

**STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION ON CIVIL RIGHTS  
DCR DOCKET NO. E2021-000071**

[REDACTED]	)	
	)	
<b>COMPLAINANT,</b>	)	
	)	
v.	)	<b>Administrative Action</b>
	)	<b>FINDING OF PROBABLE CAUSE</b>
	)	
<b>Prince Telecom LLC,</b>	)	
<b>RESPONDENT.</b>	)	
	)	
	)	
	)	
	)	

On January 21, 2021, [REDACTED].<sup>1</sup> (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that Prince Telecom LLC (Respondent) discriminated against him based on disability by refusing to hire him as a cable installation technician and failing to accommodate his disability in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. Respondent denied the allegations of discrimination in their entirety. DCR’s investigation found as follows.

**SUMMARY OF INVESTIGATION**

Respondent Prince Telecom is a telecommunications customer service fulfillment company. It constructs and maintains high speed data, cable television, telephone, and in-home networking systems. Complainant alleged that, in November 2020, Respondent rescinded its offer to hire him because he tested positive for marijuana and therefore failed a drug screening. After Complainant informed Respondent that his doctor prescribed him marijuana for a medical condition, Complainant alleged that Respondent failed to engage in the interactive process to discuss potential reasonable accommodations that would enable him to perform the job.

Complainant told DCR that, on October 26, 2020, Respondent offered him a position as a cable installation technician, pending successful completion of a drug screening and criminal background check. On or about October 30, 2020, Complainant provided his medical marijuana prescription card to MedExpress in Ledgewood, New Jersey and completed a drug screening. On November 4, 2020, Respondent’s Human Resources Representative Tonya Cale informed

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<sup>1</sup> Because Complainant is a person with a disability, this disposition will refer to them only by their initials pursuant to N.J.A.C. 13:4-2.10.

Complainant via email that Respondent had rescinded its offer because Complainant failed his drug screening. In his response to Cale's email, Complainant stated that he is a patient in New Jersey's Medical Marijuana Program, and has a medical marijuana prescription card:

My failed drug test is due to a medical condition which I explained to the medical and testing facility. I believe there are protections afforded me under law. I have never been in this situation before. So, I don't know what to do at this point. Can someone please reach out to discuss?

Complainant did not receive a response from Cale.

On November 10, 2020, Complainant spoke with Respondent's Human Resources Director, Anitha Verghese, who informed him that he would need to undergo a second drug screening. Complainant advised Verghese that he would submit to a second test, but would likely fail, because he uses marijuana for a medical condition. Verghese advised Complainant that she would get back to him. On November 20, 2020, when Complainant had not received a response from Verghese, Complainant wrote Respondent's Chairman, John Kuhn, inquiring about Respondent's policy on pre-employment drug testing and the status of his application. On December 10, 2020, Complainant then texted Verghese again inquiring about a second test. Respondent, however, did not respond to Complainant's messages.

In its position statement, Respondent stated that Complainant was not qualified for the cable installer position because it could not provide him with an accommodation that would enable him to perform the essential functions of the position, which included driving company vehicles, operating machinery, working with electrical wires and outlets, climbing ladders, and lifting a minimum of 50 pounds. Respondent stated that it would be an undue burden on its operations to waive its drug screening requirement, because it could not monitor whether Complainant was impaired during working hours, and the safety risks inherent in hiring Complainant for this position could expose Respondent to "enormous liability."

DCR requested that Respondent provide evidence that it asked Complainant how frequently he used marijuana and at what times of the day, and for evidence that Complainant's marijuana use impaired his ability to perform the essential function of the position. Respondent did not provide evidence that Complainant used marijuana regularly during the day or that it impaired him in any way.

Moreover, in response to a request for evidence that Respondent engaged in an interactive process with Complainant to attempt to accommodate him, Respondent stated that a reasonable accommodation was not possible:

The Cable Installation Technician position is a safety-sensitive position in which the safety risks are further heightened because the technicians work alone and are not supervised in the field. Cable Installation Technicians cannot do their jobs without driving company vehicles to customer's homes and engaging in other safety-sensitive tasks. There is no reasonable accommodation that would enable Claimant to perform the essential functions

of his job. The only possible accommodations would be to eliminate essential job functions or to pay two technicians to do the job of one, neither of which is reasonable.

