

Mass. Court Blazes New Trail On Employee Medical Marijuana Use

by Dennis J. Merley - Thursday, August 03, 2017



While various states and municipalities now deem it lawful to use marijuana for medical purposes, the federal law banning possession and use of marijuana remains unchanged. For this reason, state and federal courts continue to rule that employers need not accommodate an employee's use of medical marijuana.

However, the Massachusetts Supreme Court may have just hashed out a new direction by ruling that accommodation may be required for marijuana use consistent with a valid prescription.

What Sparked This Decision?

The seeds of this new perspective stem from a case where a job applicant told her prospective employer that her pre-employment drug test likely would be positive because she uses prescription marijuana to treat her Crohn's disease. She explained that she did not use marijuana every day, and that she would not use it before or during work. Nevertheless, the employer withdrew the job offer upon receiving the positive test result.

The applicant sued for disability discrimination under the Massachusetts anti-discrimination law.

The Massachusetts Supreme Court concluded that the federal law should not be interpreted to mean that accommodation for medical marijuana use is per se unreasonable. While the law would not protect medicinal marijuana use at work, the justices felt that it implicitly does protect the right to use it while off duty. If off-duty use is legally permissible, then a positive drug test reflecting the use of medicinal marijuana should not result in a penalty to the employee.

The High Court's Reasoning

The justices were quite blunt in saying that the decision does not mean that employees must be allowed to come to work under the influence of medical marijuana. They just said that marijuana use should not automatically disqualify an individual from employment and that an interactive process must be followed to determine whether off-duty use of medical marijuana can be reasonably accommodated. In this regard, they basically treated medical marijuana like any other prescribed narcotic.

The big issue here relates to how marijuana usage is detected as opposed to other forms of medication. Medical science often can determine whether someone has ingested only the prescribed dosage of a narcotic as opposed to an excessive (and more recreational) dosage, and can make an educated determination that the user is affected by the use. With marijuana, this remains very difficult. Therefore, if an employee tests positive for marijuana and has a valid prescription, an employer likely will not be able to determine that the use is inconsistent with the prescription or that it necessarily will impair production or safety on the job.

Bottom Line

Though this case was decided under Massachusetts law, it is instructive for Minnesota employers. Certainly, employers in Minnesota can still test for the illegal use of drugs, including use that is inconsistent with a valid prescription.

In addition, employers may continue to regulate their workplace to insure that employees are not engaging in work while using drugs that may impair performance or present a risk of harm to the employee or others.

However, when an employee is taking a prescribed medication consistent with the terms of a valid prescription, this case tells us that an employer may not be able to just treat the employee as if they are violating federal law. Instead, the employer should engage the employee in an interactive process to determine whether a reasonable accommodation may exist that will allow the employee to perform such work in a safe and productive manner.

It remains to be seen whether this case will create a buzz in other jurisdictions such that other similar decisions will soon be in the pipeline.