

Employment Counseling & Litigation

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New Jersey Employers May Not Discriminate Against Medical Marijuana Users And May Have Duty To Accommodate

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While a bill to legalize recreational marijuana failed to move forward last week, medical marijuana is on more solid footing following a recent New Jersey appellate court decision. In *Wild v. Carriage Funeral Holdings, Inc.*, Docket No. A-3072-17T3 (N.J. App. Div. March 27, 2019), the appeals court held that a cancer patient who was fired from his employment upon disclosing his medical marijuana use could sue his former employer for disability discrimination under the New Jersey Law Against Discrimination (“NJLAD”). In light of this decision:

- New Jersey employers should not take adverse employment action against medical marijuana users based on a positive drug test alone; termination is only appropriate when there is contemporaneous evidence that the employee is impaired on the job.
- Without evidence of impairment, New Jersey employers should engage in an interactive process with these employees to determine whether they can perform essential job functions with reasonable accommodation. Accommodation may include permitting medical marijuana use off-premises and outside of work hours if the employee is not impaired while working.

In the *Wild* case, the plaintiff was involved in a car accident caused by another driver. The next day, the plaintiff’s employer

informed him that he was required to submit to a drug test prior to returning to work. He submitted to the test and revealed his medical marijuana use to his employer. His employment was then terminated.

Although New Jersey’s Compassionate Use Medical Marijuana Act (the “Act”) expressly states that “nothing” in the Act requires “an employer to accommodate the medical use of marijuana in any workplace,” *see* N.J.S.A. 24:6I-14, the Court still held that the Act did not immunize “employers from obligations already imposed elsewhere [such as under the NJLAD].” The Court concluded that the Act’s limiting language applied only to accommodations sought “in the workplace” and therefore, the plaintiff’s claim that his employer discriminated against him by refusing to accommodate his medical marijuana use during “off-work hours” could proceed.

Conclusion

This recent decision demonstrates the risks of taking adverse employment action against medical marijuana users and clearly limits a New Jersey employer’s ability to enforce zero tolerance drug policies with respect to marijuana. Lowenstein Sandler’s Employment Law Practice Group regularly counsels employers on the implementation and enforcement of drug and alcohol policies and other employment matters and would be pleased to address any questions you may have.

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