

Publications

Pennsylvania Superior Court Opens the Door to Medical Marijuana Discrimination Claims

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Another day, another marijuana-related employment law development. This time, it's Pennsylvania, where the Pennsylvania Superior Court, in a case called *Palmiter v. Commonwealth Health Systems, Inc.*, held that employees can sue their employer for discrimination based on their status as certified users of medical marijuana.

The case is notable because Pennsylvania's Medical Marijuana Act (MMA), by its express terms, does not carry a private right of action for wrongful termination. Notwithstanding, the Superior Court held the MMA carried an implied right of action intended by the legislature in enacting the legislation, even though such a right was not expressly written into the statute.

In so doing, the Court joined its counterparts in states around the country in prohibiting employers from discriminating based on medical marijuana use. This decision means that employers in the Commonwealth can be found liable to their employees for taking an adverse action against certified users of medical marijuana solely because of said use.

Luckily for employers, there are several safe harbors in the MMA that appear unaffected by the decision. Notably, employers are not required to allow employees to use medical marijuana while at work or allow employees to be under the influence on company time. Employers also need not violate federal regulations proscribing marijuana use by employers in certain industries, e.g., Department of Transportation regulations. The MMA also contains several employee health and safety-related safe harbor provisions.

This decision adds to a growing body of law that complicates issues for employers when it comes to their employees' use of marijuana. Laws on both recreational and medical marijuana vary from state to state. In recent years, individual states have changed their laws with regularity.

Pennsylvania employers and multi-state organizations with Pennsylvania employees should carefully examine their marijuana policies, and the application of those policies, to ensure they do not run afoul of the Superior Court's *Palmiter* decision by taking an adverse action against an employee solely for medical marijuana use without a valid safe harbor defense.

You can contact your Vorys attorney for assistance in crafting a marijuana policy that both meets your needs and complies with the laws governing your employment relationships.