What Employers Need To Know: New Jersey's Appellate Division Issues Historic Ruling On Medical Marijuana Users' Rights in the Workplace

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Ever since the use of properly prescribed medical marijuana became legal in New Jersey, Courts have grappled with reconciling state and federal laws protecting employees from disability discrimination, and employers' rights to maintain workplaces free of drug use. In simple terms, New Jersey law permits the use of medical marijuana, which is illegal under federal law. With limited exceptions, the decisions in these cases have come down in favor of employers' right to enforce workplace drug rules. Generally, courts have permitted employers to discipline, terminate, or refuse to hire employees who use medical marijuana, even if there is no evidence of use or impairment in the workplace.

This week, New Jersey's Appellate Division joined the minority of courts that have found an employee may be able to state a disability discrimination claim against an employer who takes an adverse employment action due to the employee's use of medical marijuana.

What Happened?

In 2015, the employee, a funeral director, was diagnosed with cancer and was prescribed and used medical marijuana as authorized by New Jersey's Compassionate Use Act as part of his treatment. In 2016, the employee was in an auto accident while working and he was taken by ambulance to a hospital. The employee advised hospital staff he was authorized to use medical marijuana. The treating doctor responded that "it was clear [the employee] was not under the influence of marijuana [and, thus, his marijuana use was not a cause of the accident], and therefore no blood tests were required."

While the employee recuperated, his father took his medical prescription and marijuana license to his son's supervisor and explained what had happened and why the hospital had not given a drug test. Later that day, the employer called and spoke to the employee's father to advise that a blood test was required before the employee could return to work.

Later that evening, the employee went to a facility to take a urine and breathalyzer test; however, the results of those tests were not provided to the employer and were not part of the case record.

The next day, the employee returned to the funeral home, not as an employee, but because a close friend's family member had died. While there, he and his supervisor spoke briefly about his job status. His supervisor said he had not heard from "corporate" but did not see how it would be a problem since the employee had a prescription for his marijuana use. The employee told the supervisor, "I only take it when I am home, not at work because I don't want to jeopardize my license for what I have worked so hard for."

The employee eventually returned to work, but, shortly after his return, his supervisor advised him that "corporate" was unable to "handle" his marijuana use and that his employment was "being terminated because they found drugs in your system," though no test had actually been provided to the employer. In a subsequent letter, the company told the employee it had terminated him not because of his drug use, but because he failed to disclose his use of medication that might adversely affect his ability to perform his job duties. According to a company policy, "employees must advise their immediate supervisor if they are taking any medication that may adversely affect their ability to perform assigned duties safely."

The employee brought an action alleging he had been a victim of disability discrimination.

What did the Courts decide?

The trial court dismissed the employee's claims, finding that New Jersey's Compassionate Use Act "does not contain employment-related protections for licensed users of medical marijuana." The employee appealed.

On appeal, a three-judge panel of New Jersey's Appellate Division reversed the dismissal in a unanimous decision. The Appellate Division acknowledged that the Compassionate Use Act unambiguously states it does not "require . . . an employer to accommodate the medical use of marijuana in any workplace." Nevertheless, the appellate panel found that the New Jersey's Law Against Discrimination might require such an accommodation. Although the Compassionate Use Act does not make illegal an employer's adverse action against an employee for medical marijuana use, by the same token, the Appellate Division stated it does not immunize an employer's conduct that might otherwise have been a violation of the Law Against Discrimination. For this reason, the Appellate Division reversed the trial court's dismissal and permitted the case to proceed.

What do employers need to know?

At the outset, it is important to understand that the Appellate Division did not rule that this employee had been a victim of disability discrimination. In fact, the Court expressly recognized that the case was at the earliest stages, and the employer had pled potentially valid defenses. The Court ruled only that the case could not be dismissed on its face.

Although this precedent is now binding on state trial courts in New Jersey, it is far from settled law, and may well be subject to an appeal to the New Jersey Supreme Court. However, New Jersey employers need to be mindful that they no longer have a free pass to take adverse employment actions against employees and candidates solely because they use medical marijuana; those affected by such decisions will be emboldened by this new case, and their lawyers will be confident that a lawsuit challenging the adverse actions is more likely to survive a motion to dismiss at the beginning of the case. As the law in New Jersey now stands, employers are not required to accommodate medical marijuana use, but there is now an increased risk if they refuse. Additionally, various bills have been proposed and are being considered by the New Jersey legislature, which, if adopted, may expand employee rights in this area of the law.

In other words, stay tuned, because we have certainly not heard the last word on this topic. With that said, employers remain free to take adverse action if an employee shows any sign of impairment from use of medical marijuana, or, for that matter, any other drug, legal or not.

If you have any questions about this legal alert or if you run across a related issue in your workplace, please feel free to contact Adam Gersh or any other member of Flaster Greenberg's Labor & Employment Department.

ATTORNEYS MENTIONED

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