

"Dude, Where's My Cause of Action?": New Jersey Court Says CREAMMA Gives Cannabis Users the Right to Sue

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Since New Jersey legalized recreational cannabis in 2021 through the Cannabis Regulatory, Enforcement Assistance, and Market Modernization Act (CREAMMA), employers have navigated an uncertain landscape regarding drug testing and hiring decisions. CREAMMA includes robust anti-discrimination protections for employees and job applicants who use cannabis lawfully, but omits any express private right of enforcement. Historians will recognize the legal maxim, *ubi jus ibi remedium*, or in English, “where there is a right, there must be a remedy.” On May 26, 2026, the Appellate Division provided that remedy. In *Sanders v. Levari Group, LLC*, 2026 WL 1532963 (N.J. Super. Ct. App. Div. May 26, 2026), the Appellate Division held that a job applicant can sue an employer directly for violating CREAMMA's employment protections.

CREAMMA's Employment Protections

CREAMMA establishes a comprehensive regulatory framework for adult recreational cannabis use. Critically for employers, the statute includes two key anti-discrimination provisions. First, CREAMMA provides that the presence of cannabinoid metabolites in the bodily fluids of a person engaged in lawful cannabis use “shall not form the basis for refusal to enroll or employ or lease to or otherwise penalize that person.” *N.J.S.A. 24:6I-51(b)(1)*. Second, “[n]o employer shall refuse to hire or employ any person or shall discharge from employment or take any adverse action against any employee... because that person does or does not smoke, vape, aerosolize, or otherwise use cannabis items.” *N.J.S.A. 24:6I-52(a)(1)*. While employers retain the ability to drug test and take action under certain circumstances, these provisions were designed to ensure that lawful off-duty cannabis use, standing alone, cannot be the basis for adverse employment decisions.

Sanders Gets “Burned”

In December 2022, Darlene Sanders interviewed for a customer service representative position with The Levari Group, LLC. After offering Sanders the job, and her accepting, and as part of its standard hiring process, Levari subjected Sanders to a drug test. Sanders' results indicated she had used cannabis within the past 30 days. Sanders claimed that she used cannabis recreationally and was not under the influence at the time she applied or at any point during the hiring process.

Sanders was offered the opportunity to retest at her own expense within a limited time frame. Unable to afford the retest, Sanders could not comply. Levari then rescinded its offer and refused to hire her. In April 2023, Sanders filed a complaint alleging, among other claims, violation of CREAMMA and asserting a wrongful discharge claim under *Pierce v. Ortho Pharmaceutical Corp.*, 84 N.J. 58 (1980). The trial court dismissed both the CREAMMA and *Pierce* claims. Sanders appealed.

The Appellate Division's "Joint" Opinion

The Appellate Division applied the three-factor test from *Cort v. Ash*, 422 U.S. 66 (1975), which New Jersey courts use to determine whether a statute supports an implied private right of action. The court examined each factor in turn and found all three weighed in favor of recognizing a private cause of action.

First, the court found that Sanders is a member of the class for whose "especial benefit" CREAMMA's anti-discrimination provisions were enacted. The statute specifically targets employment-related discrimination based on testing positive for cannabinoid metabolites. This is precisely what Sanders alleged.

Second, the court identified several indicators in the legislative intent supporting a private right of action. CREAMMA contains "rights-creating language" analogous to Title IX's "no person shall" construction, which the United States Supreme Court found sufficient to create a private right of action in *Cannon v. University of Chicago*, 441 U.S. 677 (1979). Moreover, the Legislature did not expressly preclude a private right of action. The Court noted that no other section of CREAMMA provides a private remedy, reinforcing the inference that the Legislature relied on the judiciary to fill the enforcement gap.

Third, the court concluded that recognizing a private right of action is consistent with CREAMMA's underlying legislative purpose. Without private enforcement, the anti-discrimination provisions would be, in the court's words, "meaningless and unenforceable." The court cited the Supreme Court's holding in *State v. Gomes*, 253 N.J. 6 (2023), that CREAMMA's legislative findings "reflect a clear legislative intent to construe CREAMMA... robustly so as to achieve [its] remedial purposes." The court also relied on *Winslow v. Corp. Express* for the proposition that New Jersey courts "have readily found an implied private right of action in statutes enacted to protect employees from wrongful conduct by employers."

Notably, the Attorney General of New Jersey appeared as amicus in support of Sanders' position that CREAMMA provides a private right of action. In 2026, even the State's chief law enforcement officer endorsed the view that the Legislature intended private enforcement of CREAMMA's employment protections.

Sanders demonstrates that New Jersey Courts are serious about the "remedial purpose" of CREAMMA. New Jersey employers should understand and note the following:

- **Review Drug Testing Policies.** Employers who continue to test for cannabis and use positive results as a basis for refusing to hire or taking adverse action face direct litigation exposure. A positive test for cannabinoid metabolites alone, absent evidence of on-the-job impairment or another recognized exception, cannot support an adverse employment decision.
- **Understand CREAMMA's Scope.** The anti-discrimination protections apply not only to current employees but to applicants and prospective hires. The Sanders decision confirms that failure-to-hire claims are viable under CREAMMA. The broad language in CREAMMA expands the anti-discrimination protections beyond failure-to-hire. Any adverse action which is based on the use or non-use of cannabis is prohibited by CREAMMA.
- **CREAMMA Has Limits.** Despite the creation of the private right of action, nothing in CREAMMA or the Sanders decision requires an employer to permit cannabis use at work, on the employer's premises, or during work hours. Employer handbooks and other policies should spell out these distinctions carefully and scrupulously.
- **Employees and Applicants Have Remedies.** For employees and job applicants, Sanders confirms that CREAMMA's employment protections are not merely aspirational. Individuals who are denied employment or subjected to adverse action solely because of lawful off-duty cannabis use now have a clear path to seek judicial relief.

Employers who have not already done so should consult with employment counsel to evaluate their current exposure and develop protocols that distinguish between lawful off-duty use and legitimate workplace safety concerns.

