

IS YOUR DRUG TESTING POLICY GOING UP IN SMOKE?

7. July 2010 By Steve Palazzolo

Sorry, bad joke, but as you all know by now, in 2008 the people of the state of Michigan, in voter referendum, passed the Michigan Medical Marihuana Act. See MCL 333.26421 *et. seq.* (Ok before you say anything about the spelling, I did not spell marijuana that way, the state did.) The Act, among other things, provides for the use of medical marihuana under state law and “provide[s] protections for the medical use of marihuana” when recommended by a physician for “debilitating medical conditions.” Section 4 of the Act specifically states: “Sec. 4. (a) A qualifying patient who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or **disciplinary action by a business** . . . for the medical use of marihuana”

Seems pretty clear. You can’t fire someone for using medical marihuana, end of story, right? Not so fast my friends. You see, section 7 of the Act states: ” (c) Nothing in this act shall be construed to require: . . . (2) An employer to accommodate the ingestion of marihuana in any workplace or any employee working while under the influence of marihuana.”

Are we all completely confused now? A business can’t take disciplinary action against an employee validly using medical marihuana, but an employer does not have to allow an employee to work under the influence? How can that be?

Well, we may just find out. A couple of weeks ago, a young man named Joseph Casias, with the help of the American Civil Liberties Union, filed suit against Wal-Mart alleging that he was discharged in violation of the Act and in violation of Michigan public policy. Mr. Casias alleges in his complaint that he has cancer that causes him extreme pain, that in consultation with his doctor he sought and was given a medical marihuana registry identification card and that he was in full compliance with the Act. Mr. Casias alleges that he only used marihuana once per day at home and never performed any work for Wal-Mart under the influence of marihuana. Unfortunately, Mr. Casias hurt his knee at work. When Wal-Mart took him to the emergency room he was given a drug test. And of course, the drug test showed that Mr. Casias used marihuana.

Now Mr. Casias alleges that he told the testing facility that he was a medical marihuana user and even showed them his card. He also alleges that he told his shift supervisor that he was a medical marihuana user and showed him the card and was told not to worry about it, he was not in trouble. Then, Mr. Casias alleges, two weeks after the injury, he was fired by the store manager. Mr. Casias claims he was told that Wal-Mart “does not honor” his

registry identification card. In his complaint, Mr. Casias alleges that the knee injury that was the cause of the drug test was not a result of his use of marihuana and that he never worked under the influence of the drug.

I don't know how this case will come out, and we are not likely to know for some time. There will be a trial, and then probably an appeal. But hopefully, now, finally, we will get some clarity about exactly how this law is supposed to work.