

Case Law Starts to Develop for Pennsylvanias Medical Marijuana Act

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A Pennsylvania judge has made the first move to clarify an employer's liability under the state's Medical Marijuana Act.

A Lackawanna County Court of Common Pleas Judge recently ruled that an employee may bring a private cause of action against an employer for alleged discrimination, establishing the first case law for this question under Medical Marijuana Act, which passed in 2016 and made the use of medical marijuana legal with certification through a state process and a doctor's permission.

In *[Palmiter v. Commonwealth Health Systems Inc. et al.](#)*, Commonwealth Health Systems hired plaintiff Pamela Palmiter in January 2017 as a medical assistant. Palmiter informed the health care employer that she used medical marijuana to combat chronic pain, chronic migraines and persistent fatigue. Although the employer was in the process of being acquired by other entities, it informed Palmiter that her certified use of medical marijuana under Pennsylvania law would not be an issue.

Palmiter applied for employment with the acquiring entities and was scheduled for a post-offer drug test. She informed the new entities that she was a medical marijuana user and provided a doctor's certification. She was subsequently informed by the acquiring entities that she could not work for them due to her medical marijuana use.

She filed suit, alleging in part a violation of the MMA's anti-discrimination provision which prohibits employers from taking action against a certified medical marijuana user based solely on use of medical marijuana. The defendants argued that there is no private cause of action under the act and moved to dismiss the claim. The sole remedy for MMA violations, the defendants argued, was the imposition of civil penalties by the Pennsylvania Department of Health.

The court rejected the defendants' argument and denied their request to dismiss the claim. The court noted that while there is no express private cause of action under the MMA, the anti-discrimination provision "would be rendered meaningless if an aggrieved employee could not pursue a private cause of action." The court permitted Palmiter to move forward with her claim under the MMA.

The MMA is still in its infancy and many of its provisions remain unclear. Further complicating the issues is that no implementing regulations have been issued under the MMA which might bring clarity to the confusion around the statute. The *Palmiter* case is significant in that it makes clear that employers are subject to a private cause of action under the MMA if they violated its anti-discrimination provisions. Before rejecting a candidate for employment or terminating an existing employee for medical marijuana use, employers should seek legal advice.

If you have any questions on this case or how it could affect your business, please [reach out to me](#) or any member

of the Barley Snyder Employment Practice Group.

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Jennifer Craighead Carey

Managing Partner

Tel: (717) 399-1523

Email: jcraighead@barley.com