



NATIONAL SAFETY COUNCIL

Position/Policy Statement

Cannabis Impairment in Safety Sensitive Positions

NSC Policy/Position

The National Safety Council (NSC) supports policies to mitigate and eliminate the risks of cannabis (marijuana) and other products containing delta-9-tetrahydrocannabinol (THC), the impairing component in cannabis. Safety concerns are paramount as legalization and decriminalization continues.

NSC believes it is unsafe to be under the influence of cannabis while working in a safety sensitive position¹ due to the increased risk of injury or death to the operator and others. Research is clear that cannabis impacts psychomotor skills and cognitive ability. However, the amount of THC detectable in the body does not directly correlate to a degree of impairment. At this time, NSC believes there is no level of cannabis use that is safe or acceptable for employees who work in safety sensitive positions.

Need for Policy Position

By adopting this position, NSC will be able to increase involvement in the policy discussion about cannabis impairment, and provide guidance for employers as they navigate changing cannabis laws.

Cannabis is the most widely consumed illicit substance worldwide.² In 2015, the World Drug Report estimated over 200 million people between the ages of 15-64 have ingested cannabis. According to a study reported by the National Institute on Drug Abuse, employees who tested positive for cannabis had:

- 55% more industrial incidents
- 85% more injuries
- 75% greater absenteeism compared to those who tested negative.³

¹ "Safety Sensitive" refers to jobs that impact safety of the employee and the safety of others as a result of performing that job. For example, 49 CFR §382.107 defines safety sensitive for commercial motor vehicle operators.

² https://www.who.int/substance_abuse/facts/cannabis/en/

³ NIDA. "Marijuana." *National Institute on Drug Abuse*, 25 Jun. 2018, <https://www.drugabuse.gov/publications/research-reports/marijuana>. Accessed 30 Apr. 2019.

Cannabis affects the body in a number of ways. Experimental studies of subjects dosed with cannabis found, psychological effects include relaxation, sedation, disorientation, impaired judgment, and lack of concentration. The physiological effects include slowed fine motor skills, reddening of eyes, increased appetite, dry mouth, and increased heart rate. These effects contribute to impaired learning, short-term memory and attention deficits, and delayed decision-making.⁴

As a leader in impairment (opioids, fatigue, etc.) workplace policies and consistent with advocacy in these other areas, NSC supports moving people to non-safety sensitive operational positions when using cannabis for medical purposes.

Federal Law

Despite medical cannabis laws in 46 states, cannabis remains federally illegal. The federal government regulates drugs through the *Controlled Substances Act (CSA)* (21 U.S.C. § 811), which does not recognize the difference between medical and recreational use of cannabis.⁵ Under the CSA cannabis is classified as a Schedule 1 drug, meaning that the federal government views cannabis as having no medical value and high abuse potential.

There are no federally approved prescriptions for cannabis use. Doctors may not “prescribe” cannabis for medical use under federal law, however they can “recommend” its use under the First Amendment.

State Laws

Cannabis laws vary from state to state. At the time of writing this document, 3 states, the District of Columbia, Guam, Puerto Rico and US Virgin Islands have approved comprehensive, publicly available medical marijuana/cannabis programs. Twenty-three states and the District of Columbia have decriminalized marijuana, and ten states and the District of Columbia now have legalized small amounts of marijuana for adult recreational use. States that have approved the medical use of cannabis have allowed certain classes of medical professionals to grant a person residing in the state to purchase and use cannabis in certain controlled forms. Those states that have decriminalized or legalized recreational use of cannabis permit a person to purchase and use cannabis if:

- They are in that specific state
- The cannabis is in a legal form with regulated strengths
- It is under the maximum amount allowance, if the law stipulates an amount

Research

More comprehensive data and research is needed to better understand the effects cannabis has on the human mind and body. There are many anecdotal studies on a variety of cannabis-related subjects, including but not limited to assessing and defining the THC relationship to impairment, examining other safety implications, driving, vehicle crash rates, potential medical uses and benefits, impacts on opioid misuse and opioid overdoses, and more. However, there is not enough research to reach consensus on any of these cannabis-related subjects at this time.

⁴ NIDA. "Marijuana." *National Institute on Drug Abuse*, 22 Jun. 2018, <https://www.drugabuse.gov/publications/drugfacts/marijuana>.