### **ANALYSIS**

At the conclusion of an investigation, DCR is required to determine whether “probable cause exists to credit the allegations of the verified complaint.” N.J.A.C. 13:4-10.2(a). “Probable cause” for purposes of this analysis means a “reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the LAD has been violated.” N.J.A.C. 13:4-10.2(b). If DCR determines that probable cause exists, then the complaint will proceed to a hearing on the merits. N.J.A.C. 13:4- 11.1(b).

A finding of probable cause is not an adjudication on the merits. Instead, it is merely an initial “culling-out process” in which the Director makes a threshold determination of “whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits.” Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev’d on other grounds, 120 N.J. 73 (1990), cert. den., 498 U.S. 1073. Thus, the “quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits.” Id.

Here, Complainant alleged in the verified complaint that Respondent committed an unlawful employment practice under the LAD by refusing to hire him based on his disability, and by failing to accommodate his disability in violation of the LAD. The LAD prohibits an employer from refusing to hire, terminating, or otherwise discriminating against an employee based on disability. N.J.S.A. 10:5-4.1; N.J.S.A. 10:5-12(a). To state a prima facie case of disability discrimination under the LAD, a Complainant must allege:

- (1) a disability or the employer’s perception that the employee was disabled;
- (2) the employee remains qualified to perform the essential functions of the job and was performing at a level that met the employer’s expectations;
- (3) an adverse employment action because of the disability or perceived disability; and
- (4) the employer thereafter sought a similarly qualified individual.

Wild v. Carriage Funeral Holdings, Inc., 458 N.J. Super. 416, 429 (App. Div. 2019) (internal citations omitted), *aff’d* 241 N.J. 285 (2020).

Additionally, the LAD’s implementing regulations require an employer to “make a reasonable accommodation to the limitations of an employee or applicant who is a person with a disability, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of its business.” N.J.A.C. 13:13-2.5(b). Accordingly, once an employer is aware that an employee requires an accommodation, the employer must initiate or participate in an “interactive process” with the employee. Victor v. State, 203 N.J. 383, 424 (2010). The LAD does not permit an employer to categorically refuse an accommodation request without engaging in that required interactive process and considering alternative accommodations. See N.J.A.C. 13:13-2.5; Tynan v. Vicinage 13 of Superior Court, 351 N.J. Super. 385, 402 (App. Div. 2002). Furthermore, while an employer is not required to accommodate an employee if the employee cannot perform the essential functions of the job even with a reasonable accommodation, N.J.A.C.

13:13-2.8, “[a]n employer shall consider the possibility of reasonable accommodation before firing, demoting or refusing to hire or promote a person with a disability on the grounds that his or her disability precludes job performance,” N.J.A.C. 13:13-2.5(b)(2).

The facts at issue here also implicate New Jersey’s Jake Honig Compassionate Use Medical Cannabis Act, formerly known as the New Jersey Compassionate Use Medical Marijuana Act. Effective in 2010 and subsequently amended in 2019, the Honig Act permits the medical use of marijuana by qualifying patients upon a physician’s certification and registration with the state Department of Health. N.J.S.A. 24:6I-5.<sup>2</sup> In enacting the law, the Legislature sought “to protect from arrest, prosecution, property forfeiture, and criminal and other penalties” any “patients who use marijuana to alleviate suffering from debilitating medical conditions.” N.J.S.A. 24:6I-2(e).

The Honig Act does make clear that its provisions “shall not be construed to permit a person to,” among other things, “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.” N.J.S.A. 24:6I-8(a). It also states that the rights it affords employees should not “be deemed to,” among other things, “restrict an employer’s ability to prohibit, or take adverse employment action for, the possession or use of intoxicating substances during work hours or on the premises of the workplace outside of work hours.” N.J.S.A. 24:6I-6.1(c)(1).

Nonetheless, as amended in 2019, the Honig Act created new employee rights around the use of medicinal marijuana. The Act makes it “unlawful to take any adverse employment action against an employee who is a registered qualifying patient based solely on the employee’s status as a registrant” with the Cannabis Regulatory Commission. N.J.S.A. 24:6I-6.1(a). The Act also requires an employer to provide an employee or applicant who tests positive for cannabis “an opportunity to present a legitimate medical explanation.” N.J.S.A. 24:6I-6.1(b).

