Labor and Employment Alert: Court Rules That Employer Need Not Accommodate Medical Marijuana Use

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The issue of accommodating medical marijuana users in the workplace is becoming more common. As we reported last year, the Colorado Supreme Court has unanimously held that employers may still terminate employees who use medical marijuana – even though medical marijuana use was specifically authorized by the Colorado Constitution and even though Colorado law protects employees' lawful off-duty conduct. The Court held that marijuana use (whether for medicinal or recreational use) remains unlawful under federal law; so medical marijuana use cannot be deemed "lawful" under the state's off-duty conduct law.

A similar issue recently arose in New Mexico in *Garcia v. Tractor Supply Company*. In a case of first impression, the District Court dismissed a lawsuit filed by an employee who used marijuana in accordance with New Mexico's Compassionate Use Act. Rojerio Garcia had applied for a job with Tractor Supply, disclosed during his interview that he was diagnosed with HIV/AIDS, and was participating in New Mexico's medical cannabis program. Garcia was hired but was soon terminated after his drug test tested positive for cannabis metabolites. Garcia sued Tractor Supply alleging that his termination violated the New Mexico Human Rights Act and that the Compassionate Use Act requires Tractor Supply to accommodate his marijuana use.

The Court rejected both of these arguments and granted Tractor Supply's motion to dismiss the case for failing to state a claim upon which relief can be granted. First, the Court explained that marijuana use – regardless of the reason – remains illegal under the federal Controlled Substances Act. So, while state courts in New Mexico have held that medical marijuana is compensable under the state's workers' compensation laws, there is "a fundamental difference between requiring compensation for medical treatment and affirmatively requiring an employer to accommodate an employee's use of a drug that is still illegal under federal law." Given this, the Court held the Compassionate Use Act and Human Rights Act "do not provide a cause of action for Mr. Garcia as medical marijuana is not an accommodation that must be provided for by the employer." Second, the Court held

that the state's Compassionate Use Act could not affirmatively require Tractor Supply to accommodate Garcia's marijuana use. "To affirmatively require Tractor Supply to accommodate Mr. Garcia's illegal drug use would mandate Tractor Supply to permit the very conduct the [Controlled Substances Act] proscribes."

Twenty-three states and the District of Columbia have now "legalized" medical marijuana. Because of these laws, the interplay between state law and federal laws such as the Americans with Disabilities Act, Controlled Substances Act, Drug-Free Workplace Act, and Motor Carrier Safety Act becomes more challenging for employers. Contact your Vorys lawyer for questions about the potential impact of marijuana "legalization," marijuana use in the workplace, or for assistance in crafting workplace policies to address that use.