

# 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. Prospective employees are also protected against questions about their past marijuana use. Employees may not be impaired by cannabis on the job, and may be subject to an oral fluid, breath, or blood test. Federal employees and those in the construction trades are not protected.

A new law ([AB 2188](#) – [GC 12954](#)) 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 allows employees who have experienced discrimination 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, breath or blood that are a better indicator of recent use.

Drug testing providers are now offering urine and hair tests that do not detect marijuana, and oral swab or breathalyzer tests, which detect the presence of THC for only a few hours (or possibly up to one day), while still not detecting impairment. These are better options for companies that choose to continue to drug test.

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 CANNABIS 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.

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.

Numerous studies have found that workers who test positive for metabolites [have no higher risk of workplace accidents](#). Other [studies have shown](#) that black people are over twice as likely as white people to be reprimanded or fired for failing drug tests.

## PAST MARIJUANA USE ALSO PROTECTED

A 2023 bill, [SB 700 \(Bradford\)](#), amended [AB 2188 \(GC 12954\)](#) to disallow employers from asking about past marijuana use. SB 700 will take effect on January 1, 2024, along with AB 2188.

That 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](#), [the [Fair Chance Act](#), restricting employers' to ask about an applicant's conviction history] 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 complain to their union representative and [contact Cal NORML](#) to make a complaint and possibly be connected with a private attorney who could help file a claim, once administrative remedies have been exhausted and a [right to sue](#) has been established with the CRD.

## WHAT SHOULD EMPLOYERS DO?

Employers in California should review their policies, employee manuals, etc. to make sure they are in accord with the new state law. Employers can check with their drug-testing providers regarding compliant testing methods, like urine or hair tests that do not detect cannabis, or oral swabs or breath tests that detect active THC. Moving towards [performance indicators](#) or [performance testing](#) ensures a safe and equitable workplace without discrimination.

The surest way to avoid a discrimination lawsuit is not to test potential or current employees for cannabis at all.



Fighting for California Cannabis Consumers' Rights Since 1972

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