

COMMISSION ON HUMAN RIGHTS

Notice of Adoption

NOTICE IS HEREBY GIVEN, pursuant to the authority vested in the New York City Commission on Human Rights (“Commission”) by section 905(e)(9) of the New York City Charter and in accordance with the requirements of Section 1043 of the Charter, that the Commission has adopted new rules governing pre-employment testing for marijuana.

The required public hearing was held on April 16, 2020. The Commission voted to adopt the final rules at a public meeting held on June 16, 2020.

Statement of Basis and Purpose of Rule

The New York City Commission on Human Rights (the “Commission”) is amending its rules to add exceptions to the general prohibition on preemployment testing for tetrahydrocannabinols or marijuana.

The Commission’s authority for these rules is found in sections 905(e)(9) and 1043 of the New York City Charter and section 8-107(31) of the Administrative Code.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denotes mandatory requirements and may be used accordingly, unless otherwise specified or unless the context clearly indicates otherwise.

Chapter 2 of title 47 of the Official Compilation of the Rules of the City of New York is amended by adding a new section 2-07 to read as follows:

§ 2-07 Exceptions to the General Prohibition on Preemployment Testing for Tetrahydrocannabinols or Marijuana

(a) Exceptions Based on Significant Impact to Health or Safety: A position is deemed to significantly impact the health or safety of employees or members of the public and to be exempt from the prohibition on preemployment testing for tetrahydrocannabinols or marijuana under section 8-107(31) of the Administrative Code if:

- (1) The position requires that an employee regularly, or within one week of beginning employment, work on an active construction site;
- (2) The position requires that an employee regularly operate heavy machinery;
- (3) The position requires that an employee regularly work on or near power or gas utility lines;
- (4) The position requires that an employee operate a motor vehicle on most work shifts;

- (5) The position requires work relating to fueling an aircraft, providing information regarding aircraft weight and balance, or maintaining or operating aircraft support equipment; or
- (6) Impairment would interfere with the employee's ability to take adequate care in the carrying out of his or her job duties and would pose an immediate risk of death or serious physical harm to the employee or to other people.

(b) For purposes of this section, a "significant impact on health and safety" does not include concerns that a positive test for tetrahydrocannabinols or marijuana indicates a lack of trustworthiness or lack of moral character.