

AB 2188 AND SB 700: CANNABIS, YOUR EMPLOYEES, & YOU

What is AB 2188 and SB 700?

AB 2188 amends the California Fair Employment and Housing Act which prohibits an employer from discriminating against a current employee or applicant for using cannabis off work. California employers cannot make decisions, such as, hiring, firing, promotion, etc. based on an applicant's or employee's legal, off-work cannabis use. However, this new law does prohibit active use of cannabis at the workplace/on the job and certain exceptions apply.

SB 700 makes it unlawful for an employer to request information from an applicant regarding their prior history regarding the usage of cannabis off work. This new law applies to all parts of the hiring process, including, but not limited to, applications, interviews, etc.

Both AB 2188 and SB 700 are effective January 1, 2024.

How Can Employers Comply with these New Laws?

To comply with AB 2188, employers need to update their drug policies, including, but not limited to, drug testing. If drug tests are given, tests can no longer test for the presence of cannabis (which can remain present long after use). Instead, they can only test for the active presence of delta-9-tetrahydrocannabinol or "THC".

For compliance with SB 700, employers need to modify their hiring practices to exclude this information from their hiring procedures and train supervisors and interviewers to refrain from asking these questions of applicants.

Exceptions and the Fine Print

Neither AB 2188 or SB 700 apply to applicants and employees, including, but not limited to, individuals in the building and construction trades, positions requiring a federal background investigation or clearance, receiving federal funding, or entering in a federal contract. These laws do not preempt state or federal laws requiring applicants or employees to be tested for controlled substances as a condition of employment.

Questions?

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