

The Pennsylvania Human Relations Act Does Not Require Accommodation of Medical Marijuana Use

By: Paul N. Lalley, Esq. & Brian P. Gabriel, Esq.

In *Harrisburg Area Community College v. Pennsylvania Human Relations Commission*, Pennsylvania's Commonwealth Court has ruled that the Pennsylvania Human Relations Act (PHRA) does not require accommodation of a student's use of medical marijuana. The case involved a PHRC charge brought by a student in HACC's nursing program who was prescribed medical marijuana for post-traumatic stress disorder and irritable bowel syndrome. The student brought the charge to challenge HACC's policy that required nursing students to pass a drug test. School officials refused to permit the student an exception to the policy, and the student claimed that the failure to accommodate her medical marijuana usage amounted to disability discrimination under the PHRA and the Pennsylvania Fair Educational Opportunities Act (PFEOA).

HACC argued that its refusal to allow an exception to its drug testing policy could not constitute discrimination under the PHRA because marijuana remains illegal under the federal Controlled Substances Act (CSA) even though Pennsylvania's Medical Marijuana Act (MMA) allows it for medical purposes. The PHRC refused to dismiss the student's charge, and the Commonwealth Court agreed to hear HACC's appeal of the PHRC's ruling to decide whether the refusal to accommodate the student's use of medical marijuana amounted to disability discrimination prohibited by the PHRA.

The Court agreed with HACC and ruled that the PHRA does not require accommodation of medical marijuana usage, and that HACC could enforce its drug-testing policy. The Court concluded that the MMA did not specifically amend the PHRA, and although the MMA prohibits employment discrimination based on an employee's use of medical marijuana, it "does not require that an employer provide an accommodation therefor." Moreover, the PHRA specifically incorporates the federal CSA and excludes from the PHRA's protection a person's use of illegal drugs as proscribed by the CSA – and marijuana, medical or not, remains a Schedule I controlled substance.

The Commonwealth Court's decision only directly addresses whether a post-secondary educational program needs to accommodate a student's use of medical marijuana under the "public accommodation" provisions of the PHRA; however, statements in the opinion strongly signal that the Court does not see any duty for employers to accommodate an employee's medical marijuana usage under the PHRA. In the employment context, the MMA explicitly prohibits discrimination against a person because they are a medical marijuana user, but also explicitly provides that an employer need not accommodate an employee's medical marijuana use "on the property or the premises" of the employer. The Court's broad statements about no duty to accommodate medical marijuana goes beyond the specific language of the MMA and suggests that there is no duty to accommodate medical marijuana usage regardless of where the use occurs.

It remains to be seen whether the Pennsylvania Supreme Court will hear this case and adopt its rationale, or whether the Commonwealth Court will go in this “no accommodations needed” direction when confronted with an actual employment case under the PHRA. But the decision is worth close examination by public employers who are faced with an employee’s request to accommodate off-premises medical marijuana usage, and consultation with labor counsel regarding its application is recommended.

Takeaways:

- The Commonwealth Court’s decision in *Harrisburg Area Community College v. Pennsylvania Human Relations Commission* states that there is no duty under the “public accommodations” provisions of the Pennsylvania Human Relations Act to accommodate off-premises medical marijuana use.
- Public employers should consult with their labor counsel as to the decision’s applicability under the employment provisions of the PHRA and whether there is any duty to accommodate an employee’s off-premises medical marijuana use.

Bottom Line:

The Pennsylvania Human Relations Act may not require that employers accommodate an employee’s off-premises medical marijuana use.