

Michigan Medical Marihuana Act – Now Open For Interpretation

7/8/2010

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Last week Joseph Casias and the American Civil Liberties Union ("ACLU") filed a lawsuit against Walmart for wrongful discharge in violation of public policy and the Michigan Medical Marihuana Act ("MMMA"). Mr. Casias suffers from sinus cancer and an inoperable brain tumor for which he possesses the state registry identification card that allows him medical use of marihuana.

The Complaint

Walmart fired Mr. Casias for testing positive for marihuana after a workplace injury. Mr. Casias claims that when he showed his supervisor his registry identification card after his positive drug test that his supervisor informed him that Walmart does not honor those cards.

The method Walmart used to test for drugs does not indicate whether the person was currently under the influence or whether the person used the drugs within the past several days or week. Mr. Casias states he never came to work under the influence of marihuana, nor did he ever smoke marihuana while at work. He claims only to have used marihuana in accordance with the MMMA.

Michigan Medical Marihuana Act MCL 333.26521 et. seq.

Michigan enacted the MMMA in 2008. It includes ambiguous language that could be construed to provide employees with limited rights in the workplace. The MMMA says that a person who is registered as a medical marihuana user will not be "denied any right or privilege." There is also ambiguous language in the MMMA which could be read to prohibit discipline of a medical marihuana user by a business. Michigan courts will decide whether the MMMA prohibits discipline of a medical marihuana user either expressly or implicitly as a matter of "public policy."

The MMMA does not require employers to accommodate employees' "ingestion of marihuana" while at work nor must it accommodate employees who go to work "while under the influence of marihuana."

The MMMA does not define the terms "ingestion" or "under the influence." However, the MMMA specifically excluded the term "ingestion" as part of its definition of "medical use," which the MMMA defines as the "acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia." This suggests that the Michigan Legislature may have intended a different definition for "ingestion," however it is difficult to determine how broad or narrow a definition it intended for the term "ingestion."

"Under the influence" definitions are just as ambiguous and may range from visible impairment of the employee to any presence of marijuana in the body that a drug test may detect. Courts will have a challenging task determining the type of conduct that employers will be required to accommodate.

There have been cases from other states that have similar medical marijuana laws. An Oregon court held that employees who used medical marijuana could be fired for drug use because the state law had to yield to federal laws controlling illegal drugs. Similarly, the California Supreme Court ruled in favor of employers, saying employees can be fired, even if they are using medical marijuana legally. However, this is the first case of its kind in Michigan and the Michigan courts may interpret the law differently.

Questions

If you have questions about the Michigan Medical Marijuana Act, please contact your Labor and Employment attorney at Warner Norcross & Judd.