

Employment Discrimination against Medical Marijuana User? - *NJ Cannabis Blog*

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3.28.19

As the NJ legislature continues to debate the legalization of adult use marijuana, the NJ Appellate Division has issued an important decision addressing a controversial topic – the right of employers to discipline employees who use marijuana outside of work.

In this case, *Wild vs. Carriage Funeral Holdings*, a cancer patient, who had been prescribed medical marijuana and who used the marijuana only after work hours and at home, was terminated after his employer learned of his medical marijuana use and inability, therefore, to pass an employer required drug test. The employee then sued alleging violations of, among other things, the NJ law against discrimination.

The NJ medical marijuana law states that nothing in it requires an employer to accommodate an employee's medical use of marijuana in the workplace. Based on that statutory language, the employer argued that a discrimination claim could not proceed. The Appellate Court rejected that argument and held that nothing in the medical marijuana act "immunized employers from obligations already imposed elsewhere", including under the law against discrimination. The Court explained that nothing in the act "created new employment rights nor destroyed existing employment rights."

Because the case was only at the initial pleading stage, the court noted that the employer may ultimately succeed by showing that the termination was because the employee was unable to perform the tasks required for his job or because his inability to pass a drug test would jeopardize its licensing.

The decision does not resolve all of the issues relating to employment and medical marijuana but it does make clear that, under the right circumstances, an employer can be liable for discrimination against a medical marijuana patient.

Pashman Stein Walder Hayden is carefully monitoring developments in New Jersey and federally with respect to marijuana legislation and will be available to help its clients navigate the sure-to-be complex regulatory framework of this potential business frontier.

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