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Pennsylvania Superior Court Recognizes Employees' Right to Sue Employers Under the Medical Marijuana Act

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By Greg Hyman and Eileen Ficaro

In a matter of first impression, the Superior Court of Pennsylvania, in *Scranton Quincy Clinic Company, LLC, et al. v. Pamela Palmiter*, No. 498 MDA 2020, recognized that employees can sue their employers for violation of Pennsylvania's Medical Marijuana Act, 35 P.S. §§ 10231.101 – 10231.2110 (the "MMA"). Enacted in 2016, the MMA provides, in pertinent part, that "[n]o employer may discharge, threaten, refuse to hire or otherwise discriminate or retaliate against any employee regarding an employee's compensation, terms, conditions, location or privileges solely on the basis of such employee's status as an individual who is certified to use medical marijuana." Until the *Palmiter decision, however, it was unclear whether an employee could take action against his or her employer for violation of that provision.*

In Palmiter, the plaintiff employee was terminated from her job for failing a drug test, despite informing the laboratory that she was prescribed medical marijuana and providing a copy of her medical marijuana certification. She subsequently sued her former employer, asserting causes of action for, inter alia, violation of the MMA and wrongful discharge. The defendant employer filed preliminary objections, arguing that plaintiff failed to state a claim for violation of the MMA or wrongful discharge. The trial court disagreed, overruling the plaintiff employee's preliminary objections. On appeal, the Superior Court concluded that the trial court properly overruled the preliminary objections to those claims. The Superior Court saw "no impediment to Ms. Palmiter maintaining a private action under the MMA or a wrongful discharge action on the facts pled and the applicable law."

KD IS HERE TO HELP

If you have questions about these developments, please contact one of KD's experienced attorneys.

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