

Retail Detail



Refusal To Hire Medical Pot Users Just Got Riskier— At Least In Rhode Island

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Seyfarth Synopsis: On May 23, 2017, in [Callaghan v. Darlington Fabrics Co.](#), a Rhode Island Superior Court issued a unique decision regarding employer obligations to medical marijuana users.

The Judge who penned the decision began his analysis by quoting a 1967 lyric from The Beatles' song "With A Little Help From My Friends": "I get high with a little help from my friends." In the 32-page opinion followed this witty opening, the Court held that an employer's refusal to hire an individual based on her medical marijuana use violated [Rhode Island's medical marijuana statute](#), and the employer's conduct may have amounted to disability discrimination under the [Rhode Island Civil Rights Act](#) ("RICRA").

The Plaintiff, Christine Callaghan, applied for a position as an intern with Darlington Fabrics. During her interviews, she disclosed to the company that she used medical marijuana and would test positive for it in her pre-employment drug test. The company refused to hire her. Callaghan filed a complaint alleging disability discrimination under the RICRA and seeking a declaratory judgment that the company's refusal to hire her based on her medical marijuana use violated the Hawkins-Slater Act—Rhode Island's medical marijuana statute. Like its counterparts in numerous other states, the Hawkins-Slater Act prohibits an employer from refusing to employ "a person solely for his or her status as a [medical marijuana] cardholder."

The Court addressed two primary questions. The first question was whether the Hawkins-Slater Act creates a private right of action that allows an individual to file a lawsuit in court for alleged violations of the statute. The second question was whether a refusal to hire an applicant based on medical marijuana use could amount to disability discrimination under the RICRA. The Court answered yes to both questions.

Addressing the private right of action question, the Court acknowledged that the Hawkins-Slater Act does not contain any express language authorizing an individual to sue an employer for violation of the statute. The Court also acknowledged the general principle against assuming that a private right of action exists when the legislature chose not to create one. On the other hand, the Court also recognized the legal principle that a court should not attribute to the legislature an intent to enact a meaningless statute. Ultimately, the Court concluded that the Hawkins-Slater Act would be meaningless if it does not allow a private person to sue an employer for violating the statute. Thus, the Court held that an implied private right of action exists under the Hawkins-Slater Act, and the employer violated the law by refusing to hire Callaghan because of her medical marijuana use. In so holding, the Court rejected the notion that there is a meaningful distinction between a medical marijuana "cardholder" and a medical marijuana "user." The Hawkins-Slater Act, according to the Court, protects medical marijuana cardholders who use marijuana because a physician has recommended it. The Court therefore granted a declaratory judgment in Callaghan's favor.

As for Callaghan's claim of disability discrimination under the RICRA, the employer moved for summary judgment on several grounds. The company argued, relying on the Americans with Disabilities Act, that active drug use is not a disability. The Court rejected this argument, reasoning that the RICRA defines disability more broadly than the Americans with Disabilities Act. It also reasoned that an individual must have a "debilitating medical condition" to qualify as a cardholder under the Hawkins-Slater Act. Accordingly, the employer could have inferred that Callaghan was disabled, and thus, could have discriminated against her on that basis.

The Court also rejected the employer's argument that Callaghan was not a "qualified individual" with a disability because she engaged in the use of illegal drugs. The Court concluded that, unlike other disability discrimination laws, the RICRA does not protect only "qualified individuals" with disabilities, but rather all persons with disabilities. Thus, the Court concluded that the employer's defense was inapplicable to Callaghan's claims.

Perhaps most notably, the Court rejected the employer's argument that the federal [Controlled Substances Act](#) ("CSA"), which classifies marijuana as an illegal drug, preempts the Hawkins-Slater Act. The Court reasoned that the CSA is not intended to preempt state law unless it is in positive conflict with the CSA. Because the Hawkins-Slater Act does not require the employer to violate the CSA, the Court held that the CSA does not preempt the Hawkins-Slater Act.

In light of its conclusions, the Court denied the employer's motion for summary judgment on Callaghan's disability discrimination claim under the RICRA. Callaghan did not move for summary judgment in her favor on this claim, but the Court observed that "but for [Callaghan's] disability—which her physician has determined should be treated by medical marijuana—[Callaghan] seemingly would have been hired for the internship position."

While the *Callaghan* decision is not binding on any other courts, it is noteworthy. It goes against the weight of authority from courts in other states in its analysis of the interplay between medical marijuana and anti-discrimination laws. More importantly, it does so in a way that could require many employers with operations in Rhode Island (and perhaps other states) to change their policies regarding the hiring and continued employment of medical marijuana users. If appealed, will the decision hold up? Will other courts in other states issue similar decisions? Time will tell.

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