⁵ <https://www.law.cornell.edu/cfr/text/21/1308.11>

There is evidence that legalization or decriminalization of cannabis may increase vehicle crash rates, hospitalizations,⁶ and other public health indicators. The Rocky Mountain High Intensity Drug Trafficking Area completed a study that found the yearly rate of emergency department visits related to marijuana⁷ increased 52 percent after the legalization of recreational marijuana.⁸ A study done by the Insurance Institute for Highway Safety (IIHS) examined 2012-2016 police-reported crashes before and after the retail sales of cannabis began in Colorado, Oregon, and Washington. IIHS estimates that these three states combined saw a 5.2% increase in the rate of crashes per million vehicle registrations, compared with neighboring states that did not decriminalize or legalize marijuana sales.⁹ In 2017, the NSC Alcohol, Drug and Impairment Division issued "[Position on Cannabis \(Marijuana\) and Driving](#)," which clearly evaluates leading research concluding that cannabis degrades driving performance.¹⁰

NSC expects support from the American Industrial Hygienists Association, which has a similar position. Companies supporting cannabis decriminalization will oppose the position.

This position statement reflects the opinions of the National Safety Council but not necessarily those of each member organization.

Adopted by the National Safety Council, 2019

⁶ <https://rmhidta.org/files/D2DF/FINAL-%20Volume%205%20UPDATE%202018.pdf>

⁷ In this instance, "marijuana" is used as the term for cannabis from the underlying research document.

⁸ Ibid.

⁹ <https://www.iihs.org/iihs/news/desktopnews/crashes-rise-in-first-states-to-begin-legalized-retail-sales-of-recreational-marijuana>

¹⁰ https://www.nsc.org/Portals/0/Documents/NSCDocuments_Advocacy/Divisions/ADID/Position-on-Cannabis-and-Driving.pdf



April Horton
Director Government & External Affairs

140 West Street
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January 8, 2020

RE: Proposed rulemaking concerning potential exceptions to Local Law 91 of 2019 – In relation to generally prohibiting pre-employment testing for marijuana and tetrahydrocannabinols.

Thank you for your notice on the upcoming hearing and the option to submit comments to the record. Please accept the comments contained in this letter as Verizon's input with respect to identifying positions and the rationale of why we believe the specific jobs and or/job titles should be an exception to Local Law 91, pre-marijuana testing.

As an industry leader that prioritizes the health and safety of our employees and the public we serve, Verizon would like to bring to your attention some brief points that we believe need to be taken under consideration.

Verizon technicians are utility workers who manage and maintain critical infrastructure in the public right of way, enter customer's homes and businesses, work in close proximity of other infrastructure such as power and gas, operate heavy machinery, operate motor vehicles, and must ensure compliance with manhole operations and pole climbing procedures. Ensuring the safety of our employees, the employees of other utility companies, our customers, and the public at large are paramount. We believe that our workforce of telecommunication technicians represent a substantial part of our embedded employee base that should be exempt from this rule. Ensuring safety in these instances are of utmost importance and it is for that reason we respectfully request that telecommunications technicians be exempt. Understanding the need to keep our employees safe, and our infrastructure secure we believe these exceptions are imperatives.

Verizon welcomes the opportunity to meet to discuss these issues in more detail.

Sincerely,



April Horton



PUBLIC ADVOCATE FOR THE CITY OF NEW YORK

Jumaane D. Williams

**TESTIMONY OF PUBLIC ADVOCATE JUMAANE D. WILLIAMS
TO THE COMMISSION ON HUMAN RIGHTS**

JANUARY 9, 2020

Good morning, my name is Jumaane D. Williams and I am the Public Advocate for the City of New York. I want to thank the Commission for Human Rights for holding this public hearing on expanding Local Law 91 exemptions.

In 2019, I introduced legislation that would form Local Law 91 which prohibits New York City employers from testing for tetrahydrocannabinol or THC, the active ingredient in marijuana, as a condition of employment. Within this legislation, exceptions are provided for certain safety and security sensitive jobs, and those tied to a federal or state contract or grant. I was hesitant to put any exemptions into the original bill language as I believe that no individual should be tested for THC, and I stand firmly against any expansion of exemptions to Local Law 91. Creating more exemptions and loopholes to this law will unjustifiably deter qualified employees from obtaining gainful employment. Maintaining the original intent of the legislation, the City should be pushing to reduce the stigma around marijuana and working to restore justice for the millions of black and brown communities who have been the victims of marijuana criminalization and discrimination.

Over half of Americans admit to trying marijuana, and 11 states have already allowed recreational use of it. A majority of New Yorkers support its full legalization including the Governor and myself. Additionally, studies have shown that some commonly used drug tests can't tell the difference between THC and CBD. Individuals should not be punished for a widely accepted practice or for using CBD, a product legal nationwide. Testing for marijuana only serves as a Reagan era obstacle, preventing talented applicants from applying and accepting positions. We need to be creating more opportunities and access to employment- not less.

