



HRMA-PRINCETON LEGISLATIVE/LEGAL UPDATE

December 11, 2017

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Wild v. Carriage Services, 2017 WL 4030576 (D.N.J. 2017)
(The NJ Courts' first foray into medical marijuana in the employment setting)

In 2009, the New Jersey Legislature authorized the possession and use of marijuana for medical purposes with a doctor's prescription. The New Jersey Compassionate Use of Medical Marijuana Act (NJCUMMA), N.J.S.A. § 24:6I-1 et seq., establishes procedures for medical professionals to prescribe marijuana. It also exempts qualifying medical professionals and their patients from liability under the state's criminal and civil laws dealing with marijuana. It does not specifically reference employment. Bills introduced in the New Jersey Legislature, A2482 and S2161, would add specific employment protections for medical marijuana patients, but they have, to date, not received hearings.

Notwithstanding the NJCUMMA, Federal law classifies marijuana as a controlled substance with no recognized medical use. This has led to considerable uncertainty in the area of employment law, such as whether states that allow medical marijuana use also protect workers against discrimination based on drug use that, while legal under state law, still violates federal law. Under the Supremacy Clause of the U.S. Constitution, federal law generally takes precedence over conflicting state laws.

A recent 2017 NJ decision, Wild v. Carriage Services, briefly addresses these issues, for the first time. There, the Plaintiff Jason Wild, a licensed funeral director, was diagnosed with cancer. To help alleviate the effects of cancer, Wild's doctors prescribed him medical marijuana. Wild worked during the day at the funeral home, and smoked medical marijuana at night to help ease his pain.

In 2016, Wild was involved in a car accident, apparently occurring during the course of his employment (and allegedly through no fault of his own). Wild's employer, Carriage Services, learned about his medical marijuana use when either he, or his father, disclosed it following the accident. Carriage demanded a drug test [any issue here?], which came back positive. Carriage terminated Wild based upon the positive result, and Wild's violation of its Drug and Alcohol Policy, which requires employees to "advise their supervisor if they are taking any medication that may adversely affect their ability to perform assigned duties safely."

Mr. Wild filed a lawsuit against Carriage Services, alleging violations of New Jersey's Law Against Discrimination. He also asserted claims for defamation and tortious interference with prospective economic advantage, arising out of his bosses' alleged statements to members of the

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Bergen County Funeral Directors Association that Carriage terminated Wild because he was a “drug addict” and “under the influence of drugs.” [How did Wild find out??]

On February 28, 2017, Carriage Services filed a motion to dismiss Mr. Wild’s complaint. In support of its motion, Carriage Services made the following arguments: (1) because Mr. Wild never requested an accommodation related to his medical marijuana use, he does not have a valid claim pursuant to the NJLAD; and (2) the NJCUMMA is pre-empted by Federal Law.

The Court punted on Wild’s NJLAD failure to accommodate claim, remanding the matter to state court. However, the Court permitted the defamation and tortious interference claims to proceed against the individual defendants.

Take-aways??