

Medical Marijuana Users in New Jersey May Bring Claims under NJ Law Against Discrimination, Says NJ Appellate Division

The New Jersey Appellate Division recently ruled that an employer can violate the New Jersey Law Against Discrimination (LAD) for terminating an employee who uses medical marijuana legally outside of the workplace. The Court further held that while the New Jersey Compassionate Use Medical Marijuana Act (CUMMA) does not expand an employee's rights, it neither destroys any rights or obligations provided under other legislation, including NJ LAD.

In the case of *Wild v. Carriage Funeral Holdings, Inc.* the plaintiff, Mr. Wild, was a funeral director who took marijuana legally under NJ CUMMA to treat pain resulting from his cancer. In 2016, Mr. Wild was involved in a motor vehicle accident while working and advised his employer that he would test positive for marijuana. (It should be noted that Mr. Wild appeared not to be at fault and was not found to be under the influence by the doctors at the hospital on the date of the accident). Despite this, the employer required he take a drug test and as anticipated, he tested positive for marijuana. His employment was subsequently terminated for violating the company policy. The policy specifically required that employees disclose the use of any medication that could adversely impact their ability to perform their job safely.

Mr. Wild brought suit under the NJ LAD claiming that the employer fired him because he had cancer and for his lawful use of marijuana outside of the workplace. The trial judge granted the defendant's motion to dismiss noting that CUMMA states: "Nothing in this act shall be construed to require . . . an employer to accommodate the medical use of marijuana in any workplace" and thus does not provide protection for employees.

On Appeal, the Appellate Court focused on this section of CUMMA that an employer does not have to accommodate medical use "in any workplace" and since Mr. Wild alleges that he only used medical marijuana outside of work, this provision of CUMMA did not preclude an employee from bringing a claim under NJ LAD. The Court remanded the case back to the trial court for further proceedings to determine if the termination was based on a discriminatory intent in violation of NJ LAD due to Mr. Wild's disability and medical use. The Court acknowledged that the employer may argue that the disability or resulting use may prohibit the employee from doing the job; however, that would have to be determined at trial and was not a basis for granting the motion to dismiss.

Comment: In light of this opinion, employers should not immediately take adverse employment action against an employee using marijuana legally under NJ CUMMA, as they could be found to be in violation of NJ LAD. Employers may still ban the use or possession of marijuana in the workplace; however, determining whether an employee is under the influence remains an issue as there is no reliable diagnostic test for intoxication. Thus, an employer should have a "reasonable belief" that an employee is under the influence before sending an employee for drug testing or taking adverse action, which means they have an objective belief that the employee appeared to be under the influence.

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