

# CA AB 2188 Compliance



## Agile screening programs are compliant with new regulations for THC testing

California Assembly Bill 2188, also known as the Medical Marijuana Regulation and Safety Act, sets forth guidelines and regulations for medical clinics that perform drug testing for marijuana. Effective January 1, 2024, state law prohibits employers from using drug screen results against an applicant if the test reveals evidence of past marijuana use. The intent of the new regulations for employment-related drug testing is to test for impairment on the job or at the worksite, not just for the presence of the substance.

The California Legislature expressly states that the traditional and standard tests for marijuana use can no longer be used for pre-employment drug screening or be the basis for discipline or termination of an employee. However, applicants and employees can still be disciplined or terminated based on test results that show impairment due to the presence of the psychoactive chemical compounds of marijuana.

Employers that test for THC should consider removing pre-employment marijuana testing policies that utilize the current standard testing methods for non-psychoactive cannabis metabolites to avoid liability. Employers should consider adding oral fluid testing (saliva test), which is now the only legitimate method permitted for cannabis testing.

Agile has taken the necessary steps to meet the requirements of CA AB 2188 and is fully prepared to assist you in revising your drug screening program. For more information, please see the following page.



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## How does this effect your screenings?

AB 2188 is intended to highlight that testing for non-psychoactive cannabis metabolites in someone's system (i.e., the current testing method), which can be present for weeks after use, does not correlate whether an employee is currently and/or actively impaired on the job. Therefore, starting in January 2024, other testing methods need to be used that do not focus on the presence of non-psychoactive cannabis metabolites, but rather on the psychoactive components of marijuana in an individual's body.

## Screening compliance

Pre-employment testing is necessary for maintaining a drug-free workplace and ensuring both the safety of employees and, depending on the industry, the public. However, given AB 2188, California employers who are not statutorily exempt from the scope of the regulation should revisit their drug screening policies, particularly as they pertain to marijuana, in hiring, discipline, and termination to ensure compliance.

There are a few important exemptions to this new law. Specifically, AB 2188 exempts employees in the construction and building industries and those hired for positions that require federal background and clearance checks. Notably, the new law does not exempt employees in other safety-sensitive industries such as transportation, health and services, manufacturing, and agriculture.

Employers should remove pre-employment marijuana testing policies that utilize the current standard testing methods for non-psychoactive cannabis metabolites to avoid liability under the Fair Employment and Housing Act ("FEHA").

Employers may use testing methods that test the employee's impairment at the time of the interview or while on duty and/or test for the psychoactive component of marijuana. The test currently recognized for this type of testing is the oral fluid test.

## New screening options for employers

To comply with the new regulations, Agile now offers rapid drug tests without the THC component and oral fluid screening for the psychoactive metabolite for marijuana (saliva test) in addition to our standard screening protocols. Employers now have a choice of the following screening options to maintain compliance with the new law:

- Rapid Drug Screen 5 Panel NO THC
- Rapid Drug Screen 7 Panel NO THC
- Oral (Saliva) Drug Screen 5 panel
- Rapid Oral (Saliva) Drug Screen for THC

Pricing for the addition of oral fluid testing:

- Rapid Oral (Saliva) Drug Screen for THC \$75
- Oral (Saliva) Drug Screen 5 panel \$80



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**Contact us today to set up a cost-effective and convenient screening program.**