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Last Fridays “Lunch and Learn” Webinar:
Say Goodbye to Pre-Employment Marijuana
Testing in NYC

Introductory Statement

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Overview

- ◆ On April 9, 2019, the New York City Council passed legislation that bans pre-employment testing for the presence of any marijuana or tetrahydrocannabinols (THC), the active ingredient in marijuana.
- ◆ If Intro 1445-A becomes law, it will be the first of its kind in the United States. Mayor Bill de Blasio is expected to sign the bill. The new law will take effect one year after signing.

The Movement to Legalize Marijuana

- ◆ In 2014, New York State legalized medical marijuana by enacting the Compassionate Care Act.
- ◆ In 2018, both New York Governor Andrew Cuomo and Mayor de Blasio released reports finding the benefits of a regulated recreational marijuana market outweighed the potential negative aspects.
- ◆ Since then, Governor Cuomo continues to call upon the state legislature to legalize recreational marijuana in New York before the June conclusion of the 2019 legislative session.

Highlights

- ◆ The new law will amend the New York City Human Rights Law and provides that:
 - “Except as otherwise provided by law, it shall be an unlawful discriminatory practice for an employer, labor organization, employment agency, or agent thereof to require a prospective employee to submit to testing for the presence of any tetrahydrocannabinols or marijuana in such prospective employee’s system as a condition of employment.”

New York City's View

- ◆ "Prospective employers don't test for alcohol, so marijuana should be no different. But in no way does this bill justify individuals going to work under the influence," said Jumaane Williams, New York City's public advocate and the legislation's sponsor.
- ◆ He added, "We need to be creating more access points for employment, not less, and, as we push for legalization on a state level, it makes absolutely no sense that we're keeping people from finding jobs or advancing their careers because of marijuana use."

Exceptions

- ◆ The legislation contains numerous exceptions.
- ◆ Marijuana testing will still be permitted for those applying for jobs as:
 - Police officers or peace officers;
 - In any position requiring individuals who require OSHA 10 training to work on construction sites;
 - In any position requiring a commercial driver's license;
 - In any position requiring the supervision or care of children, medical patients, or vulnerable persons;
 - In any position with the potential to significantly impact the health or safety of employees or members of the public;

Exceptions Continued

- ◆ Pre-employment marijuana testing is still permitted in the following types of work:
 - Where any regulation promulgated by the federal department of transportation requires testing of a prospective employee;
 - Where any contract entered into between the federal government and an employer or any grant of financial assistance from the federal government to an employer requires drug testing of prospective employees as a condition of receiving the contract or grant
 - Where any federal or state statute, regulation, or order requires drug testing of prospective employees for purposes of safety or security; or
 - Where any applicants whose prospective employer is a party to a valid collective bargaining agreement specifically addressing the pre-employment drug testing of such applicants.

Current Employee Testing

- ◆ The legislation permits employers to drug-test current employees.
- ◆ If employers want to continue pre-employment drug testing, they should reach out to vendors and see if they can provide testing for drugs other than marijuana.
- ◆ Employers should start thinking about their workforce and begin to determine who performs work that may pose a health or safety risk to themselves or the public.

Next Steps

- ◆ The bill awaits the Mayor de Blasio's signature, which his spokesperson reportedly said is imminent.
- ◆ New York City employers should review their drug testing policies and practices, employment applications, offer letters, and other documents pertaining to pre-employment drug testing.
- ◆ More legislation similar to New York City's may continue to gain momentum and show up throughout the state and other localities.

THANK YOU

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