



Colorado Employers Handed Medical Marijuana Victory

Insights

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On June 15, 2015, the Colorado Supreme Court held in a unanimous decision that employers are still free to prohibit employee marijuana use in their workforces, and can still discipline and terminate employees who test positive for the drug, despite state law permitting its recreational and medicinal use. In so doing, the Court issued an employer-friendly opinion that will have wide-ranging implications for all Colorado employers. *Coats v. Dish Network*.

Case Background – Is Pot Use “Legal?”

The employee in the case is a quadriplegic who suffers intense muscle spasms as a result of a non-work related car accident. He uses medical marijuana under Colorado’s regulatory medical marijuana system, which he says helps his spasms. The employee worked for Dish Network as a customer service representative for three years, until he tested positive for marijuana during a random drug test and was fired pursuant to Dish Network’s zero-tolerance drug policy. After he was fired, the employee filed a wrongful termination lawsuit and claimed that the firing violated Colorado’s “lawful off-duty activities” statute, which prohibits employers from discriminating against or terminating employees who engage in lawful activities outside of work. The employee argued that his medical marijuana use was “lawful” under state law and, therefore, his termination violated the statute. The Colorado Court of Appeals rejected his claim, ruling that even if medical marijuana use is legal in Colorado, marijuana use of any kind is still prohibited by federal law, and thus medical marijuana use is not “lawful” for purposes of Colorado’s lawful off-duty conduct statute.

Colorado Supreme Court Upholds Employers’ Rights

The Colorado Supreme Court agreed, ruling that marijuana use is not lawful conduct for purposes of Colorado’s lawful off-duty conduct statute. To reach this conclusion, the court concluded that it must look to both state and federal law to make the critical determination. The court then reviewed the federal Controlled Substances Act, and held that because medical marijuana use is unlawful under federal law, it is therefore not lawful activity under Colorado’s lawful off-duty conduct statute. As such, the court ruled that Dish Network’s decision to fire the employee because he tested positive for marijuana did not violate Colorado’s lawful off-duty conduct statute.

Good News for Employers

This decision is a significant victory for employers. By ruling in this fashion, the Colorado Supreme Court has unequivocally affirmed employers’ rights to prohibit employees from using marijuana in Colorado, and to discipline and terminate employees who violate such prohibitions. Although the

Colorado, and to discipline and terminate employees who violate such prohibitions. Although the decision only discusses medical marijuana and does not explicitly consider retail marijuana use, its logic can easily be extended to cover recreational marijuana use, which is similarly unlawful under federal law and thus not lawful conduct for purposes of Colorado's lawful off-duty conduct statute. The court's reasoning may also have potential future applicability to other conduct that is lawful under state law but unlawful under federal law.

In sum, employers who have policies requiring employees to undergo drug testing and who have disciplined or terminated employees for testing positive for marijuana can continue these actions, knowing now that these policies and termination decisions have been validated by the Colorado Supreme Court.

If you have any questions about this case, or how it may affect your business, please contact your Fisher Phillips attorney or one of the attorneys in our Denver office at (303) 218-3650.

This Legal Alert provides an overview of a specific Colorado Supreme Court decision. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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