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New Jersey Employment Law Desk Reference

at a glance | 2021

INCLUDING:

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Establishing & Terminating Employment



Employment at Will

New Jersey adheres to the principle of at-will employment. Accordingly, an employment relationship may be terminated for any reason at the will of either party, provided the reason is not otherwise prohibited by law or agreement.

Though not legally required, it is good practice for employers to include an at-will disclaimer in their employment handbook, informing employees that nothing in the handbook should be construed as creating a contract of employment. Otherwise, under New Jersey law, employment handbooks may create an enforceable employment contract if the handbook would lead a reasonable employee to believe that the handbook provides for a contractual obligation, or if there is no clear and prominent disclaimer that the employment is at-will.



Drug Testing and Employee Use of Cannabis

New Jersey does not regulate drug testing conducted by private employers, except that employers must pay for any drug tests they require applicants and/or employees to take as a condition of employment. An employer must ensure that the drug testing program does not unduly violate the applicant or employee's privacy expectations such that the program runs afoul of public policy concerns. New Jersey courts determine whether an employer's drug testing program violates public policy on a case-by-case basis, balancing the applicant or employee's reasonable expectation of privacy against the employer's interest in maintaining public safety and a safe workplace. As a practical matter, employers should ensure that the testing is narrowly tailored and consistent with a business necessity.

The Jake Honig Compassionate Use Medical Cannabis Act, N.J.S.A. 24:6i-1 to 24:6i-30, provides certain employment protections for job applicants or employees who are qualified registered medical cannabis users. If

an employee or job applicant tests positive for cannabis, the employee or job applicant may present a legitimate medical explanation for the positive test result, and employers must provide written notice to this effect. Within three working days after receiving this notice, 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 sample at the employee's or job applicant's own expense. As part of an employee's or job applicant's explanation for the positive test result, the employee or job applicant may present an authorization for medical cannabis issued by a health care practitioner, proof of registration with the New Jersey Cannabis Regulatory Commission, or both. The law does not require that the employer allow the use of medical marijuana in the workplace, nor does it restrict the employer's ability to take adverse employment action for the possession or use of intoxicating substances either during work hours or at the workplace outside of work hours.

In February 2021, New Jersey enacted the Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMMA), which provides the framework for legal recreational cannabis use for those 21 and over. CREAMMA extends discrimination prohibitions (discussed below) to recreational marijuana users and prevents employers from refusing to hire, firing, or taking adverse action against an employee regarding "compensation, terms, conditions, or other privileges of employment because that person does or does not . . . use cannabis items."

Employers may continue to maintain drug- and alcohol-free workplaces, including zero tolerance for employee use, possession, or being under the influence of marijuana at the workplace or during work hours.

Employers need not comply with the anti-discrimination provisions if doing so violates a federal contract. CREAMMA also allows employers to continue to perform drug testing, but under certain restrictions that will become operative at the end of August, 2021. At the time of this writing, CREAMMA has no carve-out for employees in "safety-sensitive" positions, although a draft "clean up" bill has