



September 19, 2022

Governor Signs Legislation Making Cannabis Users a Protected Class of Employee

On September 18, Governor Newsom signed [AB 2188](#), which prohibits employers from discriminating in hiring, firing or setting conditions of employment based upon a person's use of cannabis away from the workplace; or, an employer-required drug screening test that has found the person to have non-psychoactive cannabis metabolites in their hair, blood, urine, or other bodily fluids.

Please note that, due to the extremely dangerous conditions presented on construction projects and long-standing contractual requirements our contractors must adhere to relating to drug free workplaces, we were successful in securing a broad exemption for the construction industry to this new law.

Simply, the measure contains language stating that the law *"does not apply to an employee in the building and construction trades."*

In addition, all employers can still refuse to hire an applicant based on a scientifically valid preemployment drug screening conducted through methods that do not screen for non-psychoactive cannabis metabolites. These alternative tests include impairment tests, which measure a person against their own baseline performance, and tests that identify the presence of active tetrahydrocannabinol (THC) in an individual's bodily fluids. THC is the chemical compound in cannabis that causes impairment. After THC is metabolized, it is stored in the body as non-psychoactive cannabis metabolites, which do not indicate impairment, only that an individual has consumed cannabis recently.

The bill does not preempt state or federal laws requiring applicants or employees to be tested for controlled substances as a condition of employment, receiving federal funding, or entering into a federal contract.

Finally, the bill does not permit an employee to possess, be impaired, or use cannabis on the job, nor does it affect the rights or obligations of an employer to maintain a drug and alcohol-free workplace.

AB 2188 takes effect on January 1, 2024.