



Washington Employers Claim Victory In Medical Marijuana Battle

Insights

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On June 9, 2011, the Washington Supreme Court handed employers a comprehensive victory in the long-running medical marijuana battle, deciding that employers need not accommodate an employee's use of medical marijuana, and that employees terminated for medical marijuana use – even offsite use – have no basis to sue their employers. *Roe v. TeleTech Customer Care Mgmt.*

The decision now means that employers can rest comfortably knowing they can consistently enforce their zero tolerance drug policies without regard to medical marijuana registry status.

A Long, Strange Trip – The Facts

Jane Roe – a fictitious name used by a woman who was fearful of prosecution given that marijuana remains an illegal drug under federal law – received approval to use medical marijuana under Washington State's Medical Use of Marijuana Act (MUMA) in June 2006. She had been suffering from what she described as "debilitating migraine headaches" for years, causing chronic pain, nausea, blurred vision, and sensitivity to light. Roe tried conventional medications and treatment to no significant benefit; meanwhile, she had also been using cannabis no fewer than four times per day to help mitigate her symptoms well before she received the state registry card. Once she obtained authorization, she began using medical marijuana and reported no pain and no side effects. Roe's condition improved to the point where she decided to seek work.

On October 3, 2006, she was offered a job as a customer service representative at TeleTech's Bremerton call center, where she was to provide telemarketing and telesales services. The offer was contingent on several background checks, including a drug screen. Roe informed TeleTech that she used medical marijuana at home, and thus it was not surprising when her drug test was returned as positive for marijuana. Although Roe had been working at the company for about a week before the test results came back, she was immediately terminated for violating TeleTech's zero tolerance drug policy.

Dazed and Confused – What Does The Law Allow?

Roe sued TeleTech and claimed that her termination was in violation of MUMA, and also a "wrongful discharge" in violation of clear public policy. Before we go further, it is helpful to understand where Washington's medical marijuana law came from. Washington is one of 16 states that permit the use of medical marijuana, including southern neighbors Oregon and California. In 1998, Washington voters approved a voter initiative which created the MUMA

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The main purpose of the statute was to exempt from state criminal prosecution those individuals who ingest marijuana for medical purposes, provided they receive physician authorization and follow certain guidelines (such as not possessing large amounts of pot, or smoking it in public places). The law states that it does not require any accommodation of medical marijuana use in any place of employment. The state legislature amended the statute in 2007 to clarify that "onsite" medical marijuana use need not be accommodated. Before Roe filed her lawsuit, there was confusion as to whether employers needed to accommodate *offsite* use of medical marijuana, such as Roe's.

High Times – The Supreme Court Hands Employers Victory

A Kitsap County Superior Court judge ruled in favor of TeleTech, holding that the termination was permissible, and in 2009, the Washington Court of Appeals agreed and upheld the ruling. On June 9, 2011, the Washington Supreme Court affirmed these decisions and held that Washington employers have the unfettered right to terminate employees for medical marijuana use, whether the use occurs on the premises or offsite.

First and foremost, the Supreme Court cleared up any confusion by holding that MUMA does not prohibit an employer from discharging an employee for authorized use of medical marijuana. It cited to the clear language of the statute, along with statements made by the initiative proponents in 1998 that made clear to voters that marijuana use would be strictly regulated and would not interfere with employment.

Further, the Supreme Court held that there was no implied right of action, especially given the fact that marijuana remains classified as an illegal drug under federal law and that even medical users remain subject to federal prosecution. In fact, even before this decision, the Washington State Human Rights Commission refused to investigate claims of discrimination due to medical marijuana use because of the federal prohibition.

What Does This Mean For Employers?

This decision could not be better for Washington employers. The highest court in the state has now said that employers need not accommodate medical marijuana users in the workplace, joining earlier pro-employer decisions from Oregon (2010) and California (2008). Employers should feel free to consistently apply zero-tolerance policies, consistently disciplining those who violate the policy and refusing to hire those applicants who fail drug screens, regardless of medical marijuana registry status. We recommend that your policy be issued in writing to applicants and employees, and that it clearly indicates that medical marijuana is prohibited just as is any other controlled substance. Employers need not engage in any interactive process to determine whether the medical marijuana use should be accommodated or excepted.

For more information contact any of the attorneys in our Portland, Oregon office at 503-242-4262.

This Legal Alert is intended to provide an overview of an important new law. It is not intended to be, nor should it be construed as, legal advice for any particular fact situation.

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