



www.njbia.org/recovery

December 1, 2020

RE: New Jersey Workplace Regulation of Marijuana

Dear Member of the Legislature,

As the leaders of the Garden State's major business associations, we write to you regarding the two versions of the Employer Protection Sections in the recreational cannabis legalization bills, A-21 / S-21. ***Recent amendments to these bills further weaken the workplace safety provisions contained in the original legislation.***

Currently, the legislation is calling for the use of Drug Recognition Experts (DREs). A business will essentially need to hire or train a DRE to determine if an employee is in fact impaired. This will place additional burdens and costs on the business community. Furthermore, the New Jersey Supreme Court is currently hearing a case to determine whether DRE testimony is even admissible in court.

As you determine how best to balance individual employee rights with the needs of employers to protect their employees and the public, it is useful to know what other states are doing with respect to workplace safety. As you will see below, most states that have legalized recreational marijuana allow employers to prohibit off-duty recreational marijuana use by employees, or allow an employer to drug test current and prospective employees. Moreover, it does not appear that DREs have been adopted in any other state as a means for employers to identify impaired employees in the workplace.

Our request of you is to protect the rights of our employer community to maintain a drug-free workplace, and thus both worker and public safety, without increasing the burdens on a business community that has been severely impacted by COVID-19 over the last nine months. Given the fact that we are for the first time legalizing recreational marijuana, we must proceed cautiously and err on the side of workplace safety.

We thank Senate Budget Chairman Sarlo for pushing for these workplace protections, and we hope we can find a compromise similar to what he wants and most other states have adopted.

Marijuana Workplace Safety in Legalized States

- **Alaska**
 - Employers can have a zero-tolerance policy prohibiting their employees from using marijuana¹
- **Colorado**
 - Employers are allowed to test for marijuana and make employment decisions based on drug test results²
- **California**
 - Within California Health and Safety Code:
 - "Section 11362.1 does not amend, repeal, affect, restrict, or preempt....The rights and obligations of public and private employers to maintain a drug and alcohol free workplace...or affect the ability of employers to have policies prohibiting the use of cannabis by employees and prospective employees...."³

¹ <http://dhss.alaska.gov/dph/Director/Documents/marijuana/ResponsibleConsumerFactBook.pdf>

² <https://www.colorado.gov/pacific/marijuana/laws-about-marijuana-use>

³ https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=HSC&division=10.&title=&part=&chapter=6.&article=2.

- Pre-employment testing is allowed. You may not require current employees to submit to random drug testing, except under certain narrowly defined circumstances.⁴
- **Illinois**
 - Cannabis Regulation and Taxation Act
 - "...nothing in this Act prevents a public employer of law enforcement officers, corrections officers, probation officers, paramedics, or firefighters from prohibiting or taking disciplinary action for the consumption, possession, sales, purchase, or delivery of cannabis or cannabis-infused substances while on or off duty, unless provided for in the employer's policies."
 - "Nothing in this Act shall be construed to create or imply a cause of action for any person against an employer for:
 - (1) actions taken pursuant to an employer's reasonable workplace drug policy, including but not limited to subjecting an employee or applicant to reasonable drug and alcohol testing, reasonable and nondiscriminatory random drug testing, and discipline, termination of employment, or withdrawal of a job offer due to a failure of a drug test;
 - (2) actions based on the employer's good faith belief that an employee used or possessed cannabis in the employer's workplace or while performing the employee's job duties or while on call in violation of the employer's employment policies;
 - (3) actions, including discipline or termination of employment, based on the employer's good faith belief that an employee was impaired as a result of the use of cannabis, or under the influence of cannabis, while at the employer's workplace or while performing the employee's job duties or while on call in violation of the employer's workplace drug policy...."
- **Maine**
 - An Act to Legalize Marijuana⁵
 - "School, employer or landlord may not discriminate. A school, employer or landlord may not refuse to enroll or employ or lease to or otherwise penalize a person 21 years of age or older solely for that person's consuming marijuana outside of the school's, employer's or landlord's property."
- **Massachusetts**
 - Massachusetts General Law⁶
 - "...This chapter shall not require an employer to permit or accommodate conduct otherwise allowed by this chapter in the workplace and shall not affect the authority of employers to enact and enforce workplace policies restricting the consumption of marijuana by employees."
- **Michigan**
 - Michigan Regulation and Taxation of Marihuana Act⁷
 - "This act does not require an employer to permit or accommodate conduct otherwise allowed by this act in any workplace or on the employer's property. This act does not prohibit an employer from disciplining an employee for violation of a workplace drug policy or for working while under the influence of marihuana. This act does not prevent an employer from refusing to hire, discharging, disciplining, or otherwise taking an

⁴ <https://www.calchamber.com/california-labor-law/drug-and-alcohol-testing>

⁵ http://lfdc.mainelegislature.org/Open/Laws/2015/2015_IB_c005.pdf

⁶ <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXV/Chapter94G/Section2>

⁷ [https://www.legislature.mi.gov/\(S\(nmdgppbj1ophhijr0bqtrc\)\)/mileg.aspx?page=getObject&objectName=mcl-333-27954&highlight=adverse](https://www.legislature.mi.gov/(S(nmdgppbj1ophhijr0bqtrc))/mileg.aspx?page=getObject&objectName=mcl-333-27954&highlight=adverse)

adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment because of that person's violation of a workplace drug policy or because that person was working while under the influence of marijuana.”

