



**BY CJ GRIFFIN**  
COMMENTARY

Nearly three years after former Governor Jon Corzine signed the New Jersey Compassionate Use Medical Marijuana Act (“the Act”) into law, the first medical marijuana dispensary opened in Montclair last month. New Jersey joins the ranks of 17 other states and the District of Columbia that have legalized some form of marijuana use for medical purposes.

While fewer than 400 residents have obtained a state license to participate in a medical marijuana program, employers are scrambling to determine how the Act will impact the workplace. Without a doubt, a New Jersey employer will soon face the inevitable situation: one of the company’s own employees will be a medical marijuana user. The company then must determine the course of action that will minimize liability, while keeping in line with the company’s goals, values, and policies.

On its face, the Act does not require employers to accommodate medical marijuana users and does not create any new workplace rights for employees. Specifically, the Act provides: “Nothing in this Act shall be construed to require...an employer to accommodate the medical use of marijuana in any workplace.” Of course, employee-side attorneys seek to narrow that language, arguing that the language means only that an employer is not required to allow medical marijuana use on company premises and thus employees who use at home or in a medical setting are otherwise entitled to accommodation or job protection.

Courts in states with similar medical marijuana laws, however, have held that the provision is broad and means that an employer may still enforce workplace drug policies and terminate

employees who test positive for marijuana use, regardless of whether the use was through a legal medical marijuana program. This is because the intent behind these laws focuses on the decriminalization of medical marijuana use. Indeed, the New Jersey Act's stated purpose is "to protect from arrest, prosecution, property forfeiture, and criminal and other penalties, those patients who use marijuana to alleviate suffering." Nothing in the Act suggests any intent by the Legislature to alter the employer-employee relationship or to provide new workplace protections to employees who use medical marijuana.

This does not mean, however, that New Jersey employers should sit idly by and wait for New Jersey courts to weigh in on the issue. Employers should keep in mind that New Jersey has hefty legal protections for employees, including the Law Against Discrimination (LAD), and New Jersey courts construe these laws liberally in the employee's favor. Thus lawsuits alleging an employer has failed to make a reasonable accommodation for medical marijuana use and engaged in disability discrimination are inevitable.

A clearly written workplace drug policy is necessary. Though the Act does not require accommodation, some employers may choose to do so. In that case, an employer may decide to treat medical marijuana as it would treat, for example, a physician-prescribed narcotic and only bar employees from reporting to work while impaired by the substance. However, companies with federal contracts are required to adhere to the Drug Free Workplace Act and because marijuana remains illegal at the federal level, a company could not opt to accommodate medical marijuana use even if it wanted to do so. Similarly, employers that operate under the Department of Transportation drug-testing guidelines cannot accommodate medical marijuana users in their policies. A zero-tolerance policy that provides that an employee is strictly prohibited from reporting to work with any drug that is illegal at the state or federal level in his or her system would best limit liability, especially in workplaces where employees utilize machinery or drive vehicles.

While case law nationwide and the language of the Act itself suggests that an employer need not accommodate an employee's medical marijuana usage, companies should still remember that they most likely will be required to accommodate the underlying condition that qualifies a patient for medical marijuana. New Jersey's medical marijuana law and accompanying regulations are the strictest in the nation and most likely, if an employee qualifies for state license to use medical marijuana, he or she has a "disability" that would also qualify them for time off under the State or Federal Family Medical Leave Acts and/or require other accommodations in the workplace.

The New Jersey Compassionate Use Medical Marijuana Act raises a slew of issues for

employers in addition to those discussed above and the impact of the law is yet to be seen. Until New Jersey courts weigh in on the issue, the only certainty is that a New Jersey employer must have an ongoing relationship with an employment lawyer. An employment lawyer can not only advise the company on workplace drug policies, but also assist the company in properly handling personnel issues so that it is not subjected to claims such as disability discrimination, breach of privacy, failure to accommodate, or wrongful termination.

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