

March 25, 2021

The Honorable Andrew Cuomo  
Governor of New York State  
Executive Chamber  
State Capitol  
Albany, New York 12224

The Honorable Andrea Stewart-Cousins  
Majority Leader  
New York State Senate  
State Capitol – Room 330  
Albany, New York 12247

The Honorable Carl Heastie  
Speaker  
New York State Assembly  
932 Legislative Office Building  
Albany, New York 12248

**RE: Adult Use Cannabis, Worker Safety, Testing and “Scaffold Law” Ramifications**

Dear Governor Cuomo, Majority Leader Stewart-Cousins and Speaker Heastie:

As negotiations proceed to legalize adult use cannabis in New York State, the construction industry is gravely concerned about the ramifications of worker safety, worker impairment, drug testing and scaffold law related insurance claims.

The legalization of adult use cannabis in New York State is particularly troubling for the entire construction industry due to the safety concerns for workers. Cannabis and its derivatives are potent drugs that impair an individual’s judgement posing a significant danger to themselves, co-workers, and the public. While a construction safety supervisor or law enforcement professional may be able to smell an individual that recently smoked cannabis, its derivatives such as vaping and edibles are not as easily detectable.

Current unregulated cannabis testing technologies and drug recognition methods do not provide a clear indication of worker impairment which will jeopardize workplace safety. The unregulated testing technologies can only detect the presence cannabis for a short period of time and drug recognition experts are limited to highly skilled law enforcement professionals. Furthermore, the adult use cannabis proposals from the Executive and Legislature do not establish a standardized impairment level complicating an employers’ duty to provide a safe working environment.

Adult use cannabis poses an unmanageable insurance risk for contractors, property owners, and governmental entities because of New York’s “Scaffold Law.” The tremendous costs and limited availability of the commercial general liability insurance have an impact across New York because construction costs go up, fewer workers are hired, consumers pay higher prices for goods and services, and the economy suffers. The “Scaffold Law” (NYS Labor Law sections 240/241) imposes absolute liability for gravity-related injuries on contractors, property owners and governmental entities engaged in construction, repair, or demolition work. Absolute liability means that the contributing fault of an injured worker, such as consuming cannabis at the workplace will be virtually irrelevant in court.

The current standard of “absolute liability” must be replaced with a standard of comparative negligence—generally or at a minimum in cases where the worker had cannabis or another impairing substance in their system at the time of the accident. Under this standard, liability is apportioned by a judge or jury, in proportion to actual fault. This common-sense reform would not prevent injured workers from bringing lawsuits for their injuries. It would simply give New York contractors, property owners, and governmental entities the chance to defend themselves in court when a worker’s own negligence or impairment is a contributing factor in an accident. This is the way every other state and virtually every other area of our civil justice system functions.

We strongly urge you to include “Scaffold Law” reform in the final agreement on adult use cannabis.

Sincerely,

Brian Sampson  
President  
Associated Builders & Contractors, Empire State Chapter

