

CANNABIS CONUNDRUM: RECENT RULING ON OFF-DUTY MEDICAL USE HIGHLIGHTS MAJOR CHALLENGES FOR FLORIDA EMPLOYERS

Insights
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Employers in Florida should take note of a recent ruling that could have far-reaching implications for managing reasonable accommodation requests related to workers' medical cannabis use. A Florida county court just sided with a paramedic who alleged he was unlawfully discriminated against for using medical cannabis while off-duty. In a December 10 order, the court found that his employer violated the Florida Civil Rights Act by failing to consider an accommodation. Although the ruling may be appealed or face further legal challenges, the decision illustrates for employers across the state the importance of carefully evaluating how drug-free workplace policies and accommodation practices address off-site medical cannabis use. Here's what you need to know about the ruling and four steps you should consider taking to strengthen your policies and practices.

Top 4 Takeaways

1. In *Giambrone v. Hillsborough County*, the court found that Florida's Medical Marijuana Law requires employers to allow off-site medical cannabis use under certain conditions, as long as it does not impair job performance, compromise workplace safety, or involve on-site use.
2. Additionally, the ruling suggests that off-site use tied to a worker's disability could potentially be protected under the Florida Civil Rights Act, thereby requiring accommodations in some cases.

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3. The decision highlights the growing need for employers to adapt to changing medical cannabis laws. Employers are encouraged to remain proactive in assessing their policies to align with evolving legal standards while mitigating risk.

4. While the court's ruling provides some guidance, employers should remain cautious and avoid making sweeping changes until further legal developments clarify the broader implications, as this decision will likely be challenged.

How Did We Get Here?

- **Medical Use of Cannabis Approved.** Florida voters approved [Constitutional Amendment 2](#) with roughly 71% of the vote in November 2016. Amendment 2 created a constitutional right to use medical cannabis for individuals with certain “debilitating medical conditions” as determined by a licensed state physician. The list of medical conditions includes cancer, epilepsy, glaucoma, the human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), post-traumatic stress disorder (PTSD), amyotrophic lateral sclerosis (ALS), Crohn’s disease, Parkinson’s disease, and multiple sclerosis. It also includes a catch-all category for other conditions “of the same kind or class as or comparable” to those enumerated, if a physician believes that the medical use of cannabis would “likely outweigh the potential health risks for a patient.”
- **Unanswered Questions.** [Constitutional Amendment 2 left many unanswered questions for employers.](#) It only made clear that the new law will not require employers to accommodate “on-site medical use of marijuana” in any place of employment but provided few answers beyond that.
- **Additional Guidance.** The Florida legislature approved a medical cannabis bill and Governor Scott signed it into effect in June 2017. The bill provided additional guidance on how Constitutional Amendment 2 will affect the workplace. Specifically, the definition of “medical use” excludes the use or administration of cannabis in a patient’s place of employment, except when permitted by his or her employer. Further, the legislation stated it did not limit an employer’s ability to establish or enforce a drug-free workplace program or policy. Specifically, the law states:

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This section does not limit the ability of an employer to establish, continue, or enforce a drug-free workplace program or policy. This section does not require an employer to accommodate the medical use of marijuana in any workplace or any employee working while under the influence of marijuana. This section does not create a cause of action against an employer for wrongful discharge or discrimination. Marijuana, as defined in this section, is not reimbursable under chapter 440.

Paramedic Tests Limits of Cannabis Law

Here are the main points you should know about the *Giambrone* case, as presented in the court's order:

- **Worker Failed Cannabis Test.** In the *Giambrone* case, a firefighter paramedic sued Hillsborough County after being placed on unpaid administrative leave in 2019 following a positive, random drug test for cannabis that was unrelated to any workplace injury or accident. Despite holding a state-issued medical cannabis card, he was disciplined under the county's Drug-Free Workplace Policy and a union collective bargaining agreement (CBA).
- **Paramedic Brought Lawsuit.** The paramedic alleged the county violated the Florida Civil Rights Act by failing to provide a reasonable accommodation for his lawful medical cannabis use. Both parties filed motions for summary judgment asking the court to resolve the case before it proceeded to a full bench trial. The paramedic contended that his lawful off-premises use of medical cannabis under Florida law should not subject him to adverse employment actions, and that the county failed to provide him with a reasonable accommodation. He pointed to the absence of clear language in the Florida Drug-Free Workplace Act prohibiting off-site medical cannabis use.
- **County Raised Several Key Arguments.** The county maintained that federal law classifying cannabis as a Schedule 1 drug preempts state medical cannabis statutes and that the paramedic's refusal to comply with follow-up drug testing violated their CBA. Additionally, the county argued that allowing him to return to work while using cannabis would pose safety risks and undermine public confidence. It further indicated that he never asked for an accommodation, and even if he did, his request for

medical cannabis use as an accommodation is unreasonable under both the ADA and Florida law.

- **Court Distinguished Case from Safety-Sensitive Ruling.** Hillsborough County also relied on [a Florida appeals court ruling](#), which upheld an employer's right to terminate an employee for cannabis use. However, that case involved a firearm-carrying employee, whereas the court noted, the paramedic in the *Giambrone* case was not subject to similar safety-sensitive responsibilities and applicable laws.
- **Underlying Disabilities.** The court ultimately sided with the paramedic, finding that he suffered from anxiety, PTSD, and insomnia, which the court categorized as conditions that substantially limit major life activities and thus qualify as disabilities.
- **No Evidence of Impairment.** The court also noted there was no evidence that the paramedic's cannabis use impaired his job performance. While Florida law explicitly states employers are not required to accommodate on-site cannabis use, the court reasoned that by specifically addressing on-site use, the legislature implicitly intended that off-site use must be accommodated under certain circumstances. Additionally, despite the fact that the paramedic tested positive for cannabis, the court made a finding that there were no allegations that he was ever "under the influence of cannabis at work."
- **Unclear Policies.** The court said the county's policies were unclear and failed to place the paramedic on notice that medical cannabis would be treated differently from other prescribed medications. The court also noted that the county's drug-free workplace policy did not explicitly prohibit medical cannabis use and arguably allowed it under the county's own definition of prescription medications in the CBA. The court's reasoning indicates that the outcome of the paramedic's breach of contract and policy-related counts could have been different if the county's policies or contract language had been clearer and explicitly addressed medical cannabis use.

What Does This Mean for Florida Employers?

This decision demonstrates the current legal tension between Florida state laws permitting medical cannabis use and federal laws prohibiting it. Employers must pay close

attention to these conflicting laws, as the ruling raises questions about how employers should reconcile zero-tolerance policies with Florida's legal protections. Employers are encouraged to take the following four steps:

1. Monitor Legal Developments. Stay informed about case law like *Giambrone* that addresses medical cannabis in the workplace, including possible appeals and legal challenges.

2. Review Drug-Free Workplace Policies. Scrutinize current drug-testing and workplace policies to ensure compliance with both state and federal laws. Clearly communicate expectations to employees regarding medical cannabis use and explain that impairment at work is expressly prohibited, while potentially requiring employees to inform employers of such prescriptions in advance. As highlighted by the court, policies that clearly outline these restrictions and expressly prohibit the use of medical cannabis may better withstand legal scrutiny, providing employers with a stronger defense in disputes over reasonable accommodations.

3. Evaluate Accommodation Requests: Although federal law does not recognize cannabis as a valid accommodation under the ADA, this ruling contemplates that an employer may have an obligation to accommodate medical cannabis use under Florida law in certain circumstances. Employers should document and evaluate requests to comply with Florida's evolving legal landscape. Employers should also proceed with caution with a termination based solely on a random drug test where there has been no other suspicion of impairment.

4. Consult Legal Counsel: Seek guidance from experienced labor and employment attorneys to navigate these complex issues and ensure compliance.

Conclusion

If you have any questions about this recent development, or how it may affect your organization, please contact your Fisher Phillips attorney or one of the attorneys in any of [our Florida offices](#). Fisher Phillips will continue monitoring this case and provide updates as new information emerges. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information.