Federal Court Rules Employer Properly Discharged Employee for Medical Marijuana Use

February 22, 2011

Employers can breathe somewhat easier when they discharge an employee who tests positive for marijuana but who produces a medical marijuana registry card.

A federal district court just ruled that the Michigan Medical Marihuana Act (MMMA) does not regulate private employment or create causes of action against private employers. A Michigan Court will not be bound by this decision, but it may be considered "persuasive."

In *Casias v Wal-Mart Stores, Inc*., the plaintiff received a registry card under the MMMA on June 15, 2009 and began using marijuana for medicinal purposes after work and on weekends.

However, in November, 2009, plaintiff suffered a workplace injury requiring him to submit to testing under Wal-Mart's drug testing policy. The plaintiff showed the drug-testing staff and his shift manager his registry card and, as expected, he tested positive for marijuana. Pursuant to Wal-Mart's drug testing policy, the plaintiff was terminated. Wal-Mart makes no exception under its drug testing policy for medical marijuana.

The plaintiff filed a lawsuit in Calhoun Circuit Court, claiming, among other things, that he was unlawfully discharged in violation of the MMMA. Wal-Mart removed the case to the federal Western District of Michigan and then sought dismissal of the complaint.

The court dismissed the action stating, in relevant part:

The fundamental problem with the plaintiff's case is that the MMMA does not regulate private employment. Rather, the Act provides a potential defense to criminal prosecution or other adverse action by *the state*. The MMMA is directed at governmental conduct, and even here the protection is very narrow. Indeed, the MMMA does not even formally "de-criminalize" the use of medical marijuana; rather, it simply provides an affirmative defense and other similarly limited protections in the face of criminal proceedings. As the Michigan Court of Appeals recognized in *Redden*, possession and use of marijuana in Michigan – even for medical purposes – is still a crime.

[T]he MMMA says nothing about private employment rights. Nowhere does the MMMA state that the statute regulates private employment, that private employees are protected from disciplinary action should they use medical marijuana, or that private employers must accommodate the use of medical marijuana outside of the workplace. Under the plaintiff's theory, no private employer in Michigan could take any action against an employee based on an employee's use of medical marijuana. This would create a new protected employee class in Michigan and mark a radical departure from the general rule of at-will employment in Michigan.

The plaintiff relied, in part, on subsection 26427(c)(2) which states that nothing in the Act requires "[a]n employer to accommodate the ingestion of marihuana in any workplace or any employee working while under the influence of marihuana." The court noted, however, that this section does not prohibit employers from taking action against employees who do use marijuana outside of work for medical purposes. Therefore, the court concluded that the MMMA does not reach decisions affecting private employment.

While no Michigan appellate court has addressed this issue, well reasoned federal decisions are usually found persuasive. Employers who wish to strictly enforce their drug testing policy should feel more secure in doing so.

If you need assistance in establishing a drug testing program, please contact the author or any Plunkett Cooney employment attorney.