

EMPLOYERS SECURE ANOTHER WIN IN MEDICAL MARIJUANA BATTLE: THREE THINGS YOU NEED TO KNOW

Insights
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Employers started 2016 by claiming another victory in the ongoing battle against medical marijuana in the workplace. On January 7, 2016, a federal court judge in New Mexico dismissed a lawsuit brought by an employee terminated after testing positive for the drug, finding that state law does not require employers to accommodate medical marijuana use (*Garcia v. Tractor Supply Company*).

The facts of the case are very simple. Rojerio Garcia was hired as a Team Leader for a Tractor Supply Company facility in New Mexico. During his job interview, Garcia advised the hiring manager that he suffered from HIV/AIDS and thus was using medical marijuana as allowed by state law. Like all new hires, Garcia took a drug test, where, not surprisingly, he tested positive for cannabis.

The next day, the hiring manager terminated Garcia's employment in accordance with the company's zero-tolerance policy. Garcia filed a lawsuit alleging disability discrimination, arguing that the company should be forced to reasonably accommodate his condition by permitting medical pot use. The judge disagreed and dismissed Garcia's claim.

Here are three things you should know about the case to help you deal with this increasingly common issue.

1. This Is Good News For Employers.

Any way you look at it, this is a solid win for employers in New Mexico and beyond. It continues a string of successes that employers have won in Washington (read [more](#)), Oregon

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(read [more](#)), Colorado (read [more](#)), California (read [more](#)), and Montana. In each of these states, the highest court in the jurisdiction ruled that employers did not have to accommodate the medical marijuana use of applicants or workers. The New Mexico federal district court judge followed the same reasoning applied by the courts in these states (and another federal court in Michigan) in rejecting Garcia's claim.

The basic premise in all of these decisions is that the medical marijuana law of the state simply prohibits criminal prosecution of the drug assuming certain conditions are met, but does not obligate an employer to allow it in the workplace. All of these courts also recognized that marijuana remains illegal under the federal Controlled Substances Act. Despite the fact that the current Administration has pronounced that marijuana prosecution is not a current enforcement priority, the state courts have held that it would be axiomatic to force an employer to allow an illegal substance at work, especially since federal enforcement priority can change at any time.

2. Some States Have Built-In Protections.

However, you will want to check on your particular state law before taking action against applicants and employees who use medical marijuana. In several jurisdictions, including Connecticut, Delaware, and Arizona (read [more](#)), the state statutes include affirmative requirements mandating that employers accommodate cardholders.

And even in New Mexico, where this case was decided, enterprising plaintiffs might still try to file a claim and argue that the situation is not fully decided until the state Supreme Court weighs in on the matter.

In other words, this is a complex area of the law, with each state approaching the matter in a distinct manner, and the law is rapidly evolving across the country. If you are not completely sure that you have the legal right to enforce your zero-tolerance policy in your state, you may want to check with labor and employment counsel.

3. Terminations Must Be Clean And Consistent.

Even if you operate in a state where the law permits you to terminate anyone who fails a drug test, you must make sure that you are enforcing your policies consistently in order to avoid legal liability. Employers that let an applicant or employee slide here or there might be setting themselves up

for a discrimination lawsuit if they later terminate someone for medical marijuana use. Not only do some states forbid employers from treating medical pot patients differently, it might look like you are targeting that employee for punishment because of the underlying medical condition that led them to use marijuana in the first place.

The employer in this case did it right because it enforced its policy in a consistent manner, and there was no evidence that anyone from the company committed disability discrimination. The court found no evidence that the employer terminated Garcia because of his medical condition, or because he was a medical marijuana user (as opposed to a recreational user).

You will want to ensure that your managers are trained to avoid making negative remarks about medical marijuana, especially during the hiring process, and enforce your anti-discrimination policies to make sure that no one makes pejorative statements or jokes about individuals with disabilities.

If you have any questions about this case, or how it may affect your business, please contact your Fisher Phillips attorney.

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