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LEGAL ALERT



Legal Alert: California Supreme Court Rules that Employer Is Not Obligated to Accommodate Employee Engaged in Compassionate Use of Marijuana

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As reported in an earlier Legal Alert, on November 6, 2007, the California Supreme Court heard oral argument in the highly controversial case of *Ross v. RagingWire*. At issue in *Ross* is whether an employer must retain as an employee an individual who fails a properly administered drug test due to the compassionate use of medical marijuana.

On January 24, 2008, the California Supreme Court affirmed the decisions of the lower courts that dismissed Ross's claim, and affirmed judgment in favor of *RagingWire*. *Ross v. RagingWire Telecommunications, Inc.* (Cal. Supreme Court 1/24/08).

Ross applied for work as an information technology professional with *RagingWire*. As part of the hiring process, *RagingWire* requires all employees to undergo a pre-employment drug test. Ross agreed to accept an employment offer with *RagingWire*, which was contingent upon passing the mandatory drug test. He did so even though he was using marijuana under California's Compassionate Use Act of 1996 to alleviate chronic back pain. When his drug test came back positive for marijuana metabolites, Ross' employment was terminated after eight days on the job.

The trial court dismissed Ross' complaint, and the California Court of Appeal affirmed that dismissal.

Ross made two arguments to the California Supreme Court. First, he argued that *RagingWire*'s refusal to accommodate his compassionate use of marijuana was tantamount to disability discrimination under the California Fair Employment and Housing Act. In rejecting this argument, the Court held that the FEHA does not require employers to accommodate the use of illegal drugs, and that marijuana is an illegal drug under federal law. The California Supreme Court noted that "Plaintiff's position might have merit if the Compassionate Use Act gave marijuana the same status as any legal prescription drug." However, the Court noted that it does not do so. Instead, the Court explained that what happened when the Compassionate Use Act was enacted was that it exempted medical users of marijuana and their primary care givers from criminal liability under two specifically designated state statutes. Indeed, the Court explained "[N]othing in the text or history of the Compassionate Use Act suggests the voters intended the measure to address the respective rights and obligations of employers and employees."

Second, Ross asserted, based upon RagingWire's refusal to accommodate his use of marijuana, that the termination of his employment violated public policy. The Court disagreed, again asserting that the Compassionate Use Act does not speak to employment law, and therefore does not articulate a public policy concerning marijuana use in the employment context.

Employers' Bottom Line:

Drug testing of employment applicants has become commonplace. While California law does permit such testing, employers must meet certain requirements in order to comply with the law. Indeed, California's Constitution contains an express right to privacy, which often comes into play when evaluating drug testing policies and procedures in the employment setting.

Should you have any questions about this case, about drug testing in the workplace, or about any employment law matters, please contact the author of this Alert, Helene Wasserman, at 213-237-2403 or hwasserman@fordharrison.com.

Helene is the host of the Employer Helpcast, which is a "one stop website" for both "nuts and bolts" employment law advice and insight into new legal developments affecting employers. The Employer Helpcast can be found at <http://employerhelpcast.blip.tv>.