

Medical Marijuana User Not Protected from Termination

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A developing exception to Washington law of employment at will is the tort of wrongful termination in violation of public policy. This narrow exception was recently tested in *Roe v. TeleTech Customer Care*, 171 Wn.2d 736 (2011), when a new hire employee asserted that her employer had violated Washington public policy for terminating her for a positive drug test for marijuana.

In *Roe*, the new hire claimed to suffer from migraine headaches, causing chronic pain, nausea, blurred vision and sensitivity to light. Her physician prescribed medical marijuana and she smoked it four times a day, but ingested it only at home. She was offered a position as a customer service representative contingent on a background check and a drug screening.

After failing the drug screening, the new hire informed her supervisor she had been prescribed medical marijuana. Her supervisor informed her that use of medical marijuana violated the company drug policy and terminated her employment during the training phase. She sued the company for wrongful termination in violation of public policy.

The trial court dismissed the claim, finding that medical marijuana merely provided an affirmative defense to criminal prosecution under Washington state drug laws but did not imply a civil cause of action in employment. She appealed. On appeal, the *Roe* court recognized that the voters of Washington had provided a defense to caregivers and physicians who prescribed marijuana to those with certain illnesses such as the new hire. That statute, however, did not provide protection for employment and specifically noted that the law did not require any accommodation of on-site use of medical marijuana. The *Roe* court had focused on the language of the medical marijuana statute which only discussed protecting health care providers. The court

also emphasized that there was no evidence that the statute provided employment protection or prohibited an employer from discharging an employee for medical marijuana use. The court found that the statute did not support a broad public policy that would remove all impediments to authorized medical marijuana use or forbid an employer from discharging an employee because she used medical marijuana. The *Roe* court also recognized that Washington patients have no legal right to marijuana under federal law, which has the effect of establishing that there is not a broad public policy that would require an employer to allow an employee to engage in illegal activity.

The take-aways from the *Roe* decision are that Washington courts will move cautiously in expanding the scope of legal protections for employees. Washington courts will not attempt to graft on an expansion of the public policy tort claims. The *Roe* decision also emphasizes that employment in Washington is at will and that any public policy exceptions are narrowly construed.