

Medical Marijuana Users in New Jersey May Bring Claims Under NJ Law Against Discrimination

This is an update from our [May 2019 Employment Alert](#) on *Wild v. Carriage Funeral Holdings, Inc.* The New Jersey Supreme Court has ruled that an employee who uses medical marijuana legally and is terminated from employment after testing positive can bring a claim for discrimination under the New Jersey Law Against Discrimination (LAD).

In the case of *Wild v. Carriage Funeral Holdings, Inc.*, the plaintiff was a funeral director who used marijuana legally under New Jersey Compassionate Use Medical Marijuana Act (CUMMA) to treat pain resulting from his cancer. In 2016, the plaintiff was involved in a motor vehicle accident while working and advised his employer that he would test positive for marijuana. It's important to note the plaintiff appeared to be not at fault and was not under the influence on the date of the accident. Despite this, the employer required the plaintiff to take a drug test, and as anticipated, he tested positive for marijuana. His employment was subsequently terminated for violating 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.

The plaintiff brought a disability discrimination lawsuit under 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 employer'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. The Appellate Division disagreed with the lower court, holding that the plaintiff had made sufficient claims to survive the motion to dismiss and remanded the case to the lower court for further proceedings.

The decision was appealed to the New Jersey Supreme Court. The Supreme Court agreed with the Appellate Division that a claim has been made sufficient to survive a motion to dismiss, but declined to adopt the Appellate Division's view that "the Compassionate Use Act intended to cause no impact on existing employment rights." The Supreme Court agrees that there is no conflict between CUMMA and NJ LAD, but points out that there would be no basis for this claim had the legislature not enacted CUMMA. In its holding, the Supreme Court refers to two specific sections in CUMMA. First, N.J.S.A. 24:6I-14 (2018), which states "nothing in the Compassionate Use Act shall be construed to require . . . an employer to accommodate the medical use of marijuana in any workplace," pointing out that the petitioner contends his use was outside of the workplace and thus did not violate CUMMA's provision. Second, section 24:6I-8 (2018) of CUMMA states, "shall not be construed to permit a person to: a. operate, navigate or be in actual physical control of any vehicle, aircraft, railroad train, stationary heavy equipment or vessel while under the influence of marijuana." The Supreme Court specifically points out this section to highlight how CUMMA will have an impact on certain jobs and employers in New Jersey.

Comment: Since this case was first filed, the State of New Jersey has since added to CUMMA specific protections for employees. Employers may still ban the use or possession of marijuana in the workplace.

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However, employers may need to accommodate use for those employees using marijuana legally under state law outside of the workplace. To that end, employers should consult with legal counsel in the preparation and application of company policy on marijuana to ensure compliance with NJ CUMMA and NJ LAD.

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