

Know Your Employment Rights As A Cannabis Consumer in California

New protections against discrimination based on urine and hair testing start 1/1/2024



[CaNORML.org/
Employment_Rights](https://CaNORML.org/Employment_Rights)

Starting on January 1, 2024, most Californians will be protected by a Cal NORML-sponsored bill which states that employers may not refuse to hire, fire, or penalize an employee based on the results of hair or urine tests for marijuana. Employees may not be impaired by cannabis on the job, and may be subject to an oral swab or blood test. Federal employees and those in the construction trades are not protected.

A new law ([AB 2188](#) – [GC 12954](#))¹ will prohibit employers from discriminating against hiring, or terminating, a person who has tested positive for non-psychoactive cannabis metabolites in their urine, hair, or bodily fluids. It also allows employees who have experienced discrimination on the basis of testing positive for non-psychoactive cannabis metabolites to institute civil action for damages and other relief against their employers.

The law does not interfere with employers' right to maintain a drug-free workplace. It allows for other kinds of tests that can indicate actual impairment on the job, such as computer-based performance tests, and chemical tests for active THC in oral fluid or blood that are a better indicator of recent use. Many major drug testing providers are offering oral swab tests, which are less invasive than urine or hair tests.

Not protected by the law are workers in the building and construction trades, and employees subject to federal drug-testing rules, like commercial truck drivers. Companies that accept federal grants or funding are often required to follow the Drug-Free Workplace Act, but this does not require drug testing, only disallowing drug use on the job.

The federal government has approved oral-swab testing to replace urine testing for truck drivers and other federal workers, but has not yet approved any labs to process oral swab tests.

WHAT'S WRONG WITH METABOLITE TESTING

Metabolite tests don't detect actual impairment, but rather the presence of non-psychoactive cannabis residues that stay in the system days and weeks after use, long after effects have faded. Numerous studies have

found that workers who test positive for metabolites [have no higher risk of workplace accidents](#). Depending on their sensitivity, oral fluid and blood tests detect the presence of THC for only a few hours, or possibly up to one day.

Testing or threatening to test bodily fluids for cannabis metabolites has been the most common way that employers harass and discriminate against employees who lawfully use cannabis in the privacy of their own homes. [Studies have shown](#) that black people are over twice as likely as white people to be reprimanded or fired for failing drug tests.

FURTHER DEVELOPMENTS

A 2023 bill, [SB 700 \(Bradford\)](#), amended AB 2188 ([GC 12954](#)) to disallow employers from asking about past marijuana use. SB 700 was signed into law by Governor Newsom on October 7, 2023 and will take effect on January 1, 2024, along with AB 2188.

The law states, “it is unlawful for an employer to request information from an applicant for employment relating to the applicant’s prior use of cannabis.” There are exceptions in the law for employers who may ask about an applicant’s conviction history under information under [GC 12952](#), or other state or federal law.”

HOW TO EXERCISE YOUR RIGHTS

Those who have been discriminated against due to off-the-job cannabis use, whether via pre-employment screening, or being disciplined or fired as an employee, can file a complaint with the [CA Civil Rights Department](#), and should also [contact Cal NORML](#) to make a complaint and possibly be connected with a private attorney who could help file a claim.

AB 2188 passed with the support of a strong coalition of labor, industry, and human rights advocates. We thank these partners for helping to spread the word about workers’ rights in California.

American for Safe Access

American Civil Liberties Union

CA Board of Registered Nursing

California Cannabis Industry Association (CCIA)

California Employment Lawyers Association (CELA)

California Nurses Association (CNA)

California State Council of Service Employees International Union (SEIU California)

Cannabis Equity Policy Council

Drug Policy Alliance (DPA)

Last Prisoner Project (LPP)

Los Angeles Housing Compliance

Origins Council

The Parent Company

United Domestic Workers/AFSCME Local 3930

United Cannabis Business Association (UCBA)

United Food and Commercial Workers (UFCW),
Western States Council



Fighting for California Cannabis
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415-563-5858