

# *Cannabis in the Workplace: Concerns for NJ Employers*

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# The Current Status of Cannabis in New Jersey and What to Expect Moving Forward

- Adult Use Recreational Cannabis – Not There Yet
  - What Has Happened So Far? Lots of Smoke, But no Fire.
  - What Does The Future Hold?
- Medical Cannabis
  - Major Expansion Over the Past 2 Years
    - 2018 – major expansion of qualifying illnesses
      - Before: major illnesses – terminal cancer, other terminal illnesses, muscular dystrophy, etc.
      - Now: anxiety, migraines, chronic pain from arthritis, opioid use disorder, irritable bowel syndrome, etc.
    - Early 2019 – six new ATCs licensed, all major out of state operators
  - Summer Expansion

# Developments In The Law: Workers Compensation

- **Case:** *McNeary v. Freehold Township*; June 28, 2018
- **Issue:** Whether a workers compensation insurance carrier was required to pay for an injured worker's medical cannabis?
- **Held:** Yes – but with a potential qualification
- **Impact:** Volume – and a clear message to treating physicians

# New Jersey Law Against Discrimination

- Overview
- Economic Realities of Discrimination Suits
- Application to Non-profits
  - *Hebard v. Basking Ridge Fire Co. No. 1*
  - Applies NJ LAD to Non-profits

# Developments In The Law

- **Case:** *Wild v. Carriage Funeral Home*; March 27, 2019
- **Issue:** Does a NJ LAD plaintiff in the MMP state a legal claim for an unlawful termination based on a positive drug test?
- **Held:** Yes
- **Impact:** Major – a big shift in the law
- **Caveats:**
  - Case only reinstated
  - Interactive process still available
  - N.J.S.A. 24:6I-14 – nothing in Compassionate Use Act requires an “employer to accommodate the medical use of marijuana in any workplace”

# Major Recent Updates

- *Wild* Case goes to the NJ Supreme Court
- Massive expansion of the medical cannabis program
- Jake Honig amendment to medical cannabis law

# Jake Honig Amendment

- New employee protections for medical cannabis patients
- Illegal to take adverse employment action based solely on employee's status as a medical cannabis patient
- New drug testing laws
  - Drug tests still permissible
  - If positive for cannabis, employee may produce legitimate medical documentation

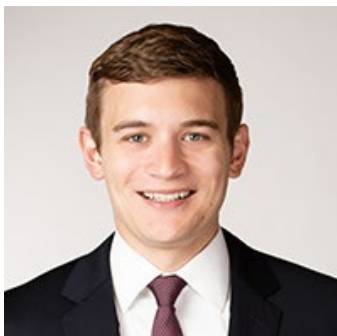
# Amazon Case and Federal Implications

- Amazon sued for drug testing
- Federal court treatment of cannabis cases



# Major Takeaways

- Population of legal cannabis users in New Jersey is growing – with the potential to grow exponentially
- New Jersey law is slowly shifting to provide greater protections to cannabis users
- However, employees will not have carte blanche to use cannabis in a workplace setting
- Most issues will be fact specific – but do not **automatically** terminate for a failed drug test
- The key moving forward: accept the reality of increased cannabis in New Jersey and develop corresponding workplace policies and procedures



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Alex's practice focuses on representing businesses in complex commercial, fraud, antitrust and RICO litigation. He has also represented clients in commercial eviction actions and defended companies in employment discrimination litigation.

In anticipation of the legalization of recreational cannabis in New Jersey, Alex assisted with the development of Saiber LLC's Cannabis Practice. Alex is the managing editor of the New Jersey Cannabis Counsel blog which provides commentary and information about the proposed legalization legislation.