



LAW OFFICES OF  
**CHRISTOPHER W. MILLER**  
ATTORNEY AT LAW

PROTECTING THOSE WHO PROTECT AND SERVE

## **CLIENT BULLETIN**

### **NEW CALIFORNIA LAW PROHIBITS WORKPLACE DISCRIMINATION FOR OFF-DUTY MARIJUANA USE**

**November 27, 2023**

Beginning January 1, 2024, California employers will be prohibited from discriminating against a person in hiring, dismissal, or any other term or condition of employment on the basis of the person's off-duty cannabis use. The new law – passed as AB 2188 – will prevent employers from discriminating against an applicant or employee who fails a drug test that detects “nonpsychoactive cannabis metabolites” in their hair or bodily fluids. Employment action can be taken only if the employee possesses, uses, or is impaired by cannabis on the job.

The law effectively prohibits testing for THC – the active ingredient in cannabis – because it requires employers to use a test that “do[es] not rely on the presence of nonpsychoactive cannabis metabolites” to determine impairment. There is no such test. Since THC metabolites can remain in the body for up to 30 days after cannabis use, any test currently available is unlikely to give definitive evidence of on-the-job use or impairment. The new law exempts the building and construction trades and any occupation subject to federal testing, such as truck drivers who have to meet U.S. Department of Transportation testing standards.

SB 700, also signed into law effective January 1 as part of a slew of permissive marijuana-related legislation, prohibits employers from asking about past marijuana use or convictions for marijuana use, sales or possession. In short, California employers may no longer rely on cannabis use as a criterion for hiring, testing, or disciplinary action unless an employee is actively impaired on the job.

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*Sacramento: 8950 Cal Center Drive, Suite 108 • Sacramento, CA 95826*  
*Bay Area: 825 Webster Street, Suite A • Fairfield, CA 94533*  
*(916) 382-4980 (O) • (916) 956-6361 (M) • (916) 368-5820 (F)*  
*cmiller@chrismillerlaw.net • www.chrismillerlaw.net*