



Pennsylvania's Medical Marijuana Act: Quick Hits

Insights

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The Pennsylvania's Medical Marijuana Act, signed into law on April 17, 2016, will take effect today (May 17, 2016). Pennsylvania is the 24th state to legalize the use of medical marijuana. There remains, however, a ramp up period before the Act takes meaningful effect. For example, the Department of Health must promulgate regulations to flesh out how the law will actually operate. An initial batch of regulations, potentially temporary regulations, should be out by the fall of 2016. See *generally* Pennsylvania Medical Marijuana Act, PL 84, No. 16 (April 17, 2016). The Act authorizes initial approval of as many as fifty dispensary operators, each of which could operate up to three locations a piece, resulting in a potential for 150 initial dispensary locations throughout the Commonwealth. See Act. Sec. 616. The total implementation period of the Act is expected to take between 18 and 24 months.

What does this Act mean for employers? For most Pennsylvania employers, the Act is significant because its practical effect will be that employers will now have employees who are licensed by the state to possess and use marijuana for medical purposes. This can impact employer substance abuse policies as well as workplace safety standards.

The Act also includes an express provision prohibiting employers from discriminating against employees “**solely on the basis of**” their status as certified medical marijuana users, *but does not require an employer to permit a medical marijuana user to accommodate use of medical marijuana in the workplace or to tolerate an employee undertaking to perform job duties while meaningfully impaired by his or her use of medical marijuana*. This portion of the Act reads as follows:

Section 2103. Protections for patients and caregivers.

(b) Employment.—

(1) No employer may discharge, threaten, refuse to hire or otherwise discriminate or retaliate against an employee regarding an employee's compensation, terms, conditions, location or privileges solely on the basis of such employee's status as an individual who is certified to use medical marijuana.

(2) Nothing in this act shall require an employer to make any accommodation of the use of medical marijuana on the property or premises of any place of employment. This act shall in no way limit an employer's ability to discipline an

employee for being under the influence of medical marijuana in the workplace or for working while under the influence of medical marijuana when the employee's conduct falls below the standard of care normally accepted for that position.

(3) Nothing in this act shall require an employer to commit any act that would put the employer or any person acting on its behalf in violation of Federal law. Act Sec. 2103(b).

Importantly, the Act specifically provides that it **does not immunize a person from criminal or civil liability arising from “[u]ndertaking any task under the influence of medical marijuana when doing so would constitute negligence, professional malpractice or professional misconduct.”** Act Sec. 1309(1). This can potentially have a very broad application. Also, employers can assume that it will be ineffective to excuse itself from liability arising from acts committed by an employee who is impaired by use of medical marijuana. That is, if that employee’s misconduct constitutes “negligence, professional malpractice or professional misconduct,” an employer may face liability, which likely could not be avoided by pointing to the Act.

Furthermore, for Pennsylvania medical employers who employ physicians, nurses, physicians’ assistants, and others who may be involved in prescribing or administering medical marijuana, there are a host of rules that will be necessary to understand. Likewise, for any employers who may enter the business of growing, processing or dispensing medical marijuana, the new law has very specific requirements relating to employees of the business. *See* Act Sec. 601. As part of the initial application for approval as a grower, processor or dispensary, criminal records background checks will be required for all employees, as well as any principal, operator, or financial backer. *See* Sec. 602(a)(4). No employee of an approved grower, processor, or dispensary may have ever been convicted of any offense relating to the sale or possession of drugs, narcotics or other controlled substances. *See* Sec. 614(1)-(3). The Department of Health, when promulgating its regulations, is required to include regulations intended to foster diversity in grower/processor/dispensary applicants and in the employees of successful applicants, and is required by the Act to collect data and issue reports regarding diversity in the medical marijuana industry. *See* Sec. 615(a)-(d). Employers who are approved as growers, processors or dispensaries will be required to implement tracking and security measures when employees are transporting marijuana, including likely GPS tracking of drivers making deliveries. *See* Sec. 703.

For schools, day care providers and other educational institution employers, the Act requires the Department of Education to promulgate regulations to govern the “possession and use” of medical marijuana by employees and students. *See* Act Sec. 2014. The Department of Human Services likewise is to issue regulations regarding day care or social service center employees and persons under the care of such centers. *See* Act Sec. 2105. Regulations from both agencies are due to be issued within 18 months of enactment of the Act. *See* Secs. 2014, 2015.

