

EMPLOYMENT NEWS ALERT

MARCH NEWSFLASH

Brian E. Curtis, Esq.

IS THE WORKPLACE GOING TO ÷POTø?

How Will the NJ Compassionate Use Act (aka Medical Marijuana Act) Impact the Work Environment?

In January, the New Jersey Legislature voted to legalize medical marijuana and outgoing Governor Jon Corzine signed it into law as one of his last gubernatorial acts. So what happens next? The Compassionate Use Act takes effect this summer, in July, and is geared to protecting those who use marijuana for medical purposes from being criminally prosecuted for that use. The questions for New Jersey employers now are how, and whether, to apply the law to the workplace.

It should be noted that the law provides that employers do *not* have to allow the use of medical marijuana in the workplace. It is doubtful that our courts and regulatory agencies will ever interpret it to authorize actual use at work, though this may become the focus for how the law will eventually be interpreted and developed. As HR professionals throughout the State know, New Jersey courts have had historically liberal views against discrimination in the workplace. Disability discrimination and failure-to-accommodate claims will likely be ÷ground zeroø for this issue, especially since the Act only allows a physician to prescribe this drug to someone suffering a debilitating medical condition. Nonetheless, it looks as if the Act will impact a wide range of employment issues, from hiring protocols and drug-testing policies to bona-fide occupational qualifications to medical confidentiality and employee privacy concerns. As the law stands now, the Act does not impose any new obligations on employers since medical marijuana has not yet been deemed to be a necessary medical accommodation. If an employee tests positive for marijuana, he or she can be fired. The Act does not protect them from termination. The dilemma is, of course, that the interpretation of the Act will likely change once the NJ Dept. of Health and Senior Services issues its regulations. Be prepared.

WHAT MUST EMPLOYERS DO NOW?

Start reviewing your handbooks and policies now! You may not need to re-write just yet, but it is strongly recommended that supplemental notices be issued *before* the law takes effect on July 1. The most prudent course for NJ employers, particularly those that require drug testing at hire and/or conduct regular ongoing drug-screening in the workplace, is to address the issue on a case-by-case basis. If a worker tests positive, HR should inquire as to whether the employee has been prescribed medical marijuana while at the same time explaining to the employee the Companyø respect for their privacy. This is a crucial step in any litigation avoidance policy!

WE CAN HELP YOU! We have created draft policies that you can apply to your Companyø unique workplace. We can help you implement the right policies to address these issues! **CALL US NOW!**

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