

RCW 49.44.240 Discrimination based upon cannabis use—

Exceptions. (1) It is unlawful for an employer to discriminate against a person in the initial hiring for employment if the discrimination is based upon:

(a) The person's use of cannabis off the job and away from the workplace; or

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

(2) Nothing in this section:

(a) Prohibits an employer from basing initial hiring decisions on scientifically valid drug screening conducted through methods that do not screen for nonpsychoactive cannabis metabolites;

(b) Affects the rights or obligations of an employer to maintain a drug and alcohol free workplace, or any other rights or obligations of an employer required by federal law or regulation; or

(c) Applies to testing for controlled substances other than preemployment, such as postaccident testing or testing because of a suspicion of impairment or being under the influence of alcohol, controlled substances, medications, or other substances.

(3) This section does not apply to an applicant seeking:

(a) A position requiring a federal government background investigation or security clearance;

(b) A position with a general authority Washington law enforcement agency as defined in RCW 10.93.020;

(c) A position with a fire department, fire protection district, or regional fire protection service authority;

(d) A position as a first responder not included under (b) or (c) of this subsection, including a dispatcher position with a public or private 911 emergency communications system or a position responsible for the provision of emergency medical services;

(e) A position as a corrections officer with a jail, detention facility, or the department of corrections, including any position directly responsible for the custody, safety, and security of persons confined in those facilities;

(f) A position in the airline or aerospace industries; or

(g) A safety sensitive position for which impairment while working presents a substantial risk of death. Such safety sensitive positions must be identified by the employer prior to the applicant's application for employment.

(4) (a) This section does not preempt state or federal laws requiring an applicant to be tested for controlled substances. This includes state or federal laws requiring applicants to be tested, or the way they are tested, as a condition of employment, receiving federal funding or federal licensing-related benefits, or as required by a federal contract.

(b) Employers may require an applicant to be tested for a spectrum of controlled substances, which may include cannabis, as long as the cannabis results are not provided to the employer. Such policies are fully subject to subsection (1) of this section.

(5) For the purposes of this section, "cannabis" has the meaning provided in RCW 69.50.101. [2023 c 359 s 2.]

Finding—Intent—2023 c 359: "The legislature finds that the legalization of recreational cannabis in Washington state in 2012 created a disconnect between prospective employees' legal activities

and employers' hiring practices. Many tests for cannabis show only the presence of nonpsychoactive cannabis metabolites from past cannabis use, including up to 30 days in the past, that have no correlation to an applicant's future job performance. Applicants are much less likely to test positive or be disqualified for the presence of alcohol on a preemployment screening test compared with cannabis, despite both being legally allowed controlled substances. The legislature intends to prevent restricting job opportunities based on an applicant's past use of cannabis." [2023 c 359 s 1.]

Effective date—2023 c 359: "This act takes effect January 1, 2024." [2023 c 359 s 3.]