Wrongful Discharge Claim Not Permitted Under State Medical Marijuana Act

10/23/2012 By R. Read Gignilliat

The 6th U.S. Circuit Court of Appeals upheld the dismissal of a wrongful discharge claim brought under the Michigan Medical Marijuana Act (MMMA), finding that the provisions of the MMMA do not apply to private-sector employers.

The Michigan legislature passed the MMMA in 2008 to provide protections for the "medical use" of marijuana. The term "medical use" is defined by the act as including the use of marijuana to treat or alleviate a qualifying patient's debilitating medical condition or symptoms." An individual's status as a "qualifying patient" under this definition must be predetermined by the Michigan Department of Community Health, as evidenced by its issuance of a "registry identification card." Thereafter, any such qualifying patient shall not be denied any right or privilege, including but not limited to disciplinary action "*by a business or occupational or professional licensing board or bureau*, for the medical use of marijuana." (Emphasis added.)

Joseph Casias, an employee at Wal-Mart, used medicinal marijuana to treat a medical condition and possessed the requisite registry identification card. He claimed to have never used marijuana while at work or to have reported for work under its influence. Casias was terminated from his employment with Wal-Mart after he failed a post-accident drug test administered pursuant to Wal-Mart's corporate drug testing policy. Casias filed suit, arguing that his termination violated his rights under the MMMA because the statute prevents a business from engaging in disciplinary action against a qualifying patient.

In seeking dismissal of Casias's complaint, Wal-Mart did not challenge Casias's status as a "qualifying patient," nor his allegations that his use of marijuana constituted "medical use" and that he never used marijuana on the job or worked under its influence. Rather, Wal-Mart took the position that the MMMA does not regulate the employer-employee relationship in the private sector. Focusing on the above italicized language, Wal-Mart argued that the term "business"—like the terms "occupational" and "professional"—simply modified the term "licensing board or bureau," and therefore referred only to state or local governmental agencies. Casias, on the other hand, argued that the term should be read independently to cover private businesses.

The 6th Circuit agreed with Wal-Mart, holding that the MMMA does not purport to alter "the general rule of at-will employment in Michigan" and affirmed the district court's holding that "private employees are not protected from disciplinary action as a result of their use of medical marijuana."

The 6th Circuit similarly rejected Casias's alternative argument for a "public policy interpretation" of the MMMA that would extend its protections to private employment. The court reasoned that such an extension would be inconsistent with Michigan's legislative precedent of using clear and explicit language whenever it enacts laws intended to fundamentally affect the employment relationship, which gives rise to a "reasonable expectation that such a far-reaching revision of [the state's at-will employment] law would be *expressly* enacted."

Casias v. Wal-Mart Stores Inc., 6th Cir., No. 11-1227 (Sept. 19, 2012).

Professional Pointer: Michigan is one of at least 18 states to enact medical marijuana legislation. The others are Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Maine, Maryland, Montana, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, and Washington, as well as the District of Columbia. Because the ultimate impact of the majority of these laws on private-sector employment relationships has yet to be determined by the courts, and given the dynamic nature of the medical marijuana issue generally, employers are encouraged to consult with labor and employment counsel prior to taking any personnel action based on an employee's or applicant's use of medical marijuana.

R. Read Gignilliat is an attorney with Elarbee, Thompson, Sapp & Wilson, LLP, the Worklaw® Network member firm in Atlanta.

Society for Human Resource Management

1800 Duke Street
Alexandria, Virginia 22314 USA

Phone US Only: (800) 283-SHRM (7476)
Phone International: +1 (703) 548-3440

TTY/TDD (703) 548-6999
Fax (703) 535-6490

Questions? Contact SHRM
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