

Philadelphia Enacts Ordinance to Prohibit Pre-Employment Marijuana Testing

Law and the Workplace Blog on January 5, 2022

Effective January 1, 2022, [Phila. Code § 9-5500](#) now prohibits Philadelphia employers from requiring job applicants to submit to pre-employment drug tests for marijuana use. Specifically, the ordinance makes it an unlawful employment practice for an employer, labor organization, or employment agency (or agent thereof) to require prospective employees to submit to testing for the presence of marijuana as a condition of employment.

Several categories of applicants are exempt from the law, including: (i) police officers and other law enforcement positions; (ii) positions requiring a commercial driver's license; (iii) positions requiring the supervision or care of children, medical patients, disabled or other vulnerable individuals; and (iv) positions in which the employee could significantly impact the health or safety of other employees or members of the public, as determined by the enforcement agency.

In addition, the law does not apply where drug testing is required pursuant to:

- any federal or state law, regulation, or order that requires drug testing of prospective employees for “purposes of safety or security;”
- any contract between the federal government and an employer or any grant of financial assistance from the federal government to an employer that requires drug testing of prospective employees as a condition of receiving the contract or grant; or
- any applicants whose prospective employer is a party to a valid collective bargaining agreement that “specifically addresses the pre-employment drug testing of applicants.”

The ordinance authorizes the Philadelphia Commission on Human Relations to promulgate implementing regulations, though further guidance has not yet been issued. Philadelphia is not the first city to enact pre-employment drug testing restrictions, and will likely not be the last. As of May of 2020, [New York City](#) prohibits most City employers from requiring prospective employees to submit to marijuana drug testing as a prerequisite for employment. In a similar vein, [Nevada](#) employers are prohibited from failing or refusing to hire a prospective employee because the individual submitted to a pre-hire drug screening and the test indicated the presence of marijuana.

We will continue to report on developments relating to this ordinance, in addition to developments relating to pre-employment drug restrictions across other cities and states. In the meantime, employers in Philadelphia should review their hiring processes to ensure compliance with these new requirements.

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