

Labor and Employment Alert: Nevada Protects Applicants from Marijuana Drug Tests

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Nevada is one of nine states to have “legalized” recreational marijuana use and one of 33 states to have “legalized” medical marijuana (marijuana use for any purpose remains illegal under federal law). Nevada also makes it unlawful to refuse to hire an applicant because he or she engages in the lawful use of any product outside the premises of the employer during nonworking hours if that use does not adversely affect the ability to perform his or her job duties. Until now, it was unclear whether that protection extended to off-duty marijuana use. In June 2019, Nevada became the first state to prohibit employers from refusing to hire an applicant who tests positive for marijuana use.

It is an unlawful employment practice to fail or refuse to hire an applicant because the applicant submitted to a screening test that revealed the presence of marijuana. A “screening test” means a test of a person’s blood, urine, hair or saliva to detect the general presence of a controlled substance or any other drug. If an employer requires an employee to submit to a screening test within the first 30 days of employment, the employee can submit to an additional screening test, at his or her own expense, to rebut the results of the initial screening test. The employer must accept and give appropriate consideration to the results of that second screening test.

The above prohibition does not apply if: (1) the applicant is applying for a position as a firefighter or EMT; (2) the position that requires the employee to operate a motor vehicle and federal or state law requires a screening test; (3) the position, in the determination of the employer, could adversely affect the safety of others; (4) the provision is inconsistent or in conflict with an employment contract or collective bargaining agreement; (5) the provision is inconsistent or in conflict with federal law; or (6) the position is funded by a federal grant.

The law becomes effective on January 1, 2020. Contact your Vorys lawyer if you have questions about workplace drug testing or state marijuana laws and their effect on your workplace.