

# Marijuana and the District's Drug & Alcohol Testing



## District Personnel Manual Instruction No. 4-34

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<b>Effective Date</b>	<b>Expiration Date</b>	<b>Related DPM Chapters</b>
July 28, 2016	Until superseded	4

**i** **NOTE:** This DPM instruction supersedes DPM Instruction No. 4-32 (same title), dated June 27, 2016, for the main purpose of including clarifying language concerning the disclosure of medical marijuana information during the drug testing process.

### Overview

The District of Columbia government provides its employees with a drug-free workplace and aims to actively discourage drug and alcohol abuse. In this context, the Department of Human Resources provides ongoing guidance related to its drug and alcohol testing procedures. This instruction reiterates information concerning Initiative 71; addresses how medical marijuana is treated during the D.C. government’s drug and alcohol testing process; and outlines the requirements for employees authorized, as outlined herein, to use medical marijuana.

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## Initiative 71 Overview

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On November 4, 2014, District voters approved Initiative 71 – Legalization of Possession of Minimal Amounts of Marijuana for Personal Use Initiative of 2014, which among other things legalized the limited possession and cultivation of marijuana. Specifically, adults who are 21 years of age or older may, within the interior of a house or rental unit that constitutes their principal place of residence, possess or grow marijuana plant(s) in accordance with the provisions of the law. Initiative 71, which became effective on February 26, 2015, does not apply to federal property in the District and therefore possessing any amount of marijuana on federal property remains illegal. The sale and public consumption of marijuana also remains illegal anywhere in the District, whether it is on District or federal property.

## Safety-Sensitive Positions

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1. Title 6B of the District of Columbia Municipal Regulations contains provisions relating to drug and alcohol testing. These provisions require drug and alcohol testing of candidates for and employees in safety-sensitive positions. Examples of safety sensitive positions include, but are not limited to, positions that involve:
  - a. Operating large trucks, heavy or power machinery, or mass transit vehicles;
  - b. Handling hazardous quantities of chemical, biological or nuclear materials;
  - c. Maintaining the safety of patrons in and around a pool or aquatic area;
  - d. Engaging in duties directly related to the public safety, including, but not limited to, responding or coordinating responses to emergency events; or
  - e. Carrying a firearm.
2. For an exact list of safety-sensitive positions in the District government, please refer to issuances related to DPM Chapter 4. (See, for example, the most recent E-DPM Instruction entitled “Positions Subject to Enhanced Suitability Screening.”)
3. This instruction shall also apply to any future safety-sensitive position designations.

## Impact of Initiative 71

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Initiative 71 has **no impact** on the District government’s current enforcement and application of employment related drug testing requirements. This is because the provisions contained in D.C. Law 20-153 expressly permit employers to continue to enforce and establish policies which restrict marijuana use amongst employees. Specifically, the plain language of the legislation permits District government agencies to maintain and develop policies which prohibit any marijuana use by employees. The legislation also, among other things, expressly permits District government agencies to bar the possession, consumption, use, or transportation of marijuana on District government property. Accordingly, Initiative 71 has no legal effect or impact on the District government’s drug and alcohol testing programs.

## Medical Marijuana

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1. An employee of the District government who has been authorized by a licensed physician to use marijuana for medicinal purposes is permitted to do so in accordance with applicable laws, rules and regulations of their state of residence, provided such usage does not impair or otherwise impede his or her ability to safely carry out assigned duties and responsibilities.
  
2. Employees enrolled in a medical marijuana program, and who occupy safety-sensitive positions, remain subject to random drug and alcohol screenings. In the event such an employee is randomly selected for testing, he or she must comply with the testing order. However, the employee may make known their participation in the medical marijuana program. In this regard, an employee has three options:
  - a. Immediately before or following a drug or alcohol screening, submit a copy of the drug testing order along with a copy of a valid medical marijuana program registration card to [dchr.compliance@dc.gov](mailto:dchr.compliance@dc.gov). Follow any supplemental instructions provided by DCHR.
  - b. If the employee tests positive for marijuana usage, he or she will be contacted by a Medical Review Officer. The employee must inform the MRO of his or her enrollment in a medical marijuana program and follow any additional instructions provided by the MRO.
  - c. If notification to DCHR or the MRO does not occur, an employee may receive a notice proposing that he or she be terminated due to a positive marijuana result. In such a case, the employee should supply the named Hearing Officer with a copy of a valid medical marijuana program registration card along with a written explanation of his or her circumstances. The Hearing Officer's contact information will be included in the notice of proposed termination. The employee should follow any additional instructions that might be provided by the Hearing Officer.

## Legal Authorities and Applicability

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### Initiatives:

- Section 2(b)(1C) of Initiative Measure 71 – Legalization of Possession of Minimal Amounts of Marijuana for Personal Use Initiative of 2014

### District Statutes:

- D.C. Official Code § 1-620.31 *et seq.*, *Child and Youth Safety and Health Omnibus Amendment Act of 2004*.
- D.C. Official Code § 1-620.33, *Anti-Drunk Driving Clarification Amendment Act of 2006*.
- D.C. Official Code § 48-904.01 *et seq.*, *Legalization of Possession of Minimal Amounts of Marijuana for Personal Use Initiative of 2014*.

- D.C. Official Code § 7-1671.01 *et seq.*, *Legalization of Marijuana for Medical Treatment Amendment Act of 2010*.

**i** **NOTE:** District government employees who reside in states other than the District of Columbia must also refer to any applicable law(s) in place pertaining to the legalization of medical marijuana.

### District Municipal Regulations:

- 6B DCMR § 400, *et seq.*, *Personnel - Suitability*.

## Applicability

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The provisions of this instruction apply to those District government agencies which are subordinate to the Mayor's personnel authority. Other personnel authorities or independent agencies may adopt any or all of these procedures.

## Additional Information

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For additional information, contact the following:

- Provisions of this instruction – Department of Human Resources, Policy and Compliance Administration, by calling (202) 442-9700 or by sending an e-mail to [dchr.compliance@dc.gov](mailto:dchr.compliance@dc.gov); or
- Medical Marijuana Program – Department of Health, Health Regulation and Licensing Administration, by calling (202) 724-4900. Information concerning the Program can be accessed at [www.doh.dc.gov](http://www.doh.dc.gov).
- An appropriate state agency.

  
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