Labor and Employment Alert: Federal Court Holds Connecticut Medical Marijuana Law Prohibits Discrimination

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Despite the federal Controlled Substances Act (CSA) that prohibits the use and possession of marijuana, Connecticut is one of 29 states to have enacted an expansive medical marijuana law; 16 additional states permit the use of low-level THC for particular medical reasons. Nine states (Arizona, Connecticut, Delaware, Illinois, Maine, Minnesota, Nevada, New York and Rhode Island) explicitly protect medical marijuana user from employment discrimination.

The federal district court in Connecticut recently considered whether federal law prevents enforcing Connecticut's Palliative Use of Marijuana Act (PUMA), which permits the use of medical marijuana for certain conditions. PUMA prohibits employers from refusing to hire, firing, penalizing, or threatening an applicant or employee solely on the basis of that person's status as a medical marijuana user.

In *Noffsinger v. SSC Niantic Operating Company*, Katelin Noffsinger was registered under PUMA to use Marinol, a synthetic form of marijuana, for PTSD. Noffsinger applied for a job but was rejected after her pre-employment drug came back positive for marijuana. She sued Niantic, alleging that Niantic had violated PUMA by discriminating against her for using medical marijuana. The court held that a person who uses medical marijuana in compliance with PUMA may maintain a cause of action against an employer who refuses to employ her for doing so. The company had argued that PUMA is preempted by the federal Controlled Substances Act (CSA), the Americans with Disabilities Act (ADA), and the Food, Drug and Cosmetic Act. The court rejected this argument, holding that none of these laws preempted PUMA.

First, the court held that the CSA "does not make it illegal to employ a marijuana user. Nor does it purport to regulate employment practices in any manner." Unlike many other state medical marijuana laws, PUMA explicitly prohibits discrimination against medical marijuana users, and this anti-discrimination provision does not conflict with the CSA or pose an obstacle to enforcing the CSA. Given that the CSA does not prohibit employers from hiring applicants who may be engaged in

illegal drug use, the company did not establish the sort of "positive conflict" between PUMA and the CSA that would cause PUMA to be preempted.

Next, the court held that PUMA was not preempted by the ADA. While the ADA explicitly provides that an employer "may prohibit the illegal use of drugs and the use of alcohol *at the workplace* by all employees," Noffsinger was not using marijuana at the workplace, and PUMA explicitly declines to authorize such workplace use. “The fact that the ADA does not further provide that an employer may prohibit an employee from the illegal use of drugs *outside* of the workplace is a powerful indication that the ADA was not meant to regulate non-workplace activity, much less to preclude the states from doing so or to preclude the states from prohibiting employers from taking adverse actions against employees who may use illegal drugs outside the workplace (and whose drug use does not affect job performance).” As to drug testing, the court found that the fact the ADA allows an employer to use drug testing “does not additionally and exorbitantly mean that the ADA was intended to categorically preclude the states from preventing an employer from taking adverse action against someone who fails any kind of a drug test.”

Finally, the court held that the Food, Drug and Cosmetic Act does not regulate employment and so has no application to the validity of PUMA's anti-discrimination-in-employment provision.

The court then interpreted PUMA to allow an applicant or employee to bring a private right of action against an employer – even though PUMA itself does not expressly authorize that action.

Noffsinger is the third case this year to hold that state medical marijuana laws protect employees and applicants from discrimination. The Rhode Island Superior Court held that the CSA does not preempt the anti-discrimination-in-employment provision of Rhode Island's medical marijuana statute. And the Massachusetts Supreme Judicial Court held that the Massachusetts medical marijuana law requires reasonable accommodation for medical marijuana users. Employers in Connecticut, Massachusetts and Rhode Island should review their hiring, drug testing, and substance abuse policies to ensure they comply with the applicable statutes and these court rulings. Contact your Vorys lawyer if you have questions about medical marijuana and its impact on your operations.