

Lawsuit Against Amazon Highlights Difficulties of Addressing Medical Marijuana in the Workplace

A disability discrimination lawsuit was recently filed in New Jersey by a former Amazon employee who was terminated for testing positive for marijuana. Although Amazon may have in excess of 600,000 employees, the lessons to be learned from the lawsuit apply to any company that has one or more employees in New Jersey.

In July 2018 Amazon required the plaintiff/employee to submit to a drug test. When the employee tested positive for marijuana he advised Amazon that he was lawfully registered with the state's medical marijuana program. Like many others in New Jersey, the employee was using medical marijuana for treatment of a medical disability — specifically, an anxiety and panic disorder. Based upon this disability, the employee submitted paperwork to Amazon requesting a reasonable accommodation for his use of medical marijuana.

Although an employer's obligation in this situation was far from clear in 2018, the legal landscape seemed to suggest that the disability discrimination laws in New Jersey did not obligate an employer to accommodate an employee's use of medical marijuana. As a result, Amazon proceeded to terminate the employee based upon the positive drug test.

What Amazon did not know in 2018 was that in March 2019 the New Jersey Appellate Division would rule that an employer may have an obligation to reasonably accommodate an employee using medical marijuana. Because this area of law is constantly changing, Amazon is now in the predicament of having its 2018 termination decision judged in accordance with legal precedent set in 2019.

Unfortunately, employers in New Jersey looking to learn from Amazon's situation still have no clear answers. The Appellate Division's March 2019 decision has been appealed to the New Jersey Supreme Court. The New Jersey Supreme Court has not yet ruled on the appeal. It is clear, however, that regardless of the court's decision, employers must comply with the requirements of the Jake Honig Compassionate Use Medical Cannabis Act (the "Act") which was signed into law in July 2019. The Act provides certain employment protections for medical marijuana users separate and apart from any protections afforded by the disability discrimination laws (e.g., employers cannot take adverse employment actions against employees based solely on the employee's status as a valid medical marijuana user and must follow very specific procedures if an applicant or employee tests positive for marijuana).

Given these constant changes, it is critical that employers remain abreast of the current status of the law and get proper advice on handling employees or applicants that test positive for marijuana.