Under the current law, individuals who show up at work under the influence are not justified. Rather, this law serves to protect the privacy and rights of those who might otherwise have their lives ruined by harmful marijuana enforcement policies before being employed. There are a



PUBLIC ADVOCATE FOR THE CITY OF NEW YORK
Jumaane D. Williams

number of safety and security sensitive jobs where alcohol consumption is not tested for, marijuana should be no different. I would charge the commission to explain why marijuana should be treated any different than alcohol. As a body that supports human rights, I urge the Commission on Human Rights (CCHR) to eliminate THC testing as a requirement for employment rather than expanding it towards a deleterious effect. I strongly recommend that the CCHR reconsider its effort to add further exemptions to Local Law 91.

Thank you for your time and consideration.



Testimony of the Partnership for New York City
Commission on Human Rights
Proposed Rulemaking Pursuant to Local Law 91 of 2019

January 9, 2020

Thank you Chair Malalis and members of the Commission on Human Rights (CHR) for the opportunity to testify on necessary exceptions to Local Law 91 of 2019's (LL91) ban on pre-employment testing for marijuana and tetrahydrocannabinols (THC). The Partnership for New York City represents the city's business leaders and largest private sector employers working to enhance the economy of the five boroughs and maintain the city's position as the pre-eminent global center of commerce, innovation and economic opportunity.

For the purpose of protecting health and safety, LL91 exempts a variety of job functions from the prohibition on pre-employment testing for marijuana and THC. Examples include individuals who care for medical patients, police officers and construction workers. The City Council recognized, however, that the list of exemptions included in LL91 was not sufficient and included a provision for CHR to exempt additional types of workers "with the potential to significantly impact the health or safety of employees or members of the public." Many jobs that are not already exempt under the law meet this standard.

We recommend exempting all employees who are required to regularly operate a motor vehicle on public roadways or in sensitive locations such as an airport. LL91 recognizes the importance of pre-employment testing for workers whose jobs require them to operate vehicles. Not all such workers are required to obtain a commercial driver's license or be tested pursuant to federal Department of Transportation regulation, but the risk to public safety still exists.

The Commission should also consider exempting workers whose roles involve working on utility poles, near power sources or operating electrical equipment. The city should give employers the tools to protect the public and other employees from the potential risks inherent in jobs that involve high elevation and working with or around dangerous equipment. LL91 already includes provisions that exempt employees performing similarly dangerous functions such as maintenance at a liquified natural gas facility.

We also hope the Commission will consider protecting public safety by exempting from the testing ban roles that require regular entry into private residences. Members of the public should feel safe when they open their home to receive necessary services.

We urge the Commission to look closely at industries that have a high potential for risk to the public and to fellow employees such as aviation, telecommunications and utilities for additional functions that should be exempt.

Thank you.

GREATER NEW YORK HOSPITAL ASSOCIATION

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January 8, 2019

Via Electronic Mail

Carmelyn Malalis
Chair
New York City
Commission on Human Rights
22 Reade Street
New York, NY 10007

RE: Comment on Pre-Employment Testing for Marijuana

Dear Ms. Malalis:

On behalf of the New York City member hospitals and health systems of Greater New York Hospital Association (GNYHA), I appreciate this opportunity to provide input on the New York City Commission on Human Rights (Commission) proposed rulemaking to implement Local Law 91 of 2019, prohibiting pre-employment testing for marijuana and tetrahydrocannabinols (THC). Our members appreciate the goals behind the legislation and have particular interest in how the Commission will interpret certain of the exceptions.

General Comments

Hospitals and health systems are a critical infrastructure sector, providing essential services on an around-the-clock basis. Hospitals cater to individuals who are at their most vulnerable: Patients present, whether for inpatient or outpatient care, who are impaired to one degree or another. Impairment may be due to physical or behavioral disabilities and are usually coupled with emotional concern and worry. The same is true for family and other caregivers accompanying them to the hospital.

Given this reality, our members have a keen interest in maintaining a workforce that is competent, compassionate, and at the top of their performance throughout every shift in their around-the-clock operations. Many of our members have considered pre-employment drug testing to be a useful tool, among others, for selecting workers who can meet this standard.

Two of the exceptions in the law will be useful in addressing the choice of some hospitals and health systems to continue to employ pre-employment drug testing in a selective way to achieve



GNYHA is a dynamic, constantly evolving center for health care advocacy and expertise, but our core mission—helping hospitals deliver the finest patient care in the most cost-effective way—never changes.

this goal. The below comments are intended to provide the Commission with input on the most effective way to implement those exceptions with respect to the hospital sector.

