

AMENDED IN SENATE JUNE 30, 2022

AMENDED IN SENATE JUNE 13, 2022

AMENDED IN ASSEMBLY APRIL 7, 2022

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 2188

Introduced by Assembly Member Quirk

February 15, 2022

An act to add Section 12954 to the Government Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2188, as amended, Quirk. Discrimination in employment: use of cannabis.

Existing law, the California Fair Employment and Housing Act, protects and safeguards the right and opportunity of all persons to seek, obtain, and hold employment without discrimination, abridgment, or harassment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. The act prohibits various forms of employment discrimination and empowers the Department of Fair Employment and Housing to investigate and prosecute complaints alleging unlawful practices.

This ~~bill~~ *bill*, *on and after January 1, 2024*, would also make it unlawful for an employer to discriminate against a person in hiring, termination, or any term or condition of employment, or otherwise penalize a person, if the discrimination is based upon the person's use of cannabis off the job and away from the workplace, except for

preemployment ~~testing~~, *drug screening*, as specified, or upon an employer-required drug screening test that has found the person to have nonpsychoactive cannabis metabolites in their urine, hair, *blood*, or bodily fluids. The bill would exempt certain applicants and employees from the bill’s provisions, including employees ~~performing work associated with construction~~ *in the building and construction trades* and applicants and employees in positions requiring a federal background investigation or clearance, as specified. The bill would specify that the bill does not preempt state or federal laws requiring applicants or employees to be tested for controlled substances as a condition of receiving federal funding or federal licensing-related benefits, or entering into a federal contract.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares both of the
- 2 following:
- 3 (a) Tetrahydrocannabinol (THC) is the chemical compound in
- 4 cannabis that can indicate impairment and cause psychoactive
- 5 effects. After tetrahydrocannabinol is metabolized, it is stored in
- 6 the body as a nonpsychoactive cannabis metabolite. These
- 7 metabolites do not indicate impairment, only that an individual
- 8 has consumed cannabis in the last few weeks.
- 9 (b) The intent of drug tests is to identify employees who may
- 10 be impaired. While there is consensus that an employee should
- 11 not arrive at a worksite high or impaired, when most tests are
- 12 conducted for cannabis, the results only show the presence of the
- 13 nonpsychoactive cannabis metabolite and have no correlation to
- 14 impairment on the job.
- 15 (c) As science has improved, employers now have access to
- 16 multiple types of tests that do not rely on the presence of
- 17 nonpsychoactive cannabis metabolites. These alternative tests
- 18 include impairment tests, which measure an individual employee
- 19 against their own baseline performance and tests that identify the
- 20 presence of THC in an individual’s bodily fluids.
- 21 SEC. 2. Section 12954 is added to the Government Code, to
- 22 read:

1 12954. (a) It is unlawful for an employer to discriminate
2 against a person in hiring, termination, or any term or condition
3 of employment, or otherwise penalize a person, if the
4 discrimination is based upon any of the following:

5 (1) The person's use of cannabis off the job and away from the
6 workplace. This paragraph does not ~~apply to prohibit an employer~~
7 *from discriminating in hiring, or any term or condition of*
8 *employment, or otherwise penalize a person based on scientifically*
9 *valid preemployment drug screening testing* conducted through
10 methods that do not screen for nonpsychoactive cannabis
11 metabolites.

12 (2) An employer-required drug screening test that has found the
13 person to have nonpsychoactive cannabis metabolites in their urine,
14 hair, *blood*, or bodily fluids.

15 (b) Nothing in this section permits an employee to possess, to
16 be impaired by, or to use, cannabis on the job, or affects the rights
17 or obligations of an employer to maintain a drug- and alcohol-free
18 workplace, as specified in Section 11362.45 of the Health and
19 Safety Code, or any other rights or obligations of an employer
20 specified by federal law or regulation.

21 (c) This section does not apply to an employee ~~performing work~~
22 ~~associated with construction, including work involving alteration,~~
23 ~~demolition, building, excavation, renovation, remodeling,~~
24 ~~maintenance, improvement, or repair work, a person licensed under~~
25 ~~the Contractors State License Law (Chapter 9 (commencing with~~
26 ~~Section 7000) of Division 3 of the Business and Professions Code),~~
27 ~~or an employee performing work in similar or related occupations~~
28 ~~or in the building and construction trades.~~

29 (d) This section does not apply to applicants or employees hired
30 for positions that require a federal government background
31 investigation or security clearance in accordance with regulations
32 issued by the United States Department of Defense pursuant to
33 Part 117 of Title 32 of the Code of Federal Regulations, or
34 equivalent regulations applicable to other agencies.

35 (e) This section does not preempt state or federal laws requiring
36 applicants or employees to be tested for controlled substances,
37 including laws and regulations requiring applicants or employees
38 to be tested, or the manner in which they are tested, as a condition
39 of receiving federal funding or federal licensing-related benefits
40 or entering into a federal contract.

1 (f) *This section shall become operative on January 1, 2024.*

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