

New York Legislative Developments: Wage Theft Law Amended, Medical Marijuana Law Enacted

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Concluding its 2014 legislative session, the New York legislature has passed amendments to the Wage Theft Protection Act and new medical marijuana legislation. Each of these enactments is potentially relevant to all New York employers.

Amendments to Wage Theft Prevention Act (WTPA)

One provision of the WTPA that has frustrated employers is its requirement that they all provide an annual wage notice during the month of January. After years of lobbying by the business community, the New York legislature finally eliminated this requirement. Governor Andrew Cuomo is expected to sign the amendment shortly. (For more information on the WTPA, see our article, [New York Wage Theft Prevention Act Update: State DOL Issues Model Forms and Guidance](#).)

While the elimination of the annual notice requirement is positive news, other provisions of the amended WTPA are not so employer-friendly. First, the remaining notice requirements of the WTPA are in effect. Second, the maximum penalties for failing to timely provide a new hire with notice is increased from \$2,500 to \$5,000 per employee not notified. Third, employers found to be in violation of the WTPA more than once in a six-year period also may face a civil penalty of \$1,000 - \$20,000, as well as injunctions and liquidated damage awards of up to \$20,000 (increased from \$10,000) payable to aggrieved employees. Fourth, any audit conducted by the state Department of Labor is generally required to cover a full six-year period from the date of the claim. Fifth, state contractors found to be in violation of the amended WTPA will be required to notify their employees and subcontractors of the nature of the violation. Finally, the additional administrative and enforcement costs will be offset by a newly created "Wage Theft Prevention Enforcement Account," which will be funded by the financial penalties collected from employers.

While the amendment will allow employers to dispense with the burdensome annual notice requirement, the increased penalties reinforce the need for ever-vigilant compliance with the WTPA.

Medical Marijuana

Governor Cuomo has signed New York's Compassionate Care Act, which will permit limited use of medical marijuana by individuals suffering from covered medical conditions, making New York the 23rd state to legalize the use of medical marijuana.

Under the law, signed on July 7th, no more than five private organizations in the state will be licensed for the production and distribution of medical marijuana through up to four regulated dispensaries per organization. The dispensaries must be wholly owned and operated by such licensed organization. Additionally, in order to obtain and maintain its certification, each organization must enter into a labor peace agreement with a bona fide labor organization representing its employees.

Of relevance to employers, and discussed below, New York is one of only a few states that deems covered individuals ("certified patients") to be "disabled" categorically under the state human rights laws. To be covered, individuals must suffer from a "serious condition," defined currently as having one of the following "severe debilitating

or life-threatening conditions” (which the legislature has concluded is likely to respond favorably to the therapeutic or palliative benefits of marijuana):

cancer

HIV/AIDS

amyotrophic lateral sclerosis (ALS)

Parkinson's disease

multiple sclerosis (MS)

damage to the nervous tissue of the spinal cord with neurological indications of intractable spasticity

epilepsy

inflammatory bowel disease

neuropathies

Huntington's disease

Individuals must be experiencing specific symptoms of a covered condition in order to be deemed to have a “serious condition.” Individuals deemed to be “certified patients” (or their designated caregivers) can obtain a maximum of 30 days’ supply of marijuana (in a dosage determined by agency rulemaking or a certified physician) at a time, with refills permitted one week before the supply runs out. Marijuana can only be possessed in its original packaging (except when being used), and it cannot be smoked, consumed, vaporized, or grown in a public place. Moreover, smoking is not considered a certified or lawful medical use under any circumstances.

While the law is effective immediately, the New York State Department of Health must promulgate regulations and has been given up to 18 months to issue or make effective registry identification cards for certified patients and designated caregivers, which will be necessary for obtaining medical marijuana.

The law does not prohibit employers from creating or enforcing existing policies that prohibit employees from performing their employment duties while impaired by medical marijuana, and it is not intended to result in violation of federal law or cause an employer’s federal contracts or funding to be jeopardized. Nevertheless, the law will create challenges for employers as it relates to drug testing policies since it is unclear whether an employer must excuse or accommodate a positive drug test where the employee is a certified patient taking marijuana in approved forms. Additionally, because covered patients are deemed “disabled” under the Human Rights Law, employers may need to engage in an interactive process with employees who reveal medical marijuana use to discuss potential accommodations.

New York employers should closely review any guidance issued by the state over the coming months and may need to modify policies and practices.

If you have any questions regarding these and other legislation affecting the workplace, please contact the Jackson Lewis attorney with whom you regularly work or Richard I. Greenberg, at GreenbeR@jacksonlewis.com, Susan M. Corcoran, at CorcoraS@jacksonlewis.com, Christopher Valentino, at ValentiC@jacksonlewis.com, Daniel J. Jacobs, at JacobsD@jacksonlewis.com, or Ellen M. Bandel, at Ellen.Bandel@jacksonlewis.com.

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practices

Drug Testing and Substance Abuse Management

Wage and Hour

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