



# New Jersey Legalizes Recreational Cannabis: Potential Consequences for Employers

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On November 3, 2020, New Jersey citizens voted to amend the New Jersey Constitution to legalize cannabis for recreational use by adults who are 21 years of age or older. The amendment takes effect on January 1, 2021.

Under a proposed bill introduced in the Legislature on November 6, an employer may not refuse to hire an applicant because they test positive for marijuana. Employers are prohibited from taking adverse action against an employee or refusing to hire an applicant because the individual “does or does not smoke, vape, aerosolize or otherwise use cannabis items.” However, an exception exists if the employer has “a rational basis for doing so which is reasonably related to the employment, including the responsibilities of the employee or prospective employee.”

Employers are permitted to continue to maintain a drug and alcohol free workplace. Employers are not required to permit employees to use, consume, possess, transfer, display, transport, sell, or grow cannabis in the workplace. Employers may prohibit the use of cannabis by employees “during work hours.” While individuals under the age of 21 are not permitted to use cannabis, individuals over the age of 18 but under the age of 21 may work in cannabis-related employment.

A copy of the bill can be found [here](#).

Employers should be aware that the bill does not absolve them of any obligations to comply with federal law. Notably, federal law prohibits the use of cannabis, even for medicinal purposes, by employees who hold a commercial driver's license. Employers should also take note of a provision which states that nothing in the proposed legislation enables anyone to be able to require a person to violate a federal law.

A separate proposed bill aims to address the expected time lag between the effective date of the amendment, the adoption of enabling legislation, implementation of regulations, and start of legal sales. It would permit existing medical marijuana dispensaries to sell to recreational consumers and would decriminalize possession of cannabis. A copy of the bill can be found [here](#).

New Jersey's recreational marijuana laws expand upon the protections given to employees using medical cannabis by the Compassionate Use Medical Cannabis Act ("CUMCA") enacted in July 2019. Pursuant to that law, employers are prohibited from discriminating against applicants and employees who lawfully use medical cannabis off premises and during non-working hours. Notably, CUMCA prohibits an employer from taking "adverse employment action" against an employee or prospective employee based "solely on the employee's status" as a legally prescribed medical cannabis patient. CUMCA also establishes a procedure employers must follow when an employee or applicant tests positive for cannabis. The employer must (1) provide written notice of the right to provide a valid medical explanation for the test result; and (2) offer an opportunity to present a valid medical explanation for the result. N.J.S.A. 14-61-9. Within three days of receiving written notice, an employee may: (1) request a confirmatory retest of the original sample at the employee's or job applicant's own expense; or (2) present "an authorization for medical cannabis issued by a health care practitioner, proof of registration with the [Cannabis Regulatory] commission, or both." If an employee or applicant presents such authorization, an employer is not permitted to take adverse action solely based on the employee or applicant's status as a legally prescribed medical cannabis patient. A copy of CUMCA can be found [here](#).

In addition to employment protections under CUMCA, medical cannabis patients are afforded protection under the New Jersey Law Against Discrimination (the "LAD"). The New Jersey Supreme Court recently held that a medical cannabis patient can assert a claim for employment discrimination under LAD for an adverse employment action based on off-site medical cannabis use. See Wild v. Carriage Funeral Holdings, Inc., 241 N.J. 285 (2020). An employer is not required, however, to accommodate the use of medical cannabis in the workplace during work hours.

While employers may maintain drug-free workplace policies, they should be aware of their obligations to accommodate medical marijuana use outside of working hours. An employer who wants to prohibit employees from engaging in off-site recreational cannabis use should be aware that they may do so only if there is a rational

basis for the restriction.

Riker Danzig is here to help if you need assistance of any kind. Please do not hesitate to contact [Scott Ohnegian](#), [Adam McNerney](#), [Fiona Cousland](#), or any member of Riker Danzig's [Labor & Employment Group](#) regarding any specific legal issue affecting your business.

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