Supervision or Care of Children, Medical Patients or Vulnerable Persons

Subdivision 31(b)(1)(D) of Section 8-107 of the administrative code of the City of New York creates an exception to the ban on pre-employment testing for marijuana and THC for “any position requiring the supervision or care of children, medical patients or vulnerable persons as defined in paragraph 15 of section 488 of the social services law [Protection of People with Special Needs].” To the extent this exception refers to “care,” it is relatively straightforward and, in our view, should allow for such pre-employment testing of caregivers, such as physicians, surgeons, nurses, physician extenders, medical assistants, technologists, and other unlicensed technical staff. The Commission should take note that not every caregiver role is patient-facing; hospital pharmacists, pathologists, and radiologists, for example, typically do not interact with patients but provide health care services to them.

Use of the term “supervision” means another action as distinguished from “care.” The *Merriam-Webster* definition includes the concepts of taking charge of or overseeing others. (See <https://www.merriam-webster.com/dictionary/supervision#synonyms>.) In the hospital context, we think the best understanding of supervision is the exercise of custodial care of a child, patient, or vulnerable person, whether by a skilled provider or not. Examples of job duties that would include supervision are transporting patients and providing one-to-one monitoring to ensure patient safety.

We urge the Commission to adopt these interpretations of “supervision” and “care” and to recognize, as more fully described below, that in most hospital jobs, there are core functions as well as periodic functions that employees may be called upon to do. Positions listing supervision or care as periodic functions, as opposed to core functions, should be eligible for the exception.

Potential to Significantly Impact the Health or Safety of Employees or Members of the Public

Subdivision 31(b)(1)(E) of Section 8-107 of the administrative code of the City of New York creates an exception for “any position with the potential to significantly impact the health or safety of employees or members of the public ...” While the legislation goes on to reference determinations of such positions by the commissioner of citywide administrative services and the chairperson of the Commission, we urge you to avoid attempting to create an exhaustive listing of job titles. Rather, we suggest a non-exhaustive list combined with a set of principles that will provide guidance to employers in determining how to selectively and appropriately use pre-employment testing for marijuana and THC in their discretion. We also urge the Commission to make clear that positions including certain functions, whether they are core duties performed every day or duties that may only be performed periodically, are eligible for the exception.

In the hospital world, as in other critical sectors, many jobs include core functions and the potential for other duties. This is not just the case for workers who “float” among departments, but even for the general workforce. An example is the security officer position. While a security officer’s core function may be ensuring the physical security of the premises by, for example, occupying a post, signing in visitors, or doing rounds, the officer also may be called upon to

provide one-to-one monitoring of patients or visitors because they are a danger to self or others (and such patients do not always fall under the definition of “vulnerable person,” depending on what type of care they are receiving). Another example is an administrator with a clinical background, such as a pharmacy director. Such a person may be primarily engaged in the administrative duties entailed in running a pharmacy, e.g., preparing schedules and budgets, but when needed may also perform clinically related duties, such as preparing medications for patients. GNYHA urges the Commission to make clear that if a job description includes duties that have the potential to impact health or safety, even if they are not the core duties, the position will fall under the exception.

As noted above, a non-exhaustive list of positions would be useful so long as it is accompanied by more general language capturing the principle behind the regulation. For example, regulatory text acknowledging that jobs that require regular contact with patients will meet the health and safety exception. This is in addition to the jobs that meet the relatively narrow “supervision or care” standard set forth in Subdivision 31(b)(1)(D) of the legislation.

Positions that we think should be included in such a non-exhaustive list and that may not be obvious outside of the hospital community include workers who have access to hazardous materials, such as researchers and technologists, and admission and registration clerks.

Conclusion

GNYHA appreciates the opportunity to provide these comments. We would be happy to discuss them in more detail.

Sincerely,

Laura M. Alfredo

New York City Commission on Human Rights
22 Reade Street
Spector Hall, 1st Floor
New York, NY 10007



Re: Local Law 91 of 2019

Dear Chairwoman Carmelyn Malalis and Commission members:

It has come to the attention of the National Drug and Alcohol Screening Association (NDASA) that the City is seeking comments concerning potential exceptions to Local Law 91 of 2019. The prohibition of testing for Marijuana and Tetrahydrocannabinols (THC/Cannabis) for pre-employment testing. Local Law provides for certain jobs to be exempt if they have the “potential to significantly impact the health or safety of employees or members of the public.”

NDASA is a national association of drug and alcohol testing professionals that represents laboratories, Medical Review Officers, drug testing facilities, safety personnel, and collectively tens of thousands of employers and hundreds of thousands of employees across the country to include NYC. We are focused on assisting employers and individuals affected by drugs of abuse.

Marijuana is an impairing substance. Illicit drug use substantially threatens workplace safety and productivity. *40% of workplace fatalities are caused by substance use.* Employee drug use costs the U.S. Economy \$246 billion annually from decreased productivity, employee turnover, increased medical costs, theft, and increased accidents. Workers who use marijuana, the most widely used drug by U.S. employees, have 75% more absenteeism, 55% more industrial accidents and 85% more workplace injuries than workers who choose to remain drug-free.

