



KD Alert: New Jersey Employers Need Not Waive Drug Testing for Medical Marijuana Users

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On August 10, 2018, the United States District Court for the District of New Jersey (Camden Vicinage) held that under New Jersey law, private employers are not required to waive drug tests for users of medical marijuana. Needless to say, the District Court's decision – which was handed down in *Daniel Cotto, Jr. v. Ardagh Glass Packaging, Inc., et al.*, No. 18-1037 (Aug. 10, 2018) – will have important consequences for both employees and business owners in New Jersey, where the use of medical marijuana was decriminalized more than eight years ago.

The District Court's Analysis

Plaintiff Daniel Cotto, Jr. previously worked as a forklift driver for Defendant Ardagh Glass Packaging, Inc. On November 1, 2016, Cotto sustained a head injury in the workplace, after which he asked to return to work on light duty. Ardagh then notified Cotto that he would need to pass a breathalyzer and urine tests before he could return to work. Cotto refused to undergo the requisite breathalyzer and urine tests, stating that he would not pass a drug test because he had been prescribed several drugs and that he was a legal user of medical marijuana. In response, Ardagh reiterated that Cotto could not return to work without passing a drug test – which included a screening for marijuana – and that he would remain on an indefinite suspension unless he did so. Cotto filed suit against Ardagh, claiming that because Ardagh refused to waive its drug testing requirement and placed him on indefinite suspension, Ardagh subjected him to disability discrimination under the New Jersey Law Against Discrimination ("LAD"). Cotto also argued that pursuant to the LAD and the New Jersey Law Compassionate Use of Medical Marijuana Act ("CUMMA"), Ardagh was compelled to waive its drug testing requirement as a "reasonable" accommodation for his alleged disability.

In evaluating Cotto's arguments, the District Court reasoned that while medical marijuana has been decriminalized in New Jersey, CUMMA does not provide that employers must allow employees to use medical marijuana in the workplace. To the contrary, CUMMA provides that employers do not need to accommodate their employees' use of medical marijuana in the workplace. In light thereof, the District Court determined that CUMMA is analogous to state laws in the majority of jurisdictions where medical marijuana has been legalized – including Washington, Michigan, Colorado, New Mexico, and California – where courts have found that employers may still drug test and take adverse employment actions against legal users of medical marijuana. Following the lead of these other jurisdictions, the District Court held that Ardagh did not violate the law by refusing to waive its drug testing requirement for Cotto and that Cotto could not compel Ardagh to do so.

Suggestions for New Jersey Employers

It is important to note that contrary to the District Court's holding in Cotto, several other jurisdictions – including Connecticut and Massachusetts – prohibit employers from discriminating against employees and job applicants solely on the basis of legal medical marijuana use. Accordingly, New Jersey employers – *and especially those who conduct business in multiple jurisdictions* – *should pay close attention to the legalization of medical marijuana across the United States and how the changing legal landscape may affect their businesses. New Jersey employers should also regularly audit and revise their Employee Handbooks, in order to ensure that their Drug Testing and Anti-Discrimination policies comply with all federal, state, and local employment laws.*

If you have any questions pertaining to the District Court's decision in Cotto or its implications for New Jersey employers, please contact Philip R. Voluck, Esq. or Marc B. Cytryn, Esq. at 215-461-1100.