

The Marijuana Haze Continues

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New Jersey has amended its medical marijuana law to address employment concerns. Specifically, the amendment prohibits employers from taking adverse action based solely on the fact that a person is a registered medical cannabis patient. Adverse action includes: refusing to hire an applicant; terminating an employee; requiring an employee to retire; and discriminating against an employee in compensation or in any terms, conditions or privileges of employment.

Additionally, the law provides protections for employees and prospective employees who test positive for cannabis. Specifically, the employer must provide the individual with written notice that he/she can provide a legitimate medical explanation for the positive test result or can request a confirmatory retest of the original sample. Within three days after receiving the written notice, the individual can submit information to the employer to explain the positive test result or can request a confirmatory retest of the original sample.

The amendment was passed on the heels of a decision by the New Jersey Appellate Division, which reversed a trial court's dismissal of an action under the New Jersey Law Against Discrimination, alleging failure to accommodate out of office use of medical marijuana. The Appellate Division held that while New Jersey's medical marijuana law specifically indicates that employers need not accommodate medical marijuana users in the workplace; it did not foreclose an action of an employee to allege that when they are suffering from a disability and it would be a reasonable accommodation (under New Jersey Law Against Discrimination) to use medical marijuana after work.

The decision and the recent amendment serve as reminders to employers to exercise caution if an employee is using medical marijuana.

Attorney

- Tracy Armstrong

Practice

- Employment Law