

Pennsylvania Drug Testing Laws and Regulations

State:	Pennsylvania
Statute of Order:	Currently Not Available
Covered Employers:	Currently Not Available
Applicant Testing:	Currently Not Available
Employee Testing:	Currently Not Available
Conditions & Methods:	Currently Not Available

Important Bullet points:

- With regards to workers' compensation, the employee may receive no compensation for injury or death caused by the employee's violation of the law including the illegal use of drugs or alcohol intoxication. The burden of proof is on the employer.
- The act of evading or causing deceitful results in a test for drugs constitutes a third degree misdemeanor in Pennsylvania.
- A positive drug test or refusal to undergo testing for controlled substances, as required by the employer's established substance abuse policy, is classified as "misconduct". The employee is therefore ineligible for compensation with regards to claims for unemployment benefits.

Drug Testing in Pennsylvania:

There is no specific Pennsylvania drug testing law. In general, Federal law has no requirements or prohibitions when it comes to drug testing in Pennsylvania. However, there is a common law on wrongful discharge and two official provisions that controls an employer's drug testing program in the workplace.

Wrongful Discharge Common Law:

In Pennsylvania, an employer has the right to terminate an employee for any reason as stipulated under the at-will employment doctrines. But an employer could be liable to wrongful discharge if there is a violation of any public policy upon terminating a particular employee. In this connection, drug testing in the workplace, if done not in accordance with Pennsylvania's drug testing procedures and policies, violates public policy.

Pennsylvania Drug Testing Policies:

Pennsylvania transportation employees are required to undergo alcohol and drug testing as mandated by the US Department of Transportation Federal Motor Carrier Safety Administration. An employee terminated from work due to a failed drug testing submission or procedure as required by his employer is not eligible to file and receive unemployment compensation.

Other Stipulations of Pennsylvania Drug Testing Law:

Pennsylvania drug testing is not prohibited when done during pre-employment, at random, when there is reasonable suspicion of intoxication and other mitigating circumstances. There is no Pennsylvania drug testing law that specifically prohibits or regulates what kind of drug testing is done. Urine, hair and blood tests can be done. There is also no Pennsylvania drug testing law that regulates which substance can and cannot be tested.

Employer's and Employee's Obligations on Pennsylvania Drug Testing:

American with Disabilities Act (ADA) does not allow employers to drug test an applicant if he has not been offered employment yet.

- An employer has the right to prohibit illegal drug and alcohol use in the workplace.
- Under the ADA, an employer has the right to require employees to undergo drug tests.
- If an employee engages in the use of illegal drugs, an employer has the right to deny or terminate the particular employee.
- Employees may be obliged to abide with the Drug-Free Workplace Act of 1988 and other rules and regulations set by federal organizations regarding alcohol and drug abuse in the workplace.
- Employees who have alcohol and/or drug problems may need to meet the same level of conduct and performance set by other employees.

Marijuana Law:

Senate Bill 3 was approved by the Senate on April 12, 2016 and by the House on April 13, 2016. On April 17, 2016, Governor Tom Wolf signed the bill into law.



The bill legalized the use, possession and cultivation of medical marijuana for qualified patients. These patients should have a signed recommendation from their physicians saying that the use of medical marijuana could alleviate or mitigate the patient's medical symptoms.

In line with the bill, the Pennsylvania Department of Health (DOH) is to establish and administer the Medical Marijuana Program, which is anticipated to take place in 18 to 24 months.

All qualified patients with recommendations from their personal physician are to register with the Pennsylvania DOH. After registration, a medical marijuana identification card will be issued to patients, which are to be used for buying medical marijuana from authorized medical marijuana dispensaries.

Qualifying Medical Conditions

- HIV/AIDS
- Cancer
- Parkinson's disease
- amyotrophic lateral sclerosis
- multiple sclerosis
- inflammatory bowel disease
- epilepsy
- Huntington's disease
- Neuropathies
- Crohn's disease
- intractable seizures
- post-traumatic stress disorder
- autism
- glaucoma
- spinal cord nervous tissue damage, with objective neurological indication of intractable spasticity
- sickle cell anemia
- chronic or intractable neuropathic pain

Limitations

- Smokable medical marijuana is not allowable.
- Medical marijuana is not FDA approved and would therefore not be covered by health insurance companies.
- Patients are not allowed to grow marijuana
- It is illegal to drive under the influence of marijuana
- It is illegal to possess and use marijuana on a school bus, school grounds and other public spaces.
- Use medical marijuana in the workplace when doing dangerous activities
- Buy food and drinks infused with cannabis
- Private health insurance companies and government medical assistance programs are not mandated to reimburse costs associated with the use of medical marijuana or



costs relating to an employer making accommodations for the use of medical marijuana in the workplace.

- Patients registered to use medical marijuana in other states are not permitted to access medical marijuana in the state of Pennsylvania.

Recreational Marijuana Law

Recreational marijuana is still illegal in Pennsylvania but Senate Bill 528 sponsored by Senators Daylin Leach and Lawrence Farneses Jr. has been sent to the Law and Justice committee in February 2015. ³ This Act is supposed to make legal the personal use of marijuana and pave the way for the lawful operation of cannabis-related facilities including the regulation of marijuana similar to the regulation of alcohol. Legalization of recreational marijuana seems to be far from happening yet.

Limitations

- It is illegal to use marijuana in any public place, and in a manner that will harm others.

Effects on Drug Testing in the Workplace

Currently, the state of Pennsylvania has not passed laws restricting or regulating an employer's right to mandate drug testing in the workplace. Basically, this means that drug testing in Pennsylvania is not restricted or prohibited, unless established legal provisions such as discrimination, defamation and invasion of privacy, are violated.

Sources

<http://medicalmarijuana.procon.org/view.resource.php?resourceID=000881#Oregon>

<https://www.mpp.org/states/pennsylvania/pennsylvanias-medical-marijuana-law-guide-doctors-patients/>

<https://www.mpp.org/states/pennsylvania/summary-sb-3/>

<http://www.nolo.com/legal-encyclopedia/workplace-drug-testing-pennsylvania.html>

