



New York City Council Passes Ban on Pre-Employment Testing for Marijuana, SHRM, ft. Keith Gutstein

The New York City Council passed legislation April 9 that bans pre-employment testing for marijuana by a veto-proof margin of 40-4. Regardless, Mayor Bill de Blasio was expected to sign it, according to Patrick Collins, an attorney with Ogletree Deakins in New York City. The bill, which will take effect a year from enactment, includes many exceptions. In addition, employers in the Big Apple still may test current employees for marijuana.

Exceptions

Collins noted the legislation's numerous exceptions. He said marijuana testing still will be permitted for those applying to be:

- Construction workers.
- Police officers.
- Commercial drivers.
- Teachers, teachers' aides or day care center employees.
- In any position requiring the supervision or care of patients in a medical, nursing home or group care facility.
- In any position with the potential to significantly impact the health or safety of employees or members of the public.

The legislation also permits marijuana testing if an applicant seeks a job for which pre-employment drug testing is required by federal law, which includes interstate truckers, drivers of large vehicles, gas pipeline employees and gas utility workers, such as those who read gas meters.

Keith Gutstein, an attorney with Kaufman Dolowich Voluck in Long Island, N.Y., criticized the exceptions as too vague. Moreover, he said that the legislation seems premature because recreational marijuana is not legal in New York state. Medical marijuana, however, is lawful in the state.