

## Employment Law Update: New Jersey Legalizes Recreational Cannabis - What Does This Mean For Employers?

03/11/21

On February 22, the New Jersey Legislature passed the Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (“CREAMMA”), enabling a new adult-use recreational cannabis (a.k.a. marijuana) market.

Although the law includes strong employment protections for use outside of work, legalizing marijuana does not mean that employees may come to work high! Employers may still prohibit marijuana use and impairment in the workplace. This post explains some of the relevant provisions.

### **Non-Discrimination for Recreational Use**

CREAMMA prohibits employers from discrimination of employees based on marijuana use outside of work. Therefore, employers may not:

- refuse to hire or employ an individual who uses marijuana, unless failing to do so would cause the employer to violate a federal contract or lose federal funding; and
- take any adverse employment action (e.g., refusing to hire an individual, discharging an employee or discriminating against an individual in compensation or in any terms or conditions of employment) against someone because they use marijuana, or based solely on a positive test result for marijuana metabolites.

### **Drug Testing Permitted, However Two Test Components Required**

Employers may continue to conduct drug testing for marijuana, including:

- Post-offer pre-employment
- Reasonable suspicion of use at work
- Reasonable suspicion of impairment
- Post-accident
- Random (for safety sensitive positions)

However, an employee can test positive for marijuana and not be impaired. The employer is trying to determine impairment at the workplace and therefore, the law requires that a drug test include both “scientifically reliable objective testing methods and procedures, such as testing of blood, urine, or saliva,” **and** a “physical evaluation.”

The physical evaluation must be conducted by an individual certified to provide an opinion about an employee’s state of impairment related to the use of marijuana. The Cannabis Regulatory Commission will adopt standards for a “Workplace Impairment Recognition Expert” (WIRE), who must be trained to detect and identify an employee’s use or impairment from marijuana or other intoxicating substances and to assist in the investigation of workplace accidents. This person can be in an employer’s workplace or can be a contracted third party.

If any of the above provisions result in a **provable** adverse impact on an employer subject to the requirements of a federal contract, then the employer may revise their employee prohibitions consistent with federal law, rules and regulations.

The State will publish regulations that are expected to provide further clarification. Once this guidance is published, we will provide an update to this legal alert. If you have any questions about this legal alert, please contact [Tracy Armstrong](#) or another Wilentz [Employment Law](#) attorney.

Disclaimer: Per federal law, under the Controlled Substances Act, marijuana is categorized as a Schedule I controlled substance. Possession, use, distribution, and/or sale of cannabis is a Federal crime and is subject to related Federal policy, regardless of any state law that may authorize certain marijuana activity. Compliance with state marijuana law does not equal compliance with federal law. Legal advice provided by Wilentz, Goldman & Spitzer, P.A. is designed to counsel clients regarding the validity, scope, meaning, and application of existing and/or proposed cannabis law. Wilentz, Goldman & Spitzer, P.A. will not provide guidance or assistance in circumventing or violating Federal or state cannabis law or policy, and any advice provided by Wilentz, Goldman & Spitzer, P.A. should not be construed as such.

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