Restricting workplace drug testing programs when this nation faces an opioid epidemic is reckless. There is clear evidence out of Colorado showing that opioid use increases when marijuana is legalized. Restricting an employer’s right to test for THC is the first step to prohibiting employers from all substance testing that puts accident, injury and fatality liability directly upon them.

NDASA would recommend, on behalf of our membership and the employers we represent, that this City Commission consider allowing ANY and ALL employers to choose a Drug Free Workplace for all. Employers are the entities forced to deal with the effects of marijuana use on their business and their service to the general public. Opting-in to public safety should be the right of every employer and not the role of a city government to restrict. Working in a safe work environment should be the right of every employee, rather than the popular notion of catering to those who choose to work under-the-influence of marijuana.

The goal of any drug-free workplace policy is to KEEP employees working and identify those with potential addiction so that treatment options may be offered. We encourage employers to seek creative alternatives to employment termination in favor of keeping people at work.

We must ask if you consulted with any experts from the workplace drug and alcohol testing policy arena for assistance in a balanced approach that is not punitive to NYC employers of all kinds and not the small subset that you’ve identified in your legislation. **Without exempting all employers or offering the ability to opt-in or out of Local Law 91 then a burden will be put on the shoulders of employers that would prefer to provide safe work environments by forcing them to accept applicants that are using a known impairing substance.**

For the above reasons, we strongly urge you to allow all employers the ability to opt-in or opt-out of an exemption to Local Law 91. Public health, employer rights, and safety in the workplace arena should be a right for **all** employers. Governments should not force employers into creating an unsafe work environment, rather it should give them the right to always have that option.

Sincerely,

National Drug & Alcohol Screening Association

Jim Greer – Chairman

Brian Drew – Vice Chairman

Jo McGuire – Executive Director



Testimony Regarding Local Law 91 of 2019 to Exempt Certain Jobs That Have the “Potential to Significantly Impact the Health or Safety of Employees or Members of the Public”

**National Safety Council
New York Commission on Human Rights
January 9, 2020**

The National Safety Council (NSC) encourages you to prioritize the safety, health and wellbeing of New York employees and citizens and clearly identify potential exemptions to Local Law 91, which prohibits pre-employment testing for cannabis and tetrahydrocannabinols (THC). NSC is a nonprofit organization with the mission of eliminating preventable deaths at work, in homes and communities, and on the road through leadership, research, education and advocacy. Its 16,000 member companies represent employees at more than 50,000 worksites, including more than 2,100 in New York State.

NSC believes there is no level of cannabis use that is safe or acceptable for employees who work in safety sensitive positions.ⁱ Research is clear that cannabis affects your mind and body. However, there is no scientifically valid test to detect cannabis impairment. Therefore, NSC respectfully requests the Commission to exempt employees in safety sensitive positions from Local Law 91. This includes allowing workplaces to establish policies that may involve prohibiting all use of cannabis for these employees because of the inability to test for impairment.

Employers are responsible for providing safe workplaces for workers. Without the ability to define impairment from cannabis, employers have primary responsibility to ensure the safety of both employees and the general public. If these workplaces include safety sensitive occupations such as driving, operating heavy machinery, child care, health care and individuals carrying firearms, their policies should reflect an ability to maintain a substance-free workplace through pre-employment drug testing for cannabis and other substances, and to take other appropriate measures. These policies should be established in a transparent manner with workers at the table.

We encourage you to prioritize safety as you work to amend Local Law 91 to allow workplaces with safety sensitive occupations to continue pre-employment drug testing. This includes ensuring the safety and the wellbeing of the over 4.6 million workers in New York City, and the millions of residents and visitors who interact with them, by ensuring safety sensitive positions are exempted from Local Law 91.ⁱⁱ

As a reminder, there are already certain occupations which are federally regulated and therefore are exempted from this law, such as commercial truck drivers, pilots and others. It is incumbent upon New York City to clearly communicate to these businesses and their employees that, despite Local Law 91, they must continue to comply with federal regulations.

Thank you for your attention to this issue. If you have any questions, please contact Tara Leystra Ackerman at tara.leystra@nsc.org or 202-602-1020.

ⁱ “Safety Sensitive” refers to jobs that impact safety of the employee and the safety of others as a result of performing that job. For example, 49 CFR §382.107 defines safety sensitive for commercial motor vehicle operators.

