

## Michigan Medical Marijuana Act Does Not Prohibit Termination for Positive Drug Test

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In a case that has been closely watched by the employer community, a Federal Court has held that Wal-Mart did not unlawfully terminate an employee who tested positive for marijuana in violation of company policy even though the employee possessed a registry card under the Michigan Medical Marijuana Act (MMMA). *Casias v. Wal-Mart Stores, Inc.*, No. 1:10-CV-781 (W.D. Mich. Feb. 11, 2011). The *Casias* decision is the first one to address whether the MMMA provides any sort of employment protection for medical marijuana users.

The facts in the case were straightforward. Casias was hired by Wal-Mart to work in a store in Battle Creek. He was an at-will employee. Under Wal-Mart policy, he was subjected to drug testing upon hire – which he passed. Casias was a good employee for the company. He had been promoted and had been named associate of the year in 2008. In mid-2009, Casias was issued a medical marijuana registry card and he began using marijuana outside of work hours. Following a workplace injury, Casias was subjected to a mandatory drug test pursuant to Wal-Mart's policy. Although he disclosed his medical marijuana card to his supervisor and the testing laboratory, Casias tested positive for marijuana and was terminated under Wal-Mart's policy.

Casias sued Wal-Mart claiming wrongful termination. Specifically, Casias claimed that although he was otherwise an at-will employee, his termination was in violation of the public policy of the State of Michigan – namely the MMMA. In support of his claim, Casias argued that the reference to a "business" in the MMMA stating that registry card holders cannot be "denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the medical use of marijuana in accordance with this act" was evidence of the public policy prohibiting his termination. The court rejected this argument, finding that the term "business" could not stand alone, and that it was merely a modifier for a "licensing board or bureau." The Court also rejected Casias' argument that the MMA's statement that nothing in the Act requires "an employer to accommodate ingestion of marihuana in any workplace or any employee working while under the influence of marihuana" was evidence that employers could not take action against non-workplace use.

In the end, the court granted Wal-Mart's motion to have the case dismissed. In the eyes of the court, the MMMA was directed at governmental action (i.e., protection from prosecution under certain circumstances) and it in no way regulates private employment. As the court forcefully stated, "In contrast to what the MMMA does address – potential state prosecution or other potential state action – the MMMA says nothing about private employment rights. Nowhere does the MMMA state that the statute regulates private employers, that private employees are protected from disciplinary action

should they use medical marijuana, or that private employers must accommodate the use of medical marijuana outside of the workplace."

The *Casias* decision is the first – any hopefully last – word on whether the MMMA in any way regulates the employment relationship. In light of *Casias*, employers can continue to develop and enforce their workplace drug testing policies. Should you have any questions about the *Casias* decision or how to develop an enforceable drug testing policy, please contact any member of Warner Norcross & Judd's Labor and Employment Law Practice Group.