

# House Bill 3428

Sponsored by Representative NOSSE

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits public health care employer from denying employment to prospective employee or taking adverse employment action against existing employee solely on basis of positive drug test for cannabinoid metabolites.

Provides circumstances under which public health care employer may take adverse employment action against employee when employer reasonably suspects employee is impaired at work. Provides remedies to employee who alleges employer violation of requirements.

Requires public health care employer to establish and implement workplace policies regarding workplace impairment due to recent use of marijuana.

Requires Director of Department of Consumer and Business Services, in collaboration with Commissioner of the Bureau of Labor and Industries, to establish program for investigation and nonbinding arbitration of claims of violations of provisions of Act.

Requires Director of Department of Consumer and Business Services, in collaboration with Commissioner of the Bureau of Labor and Industries, to develop materials that inform and educate public health care employers on impacts to workplace resulting from recent marijuana use by employees.

Requires Director of Department of Consumer and Business Services to conduct study, in collaboration with Commissioner of the Bureau of Labor and Industries and Oregon Health Authority, regarding best models for use by public health care employers in addressing workplace issues related to marijuana use and detection of impairment. Requires director to report to interim committees of Legislative Assembly related to labor and business on results of study.

## A BILL FOR AN ACT

1  
2 Relating to cannabis-related employment matters within the public health care sector.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. (1) As used in sections 1 to 4 of this 2023 Act:**

5 (a) **"Cannabinoid" has the meaning given that term in ORS 475C.009.**

6 (b) **"Marijuana" has the meaning given that term in ORS 475C.009.**

7 (c) **"Public health care employer" means a public employer within the health care sector**  
8 **that is also a recipient of state funds.**

9 (2) **A public health care employer may not deny employment to a prospective employee**  
10 **or take an adverse employment action against an existing employee solely on the basis that**  
11 **the prospective employee or the existing employee has tested positive for cannabinoid**  
12 **metabolites in connection with any employment-related drug test required by the employer.**

13 (3)(a) **Notwithstanding subsection (2) of this section, a public health care employer may**  
14 **take an adverse employment action against the employee if:**

15 (A) **The employer reasonably suspects that an employee is impaired at work due to recent**  
16 **marijuana use;**

17 (B) **The employer's reasonable suspicion of the employee's workplace impairment is based**  
18 **upon and supported by evidence-based protocols that are set forth in the employer's written**  
19 **policies required under subsection (4) of this section; and**

20 (C) **The adverse employment action is taken in accordance with the employer's written**  
21 **policies.**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (b) A public health care employer may not rely solely on a positive test result that con-  
2 firms the presence of cannabinoid metabolites to establish the employer's reasonable suspi-  
3 cion of workplace impairment.

4 (4) Each public health care employer shall establish and implement written policies and  
5 procedures relating to workplace impairment due to the recent use of marijuana. The policies  
6 must:

7 (a) Include evidence-based protocols, other than drug testing, for identifying physical or  
8 behavioral signs of impairment upon which the employer may rely to establish reasonable  
9 suspicion of workplace impairment.

10 (b) Include standards and procedures for:

11 (A) Training supervisory staff on implementing evidence-based protocols to recognize  
12 possible incidents of workplace impairment due to recent marijuana use.

13 (B) Training supervisory staff on documenting any observed physical or behavioral signs  
14 that are indications of workplace impairment.

15 (C) Investigating incidents of workplace impairment.

16 (c) Require that any adverse employment action taken by an employer against an em-  
17 ployee be supported by the employer's reasonable suspicion of workplace impairment.

18 (d) For purposes of this subsection, evidence-based protocols must include reasonably  
19 objective methods for determining whether an employee is unfit to perform the employee's  
20 assigned job duties due to recent marijuana use, including but not limited to the following,  
21 singly, or in any combination:

22 (A) Cognitive impairment assessments that are based on scientifically valid, objective and  
23 consistently repeatable and standardized measures;

24 (B) Observations of an employee exhibiting signs of impairment, including slurred speech,  
25 staggering, red eyes, delayed reaction time or the odor of marijuana; and

26 (C) A work-related accident or injury.

27 (5) The provisions of this section do not apply to a public health care employer subject  
28 to the requirements of the federal Drug-Free Workplace Act of 1988 (P.L. 100-690).

29 (6)(a) An individual may allege a violation of this section by:

30 (A) Filing a civil action against a public health care employer.

31 (B) Filing a complaint with the Director of the Department of Consumer and Business  
32 Services under section 2 of this 2023 Act.

33 (b) A person shall bring an action under this section in the same manner as, and subject  
34 to the same provisions of law that are applicable to, other civil actions.

35 **SECTION 2.** (1) The Director of the Department of Consumer and Business Services  
36 shall, in collaboration with the Commissioner of the Bureau of Labor and Industries, estab-  
37 lish a program, as described in this section, for investigation and nonbinding arbitration of  
38 claims of violations of section 1 of this 2023 Act.

39 (2) An individual claiming to be aggrieved by a violation of section 1 of this 2023 Act may  
40 file a written complaint with the Department of Consumer and Business Services describing  
41 the alleged violation. The complaint must be signed by the complainant. The complaint must  
42 be filed within one year of the alleged violation.

43 (3) A complaint may not be filed under this section if a civil action has been commenced  
44 alleging the same matters.

45 (4) A public health care employer against whom a complaint is filed may file an answer

1 to the complaint.

2 (5) Upon receipt of a complaint, the department shall investigate the complaint. The de-  
3 partment may request pertinent documents, testimony and other evidence from relevant  
4 parties. The department shall establish a process for requesting, receiving and analyzing  
5 such evidence. The department may establish a process to enable direct dialogue between the  
6 complainant and the public health care employer against whom the complaint was filed.

7 (6) The department shall issue a written determination, based on the preponderance of  
8 the evidence, of whether a violation of section 1 of this 2023 Act occurred. The determination  
9 of the department does not affect the rights or liabilities of any party.

10 (7) The department shall adopt rules necessary for the administration of this section.

11 **SECTION 3.** (1) The Director of the Department of Consumer and Business Services, in  
12 consultation with the Commissioner of the Bureau of Labor and Industries, shall develop  
13 materials that:

14 (a) Inform and educate public health care employers on the ways in which recent  
15 marijuana use by employees may impact the workplace; and

16 (b) Connect public health care employers to resources that are qualified to provide public  
17 health care employers with information and education about the addressing incidents of  
18 workplace impairment due to recent marijuana use, including best practices for detecting  
19 signs and symptoms of impairment due to recent marijuana use.

20 (2) The Department of Consumer and Business Services and the Bureau of Labor and  
21 Industries shall conduct outreach to apprise public health care employers in this state of the  
22 materials and resources that are available to employers under subsection (1) of this section.

23 **SECTION 4.** (1) The Director of the Department of Consumer and Business Services  
24 shall, in consultation with the Commissioner of the Bureau of Labor and Industries and the  
25 Oregon Health Authority, conduct a study of the best models for:

26 (a) Providing practical guidance to public health care employers regarding how to address  
27 marijuana use by employees during off-hours; and

28 (b) Quantifying the point at which a public health care employer may consider an em-  
29 ployee to be impaired due to recent marijuana use, beyond drug detection, for purposes of  
30 measuring impairment in the workplace.

31 (2) No later than January 1, 2025, the Department of Consumer and Business Services  
32 shall report to the interim committees of the Legislative Assembly related to labor and  
33 business the results of the study described in subsection (1) of this section and recommen-  
34 dations for legislation, if necessary, to implement the findings of the study.

35