ⁱⁱ <https://www.bls.gov/regions/new-york-new-jersey/data/xg-tables/ro2xgcesnyc.htm>

NASCO

National Association of Security Companies



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Why private security guards should be exempted from Local Law 91, which prohibits testing for marijuana/THC as a condition of employment

The National Association of Security Companies (NASCO) is the nation's largest trade association of contract private security companies. NASCO's members employ over 450,000 security guards (aka security officers) throughout the United States, including thousands of guards in the City of New York. For over 40 years, NASCO has worked with state and local officials on numerous issues related to the licensing, regulation and employment of security guards.

As explained below, NASCO requests that the Commission, as provided for in Local Law 91, makes an exception for security guards from the Law's prohibition on pre-employment testing for marijuana/THC, based on a determination that security guards work in positions "with the potential to significantly impact the health or safety of employees or members of the public."

New York State law defines a security guard as "a person, other than a police officer, employed by a security guard company to principally perform one or more of the following functions within the state:

- a. protection of individuals and/or property from harm, theft or other unlawful activity;
- b. deterrence, observation, detection and/or reporting of incidents in order to prevent any unlawful or unauthorized activity including but not limited to unlawful or unauthorized intrusion or entry, larceny, vandalism, abuse, arson or trespass on property;
- c. street patrol service;
- d. response to but not installation or service of a security system alarm installed and/or used to prevent or detect unauthorized intrusion, robbery, burglary, theft, pilferage and other losses and/or to maintain security of a protected premises." (See NY Gen Bus Law Article &-A Sections 89F-H)

Indeed, the largest job site in the world, describes a security officer job as such: *Security Officers ensure the safety and security of the people and property in their designated area. To do this, Security Officers use surveillance equipment, access control points, and alarms, as well as physically patrolling their designated area on foot. Security Officers are used to deter crime, to prevent theft, and to be a first responder for emergency and non-emergency situations.*

New York law also requires that all security guards be registered, pass a criminal background check, and receive a minimum of 24 hours of training on "emergency situations, communications and public relations, access control, ethics and conduct, incident command system and terrorism." (See NY GBL Article 7-A, section 89-N and NYS DCJS Security Guard Training Requirements).

In New York City, security guards are undertaking the above described responsibilities and others at a wide range of establishments including banks, schools, hospitals, office buildings, houses of worship, government facilities, colleges, museums, warehouses, industrial and manufacturing sites, laboratories,

construction sites, condominium and apartment buildings, stores, large enclosed malls, entertainment venues, port facilities and other locations. In some of these postings, the security guards are also armed.

There is no doubt that security guards in New York City work in very public/employee facing positions and an organization's decision to hire security guards, which can be quite expensive, is based on the determination that there is enough of a safety risk to the organization's employees or the public that security guards are needed to counter that possible/expected risk.

Given the prevalence of private security guards throughout NYC, and the nature and requirements of the job, security guards are often the first "first responder" to a crime, terrorist incident, accident, medical emergency or other crisis situation. There have been numerous incidents in NYC and across the nation where the alertness, diligence, quick reaction, response and communications with law enforcement by security guards have saved lives and prevented significant harm. There have also been incidents where the actions of security guards have been problematic. Good or bad, the fact is that security guards are often put in very stressful, tense, dangerous situations (e.g. at hospitals, government run facilities) and how a security guard reacts and performs his or her duties definitely has the "potential to significantly impact the health and safety of employees and members of the public."

Currently, all security guards working for NASCO members in NYC undergo pre-employment drug testing that includes testing for marijuana/THC as a condition for employment. This has been standard industry practice for decades and it is a well-known practice to persons seeking employment as a security guard. And in October of this year, the National Safety Council put out a Position/Policy Statement that said "there is no level of cannabis use that is safe or acceptable for employees who work in safety sensitive positions" which are defined as "jobs that impact safety of the employee and the safety of others as a result of performing that job." This fits the definition of a security guard's job. The paper cited a 2018 study by the National Institute for Drug Abuse which found that employees who tested positive for cannabis had: 55% more industrial accidents; 85% more injuries; and 75% greater absenteeism, compared to those who tested negative.

While the presence of THC in an applicant's system does not mean that as an employee the applicant will be under the influence of marijuana/THC while on the job – the same could be said for persons in those jobs that are specifically exempted from Law 91's prohibition on pre-employment testing, such as persons who drive commercially or work with children, medical patients or other vulnerable persons. Accordingly, the Law's intent seems to be to "play it safe" with certain jobs where it is foreseeable that something bad or dangerous could occur if a person in such a job is under the influence THC while on the job. Or, as the general exception language states there is "the potential to significantly impact the health or safety of employees or members of the public."

NASCO submits there is such potential with security guards and we urge the Commission in its regulations for Law 91 to identify "security guards," (as defined by NY State Law) or more specifically security guard jobs which require registration by the State of New York, as a position that is excepted from the Law's prohibition on requiring a prospective employee to submit to testing for the presence of THC/marijuana in such prospective employee's system as a condition of employment.

