

# Living the High Life: Separation of Work and Home?

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Count California as one of the states that will soon protect the recreational usage of cannabis for employment purposes. Assembly Bill 2188 (“AB 2188”) will prohibit employers from discriminating in hiring, termination, or any term or condition of employment, or otherwise penalizing a person for cannabis usage off the job and away from the workplace. Employers also cannot discriminate on the basis of a drug screening test that determines that an individual has *non-psychoactive* cannabis metabolites in their hair, blood, urine, or other bodily fluids.

However, employees should not take this as *carte blanche* to light up with reckless abandon. For starters, this law does not take effect until January 1, 2024. Furthermore, for employees who require a federal government background investigation or security clearance, or for those in the building and construction trades, this new law does not protect them. And all other employees still aren’t allowed to possess, be impaired by, or use, cannabis on the job. Nor are they allowed to engage in any cannabis related behaviors prohibited by law such as driving while impaired, or providing cannabis or cannabis products/accessories to anyone under 21 years of age.

## *The Future of Cannabis Drug Testing*

AB 2188 also changes the way employers should administer cannabis related drug tests. The intent of a drug test is to identify employees who are impaired. Most cannabis related drug test results only show the presence of a *non-psychoactive* cannabis metabolite that has no correlation to a person’s impairment. Therefore, AB 2188 does not prevent employers from refusing to hire a prospective employee, or penalizing existing employees, as a result of a scientifically valid pre-employment drug screening conducted through methods that *do not screen* for *non-psychoactive* cannabis metabolites.

## *A New Dawn*

It’s clear that in a number of states, and now in California, the ingestion of cannabis while off-duty is, for all intents and purposes, no longer an employer’s business. While this is still a developing issue, employers should spend the next 15 months preparing to understand what their future cannabis related drug testing options and protocols will be so that they are ready when AB 2188 becomes effective on January 1, 2024.

SACRAMENTO - Governor Newsom signed several new cannabis bills into law, including one that bans companies from testing employees for marijuana.

<https://www.cbsnews.com/sacramento/news/gov-newsom-signs-bill->

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