

WINTER/SPRING 2024

NEWSLETTER



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GOODBYE WINTER /HELLO SPRING

Winter has come again and with it snow in the mountains and rain in the valleys. All good in moderation as we look towards Spring. What is not moderate is the growth of PLPC. The firm now serves six counties as county counsel, Modoc, Sierra, Lassen, Trinity, Tehama, and San Benito. When we started almost ten years ago there were only four contract counties in the state. Of course, we also serve as city attorneys and general counsel to special districts. In addition, we serve as special counsel to multiple other counties, cities, and special districts.

A large factor in this success is our former associate Sean Cameron. “Former,” because Sean is now a partner. He started with PLPC in November of 2019, and has earned a partnership through dedication to the firm and our clients. Sean is Assistant County Counsel for the County of San Benito and is proving his leadership skills daily. Sean is also the firm’s contract expert. Congratulations to Sean!

But that is not all, of note are the recent accolades heaped upon our leader Margaret Long. She was the recipient of a proclamation by the Board of Supervisors of Modoc County for outstanding service to the county, its citizens, and employees over the last ten years. Way to go Margaret!

Thanks again to all our clients and friends of PLPC, we hope you had a wonderful and safe winter, here comes spring!

New Law Limits Employers' Ability to Screen for Marijuana Use:

Considerations for Law Enforcement Agencies

By Caitlin Smith, Associate

Effective January 2024, the off-duty use of recreational Cannabis will be legally protected under Cal. Gov. Code § 12954. While off-duty use will be protected, employers may still suspend, discipline, or terminate employees for possessing, using, or being impaired by Cannabis while on the job.

WHAT IS PROHIBITED

1. Employers may not refuse to hire an applicant, discipline an employee, or terminate an employee for their off-duty use of recreational Cannabis.
2. Employers may not request information from a job applicant regarding their prior use of Cannabis.
 - a. Exception: Senate Bill 700 amends § 12954 to provide that information about a person's prior cannabis use obtained from the person's criminal history would be exempt from the law if the employer is permitted to consider or inquire about that information under FEHA or other state law.
 - i. Cal. Gov. Code § 12952(d)(2) (the Fair Chance Act) provides that if the applicant is seeking a position within a criminal justice agency, the employer is not prohibited from inquiring about a job applicant's criminal conviction history. The employer is therefore allowed to consider information about the applicant's prior cannabis use where the information is obtained from their criminal history. If the applicant has a criminal record involving cannabis use, the employer may consider this factor as it reflects a history of violating the law (as opposed to simply having a history of legal cannabis use).
3. Employers may not use drug screening that tests for non-psychoactive Cannabis metabolites (see below for more details on drug testing). Essentially, employers may



not test for metabolites that remain in the body for some time following Cannabis use, and instead may only test an employee for active cannabis use (meaning the test is to see if the employee is currently under the influence of Cannabis while on the job).

EXCEPTIONS

The law carves out certain exceptions to account for safety (such as for employees in the construction industry) and where there is a conflict with federal law. Unfortunately, there is no exception specific to law enforcement officers, so the analysis must be on a case-by-case basis. The following exceptions may apply under certain circumstances:

1. Employees in positions that require a federal background check are exempted from § 12954.
2. There is an exception where any state or federal law requires applicants or employees to undergo drug testing as a condition of employment or where the employer receives federal funding, federal licensing benefits, or enters into a federal contract that carries requirements for drug testing. We recommend verifying whether your agency receives any such federal funding/licensing or has any contracts with the federal government that would apply.
3. There is an exception for employees hired for positions that require a federal government background check in accordance with DOT regulations or equivalent regulations. We recommend verifying whether this exception applies to your agency.

