

New Jersey Employers Must Accommodate Authorized Use of Medical Marijuana Outside of Workplace

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The New Jersey Compassionate Use Medical Marijuana Act (CUMMA) requires employers to accommodate an employee's lawful use of medical marijuana outside of the workplace, the New Jersey Supreme Court has held. *Wild v. Carriage Funeral Holdings, Inc.*, No. 082836 (Mar. 10, 2020).

Background

The plaintiff, a cancer patient and lawful user of medical marijuana, was involved in a motor vehicle accident while at work. He told a hospital physician that he possessed a license to use medical marijuana; however, the physician decided not to order a drug test because "it was clear" that the plaintiff was not under the influence of marijuana at that time.

The plaintiff subsequently was required to submit to drug testing by his employer before returning to work. The employer claimed it terminated the plaintiff's employment due to his failure to disclose his lawful use of marijuana, not the positive drug test result.

The plaintiff filed a suit alleging disability discrimination and failure to accommodate under the New Jersey Law Against Discrimination (LAD). At that time, the CUMMA did not provide employment protections to users of medical marijuana.

Lower Court Decisions

The trial court granted the employer's motion to dismiss after determining that the CUMMA "does not contain employment-related protections for licensed users of medical marijuana." But the Appellate Division reversed.

After that decision, the CUMMA was amended expressly to prohibit employers from taking adverse employment actions against a medical marijuana user if that adverse employment action is "based solely on the employee's status" as a medical marijuana patient.

High Court Decision

The New Jersey Supreme Court affirmed the Appellate Division's ruling, concluding that the plaintiff stated a LAD claim that was sufficient to survive a motion to dismiss. Specifically, the plaintiff's discrimination claims "derived in part from [the plaintiff's] assertion that, outside the workplace, he lawfully used medical marijuana" for medical reasons, that is, to treat the symptoms of his cancer.

Moreover, there is no conflict between the CUMMA and the LAD, although there are two provisions of the CUMMA that could affect a plaintiff's claim in certain settings. These are: (1) the CUMMA does not require an employer to accommodate an employee's use of medical marijuana in the workplace; and (2) the CUMMA does not require an employer to permit any person to "operate, navigate or be in actual physical control of any vehicle, aircraft, railroad train, stationary heavy equipment or vessel while under the influence of marijuana."

The Court's decision reminds employers to ensure company policies and protocols regarding medical marijuana meet the requirements in the CUMMA (now known as the Jake Honig Compassionate Use Medical Cannabis Act). More importantly, this case serves as a caution to employers that, regardless of the language in a state's medical marijuana statute, a plaintiff may assert a disability discrimination claim in connection with their disability and related use of medical marijuana. Proper policies,

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compliant protocols, and training for management and human resources professionals are recommended to avoid potential claims. Should you require assistance, Jackson Lewis attorneys stand ready to assist.

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