

Does the Pennsylvania Human Relations Act Require Accommodation of Medical Marijuana Use? Not (For Now)

Article By:

Donald D. Gamburg

Jessica M. Bocchinfuso

In *Harrisburg Area Community College v. Pennsylvania Human Relations Commission*, No. 654 C.D. 2019, (October 29, 2020), the Commonwealth Court of Pennsylvania recently examined the interaction between [Pennsylvania's Medical Marijuana Act \(MMA\)](#) and the Pennsylvania Human Relations Act (PHRA). Specifically, the court addressed whether the PHRA's prohibition against disability discrimination required a college to accommodate a student's lawful use of medical marijuana under the MMA. The court determined that the PHRA does not require the accommodation of medical marijuana use because the PHRA excludes current illegal drug use, as defined by federal law, from its definition of "handicap or disability." Although the case arose in the higher education context, the court's discussion and holding provides Pennsylvania employers with helpful insight and guidance on these complicated and evolving issues.

Background

Holly Swope suffered from various medical conditions covered by the MMA for which she was lawfully prescribed medical marijuana in Pennsylvania. Swope attended a nursing program at Harrisburg Area Community College (HACC), which provided instruction to students in both classroom and clinical settings. HACC maintained a policy requiring all nursing program candidates to submit to an annual urine drug screening. Pursuant to the policy, if a candidate tested positive for an illicit substance on the annual drug screen, he or she would be removed from the nursing program. Swope claimed that she notified HACC's director of nursing, Jill Lott, about her medical conditions and requested permission to use medical marijuana as an accommodation for her disabilities. Lott allegedly informed Swope that she was required to comply with HACC's drug policy or she would be removed from the nursing program. In response, Swope filed a complaint with the Pennsylvania Human Relations Commission (PHRC), alleging violations of the PHRA and the Pennsylvania Fair Educational Opportunities Act (PFEOA).

HACC filed a motion to dismiss Swope's complaint, arguing that neither the PHRA nor the PFEOA required the accommodation of medical marijuana, even when such usage was permitted by the MMA. Indeed, both the PHRA and the PFEOA define "handicap or disability" specifically to exclude "current, illegal use of or addiction to a controlled substance, as defined in section 102 of the [federal

Controlled Substances Act (CSA)].” Because marijuana remains illegal under federal law, HACC contended that Swope could not state a claim under either statute. The PHRC denied HACC’s motion to dismiss, arguing that medical marijuana usage consistent with the MMA was not illegal in Pennsylvania and finding that Swope’s “use of marijuana to mitigate her suffering [made] the present claim viable under the [MMA] in combination with PHRA and PFE OA.” HACC sought an interlocutory appeal of the PHRC’s decision, which was granted.

On appeal, the Commonwealth Court of Pennsylvania agreed with HACC that the federal definition of “controlled substances,” which had been adopted by the PHRA and PFE OA, prevented Swope from establishing a failure-to-accommodate claim under either statute. The Pennsylvania General Assembly could have amended the PHRA and the PFE OA to remove the references to the federal CSA, but it chose not to do so. The court determined that this “failure” to amend the statutes evidenced a legislative intent to prohibit disability discrimination claims under the PHRA and PFE OA relating to the usage of medical marijuana.

Additionally, because the MMA does not address postsecondary education, the court repeatedly looked to the MMA’s employment discrimination provisions for guidance, stressing that:

1. the MMA only prohibits employers from discriminating against an employee because of his or her status as a certified medical marijuana user and does not require employers to accommodate the use of medical marijuana in the workplace;
2. employers may “discipline an employee for being under the influence of medical marijuana in the workplace” or for engaging in “conduct [that] fall[s] below the standard of care normally accepted for [the employee’s] position” due to being under the influence of medical marijuana; and
3. the MMA permits employers to prohibit an employee from performing any duty that could result in a public health or safety risk while under the influence of medical marijuana.

The court even specifically found that the “public health or safety” exception at (3) above, “would clearly apply to intensive care unit nurses” like Swope “who are under the influence of medical marijuana while on the job or in training.”

Finally, the court disposed of the remaining arguments raised by the PHRC, finding that the MMA was not irreconcilable with the PHRA and PFE OA, that the MMA did not impliedly amend the PHRA or PFE OA, and that the PHRC’s interpretation of the PHRA was not entitled to deference because its interpretation would “frustrate[] legislative intent.” As a result of its analysis, the court reversed the PHRC’s order and remanded the matter to the PHRC for the purposes of granting HACC’s motion to dismiss.

Key Takeaways

Although the Commonwealth Court of Pennsylvania made a point to note that this was not an employment case, its analysis provides welcome guidance for Pennsylvania employers regarding the interplay between the MMA and the PHRA, as well as the contours of the MMA’s antidiscrimination provision. Indeed, the court’s reasoning strongly suggests that an employee cannot sue his or her employer under the PHRA for failing to accommodate medical marijuana usage due to the act’s exclusion of current, illegal drug use, as defined by the federal CSA.

It is important to note, however, that [Pennsylvania state and federal courts have held](#) that the MMA contains an implied private right of action that permits employees to sue for violations of the MMA's employment antidiscrimination provision. In addition, following this decision, the Pennsylvania General Assembly may face pressure to amend the PHRA to allow employees to bring disability discrimination claims related to the use of medical marijuana. In fact, in a concurring opinion, Judge Anne E. Covey urged the General Assembly to do just that.

© 2025, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., All Rights Reserved.

National Law Review, Volume X, Number 342

Source URL: <https://natlawreview.com/article/does-pennsylvania-human-relations-act-require-accommodation-medical-marijuana-use>