

LEGISLATIVE UPDATE

David B. Lichtenberg, Esq. (VP Legislative Affairs)
Joseph C. Toris, Esq.
Morris County SHRM
Jackson Lewis LLP
(973) 538-6890 (phone)
lichtend@jacksonlewis.com
torisj@jacksonlewis.com

NEW JERSEY PASSES COMPASSIONATE USE MEDICAL MARIJUANA ACT

On January 18, 2010, former New Jersey Governor Jon Corzine signed a bill making New Jersey the fourteenth state to legalize marijuana for medicinal purposes. The Compassionate Use Medical Marijuana Act ("Act") is scheduled to take effect in June, 2010. However, The Department of Health and Senior Services must first establish a process to register qualified patients, caregivers, and alternative treatment centers.

The Act provides that patients with specific illnesses will be permitted to obtain a prescription for medical marijuana. The conditions that qualify for prescription of medical marijuana include cancer, glaucoma, multiple sclerosis, HIV/AIDS, seizure disorder, amyotrophic lateral sclerosis (Lou Gherig's Disease), severe muscle spasms, muscular dystrophy, inflammatory bowel disease, Chron's Disease and any terminal illness provided a doctor has determined the patient will likely die within a year. The law also allows the New Jersey Department of Health and Senior Services to include other illnesses in the implementing regulations.

Patients interested in registering for the medical marijuana use program are required to obtain a registry identification card from the Department of Health and Senior Services. The Department maintains the list of patients who have been approved for medical marijuana confidentially. The Act prohibits people from growing their own marijuana and insures that medical marijuana is dispensed to licensed alternative treatment centers. The Act permits designated caretakers to retrieve the drug on behalf of a patient, provided they undergo a criminal background check. There is no minimum age for medical marijuana prescriptions. Government medical assistance programs and private health insurance companies are not required to provide reimbursement for medical marijuana use under the Act.

The Act does not specifically say that people are restricted to using medical marijuana in their homes. However, the Act does prohibit patients under the influence of marijuana from operating vehicles, smoking marijuana in a school bus or other form of public transportation, smoking marijuana in a public park, beach, or any recreation center, or any place where smoking is prohibited.

The Act does not provide guidance to employers regarding any obligation employers may have to employees who have been prescribed medical marijuana. One of the obvious concerns for employers is whether or not an employer would have the obligation to accommodate an employee's use of medical marijuana. In Oregon, a state that also has a medical marijuana statute, the state Supreme Court recently ruled that Oregon law does not require employers to accommodate the use of a illegal drugs, including medical marijuana that is otherwise allowed under state law. In so doing, the Oregon Supreme Court reversed a state administrative ruling that held an employer violated Oregon disability laws when it terminated an employee who disclosed to the employer he was using marijuana for medical reasons. This ruling by the Oregon Supreme Court is similar to how California and Washington view employers' obligations with respect to requests for disability accommodations based on medical marijuana use.

As New Jersey's Compassionate Use Medical Marijuana Act has not yet taken effect and no regulations have been promulgated, it is difficult to determine at this point how New Jersey courts will examine similar claims relating to medical marijuana. In addition to disability and accommodation issues, employers must also consider issues involving employee privacy, family leave laws, and other issues when dealing with potentially disabled employees.