Appellate Division Confirms That Employers Must Accommodate Medical Marijuana Use

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On March 27, 2019, the Appellate Division ruled in the matter of Wild v. Carriage Funeral Holdings, Inc. et al, A-3072-17T3, that the New Jersey Compassionate Use Medical Marijuana Act does not nullify employers obligations to accommodate medical treatment of a disability through the use of marijuana, and confirmed that the law does not permit employers to discriminate against medical marijuana use.

The plaintiff in this matter, David Wild, was employed as a licensed funeral director for the employer Carriage Funeral Holdings, Inc. ("Carriage"). Upon being diagnosed with cancer, Wild was prescribed marijuana by his physician in conformity with the Compassionate Use Act. When Carriage later became aware of Wild's use of marijuana, Wild was terminated due to his failure to previously disclose his use of such medication, and on the basis that such use might adversely affect his ability to perform his job duties.

Wild sued Carriage in Bergen County Superior Court, alleging violations of the New Jersey Law Against Discrimination (NJLAD). Following a removal to federal court based on diversity of citizenship (Carriage had been incorporated in Delaware), and the addition of two of Wild's managers as defendants that later removed diversity, the case was once against sent to Superior Court. Defendants subsequently moved to dismiss the complaint. The trial court granted the motion for failure to state a claim, and further finding that the Compassionate Use Act did not foreclose an employer's right to terminate an employee for medical marijuana use. Wild appealed the decision.

In the opinion, Judge Clarkson Fisher, Jr. reversed the decision to dismiss for failure to state a claim finding that under the liberal pleading standards Wild's pleadings were sufficient to support plaintiff's claims under the NJLAD. Judge Fisher further examined the language of the Compassionate Use Act, which states that "Nothing in this act shall be construed to require…an employer to accommodate the

medical use of marijuana in any workplace." N.J.S.A. 246I-14. The court rejected Defendants' arguments that this language immunized Carriage's conduct that would otherwise violated LAD. Judge Fisher explained that just because this language was not to be construed to require employers to provide an accommodation under the Compassionate Use Act, this did not mean that other legislation (such as NJLAD) could not require employers to provide such an accommodation independently. The Court further noted that the above language would not apply in the circumstances presented because Wild had not sought to use medical marijuana in the workplace, but Wild had stated that his treatment was during off-work hours and off-site.

This case highlights the difficult analysis that employers face when examining issues involving the intersection of legal marijuana use in New Jersey, and disability/ medical accommodation rules. These issues may become increasingly common in light of the likelihood of upcoming legislation legalizing the use of marijuana for recreational purposes. Although the Court did not examine the issue of whether such use actually had an impact of the employee's ability to perform his duties, since such issues were prematurely raised at the pleading stage, such considerations will likely affect the analysis that employers must perform prior to making decisions regarding their employees in such circumstances.