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Off-Duty Employee Cannabis Usage

DRUG TESTING POLICY

If law enforcement agencies require employees to take drug tests, they should be careful about what chemicals the test is evaluating. Employers may not test for non-psychoactive cannabis metabolites in the hair, blood, urine, or other bodily fluids, which essentially means that the remaining metabolites of Cannabis that linger in the body cannot be tested- only the active cannabis metabolites that could impair the person at the time of the test may be screened. In other words, employers may only test for current impairment on the job by THC; this requirement may prove difficult depending on the types of drug testing available to law enforcement agencies as many tests do not differentiate between active and non-psychoactive Cannabis metabolites. To protect against such shortfalls in testing capabilities, employers should be prepared to identify obvious signs of active impairment (while on the job), such as the odor of very recent Cannabis use and other signs of being under the active influence of Cannabis to support the decision to test and to bolster the results of any such tests.

We recommend that law enforcement agencies craft specific policies for drug testing to encompass these considerations. Any testing decisions should focus on the employee's conduct while on the job to ensure that there is a reasonable suspicion to believe that they are actively impaired. Indications that an employee uses Cannabis while off-duty will not suffice. Furthermore, the proper test should be used to screen for active Cannabis metabolites as opposed to non-psychoactive metabolites that tend to linger for weeks following Cannabis use.

POSSIBLE REASON TO NOT APPLY NEW LAW

There is a plausible argument to be made that law enforcement agencies can prohibit off-duty Cannabis use by their employees under the Gun Control Act of 1968, which prohibits any person who is an "unlawful user" of or addicted to controlled substances from receiving or possessing a firearm or ammunition. The argument



focuses on the fact that Cannabis use is still unlawful on a federal level, despite state legalization. As the Ninth Circuit Court of Appeals held in *Wilson v. Lynch*, that fact that Cannabis use is legal under state law does not trump federal regulations of firearm sales based upon Cannabis use. 835 F.3d 1083 (9th Cir. 2016). However, due to exceptions within the GCA, this argument likely only applies where an officer uses their personal weapon to perform job duties (and your agency should carefully review its policies if officers are permitted to use their personal weapons on the job to avoid potentially "aiding" in the violation of the GCA if the officer uses Cannabis). However, if the weapon is agency-issued, this argument would likely not apply.

CONCLUSION

Gov. Code § 12954 makes it very difficult for law enforcement agencies to screen applicants or employees for Cannabis use. Unless the specified exceptions apply (such as your agency receives federal funding that carries requirements for drug testing or where you are considering the fact that an applicant has a prior conviction involving Cannabis use), your agency is limited to testing employees only where there are overt signs that the employee is actively under the influence of Cannabis while on the job. Even then, you may only test for active/current use, which may prove difficult given testing limitations. Furthermore, your agency should be careful not to ask job applicants if they have a history of Cannabis use (unless it shows up on a criminal background check, in which case the focus is instead on the fact that they have a criminal record).

Our office will be monitoring legal developments involving this new law as there is a strong possibility that it will be challenged, particularly in the context of law enforcement. We will keep your agency informed of any changes that may result from future challenges. Please feel free to reach out with any specific questions that you may have regarding § 12954, we are happy to provide clarification as needed.

The State of our Mental Health

By Gretchen Dugan, Law Clerk

SB 1338

In 2022, Senate Bill 1338, also known as the Community Assistance, Recovery, and Empowerment (CARE) Act, was passed. This bill allows for petitioners to request court-ordered treatment for those over the age of 18, who have been diagnosed with, but untreated for, psychotic disorders such as schizophrenia. Petitioners can include certain family members, guardians, hospital directors, licensed behavioral health professionals, first responders, public guardians, various health agency directors, judges, and respondents.

If the court determines the respondent qualifies for a CARE plan, the respondent will receive medical treatment such as clinical behavioral health care, counseling, and medication. Other supportive services, such as housing assistance, are also provided. If the respondent does not engage in or successfully complete their CARE plan, the court can recommend a conservatorship or dismiss the respondent from the program.

Two major streams of funding are the Mental Health Service Act, and Behavioral Health Realignment. For the fiscal year 2022-23, they provided a combined \$4 trillion toward behavioral health services. Other sources of funding include Medi-Cal and commercial insurance plans.

