

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Department of Human Resources**



**Public Hearing on**

**B23-0266, the "Prohibition of Marijuana Testing Act of 2019," and**  
**B23-0309, the "Medical Marijuana Program Patient Employment Protection**  
**Amendment Act of 2019"**

Testimony of  
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Before the

Committee on Labor and Workforce Development  
Council of the District of Columbia  
Chairperson Elissa Silverman

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Room 500  
John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004



Good morning, Chairperson Silverman and members of the Committee on Labor and Workforce Development. My name is Ventris C. Gibson, and I am the Director for the D.C. Department of Human Resources. It is a privilege to appear before you today to provide testimony regarding Bill 23-0266, the “Prohibition of Marijuana Testing Act of 2019,” and Bill 23-0309, the “Medical Marijuana Program Patient Employment Protection Amendment Act of 2019.” Through my testimony today, I will outline the changes the District of Columbia Government has made to its workplace drug policy and address the pending bills as they relate to these policy changes.

### **Cannabis Policy for District Employees**

Cannabis is currently legal in the District of Columbia for both personal and medical use. Based on the evolving acceptance of cannabis and the need to provide greater clarity around its use by District government employees, on September 13<sup>th</sup>, Mayor Bowser issued Mayor’s Order 2019-081, which implements a new, more sensible workplace drug policy. Under the new policy, most District government employees may take advantage of the legal use of medical and recreational cannabis. However, like alcohol, there are sensible limits. For example, employees may not report for work impaired and may not possess or use cannabis while on duty.

Within our workforce, we have two special categories of employees who are subject to what we call “enhanced” drug testing requirements, “protection-sensitive” employees and “safety-sensitive” employees. “Protection-sensitive” employees work with our vulnerable populations daily. Prior to the Mayor’s Order, “protection-sensitive” employees were subject to pre-employment cannabis screening. Under the new policy, “protection-sensitive” applicants will not



be screened for cannabis prior to employment. “Safety-sensitive” employees are individuals with duties that, if performed while impaired, could reasonably cause significant injury or death to the employee or someone else. Lifeguards, for example, are classified as “safety-sensitive.” Unlike alcohol, there are presently no effective and viable testing methodologies that can determine whether an employee is currently impaired by cannabis or simply used cannabis within a few days of the test. We believe safety is paramount, and the risks of permitting cannabis use by “safety-sensitive” employees is too great. Until new testing methods become available, “safety-sensitive” employees are still prohibited from testing positive for cannabis use for any reason.

However, we recognize that with recent changes in law, applicants and employees will need clarity on the rules. Our revised policy addresses this in several ways. First, vacancy announcements for “safety-sensitive” positions will clearly articulate that a job offer is contingent upon successfully passing a drug test, which will include testing for cannabis. If a candidate tests positive for cannabis, they will be advised of the result and provided another opportunity to test absent operational needs to immediately fill the position. Also, for “safety-sensitive” employees, we are eliminating the “zero tolerance” standard for cannabis and, instead, will employ a progressive disciplinary model. The exact details will be developed through rulemaking in consultation with our labor partners, and safety-sensitive employees selected for random drug testing who test positive for cannabis will not be terminated on the first positive result, provided there are no aggravating circumstances, such as other evidence of actual on-the-job impairment.



With our revised policy as a backdrop, I am pleased to discuss the two bills that are the topic of today’s hearing. First, Bill 23-0266, the “Prohibition of Marijuana Testing Act of 2019,” would impact all District employers and generally prohibit them from testing for cannabis as a condition of employment. If enacted, testing prospective employees for cannabis use would be an “unlawful discriminatory practice,” except in specific circumstances. The District government’s revised workplace drug policy is therefore consistent with the intent of this proposed law. However, we believe the Council should consider the feedback of the broad array District employers to ensure that the bill is crafted to meet the needs of employers across the city, including any appropriate exceptions.

Should the bill move forward, I also recommend that the bill be amended to remove the grant of authority on page 2, lines 40 through 42, which would empower the Director of the Department of Human Resources to determine whether certain private sector jobs have “the potential to significantly impact the health or safety of employees or members of the public[.]” The personnel authority of the DCHR Director is limited to government personnel and does not extend to the private sector. Therefore, I recommend that the phrase “Director of Department of Human Resources” be replaced with the “Mayor” to allow the Mayor to identify the appropriate agency to perform this role.

The second bill under consideration, Bill 23-0309, the “Medical Marijuana Program Patient Employment Protection Amendment Act of 2019,” would impact only the District government workforce. Under the proposed law, the District government, as an employer, “may not refuse to



hire, terminate from employment, penalize, or otherwise discriminate” against medical marijuana participants, even if they test positive for cannabis.

This bill is not necessary, as the Mayor’s new policy makes clear that no agency may discriminate against an individual based on their participation in a medical marijuana program. Except for “safety-sensitive” employees, and except when there is evidence of on-duty impairment, no District government candidate or employee will be penalized due to a positive cannabis drug test result.

Should the Committee move this legislation forward, the bill should be amended to exclude “safety-sensitive” employees, an exclusion the Council sensibly added to the related emergency and temporary legislation. As a public employer, we must balance the lawful personal and medical use of cannabis with very real safety and liability concerns. DCHR, in collaboration with the Department of Forensic Sciences, will be exploring new drug testing methodologies that may enable us to accurately test for cannabis impairment. Until then, the risk to public safety is too great, and “safety-sensitive” employees must be prohibited from testing positive for cannabis for any reason.

Through our partnership with this Committee, as well as vital stakeholders, DCHR continuously aspires to improve the employee experience and provide the best in government services to District residents. The District’s new drug policy balances evolving marijuana laws and our legitimate governmental interest in protecting the safety of employees and residents. Given current technology limits, we believe our new policy strikes the right balance; I hope you agree.



This concludes my testimony. I am happy to answer any questions you may have.

