

Washington State law prohibiting pre-employment testing for marijuana

As of January of next year Washington State law prohibits preemployment testing for marijuana except for the exceptions below. Note this does not affect any position in a safety-sensitive position as defined by USCG and DOT regulations. **I strongly advise you to discuss this law with your employment attorney to determine which jobs fall under the law's definition of "Safety-Sensitive."**

I am sure that the "Safety-Sensitive" position definitions as determined by companies will end up to be resolved in court. Eventually, there will be an applicant that was denied employment when the company declared the applicant's job was safety-sensitive and the applicant denied employment. Then the applicant finds an attorney who will fight the company's definition of "Safety-Sensitive."

The other side would be when another employee, customer or other injured party and the employee was not tested for marijuana and should have been declared in a "Safety-Sensitive" position.

The new law makes it unlawful for an employer to "discriminate against a person in the initial hiring for employment" if the discrimination is based upon either (i) "the use of cannabis off the job and away from the workplace."

Employers that conduct pre-employment testing must not test for marijuana, except for the following exceptions:

- When testing for purposes other than pre-employment testing;
- When employers use "scientifically valid" testing in pre-employment screenings that do not screen for marijuana metabolites;
- When state or federal law requires the applicant to be tested or dictates the way tests are administered, as a condition of employment, receiving federal funding or federal-licensing-related benefits, or as required by a federal contract; or
- When an applicant seeks a position: (i) requiring a federal government background investigation and security clearance; (ii) involving work with public safety agencies such as law enforcement agencies, fire departments, and first responders (including dispatchers); (iii) as a corrections officer; (iv) within the airline or aerospace industries;
- And/or (v) another "safety sensitive" position. "Safety sensitive" positions are defined as those "for which impairment while working presents a substantial risk of death." Employers will be required to identify which positions they consider safety-sensitive prior to the applicant's application for employment.

Please let me know what your employment attorney has defined as your personnel in safety-sensitive positions and why.

My regards,

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