One of the goals of the program is to create a path for rehabilitation. For those facing misdemeanor charges, if it has been determined they are incompetent to stand trial, the court may refer the individual to the CARE program. If eligible, the defendant can participate in diversion, while the trial on the alleged violation will be suspended. The criminal charges shall be dismissed



after successfully completing and graduating from the program.

For the years 2012-2014, the Substance Abuse and Mental Health Services Administration (SAMHSA), reported that an average of 1.5 million Californians suffered a serious mental illness at least once in the past year. Serious mental illnesses are also a major contributing factor to the increased number of suicides annually in California. In 2021, according to the Centers for Disease Control and Prevention, California had 4,148 deaths by suicide, second only to Texas at 4,193. The same year, Rhode Island had the least at 117 suicides. Our very own Shasta County has the highest rate of suicide among all 58 counties in California at 24.9 per 100,000.

Last year the counties of Glenn, Orange, Riverside, San Diego, San Francisco, Stanislaus, Tuolumne, and Los Angeles implemented the program. The 50 remaining counties must implement their program by December 1, 2024, or receive an extension to December 1, 2025.



SPOTLIGHT
RHETTA VANDER PLOEG
 Senior Associate Attorney

Last summer *Prentice|LONG*, PC was fortunate to add Ms. Rhetta Vander Ploeg to our team. She brings a wealth of land use experience after years as a deputy county counsel, district attorney, and county counsel. After many years in public service, she is now serving the County of Sierra as County Counsel. This addition was long sought after, and we are grateful to Rhetta for bringing her knowledge and thoughtful practice of law to our firm.

Prior to joining *Prentice|LONG*, PC, Rhetta served as Deputy County Counsel for Nevada County for over seven years. From 2014-2015, Rhetta served as Assistant County Counsel for Sierra County, along with serving as counsel for water districts, and fire districts. She also served as County Counsel and Deputy District Attorney for Lassen County. Rhetta has experience in zoning, use permits, public domain, public contracts, fiduciary responsibility, and law enforcement. She has thorough knowledge and experience of the Brown Act and can advise on other mandatory legal obligations.

In her free time Rhetta enjoys skiing, kayaking, traveling, and spending time with family. She enjoys golf as well as historical novels and thrillers with notable favorites such as *State of Fear* and *Pillars of the Earth*. Rhetta was co-owner with her mother and siblings of two Cajun restaurants in Arizona: “Baby Kay’s Cajun Kitchen,” until moving to Japan where she lived for seven wonderful years. She attended Concord Law School and Temple Law School while living in Tokyo. She went on to receive her law degree in 2005 from Concord Law School at Purdue University Global, where she graduated (*cum laude*).

Prentice|LONG, PC is thrilled about the opportunity to work alongside attorney Rhetta Vander Ploeg!

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NEWS AND INFORMATION:

**HAND IN HAND:
 AB 455 and the CARE Act**

AB 455

New legislation, AB 455 effective July 1, 2024, is aimed at reducing the number of suicides in the United States due to firearms. This bill allows the prosecution, in a pretrial diversion hearing, to request an order from the court that would prohibit a defendant from owning or possessing a firearm. This bill would expand upon current civil or criminal restraining orders which prohibit firearm use by restrained parties. If the order is granted, the court will have the authority to issue a search warrant to confirm the relinquishment of all firearms. The order would remain until the defendant’s firearm rights have been restored, or until they successfully complete the requisite diversion program.

If you have any questions on how our office can serve you, please do not hesitate to reach out to us.



NEW CLIENTS

Prentice|LONG PC welcomes our newest clients.

Durham Irrigation District
Blevins, Braden and Lynn
McNally Law, PC

PATH
 (Poor And The Homeless, Tehama County Coalition)

City of Merced

Click [here](#) to see a list of all our clients.

For more information about PLPC, visit our website [here](#).