

Employee Benefit ■ Plan Review

N.J. High Court Rules on Employer Obligations Under State Medical Marijuana Act

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Organizations in employee-friendly New Jersey have long been faced with a choice between compliance with permissive state marijuana regulations or with stricter federal mandates. The Supreme Court of New Jersey, in *Hager v. M&K Construction*,¹ has recently clarified that the Jake Honig Compassionate Use Medical Cannabis Act (“Honig Act”) is not preempted by the federal Controlled Substances Act (“CSA”), further narrowing the discretion of New Jersey employers to interpret how to comply with conflicting state and federal laws.

INTRODUCTION

On April 13, 2021, the state’s high court ordered M&K Construction (“M&K”) to reimburse employee Vincent Hager for ongoing costs of medical marijuana after he sustained a work-related back injury during his employment with M&K in 2001. Specifically, Hager alleged that he began taking medical marijuana to treat his back pain in 2016 as a method of weaning off of opioids, which he had previously used to treat the pain.

Because his medical marijuana prescription was costly – more than \$600 each month – Hager sought reimbursement from M&K.

However, M&K argued that it was not responsible for such costs under the Honig Act because (1) the Act conflicts with, and is

therefore preempted by, the CSA, which classifies marijuana as a Schedule I drug and makes it a federal crime to “aid or abet” in the commission of, or engage in a conspiracy to commit, a federal crime, and (2) it falls within the Honig Act’s limited reimbursement exception for government medical assistance programs or private health insurers.

M&K also argued that it was not required to reimburse Hager under New Jersey’s Workers’ Compensation Law (“WCL”) because medical marijuana is not a “reasonable” or “necessary” treatment.

THE COURT’S DECISION

The court denied M&K’s claims and held that M&K was required to reimburse costs reasonably related to Hager’s prescription for medical marijuana.

First, the court analyzed whether the CSA, which prohibits nearly all uses of medical and adult-use marijuana, preempts the Honig Act, which under the WCL allows for cannabis as a reasonable and necessary medical treatment with less serious side effects than opioids for chronic pain.

In its analysis, the court noted that Congress has deprioritized prosecution for the possession of medical marijuana and for marijuana use that is legal under state law. In a rider to the U.S. legislature’s most recent

federal Appropriations Act, the U.S. Department of Justice is now prohibited from using funds to prevent states from implementing medical marijuana laws. The court said that Congress' legislative intent was to permit states to apply the provisions of laws such as the Honig Act. It took the view that defunding prosecution of criminal statutes was tantamount to a temporary suspension of the earlier statute:

We thus conclude that the CSA, as applied to the Compassionate Use Act and the Order at issue, is effectively suspended by the most recent appropriations rider for at least the duration of the federal fiscal year and that it would be inappropriate for this Court to give any legal effect whatsoever to the earlier statutory enactment. The earlier statute cannot coexist with the enacted appropriation and, consequently, must be deemed to be suspended by adoption of the later appropriation act.

Therefore, the court determined that no conflict exists requiring preemption between the Honig Act and the CSA.

AIDING AND ABETTING NOT A CONCERN

The court considered whether M&K's fear of "aiding and abetting" a CSA violation was sufficient reason to excuse compliance with the Honig Act. The court noted that "[t]o aid and abet a crime, a defendant must not just 'in some sort associate himself with the venture,' but also 'participate in it as in something that he wishes to bring about' and 'seek by his action to make it succeed.'"

To support an aiding-and-abetting conviction in the U.S. Court of Appeals for the Third Circuit, "the Government must prove: '1) that another committed a substantive offense; and 2) the one charged with aiding and abetting knew of the commission of the substantive offense and acted to facilitate it.'" To sustain a conviction under aider and abettor liability, the government must show that the accomplice "knowingly *elects to aid* in the commission of the offense."

The court rejected M&K's aiding and abetting arguments, concluding that compliance with court-mandated reimbursement payments "can hardly be interpreted as M&K electing to aid in Hager's possession of marijuana, contrary to federal law. Rather, it is being compelled to do so by the [court's] order."

The court also noted that M&K can hardly be deemed to have "aided and abetted" Hager's use of medical marijuana, or engaged in a conspiracy with him, because it will be reimbursing the cost of his medical marijuana only pursuant to court order.

The court determined that M&K correctly pointed out that the Honig Act includes a reimbursement exemption for government medical assistance programs or private health insurers, but the court held that such exemption does not apply to Hager's claim because workers' compensation claims are not listed explicitly as an exception. The court engaged in an analysis of the plain text of the Honig Act and of New Jersey's Life and Health Insurance Code to determine that only government medical assistance programs or private health insurers – not worker's compensation insurers – are covered by the exemption.

Regarding the WCL, employers must provide "such medical, surgical and other treatment . . . as shall

be necessary to cure and relieve the worker of the effects of the injury," and the "treatment shall be reasonable." The court analyzed the legislative history of the WCL and related case law, determining that palliative care falls within its scope and treatment that reduces symptoms of pain is "reasonable" and "necessary."

Because Hager testified that his chronic pain was relieved by medical marijuana, and because such testimony is supported by medical literature, the court denied M&K's argument that it is exempted from payment under the WCL.

TAKEAWAYS FOR EMPLOYERS

The Supreme Court of New Jersey's decision in *Hager v. M&K Construction* will make it more difficult for employers in New Jersey to avoid reimbursing potential workers' compensation claims involving treatment with medical marijuana. Employers, especially those in heavily regulated industries, should consider potential consequences outside of federal enforcement of the CSA, including enforcement from regulators. 🌐

NOTE

1. 2021 WL 1380984 (N.J. April 13, 2021).

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