



ACCNJ LEGAL & INSURANCE UPDATE

New NJ Law Permits Private Construction Inspections

On January 5, 2023, New Jersey Governor Phil Murphy signed into law Assembly Bill 573 (A573), designed to streamline and expedite the construction permitting processes as set forth in the Uniform Construction Code. The law, which brings the Garden State in line with several others, codifies a three-day construction inspection turnaround to allow developers to contract with private on-site inspection agencies if local officials cannot complete the inspection within the three-day period.

More specifically, the updated permitting process works as follows:

- Builders must give 24-hour written notice to the local unit of a request for an inspection, and the local unit must perform that inspection within three business days.
- If the local unit cannot perform the inspection within three business days, it must notify the builder in writing within 24 hours of receiving the builder's inspection request, at which time the local unit and the builder can agree upon an alternate inspection date.
- If the local unit and builder cannot reach any such agreement, the law empowers the builder to retain the inspection services of a Department of Community Affairs (DCA) approved private contractor.

In addition, developers can request authorization from the DCA to utilize the private inspection company for all or a portion of the project's subsequent inspections if the local unit demonstrates a repeated inability to meet its three-day inspection requirement.

The updated permitting process should help reduce delays and ensure that projects can be completed in a more timely, orderly, and less expensive fashion. All that remains to be seen is how efficiently and effectively the State and its local units can implement the relatively new law.

Supreme Court Rulings

A. Supreme Court Strips Wetlands Protections from Clean Water Act

On May 25th, the [US Supreme Court put new limits](#) on the Clean Water Act, slashing the power of federal regulators to protect wetlands. In doing so, the Court ruled that wetlands are only protected by the Clean Water Act when they have a "continuous surface connection" with a relatively permanent body of water. Further, the Court emphasized that the Clean Water Act's traditional inclusion of wetlands "adjacent" to navigable waters is too broad, and that there must be a direct connection with surface waters for the Clean Water

Act to apply. Essentially, only wetlands that are virtually indistinguishable from a larger body of water, such as a lake or river, are federally protected.

For many landowners, developers, and utility companies, this decision streamlines and provides some much-needed clarity for the federal wetlands permitting process. Despite these benefits, it is important for permit applicants to understand and track potential pitfalls and open questions that may arise as the ruling's interpretation and implementation evolves.

B. Supreme Court Rules Against Union in Labor Dispute

On June 1st, the Supreme Court dealt another setback to organized labor by making it easier for employers to sue over strikes that cause property damage. The case stemmed from contract negotiations in 2017 between Glacier Northwest (Glacier), a Washington-based deliverer and seller of ready-mix concrete, and the local Teamsters Union, representing Glacier's drivers. When negotiations soured, the Union called for a strike, culminating in its drivers walking off the job while their trucks were full of wet concrete.

Ultimately, the [Supreme Court overturned](#) a Washington State Supreme Court ruling, finding the lawsuit filed by Glacier was preempted by the National Labor Relations Act (NLRA). Under the NLRA, workers have a legal right to strike, except in cases that include deliberate property destruction and violence. Justice Amy Coney Barrett, who authored the ruling, said the Union's actions had not only destroyed the concrete but had also "posed a risk of foreseeable, aggravated and imminent harm to Glacier's trucks." In sum, the Court determined that the NLRA did not protect the Union's conduct because its drivers took affirmative steps to endanger Glacier's property rather than reasonable precautions to mitigate that risk.

This ruling opens the door for employers to fight back against strikes that cause property damage unless the union takes reasonable steps to prevent foreseeable and imminent damage.

ACCNJ staff will continue to track how these decisions are interpreted going forward and will provide updates accordingly.

Recreational Marijuana Updates

Signed just over two years ago, the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act ("the Act") legalized the use of recreational marijuana for adults over the age of 21 and prohibited employers from taking any adverse employment action against an employee due to their cannabis use. According to the law, employers may still prohibit the use and possession of marijuana in the workplace or during working hours, however, they may not take action solely on the basis of a positive drug test.

In a [recent case](#), the U.S. District Court for the District of New Jersey found the Act does not create a private right of action for individuals who believe their rights have been violated under the Act. In the aforementioned case, the defendant-employer rescinded the plaintiff's conditional offer of employment after testing positive for marijuana. The court granted the defendant's motion to dismiss and determined that there is no implied private right of action under the Act.

While this ruling is a win for employers across New Jersey, the victory may be short-lived, as the court invited re-examination of the law by way of legislative amendment, enforcement guidance, or New Jersey state court clarity on application of the state's common law "failure to hire" theory to claims under the Act.

Interestingly, in [another case](#), the district court ruled that a wrongful termination suit filed by an employee who was fired after testing positive for cannabis may proceed. In this case, the employee was employed by Daimler Truck North America LLC ("Daimler") when he was involved in an accident while operating a company vehicle. Daimler's company policy required that a drug test be administered after workplace accidents. The employee informed his manager that he had used cannabis weeks before the incident, so he anticipated that he would test positive for cannabis in his system. Ultimately, the test came

back positive, and the employee was immediately suspended without pay. About two weeks after his positive test result, the employee was fired and subsequently brought suit against Daimler for wrongful discharge. In response, Daimler filed a motion to dismiss the Complaint, arguing the Cannabis Regulatory Commission's ("CRC") suspension of the WIRE provisions of the Act left it free to terminate the employee for a positive marijuana test.

In short, the court concluded that the employee could state a claim for wrongful discharge under New Jersey common law for taking adverse employment action contrary to the Act and denied Daimler's motion to dismiss. In its reasoning, the court determined that the occurrence of the workplace accident is irrelevant if the positive test result was the only reason for the employee's suspension and subsequent termination.

These two cases demonstrate how rapidly the Act's employment protections are developing. In light of these decisions and the CRC's stance on eliminating pre-employment drug testing for marijuana (except where required by federal law), it is anticipated that the Act will be amended to add a private right of action. ACCNJ staff will continue to monitor the law for any changes and will provide updates accordingly.

[EMAIL US](#)

[WEBSITE](#)

