

New Jersey Employers Can Be Sued for Rescinded Job Offers After Positive Cannabis Test

Thursday, June 18, 2026

New Jersey employers may now face lawsuits for rescinding job offers based on a positive cannabis test. In *Darlene Sanders v. The Levari Group, LLC*, the Appellate Division held that applicants may pursue claims under CREAMMA, allowing them to sue employers for adverse hiring decisions tied to lawful cannabis use.

What Happened in the Sanders Case

On May 26, 2026, in *Darlene Sanders v. The Levari Group, LLC*, doing business as First Choice Freezer, the Appellate Division ruled, in a matter of first impression, that the state's Cannabis Regulatory, Enforcement Assistance, and Market Modernization Act, or CREAMMA, gives applicants the right to sue employers that reject them because of cannabis use [1]. Prior to this Appellate Division opinion, employees did not have a private right of action to sue employers pursuant to CREAMMA for violations.

The Plaintiff, Sanders, interviewed for a customer service role at First Choice Freezer and was offered the position, which she accepted. As part of the standard hiring process, she was required to submit to drug testing. The results were positive for cannabis use within the past 30 days. Sanders explained the use was recreational, that she had not used cannabis the day of the test, and that she was not under the influence when she applied.

Shortly thereafter, she contacted the company's HR department to ask about her start date. According to the decision, the company offered her a retest within a week, at her own expense. She did not have the money. The offer of employment was then rescinded.

Sanders sued First Choice Freezer claiming that she was discriminated against for using Cannabis, which is illegal under CREAMMA. The Appellate Division found that while CREAMMA does not provide an express statutory private right of action, it does provide an implied ability for employees to sue employers for violations. The Court explained that job applicants who test positive for cannabinoid metabolites are the exact class the law was meant to protect. The Legislature did not give the Cannabis Regulatory Commission authority to enforce the anti-discrimination provisions against ordinary employers. And without a private right to sue, the court said, CREAMMA's intended protections "would be meaningless and unenforceable."

How This Impacts New Jersey Employers

Rescinding an offer after a positive cannabis test (unless the prospective employee is impaired) [2] can, now, result in a lawsuit. Applicants can pursue compensatory damages, lost past and future earnings, punitive damages, damages for emotional distress and pain and suffering, and attorneys' fees and costs. HR teams will want to revisit pre-employment drug testing protocols, applicant communications, offer letter language regarding reasons they can rescind an offer of employment, and any policies that focus on hiring decisions based on testing for cannabinoid metabolites alone.

What Should Your Business Do Next?

This decision changes how New Jersey employers should approach pre-employment drug testing and hiring decisions. If your policies haven't been reviewed recently, now is the time.

Our Employment Law team can help you evaluate your current practices, update your policies, and reduce the risk of costly claims. Call a member of our Employment Law Team to discuss how this ruling may impact your business.

Resources

[1] The Third Circuit (New Jersey is a part of the Third Circuit reached the opposite result in *Zanetich v. Wal-Mart Stores East, Inc.*, 123 F.4th 128 (2024), finding no private right of action. The Appellate Division acknowledged the split but noted New Jersey courts are not bound by federal readings of state law. In state court, the Sanders ruling controls.

[2] There is the federal contract and federal funding exception under N.J.S.A. 24:6I-51(b)(1) that remains in place.

Attorney

- Tracy Armstrong

Practice

- Employment Law