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Federal Judge Rules that Employer Violated Connecticut Law by Refusing to Hire Medical Marijuana User

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Seyfarth Synopsis: *On September 5, 2018, a federal district court in Connecticut granted summary judgment to a job applicant after an employer refused to hire her because she tested positive for marijuana in a pre-employment drug test. The decision,* Noffsinger v. SSC Niantic Operating Co., LLC, d/b/a Bride Brook Nursing & Rehab. Ctr.*, should serve as a reminder to employers operating in states with medical marijuana laws to evaluate their policies and practices concerning employee use of marijuana outside the workplace.*

Background

The plaintiff claimed that her doctors recommended she use medical marijuana (specifically, a synthetic form of marijuana, Marinol) for her post-traumatic stress disorder (PTSD).

The employer, which was a government contractor, extended to the plaintiff a job offer contingent on her passing a pre-employment drug test. The plaintiff notified the employer that she was a registered medical marijuana user who took Marinol, but only at night before bed so she would not be impaired at work. The employer withdrew the job offer after the plaintiff's pre-employment drug test revealed a positive result for THC, a chemical component of marijuana.

The plaintiff sued, alleging the employer violated the Palliative Use of Marijuana Act (PUMA)'s anti-discrimination provision, which states:

> [U]nless required by federal law or required to obtain funding: … No employer may refuse to hire a person or may discharge, penalize or threaten an employee solely on the basis of such person's or employee's status as a qualifying patient.

The District Court Rejects the Employer's Preemption Arguments

In its first attempt to end the litigation, the employer moved to dismiss, primarily asserting plaintiff's PUMA claim was preempted by three federal statutes: the Controlled Substances Act (CSA), the Americans with Disabilities Act (ADA), and the Food, Drug, and Cosmetic Act (FDCA).

On August 8, 2017, the federal district court denied the employer's motion and held that these laws do not preempt PUMA. The court also held that PUMA has an implied right of action under its employment anti-discrimination provisions. This decision marked the third time in 2017 that a court ruled in favor of a medical marijuana user, with separate decisions in Rhode Island and Massachusetts. These decisions stand in contrast to rulings from other courts--including courts in California, Colorado, Montana, New Mexico, and Oregon--ruling in favor of employers in cases involving employee or applicant use of marijuana.

The parties then conducted discovery and filed cross motions for summary judgment.

The District Court Grants the Plaintiff's Summary Judgment Motion

One year later, the court denied the employer's second request to dismiss the case, and instead **granted** the plaintiff's motion for summary judgment.

The employer argued, among other things, that as a federal contractor, it was allowed to make the employment decision because it is exempt from PUMA's anti-discrimination provision. The employer relied on PUMA's provision allowing employers to refuse to hire or employ state-qualified medical marijuana users if "required by federal law or required to obtain funding." According to the employer, as a government contractor, it was required to comply with the federal Drug-Free Workplace Act (DFWA) which, the employer argued, makes it unlawful for an employer to allow employees to use illegal drugs. Marijuana remains a Schedule I drug under the CSA and, thus, its use violates federal law. The court disagreed, holding that the DFWA neither requires drug testing nor regulates an employee's off-duty cannabis use, "much less an employee who uses medical marijuana outside the workplace in accordance with a program approved by state law."

The court also rejected the employer's argument that it did not "discriminate" against the plaintiff because it relied solely on her failed drug test rather than on her status as a medical marijuana user. To accept the employer's argument, according to the court, "would render the statute's protection against PUMA-based discrimination a nullity, because there would be no reason for a patient to seek PUMA status if not to use medical marijuana as permitted under PUMA." The court also found it important that PUMA allows an employer to discipline employees for on-duty use of cannabis. The court said that this statutory provision, "by negative implication . . . makes clear that PUMA protects a qualifying patient for the use of medical marijuana outside working hours and in the absence of any influence during working hours."

Notably, despite the ruling in favor of the plaintiff, the court held that she will not be entitled to her attorney's fees or punitive damages on the basis that PUMA doesn't expressly allow for this type of relief.

What the Decision Means for Employers

The decision is from one federal district court analyzing the medical marijuana law in Connecticut. Thus, it is not binding on other courts and the employer may appeal the decision. Regardless, this is a developing area of the law and, thus, employers should consider reviewing their drug-related policies. More states are enacting medical marijuana laws and courts have issued employee-friendly decisions addressing existing laws, which makes it particularly important for employers to stay ahead of this evolving area of the law.

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