

New York State Legislature Approves Use of Medical Marijuana; Users to Be Considered "Disabled" Under State Human Rights Law

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On June 20, 2014, the New York state legislature approved a bill that would allow patients to use marijuana for limited medical therapeutic purposes. Governor Cuomo is expected to sign the bill into law. The bill will not take effect until 18 months after it is signed into law, giving employers time to consider the potential impact that it will have on their workplaces.

The New York medical marijuana bill will allow the "certified medical use" of marijuana, but prohibits smoking the drug. It will also allow the Health Department to license five private companies in the state to produce and distribute medical marijuana products through dispensaries.

Notable for employers, the bill contains a non-discrimination clause which provides that patients who use the drug will be deemed to have a disability under the Human Rights Law. However, patients will have to meet a number of requirements in order to be eligible to receive medical marijuana and, therefore, to be considered disabled under this law.

The bill sets forth a robust certification process by which a practitioner certifies that the patient is likely to receive therapeutic or palliative benefit from the use of marijuana. Only patients aged 21 or over who suffer from one of the ailments specified in the bill—cancer, HIV/AIDS, amyotrophic lateral sclerosis (ALS), Parkinson's disease, multiple sclerosis, certain spinal cord injuries, epilepsy, inflammatory bowel disease, neuropathies, or Huntington's disease—will be eligible to use the drug as part of their treatment. Even those afflicted with these diseases are only eligible to use medical marijuana if they suffer certain clinical symptoms, which include wasting syndrome, severe or chronic pain, severe nausea, seizures, or severe or persistent muscle spasms. Notwithstanding the provisions of this law, it is likely that an employee with one of these listed conditions and symptoms would be considered disabled under the Americans With Disabilities Act, or the New York State Human Rights Law. The Health Department will have discretion to approve other "serious conditions" for use of marijuana as needed.

The new law will not bar an employer's enforcement of a policy prohibiting employees from performing their employment duties while impaired by a controlled substance. In addition, the bill specifically states that it does not require any person or entity to do any act that would put that person or entity in violation of federal law or cause the loss of a federal contract or funding. Therefore, employers who are subject to the Drug Free Workplace Act or other federally-imposed drug related restrictions are still required to follow and abide by such laws and requirements. In these circumstances, an employer would not be required to employ someone using medical marijuana when doing so conflicts with superseding federal requirements prohibiting employees' use of such drugs.

Please contact your Proskauer Labor Department lawyer, or one of the lawyers listed in this alert, if you have any questions regarding the impact of this new pending law on your workplace, or of other similar medical marijuana laws.

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