

## New Jersey Enacts Broad Employment Protections for Registered Medical Cannabis Users

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On July 2, 2019, New Jersey joined [Illinois](#), [Nevada](#), [New Mexico](#), [New York City](#), and [Oklahoma](#) in enacting employment protections for authorized users of medical cannabis. New Jersey's [new medical cannabis law](#) ("Law"), which became effective upon signing by Governor Phil Murphy, amends the state's Compassionate Use Medical Cannabis Act ("CUMCA"),<sup>1</sup> N.J.S.A. 24:61-2, *et seq.* Among other measures, the Law prohibits employers from taking an adverse employment action against a current or prospective employee based on the individual's status as a registered qualifying user of medical cannabis. Under the Law, an "adverse employment action" means "refusing to hire or employ an individual, barring or discharging an individual from employment, requiring an individual to retire from employment, or discriminating against an individual in compensation or in any terms, conditions, or privileges of employment." In addition, the Law requires employers that maintain drug-testing policies to offer applicants and employees the right to respond, in specific ways, to a drug test that comes back positive for cannabis.

Specifically, if an employee or applicant tests positive for cannabis, the Law requires the employer to provide written notice offering the individual the right to provide a "legitimate medical explanation" for the positive test result or to request a retest of the sample. The individual has three days after receiving the notice to (i) provide the explanation, which may include authorization for the use of medical cannabis issued by a health care practitioner, proof of registration with the state's newly created Cannabis Regulator Commission, or both, or (ii) request a confirmatory retest of the original sample at the individual's own expense.

In addition, the Law grants employment and other protections to health care practitioners who engage in conduct authorized by CUMCA. Unless failing to do so would result in losing a monetary or licensing-related benefit granted pursuant to federal law, a health care facility may not take an adverse employment action against a health care

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<sup>1</sup> The Law amends the statute's original name, "New Jersey Compassionate Use Medical Marijuana Act," to the "Jack Honig Compassionate Use Medical Cannabis Act."

practitioner or limit, restrict, or terminate a professional affiliation with a health care practitioner solely for engaging in conduct permitted by CUMCA, including authorizing patients for the medical use of cannabis, issuing written instructions to patients regarding such use, and consulting with patients regarding the use of medical cannabis to treat the patient's qualifying medical condition. The Law reiterates that, under New Jersey law, no employer, including a health care facility, may be penalized or denied any benefit to which it is otherwise entitled for employing or maintaining a professional affiliation with a health care practitioner who engages in conduct permitted by CUMCA.

Of note, the Law deleted the original statute's provision stating nothing in the act imposed "an obligation on employers to accommodate an employee's use of medical marijuana." The interpretation of the now-deleted provision was the subject of a recent New Jersey Appellate Division decision, which ruled that medical cannabis users might be entitled to reasonable accommodation under the New Jersey Law Against Discrimination, which we discussed in a previous [Act Now Advisory](#); the amendment effectively ratifies that decision.

### **Implications for Other States and Multistate Employers**

Given the trend in state laws to permit and expand the use of both medical and recreational marijuana and cannabis derivatives, some companies are reconsidering their drug-testing policies for applicants and employees. Laws such as those in Nevada, New Mexico, New York City, Oklahoma, and now New Jersey, which provide qualified medical cannabis users with various workplace protections, reflect the growing shift in attitudes about cannabis use, at least in some parts of the country. As employers try to balance their efforts to maintain a safe and healthy work environment with the increasing number of employees who lawfully use cannabis, they should anticipate that other states are likely to follow suit.

Employers therefore should consider how they want to approach the changing landscape—for example, whether to take a state-by-state approach or, to the extent possible, adopt a uniform approach that applies the law of the state with the most employer restrictions.

### **What New Jersey Employers Should Do Now**

New Jersey employers that engage in applicant and employee drug testing should do the following:

- Prepare protocols for responding to positive drug-test results, including creating a written notice to give to persons who test positively for cannabis, advising them of:
  - their positive drug test result for cannabis;

- their right to:
  - provide a “legitimate medical explanation” for the positive result, i.e., their authorization for the use of medical cannabis issued by a health care practitioner, proof of registration with the state’s Cannabis Regulator Commission, or both, or
  - request a confirmatory retest of the original sample at the person’s own expense; and
- the three-day deadline for providing such information or request.
- Train human resources staff and supervisors on the Law, as well as on any newly adopted or revised policies and protocols with respect to drug testing.

As the regulatory landscape continues to evolve, all employers should regularly review and, as necessary, revise their drug-testing and related policies, and consult with counsel, as appropriate.

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