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Recent Amendments to New Jersey's Medical Marijuana Law Prohibit Employer Discrimination and Retaliation

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On July 2, 2019, Governor Phil Murphy signed the Jake Honig Compassionate Use Medical Cannabis Act (Honig Act), which dramatically reforms New Jersey's Medical Marijuana Program. Significant to New Jersey employers are expansive employment protections for patients which were unclear under the state's prior medical marijuana laws, and which are summarized in this Alert.

Under the Honig Act, employers are prohibited from taking "adverse employment action" against employees based solely on their status as a registrant with the newly formed Cannabis Regulatory Commission. An "adverse employment action" includes refusing to hire or employ an individual, barring or discharging an individual from employment, requiring an individual to retire from employment, or discriminating against an individual in compensation or in any terms, conditions, or privileges of employment.

The Honig Act makes clear, however, that nothing in the law requires employers to allow employees to use or possess medical marijuana in any form during work hours, or to take any action that could compromise federal funding. An employee can also be disciplined for possessing or using medical marijuana after work hours on work property.

Prior to the enactment of the Honig Act, employers were without guidance as to their obligations to employees who tested positive for marijuana and were legally using medical marijuana consistent with New Jersey's Compassionate Use of Medical Marijuana Act (CUMMA). Under the Honig Act, if an employer has a drug testing policy in place and an employee or job applicant tests positive for marijuana, the employer must offer the employee or job applicant an opportunity to present a

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legitimate medical explanation for the positive test result, and must provide the employee or job applicant with written notice of their right to explain such use.

Within three days of the positive test results, the employee or job applicant may submit information to the employer to explain the positive test result, or may request a confirmatory retest of the original specimen at the employee's or job applicant's own expense. As part of their explanation for the positive test result, the employee or job applicant may present an authorization for medical marijuana issued by a doctor, proof of registration with the Commission, or both.

Finally, no employer will be penalized or denied any benefit under state law simply for employing a person who is registered with the Commission.

As a practical matter, it is always important to consult with legal counsel prior to taking any adverse employment action against an employee who is afforded protection under state or federal laws. Those laws now include the Honig Act, as well as any law providing protection to an employee who falls within an identified protected class, including an employee suffering from a disability.

We will be monitoring the implementation of the Honig Act closely, and will provide additional guidance going forward. In the meantime, please contact the author of this Alert, **Jemi Goulian Lucey**, with questions about the Honig Act or to learn more about best practices in this area.