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When the Smoke Clears: What Employers Need to Know About Pennsylvania's New Medical Marijuana Law

By CCHRA Legislative Chairperson Jennifer Ermilio, Esq. (August 2016)

On May 17, 2016, Pennsylvania's Medical Marijuana Act (MMA) went into effect. While it is still in the process of being implemented, employers should understand its provisions and take steps to prepare for its implementation.

In General

The MMA allows individuals who suffer from one of 17 enumerated serious health conditions to obtain medical marijuana from a limited number of authorized dispensaries. These conditions include autism, cancer, HIV/AIDS and PTSD, among others. In order to purchase medical marijuana, an individual must obtain a certification from their medical provider and be issued an identification card from the Pennsylvania Department of Health. Medical marijuana will only be sold to authorized users in pill, oil, topical gel/cream, tincture or liquid form, or in a form that can be vaporized. Currently, it may not be sold in dry leaf of plant form.

Provisions Specific to Employers

The MMA prohibits employers from discriminating or retaliating against individuals solely on the basis of their status as a certified medical marijuana user. However, employers are not required to permit the use of medical marijuana on their premises as an accommodation for a disability. Employers may also discipline employees for being under the influence of medical marijuana at work if the employee's job performance falls below the standard of care "normally accepted for that position." While the law does not describe how an employer is to determine what is the "normally accepted" standard of care for a particular position, this question is one that the coming regulations hopefully will address.

The MMA also prohibits individuals under the influence of medical marijuana from performing certain work for safety reasons. Specifically, individuals under the influence of medical marijuana may not operate or control high voltage electricity or any other public utility; control chemicals that require federal or state permits; or work at heights or in confined spaces, including mining. Additionally, employees may not perform any task which the employer deems life threatening or any duty which could result in a public health or safety risk.

Finally, the MMA does not require employers to violate federal law. At a minimum, employers in industries subject to federal requirements that prohibit marijuana use can continue to enforce and abide by those standards.

Next Steps

Interim regulations implementing the MMA are in the process of being developed and published. Final regulations are expected sometime around the end of 2017 or early 2018.

In the meantime, employers should review their employee handbooks and policies. In particular, EEO policies will need to be updated to include certified medical marijuana users. Drug testing and ADA policies may need to be revised as well. For example, with regard to ADA policies, employers should encourage certified medical marijuana users to engage in the interactive process; however, they may also wish to revise their ADA policies to clarify that they are not required under the MMA to permit the use of medical marijuana on the premises as an accommodation for a disability.

Job descriptions should also be reviewed because they will be referenced to identify positions containing duties that are off limits under the MMA to certified medical marijuana users for public health and safety reasons. Moreover, job descriptions should be helpful in establishing the standard of care “normally accepted” for a certified medical marijuana user’s position.

As with any new law, there will likely be challenges and struggles with regard to the interpretation of the MMA in the coming months and years. Multi-state employers will have the added burden of reconciling the MMA with the laws of other states in which they do business. Employers should keep an eye out for the new interim regulations implementing the MMA, and as always, consult with qualified employment counsel regarding their specific situation.

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