



The
Lynch Law Group

Pennsylvania Medical Marijuana Program

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- **Effective May 17, 2016**
- **Individual must meet certain criteria and present with a statutory medical condition**

1. Must be a resident of the Commonwealth of Pennsylvania;
2. Must have a “Serious Medical Condition” as certified by a registered physician;
3. Must obtain a valid permit (a “Medical Marijuana Card”) from the Pennsylvania Department of Health;
4. Serious Medical Conditions include:
 - Amyotrophic Lateral Sclerosis (ALS)
 - Autism
 - Cancer
 - Chron’s Disease
 - Damage to the Nervous tissue of the spinal cord with objective neurological indication of intractable spasticity (dyskinetic)
 - Multiple Sclerosis
 - Glaucoma
 - Huntington’s Disease
 - Inflammatory Bowel Syndrome
 - Intractable Seizures
 - Neuropathies
 - Parkinson’s Disease
 - Addition Substitute Therapy – Opioid Reduction
 - HIV/AIDS
 - Post-Traumatic Stress Disorder
 - Severe Chronic or Intractable Pain of Neuropathic origin or severe chronic or intractable pain in which conventional therapeutic intervention and opiate therapy is contraindicated or ineffective
 - Sickle Cell Anemia
 - *Anxiety (19% of U.S. Adults)
 - *Tourette Syndrome (1 to 10 in 1,000 children)

*(July 29, 2019 list expanded to include additional conditions)

5. Smoking of marijuana is not permitted under the MMA (only pills, oils and gels are allowed).

6. Employers do not have to accommodate employees on-site use.
7. Discriminating against an employee certified to use medical marijuana is prohibited. No Employer “may discharge, threaten, refuse to hire or otherwise discriminate or retaliate”.
8. Employer can discipline employee for:
 - Being under the influence of medical marijuana in the workplace, or;
 - Working while under the influence of medical marijuana “when the employee’s conduct falls below the standard normally accepted for that position.”
9. MMA Prohibits anyone under the influence of medical marijuana to engage in:
 - Control of chemicals which require a permit issued by the federal or state Government;
 - Operation or control of high-voltage electricity or any other public utility; or employment duties at heights or in confined spaces;
 - Any task that an employer deems life-threatening to any employee of the employer; or
 - Any duty which could result in a public health or safety risk.

Unanswered Questions

1. What does it mean to be “under the influence”?
2. How does an employer prove that an employee is under the influence?
3. What is that “standard of care” for a particular employee’s position?
4. Does the MMA require employers to accommodate medical marijuana use outside of work?
5. Is it required to provide an accommodation under the Americans with Disabilities Act or PA Human Relations Act?
6. Does the exemption under the ADA for “use of a drug taken under the supervision of a licensed Health Care Professional” apply to the MMA?
7. Is the State’s Medical Marijuana Law preempted by the Federal Controlled Substance Act (“CSA”) and the ADA? (The ADA provisions do not expressly state that an employer may prohibit an employee from the illegal use of drugs outside the workplace).

Important Considerations

1. Do not ask applicants for employment if they are certified to use medical marijuana (just like other protected classes).
2. Make sure your ECO policies encompass cause certified to use medical marijuana.
3. Use caution when dealing with employees who you know are certified to use medical marijuana (there may be disability discrimination implications).
4. Review your job descriptions, particularly for safety sensitive positions. (Update and accurately describe the employee’s job description).
5. Educate managers regarding the MMA.