

Governor Signs Law Expanding New Jersey Medical Marijuana Act

Today Governor Murphy signed into law a long awaited expansion to the New Jersey Compassionate Use of Medical Marijuana Act (CUMMA). This expansion will provide greater access to the drug by granting 24 new business licenses; permitting physicians assistants and advanced-practice nurses the authority to refer a patient for medical cannabis; requiring patients only see a doctor once a year to verify eligibility; expanding the amount of cannabis one can get from two ounces to three ounces a month; and permitting nursing homes and hospice centers to be listed as a patient's institutional caregiver. In addition, it also provides some protections for employees not previously included.

The new changes state that employers may not take any adverse employment action against an employee who is a registered qualifying patient based solely on the employee's status as registrant with the Commission. Instead, the employer is required to provide notices and an opportunity for the employee to explain the positive drug test. Specifically, "if an employee tests positive for marijuana the employer shall offer the employee or job applicant an opportunity to present a legitimate medical explanation for the positive test result or the opportunity for a retest."

There remains however no protections for an employee's possession or use during work hours or on the premises outside of work hours. When there is no evidence of intoxication or use on the job an employee should be protected, provided their position is not of a safety-sensitive nature. In the event that it is a safety-sensitive position, the employer will need to engage in the interactive process with the employee to determine if there can be any accommodation that might allow for the employee to still perform the essential job functions safely.

The issue remains; there is no reliable test to determine intoxication. Although an employee might test positive for marijuana there is no precise way to know when the marijuana was consumed, thus creating issues for employers trying to comply with the statute.

Comment: Marijuana legalization has been a cause for concern for local government, businesses and insurance companies since marijuana became legal for medical use in 2010. The new changes to the law will result in larger numbers enrolling in the program. Since Governor Murphy made the initial changes to the law in 2018 the enrollment jumped from roughly 16,000 to 46,000 in a period of about seven months. This new expansion is only going to increase those numbers along with concerns from employers. The mandated notice and interactive process set forth in the revisions to CUMMA also complicate employers' obligations to employees or applicants that test positive for marijuana. Employers will want to educate management in the detection of marijuana intoxication, update their policies accordingly and make sure that their employees are aware of existing and changing workplace or work-related drug policies.

Employers should consult with legal counsel and have a plan in place to address these concerns.

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