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## New Jersey Court Finds that Marijuana Use is not a Reasonable Accommodation

08/16/18

In a recent decision, a New Jersey district court dismissed an employee's claim for disability discrimination stemming from the employee's use of medical marijuana.

In Cotto v. Ardagh Glass Packing, Inc., an employee brought a claim against his employer for disability discrimination and retaliation. The employee had injured his head on a forklift while working and was told that in order to return to work, he must pass a drug test. The employee advised that he used medicinal marijuana and that he was unable to pass a drug test. His employer refused to allow him to return to work unless he could pass a drug test. The employee sued, claiming disability discrimination, arguing that the New Jersey Compassionate Use Medical Marijuana Act ("CUMMA") and the New Jersey Law Against Discrimination ("NJLAD") require his employer to provide an accommodation for him by waiving the requirement that the employee pass a drug test.

The Court first noted that marijuana is a federally-prohibited narcotic and that while states like New Jersey have passed laws allowing the use of medical marijuana for medicinal purposes, the drug was still banned under federal law. The Court then looked at the language of CUMMA and the NJLAD. The Court explained that CUMMA had no bearing on the employee's case as the statute merely permits individuals to use medical marijuana and does not require employers to accommodate employees who use medicinal marijuana. Similarly, the Court found that the LAD also contained no requirement that an employer accommodate an employee's use of medical marijuana with a drug test waiver. As such, the Court dismissed the employee's claim, explaining that the employee could not perform the essential functions of his job and that the employer was "within its rights to refuse to waive a drug test for federally-prohibited narcotics."

**TAKEAWAY:** Employers do not have to waive a drug test requirement as a reasonable accommodation for their employees.

### Attorney

- Tracy Armstrong