



New Pittsburgh Ordinance Protects Workers Using Medical Cannabis: 4 Steps Employers Can Take Now

Insights

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Pittsburgh employers must prepare for new workplace protections for medical cannabis patients due to a new anti-discrimination ordinance that will likely be signed into law. The new rules would prohibit employers from discriminating against employees or job applicants – including by requiring drug testing as a condition of employment – based on the individual’s status as a certified medical cannabis cardholder. We’ll explain everything you need to know and give you four steps you can take to prepare for the rules to take effect.

What Happened?

The Pittsburgh City Council unanimously passed an ordinance yesterday that aims to protect medical cannabis patients from workplace discrimination. The ordinance, which is expected to be signed into law by Mayor Ed Gainey, addresses a murky area of the law after the state legalized medical cannabis use but did not outright prohibit employers from requiring medical cardholders to test for cannabis during the pre-employment process or course of their employment.

Who Must Comply?

The new rules generally would apply to:

- **employers that have five or more employees** (excluding religious, fraternal, charitable, or sectarian organizations not supported by any governmental appropriations);
- **employment agencies;** and
- **labor organizations.**

What Does the Ordinance Prohibit?

The new rules would prohibit employers from discriminating against any current or prospective employee based on their status as a “medical marijuana patient,” which means any individual who:

- qualifies for medical marijuana use based on “a serious medical condition, disability or handicap;” and

- is certified under the Pennsylvania Medical Marijuana Act to access marijuana for a certified medical use.

The ordinance explicitly bans employers from discriminating against medical cannabis patients by requiring pre-employment testing or testing during employment as a condition of employment. If enacted, workers could file complaints through the city's Commission on Human Relations if they believe they experienced workplace discrimination because of their lawful use of or access to medical cannabis.

Are There Any Exceptions?

Yes. The new rules would carve out important exceptions, as detailed below.

Exceptions for Certain Jobs or Professions.

The ordinance does not apply to:

- any position subject to drug testing due to **regulations of the state or federal transportation departments;**
- any position that requires the employee to **carry a firearm;** or
- any applicants whose prospective employer is a party to valid **collective bargaining agreement that specifically addresses pre-employment drug testing** for such applicants.

Job Restrictions for Medical Cannabis Patients

In line with the state's Medical Marijuana Act, covered patients:

- may not, while under the influence with more than 10 nanograms of active THC in their blood, operate or be in physical control of **certain chemicals, high-voltage electricity, or any other public utility;**
- may not perform any employment duties at heights or in confined spaces (such as **mining**) while under the influence of medical cannabis;
- may be prohibited by an employer from performing any task that the employer deems **life-threatening**, to either the applicable employee or any other employee, while under the influence of medical cannabis; and
- may be prohibited by an employer from performing any duty that could result in a **public health or safety risk** while under the influence of medical cannabis.

Permitted Employer Actions

In addition, employers may:

- **take disciplinary action** against an employee who is a medical cannabis patient if they are working while under the influence and their conduct falls below the standard of care normally accepted for that position;
- **prohibit use of medical cannabis on workplace property.**
- **test medical cannabis patients for illegal use of controlled substances;**
- **conduct for-cause drug testing** if supervisors have reasonable cause to suspect an employee of being under the influence of a drug while at work; and
- **perform drug tests after a workplace accident.**

The ordinance also clarifies that employers are never required to commit any acts that would put them (or anyone acting on their behalf) in violation of state or federal law.

What Should You Do?

If you are an employer in Pittsburgh, you should prepare for the new rules to be signed into law by taking the following steps:

- **Update Your Policies.** Review your hiring and employment policies and revise them as needed to comply with the new rules. Make sure that you do not condition continued employment or an offer of employment on testing for cannabis if you know the individual holds protected medical cannabis patient status under the new rules.
- **Note the Exceptions.** Keep in mind that the new rules do not protect certain individuals, such as those holding certain specified jobs or applying for a job covered by a labor agreement requiring pre-employment drug testing. And employers may continue to take disciplinary action in some situations – for example, you may terminate a worker for being under the influence of medical cannabis during work hours if their conduct does not meet the position’s normally accepted standard of care.
- **Train Your Managers.** Your management and hiring personnel should be educated on the new rules, including when testing for cannabis is prohibited and when employment decisions affecting medical cardholders could be deemed discriminatory.
- **Seek Guidance.** These complex and evolving requirements highlight the importance of working with experienced legal counsel before firing or refusing to hire a worker based on medical cannabis use.

Conclusion

We will continue to monitor this development, so make sure you are subscribed to [Fisher Phillips’ Insight System](#) to receive the most up-to-date information directly in your inbox. If you have any questions, we encourage you to reach out to the author of this article, your Fisher Phillips attorney, or any attorney in our [Pittsburgh office](#).

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