

# New Jersey Amends Medical Marijuana Law to Provide Job Protections, Include Drug Testing Procedures

By Kathryn J. Russo

July 15, 2019

## Meet the Authors



**Kathryn J. Russo**

(She/Her)

Principal

(631) 247-4606

[Kathryn.Russo@jacksonlewis.com](mailto:Kathryn.Russo@jacksonlewis.com)

## Related Services

Disability, Leave and Health  
Management

Drug Testing and Substance  
Abuse Management

New Jersey has provided job protections to medical marijuana users and created new drug testing procedures under new law signed by Governor Phil Murphy on July 2, 2019, that took effect upon signing.

The new law also changes the name of the New Jersey Compassionate Use Medical Marijuana Act (N.J.S.A. 24:61-2 *et seq.*) to the “Jake Honig Compassionate Use Medical Cannabis Act” (CUMCA), expands patient access to medical marijuana, and reforms the state’s medical marijuana program.

### Case Law

Prior to this amendment, the CUMCA did not expressly require employers to accommodate medical marijuana use. Instead, it said that nothing in the law required an employer to accommodate an employee’s use of medical marijuana.

Recent New Jersey case law, however, suggested that New Jersey’s anti-discrimination statute, the New Jersey Law Against Discrimination (LAD), may require employers to accommodate medical marijuana use to treat a disability. *See Wild v. Carriage Funeral Holdings, Inc.*, 458 N.J. Super. 416 (App. Div. 2019). (For more on this decision, see our blog post, [Medical Marijuana Users May Not Be Discriminated Against In New Jersey](#)) The CUMCA, as amended, endorses the New Jersey Appellate Division’s decision in *Wild*.

### Adverse Action

The CUMCA expressly prohibits an employer from taking any adverse employment action against a medical marijuana user if that adverse employment action is “based solely on the employee’s status” as a medical marijuana patient.

An “adverse employment action” is defined as “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.”

However, the amendment does not “restrict an employer’s ability to prohibit or take adverse employment action for the possession or use of intoxicating substances during work hours or on workplace premises outside of work hours.”

Moreover, an employer may take an adverse employment action against a medical marijuana patient if accommodating the employee’s medical marijuana use would “violate federal law or result in the loss of a federal contract or federal funding.”

### Drug Testing

The CUMCA does not prohibit drug testing, but it creates new procedures that must be

followed when an employee or applicant has tested positive for marijuana.

The employer must give the employee or applicant written notice of the positive test result and an opportunity to provide a “legitimate medical explanation for the positive test result.” Within three working days after the employee or applicant receives the written notice, he or she may provide a legitimate medical reason for the positive test result or request retesting at his or her expense.

The legitimate medical reason may be an authorization for medical marijuana use by a health care provider, proof of registration for medical marijuana use, or both.

Employers in New Jersey who conduct drug testing should review their testing policies to ensure compliance with the law.

\*\*\*

New Jersey is among a growing list of states (including Arizona, Connecticut, Delaware, Illinois, Maine, Massachusetts, Minnesota, Nevada, New York, Oklahoma, and Rhode Island) offering employment protections for authorized users of medical marijuana. Employers should consult legal counsel to navigate compliance with the varying state and federal laws relating to marijuana use.

Jackson Lewis attorneys are available to assist employers with this and other workplace requirements.

©2019 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on employment and labor law since 1958, Jackson Lewis P.C.'s 1,000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged and stable, and share our clients' goals to emphasize belonging and respect for the contributions of every employee. For more information, visit <https://www.jacksonlewis.com>.