

The content in this webinar and on these slides is not legal advice, and it does not create an attorney-client relationship. It represents an interpretive and informational summary of some of today's emerging legal issues.

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For those in need of additional COVID-19-related resources or assistance, please feel free to visit Genova Burns' COVID-19 Resource Center on our website at genovaburns.com or contact one of our attorneys. None of today's presentation should be a substitute for legal advice.

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Today's Discussion

Part I: Lay of the Land Part II: Recreational Use at the Workplace Part III: Medicinal Use at the Workplace Part IV: Drug-Free Policies/Drug Testing Part V: Duty to Accommodate

Questions & Answers

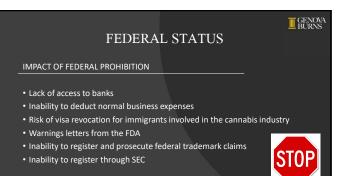


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MICROBUSINESS LICENSE

- Under the law, at least 25% of the total number of licenses in each class will be reserved solely for microbusinesses.
- "Microbusiness" is defined as a person or entity with business operations that employ no more than 10 employees.
- Microbusiness cannot process more than 1,000 cannabis plants each month, operate a cannabis establishment that occupies more than 2,500 square feet, or acquire more than 1,000 pounds of cannabis in dried form for retail, resale, or processing each month.

TAXES

- Cannabis items are subject to New Jersey's sales tax (i.e., 6.625%).
- Local municipalities may impose an additional tax of up to 2%.
- A Social Equity Excise Fee may also be assessed on Cultivators, in the amount of 1/3 of 1%.



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RECREATIONAL USE AT THE WORKPLACE

Under the Recreational Use Law:

- Dealerships can ban use of cannabis at the workplace and during workhours.
- Dealerships can also prohibit possession of cannabis at the workplace



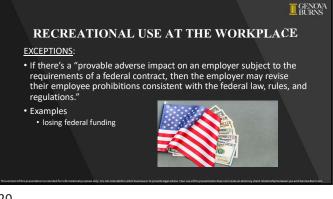
RECREATIONAL USE AT THE WORKPLACE

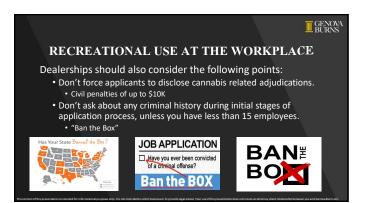
However...

- Dealerships cannot take adverse employment action against existing employees for off-duty use (or non-use).
- Dealerships cannot refuse to hire applicants for recreational use of cannabis (or non-use).



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JAKE HONIG COMPASSIONATE USE MEDICAL CANNABIS ACT

Job Protections under the Act:

"It shall be unlawful to take <u>any adverse employment</u> <u>action</u> against an employee who is a registered qualifying patient based solely on the employee's status as a registrant with the commission."



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JAKE HONIG COMPASSIONATE USE MEDICAL CANNABIS ACT

The Act defines "adverse employment action" as:

- refusing to hire or employ an individual;
- barring or discharging an individual from employment;
- requiring an individual to retire from employment; and
- discriminating against an individual in compensation or in any terms, conditions, or privileges of employment.

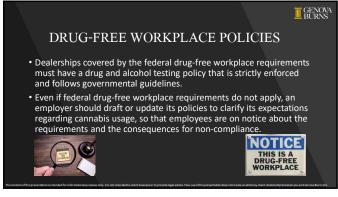


DRUG FREE WORKPLACE POLICIES

- The laws recognize that federal contracts have prohibitions that Dealerships must follow.
- For example, most federal contractors are required to comply with the federal Drug-Free Workplace Act (DFWA), which precludes the possession or use of controlled substances at work sites.



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DRUG TESTING

- The methodology used must produce results that are scientifically reliable, which suggests using methods such as urinalysis, blood sampling, or saliva testing.
- However, those tests cannot detect current impairment, only prior use.



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ADVERSE EMPLOYMENT ACTION

New Jersey law permits Dealerships to take adverse action if:

- (1) an employee possesses or uses an intoxicating substance while on duty; or
- (2) if such use would require an employer to commit any act that would cause the employer to be in violation of federal law.



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DUTY TO ACCOMMODATE

- The New Jersey Law Against Discrimination (LAD) prohibits disability discrimination in employment.
- Dealerships must "make a reasonable accommodation to the limitations of an employee or applicant who is a person with a disability, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of its business."
- To determine what appropriate accommodation is necessary, the employer must initiate an informal "interactive process" with the employee.



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DUTY TO ACCOMMODATE

New Jersey's previous Medical Marijuana Law contained language stating:

[N] othing in [the Act] shall be construed to require... an employer to accommodate the medical use of marijuana in any workplace.

The Law was later amended in 2019 and the language was removed from the current version.



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DUTY TO ACCOMMODATE

Are Dealerships required to accommodate an employee's use of medical marijuana?

In New Jersey . . .

No obligation to accommodate on-duty use
May have to accommodate off-duty use.
See Wild & Carriage Funeral Holdings



DUTY TO ACCOMMODATE

Wild v. Carriage Funeral Holdings (Facts)

- A licensed funeral home director gets into a car accident driving during funeral.
- He goes to the ER, his dad discloses that he uses medical marijuana off-duty because of a cancer diagnosis about a year before.
- Employer requires him to pass a drug test to return to work.
- He is terminated for two reasons: the presence of marijuana in his system and the failure to disclose the use of a substance that might impact his ability to do his job.
- He sues, claiming violations of the Law Against Discrimination.

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DUTY TO ACCOMMODATE

Wild v. Carriage Funeral Holdings (Decision)

 The Appellate Division held the employer doesn't have to allow use on-site but must accommodate the employee's off-duty use of medical marijuana.

The NJ Supreme Court adopted the Appellate Division's decision that the failure to accommodate claims should be considered under the law against discrimination standard.

 The NJ Supreme Court also added that nothing in the medical marijuana law requires acceptance of on-site use or the operation of heavy machinery while under the influence.





