

Employer Required to Reimburse Employee For Medical Marijuana Treatment

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The Court of Appeals of New Mexico issued a decision last week that many employers believe flies in the face of the Controlled Substances Act, 21 U.S.C. §§ 801 (“CSA”), and the Justice Department’s August 29, 2013 Memorandum. Are employers over-reacting?

Sandra Lewis works for Gallagher Bassett Services, Inc., a property casualty third party administrator. In 1998, she suffered a work-related injury to her lower back and after undergoing several surgical procedures, currently suffers from post-laminectomy syndrome, a condition for which she is prescribed medical marijuana under New Mexico’s Compassionate Use Act.

At the administrative level, the workers’ compensation judge ruled that Lewis’ use of marijuana constituted “reasonable and necessary” medical care and required Gallagher Bassett to reimburse Lewis for the cost of her marijuana treatment. Gallagher Bassett appealed, claiming that complying with the judge’s order would require the company to violate the CSA, specifically, section 841A(a), which prohibits a person from knowingly possessing a specific amount of a controlled substance. The company argued that by paying for Lewis’ treatment, it was aiding and abetting her violation of the CSA.

The Court of Appeals dismissed the company’s argument and affirmed the judge’s decision. The Court of Appeals ruled that the Justice Department’s memorandum identifies eight areas where it will focus its enforcement and the Court noted that medical marijuana was not one of them.

The treatment of medical marijuana by courts tends to fall into one of two camps: (1) those that adhere strictly to federal law and (2) those that uphold state-regulated programs notwithstanding federal law. *Coats v. Dish Network, LLC*, discussed in an earlier blog post, is an example of those judges who are in the first camp, and this decision is clearly an example of the second. This split presents a challenge to multi-state employers. It is uncertain where Connecticut will stand on the issue since no court has considered the issue.

My colleague, Megan Carannante and I, will be discussing medical marijuana laws nationwide in more depth in a live webinar on October 15, 2015 from 1:00 PM – 2: 30 PM titled “Weed Out the Confusion About Marijuana Use Law.” Stay tuned for more details.

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