

# Got the Green Light: New Puerto Rico Law Expands Employment Protections for Registered and Licensed Medical Cannabis Patients

By Sashmarie Rivera and José L. Maymí on July 30, 2021

On July 29, 2021, Puerto Rico Governor Pedro Pierluisi signed into law Act No. 15-2021 (Act 15). Act 15 amends Act No. 42 of July 9, 2017, also known as the *Act to Manage the Study, Development and Research of Cannabis for Innovation, Applicable Standards and Limits* (Medicinal Cannabis Act). This amendment expands employment protections to employees who are registered and licensed medical cannabis patients.

The Medicinal Cannabis Act, among other things, allows the use of medical cannabis per a doctor's recommendation for duly authorized individuals suffering from a serious health condition. There must be a *bona fide* doctor-patient relationship between the doctor who issues the recommendation and the individual. The Medicinal Cannabis Act and its applicable regulation specifically provide a list of covered health conditions for which medical cannabis treatment could be accepted.

As originally drafted, the Act remained silent on whether users were protected in employment. Therefore, its interaction with employers' validly established drug testing and anti-discrimination policies was a topic of public and legal debate. This now changes with the approval of Act 15, which provides that any employee who identifies themselves as a registered and authorized medical cannabis patient will be a member of a protected category for purposes of employment protection laws. Accordingly, no employer may discriminate against such persons either in the process of recruitment, hiring, termination, or other employment conditions. Act 15 states that the

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statute's protections shall be interpreted liberally in favor of medical cannabis patients. The employee protections are not absolute, however. The Act's protection vanishes if the employer can establish, by a preponderance of the evidence, *any* of the following:

1. The use of medical cannabis represents a real threat of harm or danger to people or property;
2. The use of medical cannabis by the registered and authorized patient interferes with their performance and essential job functions;
3. The use of medical cannabis by the registered and authorized patient exposes the employer to the loss of any license, permit or certification related to any federal law, regulation, program or fund;
4. The registered and authorized patient ingests or possesses medical cannabis in the workplace and/or during working hours without written authorization from the employer.

Act 15 further provides that no contract, license, permit, or benefit under the laws of Puerto Rico will be denied or penalized for the sole reason that the employer has employed persons who are registered and authorized medical cannabis patients. Finally, the Act requires that both the Puerto Rico Department of Labor and Human Resources and the Regulatory Board of Medicinal Cannabis adopt the necessary regulations to implement the statute within 90 days of its approval (*i.e.*, on before October 27, 2021). Notwithstanding this delegation, it is important to note that Act 15 is effective immediately. Consequently, employers must be aware of this new protected category of employees (authorized medical cannabis patients) and should revise their practices to ensure compliance with this new obligation.

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