

Updated Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? The New York City Commission on Human Rights (the “Commission”) is proposing to amend its rules governing preemployment testing for tetrahydrocannabinols or marijuana.

When and where is the hearing? The hearing will be held online on April 16, 2020 at 10:00am at <https://join.me/CCHR-Public-Hearing>. Participants who are unable to join online may attend by phone by calling (646) 307-1990 and using conference code 148-616-607. (Please note, the Commission previously announced that the hearing would be held in Spector Hall, 22 Reade Street, New York, New York 10007; however, in light of the 2019 Novel Coronavirus (COVID-19) pandemic, the hearing has been converted to an online hearing.)

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- Website. You can submit comments to the Commission through the NYC rules website at <http://rules.cityofnewyork.us>.
- Email. You can email comments to policy@cchr.nyc.gov. Please include a reference in the subject line to “Proposed Rules on Preemployment Testing for Marijuana.”
- Mail. You can mail comments to Office of the Chair, New York City Commission on Human Rights, 22 Reade Street, New York, New York 10007. Please note that receipt of mail to the Commission has been delayed due to office closures caused by the COVID-19 pandemic.
- Fax. You can fax comments to Zoey Chenitz, Senior Policy Counsel, (646) 500-7330.
- By speaking at the hearing. Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by emailing policy@cchr.nyc.gov. You can also sign up during the online hearing on April 16, 2020. You can speak for up to three minutes.

Is there a deadline to submit comments? You must submit written comments by April 16, 2020.

What if I need assistance to participate in the hearing? You must tell the Commission if you need a reasonable accommodation for a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail or email at the address given above. You may also tell us by telephone at (212) 306-7450. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by April 13, 2020.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of the online hearing will be available to the public on the Commission’s website.

What authorizes the Commission to make this rule? Sections 905 and 1043 of the New York City Charter and section 8-107 of the Administrative Code of the City of New York authorize the Commission to make this proposed rule. This proposed rule was not included in the Commission’s regulatory agenda for this Fiscal Year because it was not contemplated when the Commission published the agenda.

Where can I find the Commission’s rules? The Commission’s rules are in title 47 of the Rules of the City of New York.

What laws govern the rulemaking process? The Commission must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

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

These proposed rules would amend title 47 of the Rules of the City of New York to explain covered entities’ obligations under the City Human Rights Law.

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 power or gas utility lines;

(4) The position requires that an employee operate a motor vehicle on an approximately daily basis; or

(5) 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.

NEW YORK CITY LAW DEPARTMENT

DIVISION OF LEGAL COUNSEL

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CERTIFICATION PURSUANT TO

CHARTER §1043(d)

RULE TITLE: Exceptions to Prohibition of Preemployment Testing for Marijuana

REFERENCE NUMBER: 2019 RG 012

RULEMAKING AGENCY: City Commission on Human Rights

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN

Date: March 10, 2020

Acting Corporation Counsel

NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS

253 BROADWAY, 10th FLOOR

NEW YORK, NY 10007

212-788-1400

CERTIFICATION / ANALYSIS

PURSUANT TO CHARTER SECTION 1043(d)

RULE TITLE: Exceptions to the General Prohibition on Preemployment Testing for Tetrahydrocannabinols or Marijuana

REFERENCE NUMBER: CCHR-9

RULEMAKING AGENCY: The New York City Commission on Human Rights

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Alexandra Gjoni

Mayor's Office of Operations

March 10, 2020

Date