite and have no correlation to impairment on the job.

As science has improved, employers now have access to multiple types of tests that do not rely on the presence of nonpsychoactive cannabis metabolites. These alternative tests include impairment tests, which measure an individual employee against their own baseline performance and tests that identify the presence of THC in an individual's bodily fluids.

The law does not further define “nonpsychoactive cannabis metabolites” and it is unclear what “alternative tests” are being referred to as “tests that do not rely on the presence of nonpsychoactive cannabis metabolites.” While drug tests are being developed to detect recent use of cannabis, at the present time, such tests are not available.

The law does not apply to employees in the building and construction trades. It also does not apply to applicants or employees hired for positions that require a federal government background investigation or security clearance in accordance with regulations issued by the U.S. Department of Defense or equivalent regulations applicable to other agencies. The law also does not preempt state or federal laws requiring drug testing of applicants and employees, including law and regulations requiring applicants or employees to be tested, or the manner in which they are tested, as a condition of employment, receiving federal funding or federal licensing-related benefits, or entering into a federal contract.

Employers should review their drug testing policies to ensure that their practices will comply with the new law by the time it takes effect.

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National Law Review, Volume XII, Number 263

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