Respectfully,

Steve Amitay

Steve Amitay
Executive Director and General Counsel
NASCO

**Testimony concerning proposed rulemaking by the Commission on Human Rights
regarding potential exemptions to Local Law 91 of 2019, which prohibits pre-employment
testing for marijuana and THC**

**John Corlett, Chairman Legislative Committee, AAA New York State
New York City, January 9, 2020**

Thank you for the opportunity to testify today. My name is John Corlett, Director of Public and Government Affairs and Traffic Safety Services for AAA Northeast. AAA Northeast is a not-for-profit motor club with more than 5.8 million members. For the reasons expressed below, we are respectfully requesting that the NYC Commission on Human Rights consider an exemption with respect emergency roadside technicians from Local Law 91 of 2019, a measure which prohibits pre-employment testing for marijuana and THC.

AAA Northeast strongly believes maintaining pre-employment drug testing for the sensitive safety position of emergency roadside technician will promote the safety of the public, our members and our roadside assistance employees. AAA Northeast currently employs 90 roadside technicians in New York City who are responsible for providing safe and reliable emergency service for disabled vehicles twenty-four hours per day and seven days a week, in every traffic and weather condition. On an annual basis, AAA Northeast responds to over 3 million calls for roadside assistance.

Emergency roadside technicians put their lives on the line every day in one of the most dangerous careers in the U.S. An analysis conducted by researchers at the Centers for Disease Control and Prevention showed that the towing industry is 15 times deadlier than all other private industries combined. Specifically, motor vehicle tow operators have an annual fatality rate of nearly 43 deaths per 100,000 workers; while the annual fatality rate for all other U.S. private industries combined, is 2.8 deaths per 100,000 workers. These data include all causes of fatal workplace injuries (e.g., poisoning, homicide, falls, etc.), but motor vehicle incidents are the most frequent cause of death. Therefore, we consider this to be a highly safety sensitive position.

Countless studies have shown that marijuana negatively affects psychomotor functions, like attention, reaction time and coordination. These impairing effects interfere with the skills tow truck operators need to ensure safety, such as remaining vigilant and reacting quickly to road hazards. Currently, there is no mechanism to discern marijuana impairment or how long the residual effects of impairment can last. However, a study reported by the National Institute on Drug Abuse (25, June 2018), found that individuals who test positive for marijuana have 55 percent more industrial accidents and suffer 85% more injuries. Accordingly, AAA Northeast believes for this small group of safety sensitive employees there is no safe amount of marijuana use.

Additionally, given the dangers roadside technicians face daily and the impairing effects of THC, technicians must be in complete control of their skills. Needless to say, New York City has a very complex and challenging driving environment. Indeed, roadside technicians must safely aid drivers while contending with pedestrians and other road users on congested, and often narrow streets. Thus, failure to consider a waiver would in our opinion run counter to the spirit of New York City's ambitious *Vision Zero* campaign which aims to reduce fatalities and injuries on the city's roadways.

Accordingly, we respectfully request the Commission on Human Rights to consider this request for a waiver.

Cope, Director Lori

From: Cope, Director Lori
Sent: Wednesday, January 8, 2020 12:53 PM
To: 'policy@cchr.nyc.gov.'
Subject: Comment on Pre-Employment Testing for Marijuana

Importance: High

As a municipality, the largest in Richland County, Ohio, it is with strong belief that we suggest that stand that all employers should be able to have the right to choose a safe and drug free workplace as THC consumption impacts the health and safety of users as well as that of those in their presence in any work environment due to the effects of the drug on the user. I would ask respectfully that you vote in accordance with the safety of all your employees and citizens in mind.





Legalization of Marijuana – Implications for Workplace Safety

A Statement from the American College of Occupational and Environmental Medicine

As the U.S. Congress considers the legalization of marijuana, the American College of Occupational and Environmental Medicine (ACOEM) recommends that the implications for workplace safety be a primary consideration. ACOEM is the pre-eminent physician-led organization that champions the health of and safety of workers and workplaces. The College is dedicated to improving the care and well-being of workers through science and the sharing of knowledge. From this perspective, ACOEM offers the following insights for Congress' consideration.

To date, 33 states and the District of Columbia have legalized the medical and/or recreational use of marijuana. With most Americans living and working in states that allow some form of legal marijuana use, it is critical that safety be at the forefront of any policy discussions regarding the use of cannabinoids outside of the standard U.S. Food and Drug Administration (FDA) approval process. The current patchwork of laws to address marijuana use and workplace safety is detrimental to employees, employers, and the general public.

Similar to other FDA-approved medications, marijuana can cause impairment which will interfere with safe and acceptable performance in the workplace. This is particularly concerning for those individuals working in safety-sensitive positions where impairment can affect the health and safety of other workers, customers, the general public, or others.

