

CALIFORNIA

California Prohibits Questions About Off-duty Marijuana Use

Almost a year to the day after enacting [Assembly Bill \(AB\) 2188](#), which provides employment protection for job applicants and employees who use marijuana outside of work, California has enacted additional new protections related to legalized marijuana. Specifically, [Senate Bill \(SB\) 700](#), enacted Sept. 19, 2023, adds protections against marijuana-related questions for job applicants. Both new laws go into effect on **Jan. 1, 2024**.

Prohibited Actions

Under the new laws, employers may not:

- ❌ Ask an applicant about prior use of marijuana; or
- ❌ Discriminate against or in any way penalize an employee or applicant based on the individual's:
 - Use of marijuana off the job and away from the workplace; or
 - Positive tests for marijuana that do not measure impairment.

Exemptions

The new prohibitions do not apply to:

- Employees in the building and construction trades;
- Individuals applying for or working in positions that are subject to certain state or federal laws that require drug testing; or
- Individuals who possess, use or are impaired by marijuana at work.

Employer Impact

AB 2188 and SB 700 both amend the state's existing Fair Housing and Employment Act, which applies to employers with five or more employees. The laws also [replace a 2008 California Supreme Court decision](#) that currently allows for virtually unrestricted discrimination based on marijuana use. Therefore, employers with workplace policies addressing marijuana use should review the new laws and revise their policies as necessary to ensure compliance.

Provided to you by **Employco USA, Inc.**

Important Dates

Sept. 18, 2022

California enacted a new law that prohibits employment discrimination based on certain marijuana test results or off-duty use.

Sept. 19, 2023

California enacted a new law that prohibits employers from asking job applicants about prior marijuana use.

Jan. 1, 2024

Though the above laws were enacted a year apart, they both go into effect on this date.

As of Jan. 1, 2024, employers may not ask about or take adverse actions based on an individual's off-duty marijuana use.