

Clearing the Cannabis Haze: Cannabis Discrimination Claims By Employees

07/31/25

In 2021, New Jersey enacted the Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act ("CREAMMA") which makes it illegal for employers to take adverse employment action against employees for use of recreational cannabis in off hours. It wasn't until three years later, in a 2024 decision, *Zanitech v. Walmart*, that the court upheld an employer's right not to hire an applicant who during a pre-employment drug test tested positive for cannabis.

In *Zanitech*, Walmart rescinded a job offer to a job applicant whose drug test was positive for cannabis. He sued Walmart, alleging that the company violated New Jersey's public policy exception to at-will employment. He claimed that since there is a clear public policy of the State of New Jersey to allow recreational cannabis use, he could not be denied employment for doing so. The employee also claimed that the company violated CREAMMA by failing to hire him solely because he tested positive for cannabis.

The court made two significant findings.

The first finding was: **the State's public policy exception (called a "Pierce" claim) does not apply to job applicants.** Therefore, withdrawing the offer to the applicant, who tested positive, was not against any public policy and therefore, no claim could be brought as a Pierce claim.

The second, and most significant finding was: **CREAMMA does not contain a private right of action for employees.** The Court explained that CREAMMA does not contain a private right of action, meaning it does not include a provision that gives employees the power to sue under the law. Therefore, even if the claims were true, an employee would have no recourse under CREAMMA.

The Zanitech Case Does Not Mean Employers Are in the Clear

Although employers should not be overly concerned about employee claims under CREAMMA for now, they need to be aware that employees can still file other types of claims related to adverse employment actions based on cannabis use. For example, employees (but not applicants) may be able to file public policy exception claims, known as Pierce claims, if they are terminated from employment (not a job applicant) due to a positive cannabis test without evidence of impairment. Additionally, both employees and applicants could bring disability discrimination claims if their cannabis use is medically required. Finally, employees may have grounds to sue under the New Jersey Conscientious Employee Protection Act if they face retaliation after complaining about adverse actions related to their cannabis use.

Is Your Cannabis Policy Compliant?

Employers should review their policies regarding cannabis use to ensure they are in compliance with CREAMMA. In addition, when taking any action regarding an employee who has tested positive for cannabis, employers should proceed with caution. If you are an employer who needs advice regarding workplace policies on cannabis or how to deal with an employee who has tested positive for cannabis, or any other employment law, please contact [Stephanie Gironde](#) or any member of the Wilentz [Employment Law](#) Team.

Attorney

- Stephanie D. Girona

Practices

- Environmental
- Cannabis Law *

*Cannabis Law Disclaimer: Per federal law, under the Controlled Substances Act, marijuana is categorized as a Schedule I controlled substance. Possession, use, distribution, and/or sale of cannabis is a Federal crime and is subject to related Federal policy, regardless of any state law that may authorize certain marijuana activity. Compliance with state marijuana law does not equal compliance with federal law. Legal advice provided by Wilentz, Goldman & Spitzer, P.A. is designed to counsel clients regarding the validity, scope, meaning, and application of existing and/or proposed cannabis law. Wilentz, Goldman & Spitzer, P.A. will not provide guidance or assistance in circumventing or violating Federal or state cannabis law or policy, and any advice provided by Wilentz, Goldman & Spitzer, P.A. should not be construed as such.