

## The Pennsylvania Medical Marijuana Act and Implications for the Workplace

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*Labor and Employment Alert*

4.5.19

It has been three years since Pennsylvania Governor Tom Wolf signed the Pennsylvania Medical Marijuana Act (the Act) and over a year since the patient registry opened in Pennsylvania providing access to medical marijuana. The Act allows individuals with a "serious medical condition" to receive a certification to use medical marijuana obtained from a licensed dispensary in the commonwealth. Currently, 21 medical conditions are covered by the Act and 112,000 Pennsylvania residents have registered for the medical marijuana program since the registry opened, with 80,000 being issued certification/identification cards. Employers need to be familiar with the Act and prepared to properly manage employees at the worksite that are certified to use medical marijuana.

The Act provides protections for employees certified to use medical marijuana and in particular, it prohibits employers from discriminating or taking an adverse action against an employee "solely on the basis of the employee's status as an individual who is certified to use medical marijuana." Employers, however, are not required to accommodate an employee's possession or use of marijuana on its premises under the Act. Employers may discipline an employee found to be under the influence of medical marijuana in the workplace. Additionally, the Act allows employers to prohibit employees from completing tasks that the employer deems life-threatening or which pose a public health or safety risk while the employee is under the influence.

While these provisions apply to employers, questions arise about how the Act intersects with other laws and existing employment policies. For example, under federal law, marijuana is a Schedule I controlled substance and its use is illegal. This intersection creates challenges for businesses that must comply with state and federal laws and for employers who are subject to federally mandated, drug-free workplace programs. Questions also arise as to the requirements under the Act that conflict with requirements under other employment laws, including the Americans with Disabilities Act, the Pennsylvania Human Relations Act, and in particular, the duty to accommodate.

Other states are similarly grappling with balancing workplace safety and policies against compliance with state medical marijuana laws. In July 2017, the Massachusetts Supreme Judicial Court held that employers in the state have a duty to accommodate the use of prescribed medication, including medical marijuana, for the treatment of a serious health condition. In August 2018, a federal district court in New Jersey held that New Jersey employers are not required to waive mandatory drug testing for any employee who is a medical marijuana patient under the New Jersey Compassionate Use Medical Marijuana Act. In February 2018, a federal district court in Arizona ruled that Walmart disregarded the anti-discrimination protections of the Arizona Medical Marijuana Act when it fired an employee who had been prescribed medical marijuana, but was not proven to be impaired while on the job. Most recently, in March 2019, the Superior Court of New Jersey, Appellate Division held that the provision in the state's Compassionate Use Act that does not require an employment accommodation for a medical marijuana user does not mean that the Compassionate Use Act has immunized employers from obligations already imposed elsewhere, such as the New Jersey Law Against Discrimination.

Employers should review their handbook policies, specifically anti-discrimination and drug testing policies, to ensure they are complying with the applicable medical marijuana law(s) in the states where they operate. Human resources staff and management employees should also develop a plan to ensure compliance with both federal and state law and to maintain a safe workplace.

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