



New Jersey Amends Medical Marijuana Law

Insights

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New Jersey Governor Phil Murphy recently signed into law amendments to the state's medical marijuana law, providing greater clarity when it comes to the workplace implications of medical marijuana use by employees and applicants, while creating additional obligations for employers. The July 2 amendments took effect immediately, which means you should not delay incorporating the new law's requirements into your day-to-day human resources practices.

The Law Before The Amendments

The New Jersey Compassionate Use Medical Marijuana Act, first adopted in 2009, was purposely drafted to omit specific employment protections. Instead, the law as originally adopted was primarily designed to decriminalize medical marijuana use in New Jersey. In fact, the law expressly provided that it did not require an employer "to accommodate the medical use of marijuana in any workplace."

As a practical matter, however, even before the recent amendments, New Jersey employees had already gained protections through the state court system via the state's Law Against Discrimination (LAD). On March 27, 2019, a New Jersey appellate court issued a decision that permitted an employee fired after testing positive for marijuana – which he had been using off duty to treat the pain caused by cancer – to sue under a disability discrimination theory. The court's ruling, in *Wild v. Carriage Funeral Holdings, Inc.*, said that "the Compassionate Use Act's refusal to require an employment accommodation for a medical marijuana user does not mean that the Compassionate Use Act has immunized employers from obligations already imposed elsewhere." Therefore, the court concluded, "the Compassionate Use Act does not immunize what the LAD prohibits."

The Amended Law

The law as amended has been renamed the Jake Honig Compassionate Use Medical Cannabis Act, in honor of a seven-year old New Jersey boy who died of brain cancer. It contains several new protections for employees, while also providing two important pieces of good news for employers.

Employee Protections

The amendments delete the language that had caused confusion and led to the legal dispute in the *Wild* case. They also adopt two provisions expressly protecting employees.

Adverse Employment Actions Prohibited

First, the amendments prohibit employers from taking any “adverse employment action” against an employee who is a “registered qualifying patient” based “solely on the employee’s status as a registrant with the commission.” A “registered qualifying patient” is an individual who both (1) has been authorized by a health care provider for the medical use of cannabis, and (2) has registered with the state’s Cannabis Regulatory Commission.

“Adverse employment action” pretty much means what anyone involved in human resources would expect – refusing to hire or employ an individual; barring or discharging an individual from employment; requiring an individual to retire from employment; or discriminating against an individual in compensation or in any terms, conditions, or privileges of employment.

Right To Explain Drug Test Results

Second, the amendments provide workers with the right to explain positive drug test results. If an employee or job applicant tests positive for cannabis under an employer’s drug testing policy, the employee or job applicant must be granted an opportunity to present a “legitimate medical explanation” for the test result. The employer must provide the employee or job applicant written notice of this right to explain.

Within three working days of receiving the written notice, the employee or job applicant may submit information to the employer to explain the positive test result; the explanation may include the presentation of an authorization for medical cannabis issued by a health care practitioner, proof of registration with the Cannabis Regulatory Commission, or both. Alternatively, within the same three-working-day period, the employee or applicant may request a confirmatory retest of the original sample at the employee or job applicant’s own expense.

Employer Protections

The amendments also provide two important protections to employers. First, the employee protections do *not* restrict employers from prohibiting, or taking “adverse employment action” for, employee possession or use of intoxicating substances “during work hours or on the premises of the workplace outside of work hours.”

It is well known that federal law continues to restrict the sale and use of cannabis. Therefore, the Compassionate Use Act’s employee protections are not to be deemed to “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.”

What You Should Do

With the relative clarity provided by the amendments to the Compassionate Use Act, now is a good time to update your policies to expressly prohibit adverse employment actions against employees because they are registered medical marijuana users. This should be coupled with a reminder that employees may not use drugs or alcohol at the workplace at any time, or during working hours

whether at or away from the workplace. You should also prepare the written notice the amended Act requires for employees or job applicants who test positive for cannabis.

We will continue to monitor further developments and provide updates regarding the state of medical marijuana law in New Jersey, so you should ensure you are subscribed to [Fisher Phillips' alert system](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney or any attorney in our [New Jersey office](#).

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