

HOUSE BILL 230

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

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AN ACT

RELATING TO MEDICAL CANNABIS; CLARIFYING WHEN DRUG TESTING FOR CANNABIS IS ALLOWED FOR EMPLOYEES WHO ARE QUALIFIED PATIENTS PURSUANT TO THE LYNN AND ERIN COMPASSIONATE USE ACT; PROVIDING PROTECTIONS AGAINST ADVERSE EMPLOYMENT ACTIONS; PROVIDING REQUIREMENTS FOR DETERMINING IMPAIRMENT; REQUIRING THE DEPARTMENT OF HEALTH AND THE WORKFORCE SOLUTIONS DEPARTMENT TO DEVELOP GUIDELINES FOR EMPLOYERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 26-2B-9 NMSA 1978 (being Laws 2019, Chapter 247, Section 11) is amended to read:

"26-2B-9. EMPLOYMENT PROTECTIONS.--

A. Unless a failure to do so would cause the employer to lose a monetary or licensing-related benefit under federal law or federal regulations, it is unlawful to take an

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1 adverse employment action against an applicant or an employee
2 based on conduct allowed under the Lynn and Erin Compassionate
3 Use Act. An employee shall not be considered to be impaired by
4 cannabis solely because of the presence of metabolites or
5 components of cannabis.

6 B. Random drug testing of an employee shall not
7 include testing for cannabis. A employer may require a drug
8 test for cannabis if the employer has a reasonable suspicion of
9 the employee's impairment by cannabis at work or after an
10 accident involving the employee and at least one other person
11 or an accident causing significant damage to property if the
12 employer has a reasonable suspicion of the employee's
13 impairment by cannabis at the time of the accident. The drug
14 test for cannabis shall be reviewed by a medical review officer
15 who shall determine if the reason for a positive test has a
16 legitimate medical explanation.

17 ~~[B.]~~ C. Nothing in this section shall ~~[(1)]~~
18 restrict an employer's ability to prohibit or to take an
19 adverse employment action against an employee for use of or
20 being impaired by ~~[medical]~~ cannabis on the premises of the
21 place of employment or during the hours of employment ~~[or~~

22 ~~(2) apply to an employee whose employer deems~~
23 ~~that the employee works in a safety-sensitive position].~~

24 D. Defining "cannabis impairment" is the
25 responsibility of the employer. The department of health shall

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1 assist the workforce solutions department in developing
2 cannabis impairment guidelines that are based on the most
3 reliable research- or evidence-based cannabis impairment
4 indicators, including the evaluation of physical symptoms and
5 psychomotor and cognitive performance. The workforce solutions
6 department shall inform private employers of this section and
7 provide information related to the most recent advances in
8 testing protocols for determining cannabis impairment. The
9 department of finance and administration shall disseminate the
10 cannabis impairment guidelines to state agencies and political
11 subdivisions of the state.

12 E. As used in this section:

13 (1) "employee" means an employee who is also a
14 qualified patient pursuant to the Lynn and Erin Compassionate
15 Use Act; and

16 (2) "employer" includes an agent of the
17 employer."