Employers have a legal responsibility to protect employees from workplace illness or injury under the Occupational Safety and Health Administration's (OSHA's) general duty clause. Employers also have an ethical responsibility to prevent impaired workers from exposing themselves, their co-workers, and/or the general public to risk of harm. Regardless of marijuana's legal status in a jurisdiction, ACOEM strongly supports legislative proposals that would allow employers to prohibit those employed in safety-sensitive positions from working while under the influence of marijuana.

Without measurable concentrations of psychoactive ingredients in marijuana-containing products, known potency of the active ingredient, delivery mechanism, or scientifically established dose or dosing schedule, it is impossible to use evidence-based methods to evaluate marijuana impairment in the workplace. While there is much we do not know about marijuana and other cannabinoids, there is enough current knowledge of their effects. In addition, there are enough acknowledged significant gaps in scientific evidence to raise concern and caution in the legislative process surrounding marijuana use:

- Marijuana can significantly impair judgment, motor coordination, and reaction time. Studies have found a direct relationship between blood (usually serum) THC concentrations and impaired driving ability, although the degree of impairment cannot be defined by the level, especially at lower levels.
- It is well documented that persons experiencing impairment from any drug or medication tend to underestimate the severity of their impairment.
- States with legal recreational or medical marijuana are reporting an increase in fatal motor vehicle crashes involving THC.
- Those in safety-sensitive identified positions should be held to a higher standard until a scientifically valid method to identify impairment has been developed. There is a lack of consensus among the states on what occupations are considered to be safety-sensitive positions and when employers may conduct drug testing or institute a zero-tolerance drug policy for those positions. If marijuana is removed from the Controlled Substances Act, it is imperative that the ability of employers to obtain objective measurement of body fluid levels of marijuana be maintained.

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The following are areas that ACOEM advises to be considered as part of the process for implementing new legislation:

- Reconcile the differences between state and federal laws regarding marijuana use.
- Assess the impact of marijuana on workplace safety through research. The effects of marijuana can vary greatly. The time course of these effects, onset, and duration depend on the route of ingestion (inhalation, oral, sublingual, or topical) as well as an individual's body composition. Unlike alcohol where there is a very predictable relationship between elimination from the body, impairment, dose, and the time since ingestion, THC (the main psychoactive ingredient in marijuana) is lipid-soluble (stored in fatty substances like body fat and brain tissue) and its elimination is much less predictable. This makes it more difficult to determine the duration of impairment.
- Define the correlation of THC concentrations and impairment.
- Allow employers the latitude to manage risk. In an area where knowledge of risk and impairment is falling far behind the rapidly expanding use of marijuana and other cannabinoids, employers must be able to manage risk in the workplace.
- Identify a reliable, practical mechanism for employers to assess fitness for duty. This is especially important in those states where medical and/or recreational use of marijuana is legal. Until the science of impairment by marijuana is better defined, a reasonable approach is to set a period of time between the use of marijuana and performing safety-sensitive work. This is the current approach to marijuana use in Canada and to alcohol use in the United States.

As previously stated, except where specified by law, the employer has primary responsibility to ensure the safety of both employees and the general public. Employers are the ones best suited to determine if a job is safety sensitive and, until the science of marijuana impairment is resolved, an employer should not be expected to manage a risk until that risk can be measured. While the definition of "safety sensitive" should ultimately be left up to the employer, ACOEM supports the essential criteria to classify a position as safety sensitive if impairment would:

- Increase safety and health risks to fellow employees, self, contract personnel, or the public;
- Adversely affect the environment through contamination of air, water, soil, flora, or fauna;
- Jeopardize the community through property damage or peril to members of the public;
- Involve the use of firearms, emergency response, and judgment and decision-making that have an immediate impact on the life and health of others.

Marijuana is an impairing substance and its legalization has huge public health implications. Before Congress passes any legislation regarding marijuana, the College urges that the impact of such legislation on workplace safety be considered.

The American College of Occupational and Environmental Medicine (ACOEM), an international society of more than 4,000 occupational physicians and associated professionals, provides leadership to promote optimal health and safety of workers, workplaces, and environments. Occupational and environmental medicine is the medicine specialty devoted to prevention and management of occupational and environmental injury, illness and disability, and promotion of health and productivity of workers, their families, and communities.

This document was prepared by the ACOEM Task Force on Marijuana and approved by ACOEM on September 27, 2019. ACOEM requires all substantive contributors to its documents to disclose any potential competing interests, which are carefully considered. ACOEM emphasizes that the judgments expressed herein represent the best available evidence at the time of publication and shall be considered the position of ACOEM and not the individual opinions of contributing authors.