DISCRIMINATION IN EMPLOYMENT: USE OF CANNABIS

FAQ

The Civil Rights Department (CRD) enforces California laws that protect people from discrimination, harassment, and other civil rights violations. Beginning January 1, 2024, a California law known as the Fair Employment and Housing Act includes certain protections for California workers who use cannabis – commonly known by terms such as "weed" or "pot" – off the job and away from the workplace. Below are answers to frequently asked questions about these protections and important exceptions.

IMPORTANT

The protections described in this FAQ:

- **Do not allow someone to possess, be impaired by, or use cannabis at the workplace or while working[1]**
- **Do not impact an employer's legal right or obligation to maintain a drug-free workplace, screen for other controlled substances, or make employment decisions based on those screenings when allowed under California or federal law[2]**
- **Apply to most, but not all, California workers**

WHEN APPLYING FOR A JOB

1 | May an employer ask a job applicant if they have used cannabis before?

Generally, no. California employers cannot ask a job applicant about their past use of cannabis.[3] However, these protections do not apply if the employer has four or fewer employees, or the position involves a federal background investigation or security clearance.[4]

2 | May an employer run a background check on a job applicant?

Yes, an employer may run a background check on a job applicant. But if the employer has five or more employees, the employer must comply with a California law known as the Fair Chance Act.[5] If an employer conducts a lawful background check that reveals information related to prior cannabis use, the employer may consider that information if permitted by the Fair Chance Act or another state or federal law. For more information about the Fair Chance Act, visit https://bit.ly/crdfairchanceact.

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1 Gov. Code § 12954(d)
2 Gov. Code § 12954(d), (e)
3 Gov. Code § 12954(b)
4 Gov. Code § 12954(f)
5 Gov. Code § 12952

3 | May an employer discriminate against a job applicant who uses cannabis off the job and away from the workplace?

Generally, no. California employers cannot deny someone a job or otherwise discriminate against a job applicant because the person uses cannabis off the job and away from the workplace.[6] However, these protections do not apply if the employer has four or fewer employees or the position involves a federal background investigation or security clearance.[7]

4 | May an employer discriminate against a job applicant based on a drug test showing they used cannabis?

It depends. Generally, most employers cannot deny someone a job or otherwise discriminate against them because their drug test shows the presence of non-psychoactive cannabis metabolites.[8] Non-psychoactive cannabis metabolites are substances in a person's hair, blood, urine, or other bodily fluid that indicate the person used cannabis at some point in the past. If, however, a scientifically valid drug screening test shows the presence of psychoactive THC, or other substances screened for pursuant to state or federal law, the employer may be allowed to deny someone a job on that basis. Moreover, these protections do not apply if the employer has four or fewer employees or the position involves a federal background investigation or security clearance.[9]

5 | May an employer require all job applicants to take a drug test?

Yes, employers may still require all job applicants to take a drug screening test.

DURING EMPLOYMENT

6 | May an employer discriminate against a current employee who uses cannabis off the job and away from the workplace?

Generally, no. California employers cannot fire, penalize, or otherwise discriminate against an employee based on the person's use of cannabis off the job and away from the workplace.[10] However, these protections do not apply if the employer has four or fewer employees, the position involves a federal background investigation or security clearance, or the employee is in the building or construction trades.[11]

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6 Gov. Code § 12954(a)(1)
7 Gov. Code § 12954(f)
8 Gov. Code § 12954(a)(1)
9 Gov. Code § 12954(f)
10 Gov. Code § 12954(a)(1)
11 Gov. Code § 12954(f), (a)(2)

7 | May an employer discriminate against a current employee based on a drug test showing they used cannabis?

It depends. Generally, employers cannot fire, penalize, or otherwise discriminate against an employee because their drug test shows the presence of non-psychoactive cannabis metabolites.[12] (See definition in question 4). If, however, a scientifically valid drug screening test shows the presence of psychoactive THC, or other substances screened for pursuant to state or federal law, the employer may be allowed to fire or discipline someone on that basis. Moreover, these protections do not apply if the employer has four or fewer employees, the position involves a federal background investigation or security clearance, or the employee is in the building or construction trades.[13]

EXCEPTIONS/EMPLOYERS MAY MAINTAIN A DRUG-FREE WORKPLACE

8 | Do the employment protections related to cannabis use apply to employers with four or fewer employees?

No, the protections related to cannabis use described in this FAQ only apply to California employers with five or more employees.

9 | Do the employment protections apply to a position for which a federal background investigation or security clearance is needed?

No, the protections related to cannabis use described in this FAQ do not apply if the position involves a federal government background investigation or security clearance.[14]

10 | What happens if another state or federal law requires drug testing?

The protections related to cannabis described in this FAQ do not override other state or federal laws that require a job applicant or employee to be tested for controlled substances, or the manner in which they are tested.[15]

11 | Can an employer still maintain a drug-free workplace?

Yes, the protections related to cannabis use do not permit an employee to possess, be impaired by, or use cannabis on the job. Nor do they impact an employer's right or obligation to maintain a drug- and alcohol-free workplace pursuant to state and federal law.[16]

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12 Gov. Code § 12954(a)(1)
13 Gov. Code § 12954(f), (a)(2)
14 Gov. Code § 12954(f)
15 Gov. Code § 12954(e)
16 Gov. Code § 12954(d)

CIVIL RIGHTS COMPLAINTS

12 | What if an employer violates the protections related to cannabis use?

If a worker thinks their employer has discriminated against them, they have three years to file a complaint with CRD. CRD will investigate their complaint or issue a right-to-sue so they can pursue their case in civil court. They cannot file an employment discrimination lawsuit in court without receiving a right-to-sue from CRD.

13 | Can an employer violate other civil rights laws when conducting drug screenings or making employment decisions based on cannabis use?

Under existing civil rights laws, employers may not discriminate based on race, color, national origin, and other protected characteristics. For example, an employer would violate the Fair Employment and Housing Act by requiring only job applicants of a certain race or ethnicity, and not others, to submit to drug screenings. Or, an employer would violate the Fair Employment and Housing Act by treating employees who are found to possess, use, or be impaired by cannabis differently based on their gender identity.

14 | What are possible outcomes after a CRD investigation into discrimination based on cannabis use?

If, after an investigation, CRD finds reasonable cause that the employer broke the law, it may require the parties to go to mediation in order to try to reach a settlement and, if the complaint can't be settled, CRD may file a lawsuit on behalf of the worker. Possible remedies include:

- Forcing the employer to change its policies or practices
- Getting the worker hired or re-hired
- Requiring the employer to undergo training
- Damages (money) for emotional distress

15 | How does a worker file a complaint?

They can file a complaint in one of three ways:

- Online by creating an account and using our interactive California Civil Rights System, (CCRS)
- By mail using a printable intake form
- By calling our communication center at 800.884.1684 (Toll Free), 800.700.2320 (TTY), or California's Relay Service at 711

CRD can provide reasonable accommodations for people with disabilities during the complaint process.

For translations of this guidance, visit: calcivilrights.ca.gov/posters/employment

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