
What Employers Need to Know About Pennsylvania's New Medical Marijuana Act

By Lauri A. Kavulich / May 03, 2016

SB3, the Pennsylvania Medical Marijuana Act, was signed into law last week. Employers need to take note because employees have protections in the workplace under this Act, and the law specifically sets forth parameters on how the use of medical marijuana by an employee shall be treated by an employer.

In the Act, there are several provisions that impact the employment relationship:

- A medical marijuana card may only be issued to a patient with a "serious medical condition" or who is terminally ill as prescribed by the Act. This includes cancer, HIV or AIDS, ALS, Parkinson's, Multiple Sclerosis, epilepsy, damage to the nervous tissue of the spinal cord, neuropathies, inflammatory bowel disease, Huntington's disease, Crohn's disease, PTSD, seizures, glaucoma, sickle cell anemia, "severe chronic or intractable pain of neuropathic origin or severe chronic or intractable pain in which conventional therapeutic intervention and opiate therapy is contraindicated or ineffective," and autism.
- An employer may not discharge, threaten, refuse to hire, or otherwise discriminate or retaliate against an employee solely on the basis of such employee's status as an individual who is certified to use medical marijuana. However, the provisions specifically state that an employer is allowed to discipline an employee for "being under the influence of medical marijuana in the workplace or for working while under the influence of medical marijuana when the employee's conduct falls below the standard of care normally accepted for that position." Therefore, while the employer is not allowed to discriminate against an employee for qualifying for a medical marijuana card, it appears the legislature is not extending those protections to being under the influence of medical marijuana while on the job.
- An employer does not have to accommodate use of medical marijuana on the premises or property of the employer. Further, the Act in no way limits the employer's ability to discipline an employee for being "under the influence of medical marijuana" in the workplace or for working "while under the influence of medical marijuana when the employee's conduct falls below the standard of care normally accepted for that position." In addition, nothing in the Act shall require the employer to commit any act that would put the employer in violation of federal law. This will become the hotbed of litigation under this law, as the courts interpret what constitutes "under the influence" and the "standards of the position."
- An employer may still discipline an employee for work performance under this new law, regardless of whether the employee is certified as a medical marijuana patient.
- A patient may be prohibited by an employer from performing any duty which could result in a public health or safety risk while under the influence of medical marijuana. The prohibition shall not be deemed an adverse employment decision even if the prohibition results in financial harm for the patient.
- Because the Medical Marijuana Act does not permit medical marijuana in plant form or allow it to be smoked or ingested in edible form, any possession of marijuana in those forms is still illegal and still subject to the criminal statutes and considered an illicit drug.

We will be hearing a lot more about interpretations of this new law in the years to come. It is expected to take approximately two years for the licensing and regulations to be completed. During that time, we will have an opportunity to see how courts in other jurisdictions are handling similarly worded statutes. Stay tuned.

If you have any questions regarding Pennsylvania's Medical Marijuana Act, please contact Lauri A. Kavulich at (215) 640-8527 | lkavulich@clarkhill.com or another member of Clark Hill's Labor and Employment Practice Group.