- **Nevada**
 - Title 56 Nevada Revised Statutes 678D⁸
 - “The provisions of this chapter do not prohibit.... A public or private employer from maintaining, enacting and enforcing a workplace policy prohibiting or restricting actions or conduct otherwise permitted under this chapter....”
- **Vermont**
 - (18 V.S.A. § 4230a)⁹: “Nothing in this section shall be construed to do any of the following...create a cause of action against an employer that discharges an employee for violating a policy that restricts or prohibits the use of marijuana by employees.”
 - (21 V.S.A. § 512)¹⁰: “An employer may require an applicant for employment to submit to a drug test only if all of the following conditions are met:
 - (1) Conditional offer of employment. The applicant has been given an offer of employment conditioned on the applicant receiving a negative test result.
 - (2) Notice. The applicant received written notice of the drug testing procedure and a list of the drugs to be tested. The notice shall also state that therapeutic levels of medically-prescribed drugs tested will not be reported. The notice required under this subdivision may not be waived by the applicant.
 - (3) Administration. The drug test is administered in accordance with section 514 of this title.”

Thank you again for your consideration of this important issue. Please contact Chrissy Buteas or Ray Cantor at NJBIA to discuss this further and answer any questions you may have at cbuteas@njbja.org or rcantor@njbja.org.

Sincerely,

Access to Care Coalition
African American Chamber of Commerce of New Jersey, Inc.
American Camp Association NY/NJ
New Jersey Camps Government Affairs Project
American Council of Engineering Companies of New Jersey
American Physical Therapy Association of New Jersey
Big I New Jersey
BioNJ
Burlington County Regional Chamber of Commerce
Bus Association of New Jersey
Cape May County Chamber of Commerce
Capital Region Minority Chamber of Commerce
Chamber of Commerce of Greater Philadelphia
Chamber of Commerce Southern New Jersey
CLB NJ
Commerce and Industry Association of New Jersey
CrossState Credit Union Association

⁸ <https://www.leg.state.nv.us/NRS/NRS-678D.html>

⁹ <https://legislature.vermont.gov/statutes/section/18/084/04230>

¹⁰ <https://legislature.vermont.gov/statutes/section/21/005/00512>

Downtown New Jersey
Early Childhood Education Advocates
Eastern Monmouth Area Chamber of Commerce
Employers Association of NJ
Fuel Merchants Associates of NJ
Garden State Pharmacy Owners, Inc
Global Business Alliance
Gloucester County Chamber of Commerce
Greater Toms River Chamber of Commerce
Greater Westfield Area Chamber of Commerce
Health Care Association of NJ
Hoboken Chamber of Commerce
Home Care & Hospice Association of New Jersey
Home Health Services Association of New Jersey
Hudson County Chamber of Commerce
Hunterdon County Chamber of Commerce
Independent Insurance Agents & Brokers of NJ
Insurance Council of New Jersey
Jersey Shore Partnership
Mahwah Regional Chamber of Commerce
Marine Trades Association of New Jersey
Middlesex County Regional Chamber of Commerce
Meadowlands Chamber
Monmouth Ocean Development Council
Morris County Chamber of Commerce
NAIOP-NJ
National Federation of Independent Business (NFIB)
Newark Venture Partners
Newark Alliance
Newark Regional Business Partnership
New Jersey Apartment Association
New Jersey Asphalt Pavement Association
New Jersey Association of Osteopathic Physicians and Surgeons
New Jersey Association of Mental Health & Addiction Agencies
New Jersey Builders Association
New Jersey Business & Industry Association
New Jersey Campground Owners and Outdoor Lodging Association
New Jersey Chemistry Council
New Jersey Civil Justice Institute
New Jersey Coalition of Automotive Retailers
New Jersey Concrete and Aggregate Association
New Jersey Council of County Colleges
New Jersey Dental Association
New Jersey Gasoline-Convenience-Automotive Association
New Jersey Hospital Association
New Jersey Hotel and Lodging Industry Association
New Jersey Independent Electrical Contractors Association
New Jersey LGBT Chamber of Commerce
New Jersey Liquor Store Alliance

New Jersey Motor Truck Association
New Jersey Pharmacists Association
New Jersey Podiatric Medical Society
New Jersey Realtors
New Jersey Restaurant & Hospitality Association
New Jersey Retail Merchants Association
New Jersey Salon and Spa Coalition
New Jersey Self Insurers Association
New Jersey Society of Certified Public Accountants
NJ Society of Optometric Physicians (NJSOP)
New Jersey State Chamber of Commerce
New Jersey State Funeral Directors Association
New Jersey State Veterans Chamber of Commerce
New Jersey Tourism Industry Association
New Jersey Utilities Association
New Jersey YMCA State Alliance
New Jersey Warehousemen & Movers Association
New Jersey Utilities Association
New York Shipping Association, Inc.
North Jersey Jewish Business Alliance
Ocean City Chamber of Commerce
Princeton Mercer Regional Chamber of Commerce
Recreational Fishing Alliance
Salem County Chamber of Commerce
Somerset County Business Partnership
Southern NJ Development Council
Southern Ocean County Chamber of Commerce
Statewide Hispanic Chamber of Commerce of NJ
Sussex County Chamber of Commerce
The United Boatmen of N.J.
Union Township Chamber of Commerce
Utility & Transportation Contractors Association
Washington Borough BiD

CC: Governor Phil Murphy