

April 18, 2022

Ms. Cathy Sheridan, P.E.  
Chief of Staff  
MTA Construction & Development  
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New York, New York 10004

**RE: Request To Remove THC Metabolite from the MTA Construction and Development Company's Drug Test Panel**

First, I want to thank you, Jamie Torres-Springer and the rest of the staff for the opportunity to discuss a host of issues of mutual interest to us both the other day.

This is a follow-up to the above issue I mentioned that places contractors in a compromised position where if they comply with the MTA contract language on this issue it places them in a position of being subject to wrongful termination lawsuits because the policy requires them to violate that of the NYS Department of Labor when it comes to testing workers for marijuana while working on MTA projects.

There have been several conversations with MTA staff including Dianne Nardi and others on this issue as I understand, but any final policy determination remains unresolved.

The specific request is for the MTA's drug test panel policy change is to continue to use its drug test panel EXCEPT for the use of the THC Metabolite and REMOVE IT FROM THE CURRENT PANEL PROVISION FROM THE STANDARD.

MTA officials involved in these discussions to date have indicated they believe the agency meets one of the exemptions the law allows for this requirement because the agency receives federal funds. However, MTA Bridges and Tunnels as well as many other MTA projects may not receive federal funds and thus would not qualify for the exemption.

MTA contract language now requires that no one on any project can work under the influence of cannabis. These provisions directly conflict with Sections 01-d(2)(b) and (c) of New York State Labor Law which makes it unlawful for an employer to refuse to employ, or to discharge from employment, any individual because of his or her use of cannabis outside of work hours, off the employers' premises and without the use of the employer's equipment or property. The MTA policy infringes upon these rules according to Sections 201-d (2)(b) and (c) of New York Labor Law.

Furthermore, NYS Labor Law Guidance issued on 10/21 in their FAQ states that NYS Labor Law Section 201-d (4-a) prohibits taking action against employees who use cannabis but for the following exceptions:

- 1) An employer is required to take such action based on state or federal law (there are no such provisions in either).
- 2) The employer would otherwise be in violation of federal law or would lose a federal contract or federal funding.
- 3) The employee, while working, manifests specific, articulable symptoms of impairment that either decrease or lessens the employee's performance or interfere with the employees obligation to provide a healthy and safe workplace.

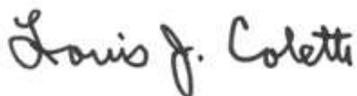
What happens to a contractor if an employee tests positive for cannabis and is dismissed in order to comply with the MTA's contract requirement?? They would face a lawsuit for violating the above requirements and rights of the workers and/or be in non-compliance with the contract provisions if they allow the individual to continue working irrespective of when and where they may have consumed cannabis.

There are also significant cost and schedule implications to the MTA and the project. If a worker must be removed from the project, they must be replaced to keep the project moving ahead. What happens if the contractor is unable to get another worker from the union? Will the agency agree to change orders that include the cost of these kind of issues including the possibility of legal costs if the contractor is sued by the dismissed employee?

Add to that the fact that marijuana can be detected in an individual's system for up to 90 days after use and it is clear this issue is challenging for both the Agency and the industry. BTEA contractors share your concern about ensuring a safe work site for all its workers.

We strongly urge the MTA to continue to use its drug test panel EXCEPT for the use of the THC Metabolite and remove it from the current panel standard.  
We would welcome the opportunity to discuss this issue with you further.

Best Regards,



Louis J. Coletti  
President & CEO