



DISTRIBUTOR MEMORANDUM

TO: DISTRIBUTORS OF HEALGEN SCIENTIFIC TOXICOLOGY TESTS IN THE US MARKET

FROM: LORRAINE COGAN, CONSULTANT

SUBJECT: STATE LAW CHANGES THAT AFFECT METHODS FOR DETECTING THC AND/OR ITS METABOLITES FOR EMPLOYMENT PURPOSES

DATE: JANUARY 15, 2024

CC: HEALGEN SCIENTIFIC RA/QA, SALES, AND CUSTOMER SERVICE

Valued customers,

The following is an outline of changes to the laws of some states that **dramatically affect** the types of tests that can be used for employment-based testing. These laws became effective on **January 1, 2024**. This list is not intended to be all-inclusive.

1. **California: AB-2188 Discrimination in employment: use of cannabis.**
 - a. **Summary:** The paraphrased summary as it pertains to drug screening is:
 - i. It is unlawful for an employer to discriminate against a person in hiring, termination, or any term or condition of employment, or otherwise penalizing a person, if the discrimination is based upon the person's use of cannabis off the job and away from the workplace. This paragraph does not prohibit an employer from discriminating in hiring, or any term or condition of employment, or otherwise penalize a person based on scientifically valid preemployment drug screening conducted through methods that do **not** screen for non- psychoactive cannabis metabolites...
 - b. **Simplified interpretation:**
 - i. Urine screening tests for THC are incapable of detecting psychoactive THC (delta-9-THC, parent THC). Therefore, urine drug screens and confirmation tests that identify THC metabolite (aka THC-COOH, carboxy-THC) **cannot** be used as a basis for hiring or firing an employee.
 - ii. **Drug tests that detect "psychoactive THC" (parent THC, delta-9-THC, Δ⁹-THC) are allowed.** Oral fluid/saliva tests for THC detect psychoactive THC and, as such, are allowed by law. Although uncommon, blood testing for parent THC would also be allowed.
 - c. **Legal citation:**
https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2188

2. **Washington State:** *ESSB 5123 Concerning the employment of individuals who lawfully consume cannabis.*
- a. **Summary:** The wording of this law closely mirrors the one from California. The details from the Washington law are:
 - i. **Prohibited Practices.** Employers are prohibited from discriminating against a person in hiring if the discrimination is based upon:
 - 1. the person's use of cannabis off the job and away from the workplace; or
 - 2. an employer-required drug screening test that identifies non-psychoactive cannabis metabolites in the person's hair, blood, urine, or other bodily fluids.
 - ii. **Non-prohibited Practices:** The bill does not
 - 1. prohibit an employer from basing initial hiring decisions on scientifically valid drug screening conducted through methods that do not screen for non-psychoactive cannabinoids.
 - 2. apply to testing for controlled substances other than pre-employment, such as post-accident testing or testing because of suspicion of impairment or being under the influence of alcohol, controlled substances, medications, or other substances.
 - b. **Simplified interpretation:**
 - 1. Same as California.
 - c. **Legal citation:**
<https://lawfilesext.leg.wa.gov/biennium/2023-24/Pdf/Bill%20Reports/Senate/5123-S.E%20SBR%20FBR%2023.pdf?q=20240117101045>
3. **Minnesota:** <https://cannabis.mn.gov/workplaces#employer>
- a. **Summary:** Minnesota's law is more succinct than those of CA and WA. Here is the exact wording taken from the website cited above:
 - i. **Employer drug testing**
Unless the employer is otherwise required to do so by state or federal law (see below for state law exceptions), an employer can no longer require or request a job applicant to undergo pre-employment cannabis-specific testing or refuse to hire an applicant solely because the person tests positive for cannabis as a result of an authorized pre-employment drug test. Also, employers may not request or require an employee or job applicant to undergo testing for cannabis on an arbitrary or capricious basis.
 - A. Exceptions for pre-employment or routine testing: An employer may continue pre-employment or routine cannabis testing for the following:
 - i. Safety-sensitive positions - a job (including supervisory or management positions) in which an impairment caused by drug, alcohol or cannabis use would threaten the health or safety of any person.
 - ii. Peace officer positions.
 - iii. Firefighter positions

- iv. Positions requiring face-to-face care, training, education, supervision, counseling, consultation, or medical assistance to:
 - v. Children
 - vi. Vulnerable adults, or
 - vii. Patients who receive health care services from a provider for the treatment, examination, or emergency care of a medical, psychiatric, or mental condition.
 - viii. Positions requiring a commercial driver's license or requiring an employee to operate a motor vehicle for which state or federal law requires drug or alcohol testing of a job applicant or an employee.
 - ix. Positions of employment funded by a federal grant.
 - x. Positions for which state or federal law requires cannabis testing of an employee or job applicant.
- B. NOTE:** Employers may request or require employees to undergo cannabis testing on a random selection basis only if the employees are either employed in safety-sensitive positions or the employees are professional athletes subject to a collective bargaining agreement that permits such testing.

4. **New York:** New York has a definitive pdf that outlines the policy on employment-based testing of cannabis. It has a Q&A section that clearly states answers to basic questions with a legal citation that follows. A most-notable question/answer is:

a. DRUG TESTING OF EMPLOYEES

Can an employer test for cannabis? **No**, unless the employer is permitted to do so pursuant to the provisions of Labor Law Section 201-D(4-a) or other applicable laws.

b. Citation: <https://dol.ny.gov/system/files/documents/2021/10/p420-cannabisfaq-10-08-21.pdf>

As stated earlier in this memo, this list is not all-encompassing. Distributors should check with their legal counsel or verify laws in the jurisdictions where their drug tests are used.

Notably, Healgen Scientific has an FDA-cleared oral fluid THC test that detects psychoactive THC (delta-9-THC, or parent THC). For states that allow the testing of psychoactive THC, oral fluid is a viable alternative. The 510K number is K223162.

To order Healgen Oral Fluid products please
contact Healgen approved Distributor
CLIAwaived.com at sales@cliawaived.com
or 1-888-882-7739.

The Suggested Catalog #'s are listed below

GBDSA-91864 ESI-1-EUO \$3.35 per test – Offered through www.cliawaived.com	6 Panel Oral Fluid DOA Test Device E with Saturation Indicator: AMP50, COC20, MET50, OPI40, OXY20, THC40, Employment & Insurance Use	Employment and Insurance (EUO)
GBDSA-91104 ESI-1-EUO \$4.20 per test— Offered through www.cliawaived.com	10 Panel DOA Test Device E with Saliva Indicator: AMP50, BAR50, BUP5, BZO10, COC20, MET50, MTD30, OPI40, OXY20, THC40, Employment & Insurance Use	Employment and Insurance (EUO)