

Labor and Employment Alert: Court Decision Obliging Employer To Reimburse Employee's Medical Marijuana Expenses Has Broader Implications

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In the case of *Vincent Hager v. M&K Construction*, the plaintiff employee's doctor recommended the use of medical marijuana as a treatment for the employee's work-related injury. The defendant employer contended that it should not be forced to reimburse the employee for the cost of the medical marijuana for several reasons, including the fact that marijuana usage remains illegal at the federal level. In a *unanimous* decision, the New Jersey Supreme Court ruled that the employer was obligated to reimburse the employee for his medical marijuana costs (which costs were more than \$600 a month).

At first glance, the relevance of the New Jersey Supreme Court's ruling might seem limited to the specific issue of medical marijuana as a treatment for workers' compensation injuries and the resulting increases employers may see in their workers' compensation insurance premiums on a going-forward basis. The rationale for the court's decision, as well as a prior decision from the court, suggests the impact of this ruling will be much more far-reaching. The ruling shows the court has given full force and effect not only to the letter of New Jersey's cannabis laws but to the intended goals and purposes sought to be achieved by said laws (both medical use and adult recreational use).

In some of the other states that have legalized cannabis usage, the rights afforded under those laws have been limited by court rulings that have cited to the fact that marijuana remains illegal at the federal level. The New Jersey Supreme Court first bucked that trend in 2020 when, in contrast to decisions reached by other courts, it ruled that an employee terminated for using medical marijuana to treat a disability could pursue a claim of discrimination against his former employer. In deciding *Hager* the New Jersey Supreme Court went even further. Specifically, the court found that the federal Controlled Substances Act has been "suspended" as to conduct that complies with New Jersey's medical marijuana law. In reaching this decision the court relied upon the fact that, for seven consecutive fiscal years, Congress has used appropriation riders to prohibit the United States Department of Justice from using funds to interfere with state medical marijuana laws.

Before long it is likely the New Jersey Supreme Court will have reason to address issues relating to adult recreational cannabis use. As reported in a prior alert, such usage became legal in New Jersey by having been approved by a voter referendum in November 2020 and signed into law on February 22, 2021. As was addressed in the April 8, 2021 webinar hosted by Brach Eichler titled "[Cannabis in the New Jersey Workplace...What You Need To Know](#)" the adult-use cannabis law provides significant protections to employees and imposes significant obligations on employers. The decision in *Hager* suggests the New Jersey Supreme Court likely will seek to enforce that law and the employee rights and employer obligations thereunder to the greatest extent possible.

Please contact any of our Labor and Employment attorneys below for assistance:

[Matthew Collins](#), Member and Co-Chair, [Labor and Employment Practice](#), at mcollins@bracheichler.com or 973-403-3151

[Anthony Rainone](#), Member and Co-Chair, [Labor and Employment Practice](#), at arainone@bracheichler.com or 973-364-8372

[Jay Sabin](#), Counsel, [Labor and Employment Practice](#), at jsabin@bracheichler.com or 917-596-8987