

A Primer on Medical Marijuana for Pennsylvania Employers

By: Joseph J. Lee

The Employment Law Counselor

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In the Mid-Atlantic region, both New York and New Jersey have legalized the use of marijuana. Despite pushes by the legislature to do so, and Governor Wolf repeatedly calling for it, the Commonwealth of Pennsylvania has yet to legalize recreational marijuana. A bill could certainly be proposed in the foreseeable future as a Senate committee held a legislative hearing just last month to discuss this possibility.

Nevertheless, the Pennsylvania Medical Marijuana Act (MMA) has been around for quite some time. Enacted in 2016, the MMA permits individuals with a qualifying medical condition to obtain a certification to use medical marijuana in the Commonwealth. Since its enactment, many employers have faced issues surrounding the impact of MMA on the workplace. Notably, the MMA states that “[n]o employer may discharge, threaten, refuse to hire or otherwise discriminate or retaliate against an employee regarding an employee’s compensation, terms, conditions, location or privileges solely on the basis of such employee’s status as an individual who is certified to use medical marijuana.”

Employers may still discipline employees if they are under the influence of medical marijuana in the workplace and it affects the employee’s conduct. The MMA does not require employers to accommodate the use or possession of medical marijuana in the workplace. Many issues with employers arise from drug test results that come back with positive results, and ensuing decisions being made despite knowledge of the employee’s certification to use medical marijuana. Courts in Pennsylvania have also permitted employees to sue their employers for taking an adverse action based on an employee’s status to use medical marijuana. Employers should certainly take precautions when it comes to drug tests, including when to test and what actions to take when positive results are received, to avoid litigation.

For employers in Philadelphia, the “Prohibition on Testing for Marijuana as a Condition for Employment” took effect on January 1, 2022. This ordinance prohibits pre-employment marijuana testing as a condition of employment, with some limited exceptions for certain job positions such as positions requiring a commercial driver’s license and positions requiring the care of children or medical patients. The ordinance also would not apply to job positions that could impact the health and safety of other employees or members of the public.

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