

New Jersey Supreme Court Poised to Resolve Cannabis Reimbursement Conflict

It is undisputed that federal and state laws conflict with regard to the creation of regulated cannabis businesses. The illegality of cannabis on the federal level, while many states including New Jersey create either medical or recreational access, evidence this continued bi-polar marketplace. New Jersey's laws creating access to cannabis for medical uses are no exception. In the coming weeks, it appears New Jersey's Supreme Court will grapple with the pervasive impact of this apparent conflict: whether an employer is in violation of federal law for reimbursing an employee – who sustained work-related injuries – for medical marijuana consumed to treat the workplace injury. Indeed, this is an issue that has divided many state appellate courts. *It is now time for New Jersey's highest court to weigh in and set the record straight.*

The New Jersey Supreme Court's grant of certification is the result of an appellate panel's decision in January 2020 concluding that a Workers' Compensation Judge's order mandating an employer to cover an employee's medical marijuana costs did not conflict with the federal Controlled Substance Act (CSA). *Hager v. M & K Constr.*, 462 N.J. Super. 146, 165 (App. Div. 2020). The *Hager* Court held there was "no positive conflict" between the CSA and New Jersey's Medical Marijuana Act (MMA). *Id.* at 165. And, perhaps most notably, the *Hager* Court found that Hager's "use of medical marijuana was reasonable and necessary for the treatment" of his chronic pain. *Id.* at 170.

Nonetheless, other states have weighed in, or are in the process of weighing in on this very issue. For example, in 2018, the Maine Supreme Court concluded that ordering an employer to compensate an employee for medical marijuana would be a violation of the CSA. As recently as May 5, 2020, the Massachusetts Supreme Judicial Court heard oral argument on nearly the same exact issue (*i.e.*, whether requiring an employer (an insurance company) to pay for an employee's medical pot expenses constituted a violation of the CSA—to be determined).

As New Jersey is poised to consider the creation of an adult-use cannabis marketplace when they vote on the public question in November, this is a vitally important issue that will help set the stage for how New Jersey will decide these conflicts in the future. Stay tuned....