

Drug Testing in the Workplace: Employee Rights Under New Jersey Law

Results achieved in prior matters are not meant to be a guarantee of success as the facts and legal circumstances vary from matter to matter.

Private employers in New Jersey may implement drug testing programs, but must respect statutory protections—especially concerning cannabis use outside the workplace.

Employers may lawfully require testing under the following circumstances:

- Pre-employment screening – to determine baseline drug usage before hiring.
- Reasonable suspicion – based on observable signs (e.g., bloodshot eyes, odor) or behavior indicating impairment. Such testing must follow a documented evaluation by a trained individual.
- Post-accident investigation – if injury or equipment damage occurs.
- Random testing – only for employees in safety sensitive roles and random testing for cannabis may also be permitted during work hours under NJ Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMMA). Please note that cannabis testing must use scientifically valid methods (urine, saliva, blood) and include a physical evaluation, regarding impairment, by a trained individual before any adverse action based on cannabis results. Under CREAMMA:

Employers cannot refuse to hire, discipline, or fire employees solely because they legally use cannabis off duty or test positive for cannabis metabolites. Adverse actions require both a positive drug test and documented impairment during work hours.

CREAMMA doesn't override stricter federal rules that apply to federal contractors or safety sensitive roles. Those users may be subject to zero tolerance testing.

Drug test results are considered confidential medical records and must be stored separately from general personnel files. Access should be restricted to necessary parties (e.g., HR, testing coordinators). Employers must comply with HIPAA and state privacy standards when handling results.

Right to retest: Employees may request a confirmatory retest at their own expense.

For employees under twenty-one (21), under NJ's Law Against Discrimination, employees using medical marijuana must be accommodated unless it jeopardizes workplace safety.

If you have tested positive for cannabis or need to use medical marijuana and you need to understand your rights, the employment law team at Wilentz, Goldman & Spitzer P.A. is here to advocate for your rights and ensure you receive the accommodations you're entitled to under New Jersey law. Contact us today to schedule a confidential consultation.

To speak with an attorney about your legal options, please call: 732-352-9858.