



New Jersey Codifies Employment Protections for Medical Marijuana Users

Client Advisories

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Earlier this month, Governor Murphy signed the Jake Honig Compassionate Use Medical Cannabis Act (CUMCA), which amended the state's medical marijuana law. This amendment implements some significant changes, including the creation of the Cannabis Regulatory Commission, the expansion of the medical conditions for which medical marijuana can be prescribed, and the increase in the number of permitted dispensaries. The law also contains a provision for employee use of medical marijuana.

The former law did not offer any protections for employees who use medical marijuana. However, *as we wrote earlier this year*, in *Wild v. Carriage Funeral Holdings*, a New Jersey appellate court ruled that the state's Law Against Discrimination (NJLAD) could be read to protect employees who use medical marijuana. This new law codifies that concept and given that the New Jersey Supreme Court recently granted certification to review the Appellate Division's decision in *Wild*, employers can expect to receive additional guidance regarding the relationship between CUMCA and NJLAD.

Specifically, under CUMCA, employers may not take "adverse employment actions" against registered medical marijuana users. "Adverse employment action" is broadly defined, and it includes refusing to hire, discharging, or discriminating in compensation or any other term of employment. In addition, the law states that, if an employer conducts a drug test and an employee or job applicant tests positive for marijuana, the employee must be given written notice of their rights and three days to provide a legitimate medical explanation. The employee or job applicant may also request that his or her original sample be retested at the employee or job applicant's own expense.

The law provides some protections for employers as well. For example, employers may take adverse employment action against employees who possess or use intoxicating substances during work hours or at the workplace. More generally, the law does not require employers to engage in any act that would violate federal law, that would result in a loss of a licensing-related benefit pursuant to federal law, or that would result in the loss of federal contracts or funding. Finally, the law prohibits the state from penalizing employers on the basis of employee medical marijuana use.

This law took effect upon signing on July 2, 2019. For that reason, you should review your policies to ensure that you are in compliance with current law. If you conduct drug tests, you should prepare a notice of employee rights in the event an employee or job applicant tests positive for marijuana. Moreover, you should take the opportunity to remind your employees that they cannot use intoxicating substances at work.

If you have questions about this law, please contact any member of **Archer & Greiner's Labor and Employment Group** in Haddonfield, N.J., at (856) 795-2121, in Princeton, N.J., at (609) 580-3700, in Hackensack, N.J., at (201) 342-6000, in Philadelphia, Pa., at (215) 963-3300, or in Wilmington, Del., at (302) 777-4350.

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