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July 16, 2010

Honorable Loretta Weinberg
545 Cedar Lane
Teaneck, NJ 07666

Dear Senator Weinberg:

You asked whether the “New Jersey Compassionate Use Medical Marijuana Act” (N.J.S.A. 24:6I-1 et seq.), which was enacted this year, supersedes the “New Jersey Smoke-Free Air Act” (N.J.S.A. 26:3D-55 et seq.), which was enacted in 2005. As set forth more fully below, the Medical Marijuana Act does not supersede the Smoke-Free Air Act.

The Medical Marijuana Act contains nothing suggesting that it supersedes the Smoke-Free Air Act. There is general a presumption against the implied repeal of one statute by a later-enacted statute. Further, canons of statutory interpretation (e.g., the canon that a statute enacted later in time controls over an earlier-enacted statute), are typically invoked when two statutes irreconcilably conflict and courts need to discern legislative intent. These laws do not conflict.

Your concern is that the Medical Marijuana Act will enable individuals to legally smoke indoors at workplaces if employers so permit. The Smoke-Free Air Act defines the term “smoking” broadly to include not only cigarette, cigar, and pipe tobacco, but also “any other matter that can be smoked.” Therefore, whatever prohibitions exist under the Smoke-Free Air Act apply to smoking marijuana, since marijuana is “matter that can be smoked.”

The Medical Marijuana Act also contains a provision that limits smoking marijuana in a variety of contexts beyond those set forth in the Smoke-Free Air Act. N.J.S.A. 24:6I-8 of the Medical Marijuana Act states that the law is not to be construed to allow a person to:

- a. operate, navigate, or be in actual physical control of any vehicle, aircraft, railroad train, stationary heavy equipment or vessel while under the influence of marijuana; or

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b. smoke marijuana in a school bus or other form of public transportation, in a private vehicle unless the vehicle is not in operation, on any school grounds, in any correctional facility, at any public park or beach, at any recreation center, or in any place where smoking is prohibited pursuant to N.J.S.2C:33-13. . .¹

Thus, between the Smoke-Free Air Act and the Medical Marijuana Act, individuals cannot legally smoke marijuana in the following situations:

- in workplaces where smoking is prohibited under the Smoke-Free Air Act
- when operating vehicles, aircraft, railroad trains, stationary heavy equipment and vessels
- on school grounds
- in correctional facilities
- at public parks, beaches, and recreation centers
- in public transportation and cabs
- wherever smoking is prohibited by municipal ordinance, or by the owner or person responsible for operating a public place

In sum, the Medical Marijuana Act does not supersede the Smoke-Free Air Act. If individuals cannot smoke cigarettes, pipes, or cigars in a given workplace under the Smoke-Free Air Act, individuals likewise cannot smoke marijuana. Please note that the Smoke-Free Air Act does contain limited exceptions.²

I hope that this information is responsive to your request. If you have any questions, please contact me.

Sincerely,

Elizabeth Boyd
Senior Counsel

¹ N.J.S. 2C:33-13 a. prohibits smoking “in or upon any bus or other public conveyance, except group charter buses, specially marked railroad smoking cars, limousines or livery services, and, when the driver is the only person in the vehicle, autocabs. . . .” N.J.S. 2C:33-13 b. prohibits smoking “in any public place, including but not limited to places of public accommodation, where such smoking is prohibited by municipal ordinance . . . or by the owner or person responsible for the operation of the public place, and when adequate notice of such prohibition has been conspicuously posted”

² N.J.S.A. 26:3D-59 of the Smoke-Free Air Act permits smoking in cigar bars and lounges that generated at least 15% of their annual income from the sale of tobacco products in 2004, tobacco retail establishments that allow smoking, tobacco businesses where testing by smoking is integral to manufacturing cigars or pipe tobacco, private residences, private automobiles, and certain areas in casinos and casino simulcasting facilities.