



NJ Employer Faces Scrutiny for Failing to Hire Medical Marijuana Patient: 7 Key Compliance Reminders

Insights

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A telecom company allegedly violated New Jersey's anti-discrimination law by refusing to hire a job applicant after he tested positive for THC as a result of medical marijuana use, according to the state's Attorney General. The applicant said he was offered a job pending the drug test results – and although he disclosed his status as a medical marijuana patient, the employer allegedly ghosted the applicant after the test came back positive. The Attorney General is pursuing legal action under the New Jersey Law Against Discrimination (NJLAD), which bars employment discrimination based on a job applicant's or employee's disability. Although employers are not necessarily required to hire medical marijuana patients under NJLAD, state officials say the employer should have engaged in an interactive dialogue with the job applicant to determine whether a reasonable accommodation could have been provided. Here's what you need to know about the case and seven key compliance reminders for New Jersey employers.

Brief Background

What was alleged in this case? According to state prosecutors:

- A cable installer applied for a job with a telecommunications company.
- He was offered the job pending the results of a drug test.
- He presented his New Jersey medical marijuana card and explained that he used cannabis to treat a disability.
- He tested positive for THC, the psychoactive component in cannabis.
- The company effectively rescinded the job offer based on the drug screen results.
- He contacted HR, explained the situation, and expressed his belief that his cannabis use is protected under state law.
- He never received a meaningful response to his request to explore reasonable accommodations.
- While employers may claim that providing a reasonable accommodation would cause an undue hardship for their business, it must first engage in a dialogue with the job candidate (which is commonly referred to as the "interactive process") to explore such accommodations.

What are the relevant state laws?

- The **Jake Honig Compassionate Use Medical Cannabis Act** (known as Jake's Law) prohibits employers from taking adverse employment action based solely on an employee's status as a registered medical marijuana patient with the Cannabis Regulatory Commission.
- The **Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMMA)** protects employees and job applicants from adverse employment actions based solely on a positive cannabis test.
- In this case, the adverse action occurred before CREAMMA took effect, but the Attorney General noted that the **New Jersey Law Against Discrimination (NJLAD)** also protects registered medical marijuana patients from employment discrimination based on a disability.

What did the Attorney General's Office find?

- In a preliminary investigation, the AG and the Division on Civil Rights found that the job applicant produced "sufficient evidence" that his rights were violated, specifically regarding disability accommodations.
- Notably, however, this is not a final ruling on the merits of the claim, and the employer might still present evidence that disputes the allegations brought by the state.
- The parties will have an opportunity to voluntarily settle before the case is prosecuted by the Attorney General's Office, and the employer still has a right to defend itself against these charges.

7 Key Compliance Reminders for Employers

1. **Explore reasonable accommodations.** "New Jersey's civil rights laws require that employers discuss how to develop accommodations that will allow employees with disabilities to perform their duties," according to Attorney General Matthew Platkin. In the telecom case, New Jersey officials found evidence that the employer violated the law by cutting off all communication and refusing to engage in an interactive dialogue with the job applicant after he tested positive for cannabis, despite the applicant's disclosure that he was a registered medical marijuana patient. Even if you ultimately cannot accommodate a worker's medical marijuana use, you should engage in the interactive process and make a good faith effort to explore possible accommodations before making any adverse employment decisions.
2. **Track evolving laws.** While Jake's Law and CREAMMA do not expressly provide for private rights of action, these two laws operate in conjunction with the NJLAD, which provides employment protections to employees with disabilities. Additionally, New Jersey law now protects off-duty recreational cannabis use. Because these laws are relatively new and untested, you should make sure you are keeping up to date with new developments as these laws are interpreted by the courts.
3. **Note the exceptions.** Cannabis use is still illegal under federal law. This means that the employee protections provided by Jake's Law and CREAMMA do not "require an employer to

commit any act that would cause the employer to be in violation of federal law, that would result in the loss of a licensing-related benefit pursuant to federal law, or that would result in the loss of a federal contract or federal funding.” Moreover, there are exceptions if compliance may jeopardize an employer’s federal contract or receipt of federal grant money or put the employer out of compliance with federal regulations governing its employees.

4. **Questions remain about safety-sensitive jobs.** It is important to note that neither Jake’s Law nor CREAMMA guidance provide exceptions for employees in safety-sensitive positions. Therefore, unlike other states, safety-sensitive employees in New Jersey are still protected from an adverse employment action if it is based solely on the result of a positive drug test. This means that only employers who fit into the federal contractor/grantee exception may prohibit their safety-sensitive employees from using cannabis while off-duty.
5. **Focus on impairment.** In New Jersey, an employee’s off-duty use of cannabis products cannot be the reason for any adverse employment action, whether the employee is using cannabis for medical or recreational purposes. Employers can, however, terminate workers for being under the influence of cannabis during work hours, but there are some specific practices and protocols you need to follow to ensure you comply with the law.
6. **Update your policies accordingly.** Since prohibiting off-duty cannabis use is, generally, unlawful in New Jersey, you should review your existing drug testing and drug-free workplace policies to ensure they are up to date and compliant.
7. **Seek guidance.** These complex and evolving requirements highlight the importance of working with experienced legal counsel before firing or refusing to hire a worker based on off-duty cannabis use, regardless of whether it is medical or recreational.

Conclusion

Fisher Phillips attorneys will continue to monitor the status of cannabis regulations in New Jersey, so make sure you are subscribed to [Fisher Phillips’ Insight System](#) to receive the most up-to-date information directly in your inbox. If you have any questions, we encourage you to reach out to the author of this article, your Fisher Phillips attorney, or [any attorney in our New Jersey office](#).

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Katherine M. DiCicco

Associate

908.516.1084

Email

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