The New Jersey Supreme Court addressed the intersection between the Honig Act and the disability discrimination provisions of the LAD in Wild v. Carriage Funeral Holdings, Inc., 241 N.J. 285 (2020).<sup>3</sup> The Supreme Court in Wild endorsed the Appellate Division’s analysis that “there is no conflict between the [Honig Act] and . . . the LAD.” Id. at 287. In doing so, the Court held that the LAD may in some circumstances require an employer to accommodate an employee’s use of medical marijuana, and that the Honig Act did not conflict with the LAD’s disability

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<sup>2</sup> This case does not involve the application of the Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act, or CREAMMA, which legalizes the recreational use of adult cannabis and was signed into law after the conduct at issue in this complaint. P.L. 2021 ch. 16. Under CREAMMA, an employee cannot be subject to adverse action by an employer solely due to the presence of cannabinoid metabolites in the employee’s bodily fluid as a result of engaging in conduct permitted under CREAMMA. N.J.S.A. 24:5I-52a.

<sup>3</sup> Because the facts in Wild involved conduct that occurred prior to the 2019 amendments to the Honig Act, neither the Appellate Division nor the Supreme Court considered those amendments. In particular, the Court did not address the 2019 amendment to the Honig Act that makes it “unlawful to take any adverse employment action against an employee who is a registered qualifying patient based solely on the employee’s status as a registrant.” N.J.S.A. 24:6I-6.1(a).

accommodation mandate. Id. The Court did note that, to the extent “the circumstances surrounding a LAD disability discrimination claim” would “implicate” specific provisions of the Honig Act, the “Act would have an impact on that claim.” Id. at 288-289. The bottom line, though, was clear: The Honig Act does not displace the LAD, and an employer’s failure to accommodate a prospective employee’s use of medical marijuana may violate the LAD.

Here, there is sufficient evidence to credit Complainant’s allegation that Respondent failed to accommodate his disability in violation of the LAD. Respondent offered Complainant employment pending completion of a drug screening. But when Complainant failed his drug screening, Respondent rescinded Complainant’s offer of employment. Complainant then stated that he has a medical condition and is a patient in New Jersey’s Medical Marijuana Program. Respondent did not respond despite Complainant’s repeated attempts to follow up. The evidence shows that Complainant initiated the interactive process by informing Respondent’s employees that he had a medical condition. But Respondent failed entirely to engage in the interactive process with Complainant to determine whether he could perform the essential functions of the position with or without accommodation. There is therefore sufficient evidence to support the conclusion that Respondent failed to accommodate Complainant’s disability. In so doing, Respondent also appears to have failed to meet its obligation under the Honig Act to present Complainant with “an opportunity to present a legitimate medical explanation” for the test result. N.J.S.A. 24:6I-6.1(b).

There is also sufficient evidence to credit Complainant’s allegation that Respondent refused to hire Complainant based on disability. Respondent claims that it could not provide Complainant with an accommodation that would enable him to perform the essential functions of the position, asserting that it would be an undue burden on its operations to waive its drug screening requirement and that the safety risks inherent in hiring Complainant could expose Respondent to “enormous liability.” Respondent provided no support for those assertions. Respondent did not provide any evidence that Complainant used marijuana regularly during the day. Nor could Respondent provide any evidence that it requested information from Complainant about the frequency of his marijuana use or its potential impact on his ability to perform essential functions of his job. In short, Respondent summarily determined that Complainant’s disability—and the treatment for his disability—automatically disqualified him from employment. Accordingly, there is sufficient evidence to conclude that Respondent refused to hire Complainant based on disability.

Thus, at this threshold stage in the process, there is sufficient basis to warrant “proceed[ing] to the next step on the road to an adjudication on the merits.” Frank, supra, 228 N.J. Super. at 56. The Director finds **PROBABLE CAUSE** to support Complainant’s allegations.

May 21, 2024  
DATE



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Rosemary DiSavino, Deputy Director  
New Jersey Division on Civil Rights