

Minnesota Has Loosened Restrictions on Edible Products Containing THC – What Does that Mean for Minnesota Employers?

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What is the current Minnesota law regarding edible products containing THC?

An inconsistency in two amended provisions of [Minnesota Statute § 151.72](#) has resulted in what some have deemed the legislature “accidentally” legalizing edible products containing certain amounts of hemp-derived tetrahydrocannabinol (THC) for purchasers 21 years of age and older.

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When did the new law take effect?

The new law went into effect on July 1, 2022. And in simplest terms, most edibles and beverages containing THC are now legal in the state of Minnesota.



Did the new law change drug testing requirements for employers?

It doesn't appear so. Minnesota employers are not required to perform drug testing on employees, but when employers choose to have a drug testing program, it must be carried out within the strict parameters of [Minnesota Statute § 181.951](#). Minnesota's drug testing law was not amended to interact with the legalization of edibles and beverages containing THC in the state.

Under the Minnesota drug testing law, employers may take certain actions against an employee that tests positive for a controlled substance as defined in [Minnesota Statute § 152.02](#), Subd. 2 through 6. Included within those sections is cannabinoids, including dronabinol [(–)-delta-9-trans-tetrahydrocannabinol (delta-9-THC)], the THC legalized in edible form under Minnesota's new law.

Many states that have legalized some form of recreational marijuana have also updated their employment drug testing laws. For example:

- In Alaska, persons over the age of 21 may use and possess small amount of marijuana. While the recreational marijuana law does not address employee drug testing, it specifically allows employers to prohibit or restrict the use, possession, transfer, or cultivation of marijuana in the workplace; implement policies restricting the use of marijuana by employees; and prohibit or restrict the use, possession, transfer, or cultivation of marijuana on any property owned or controlled by the employer.
- In Colorado, employers are permitted to have policies that restrict employee's use of marijuana.
- In Connecticut, employers may still conduct drug tests for applicants and employees, but cannot take action for a positive result for 11- or -9-carboxy-delta-9-THC unless certain circumstances exist.
- In New Mexico, even though the recreational use of cannabis is legal, employers may still adopt zero tolerance policies which can include discipline or termination of an employee based on a positive drug test that indicates any amount of delta-9-THC or delta-9-THC metabolite.

At least for now, employers in Minnesota may continue to take employment actions—*in compliance with Minnesota's drug testing law*—against employees or applicants that test positive for now-legal substances.

Should employers continue to drug test?

Minnesota's law is lengthy, arguably onerous, and can be a minefield for unsuspecting employers trying to manage a drug testing program. Unless an employer has a really good reason for doing so – such as a safety sensitive work environment or industry requirements and regulations – we understand why employers may choose not to drug test employees. Some federal contractors must comply with the Drug Free Workplace Act as a condition of their contract. That law requires covered employers to have a drug-free workplace policy statement, establish a drug-free awareness program, ensure that employees understand their reporting requirements under the Act, report any violations to the federal contracting agency, and take action against employees engage in a workplace drug violation. Noticeably absent is a requirement that employers conduct drug testing of employees.

As a compromise, an employer would be well-advised to include in their employee handbook a policy that prohibits the use of drugs and alcohol while at work, and advises employees to immediately alert their employer if they are taking any legal drugs that could limit their ability to safely do their job.