

Recent Colorado Supreme Court Decision on Medical Marijuana Highlights Risks Facing Employers in Connecticut Who Seek to Enforce Drug Free Workplace Policies

Working Together

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As many of our clients know, we frequently train and counsel employers on the implications of Connecticut's medical marijuana law in the workplace. Although medical marijuana use remains illegal under federal law, Connecticut's statute legalizes medical marijuana use in the state and affords users and caregivers certain protections. One of these protections is contained in a unique anti-discrimination provision in the law. This provision prohibits employers from refusing to hire or otherwise discriminating against employees solely on the basis of their status as qualified medical marijuana users.

While employees have protections under Connecticut's law, the protection is not without its limits. The statute is clear that employers need not allow medical marijuana use at work. In this vein, employers may continue to enforce their drug-free workplace policies and discipline a qualified medical marijuana user who violates the employer's policy by "being under the influence of intoxicating substances" during work hours."

Unfortunately, navigating the law's requirements is much more complicated in practice than it appears at first blush, because employers often rely on drug tests to determine whether their employees are using drugs at work. But marijuana remains in the user's system long after the high subsides, so a drug test is not a reliable indicator of whether or not an employee is under the influence during work hours.

How, then, should an employer treat an employee who uses medical marijuana during non-work hours but then inevitably fails a drug test? May the employer enforce its drug-free workplace policy and terminate the employee, or does it risk liability for doing so?

The risk of terminating a qualified user solely on the basis of a positive drug test is illustrated in a decision issued last week by the Colorado Supreme Court, *Coats v. Dish Network, LLC*.

In *Coats*, Dish Network disciplined its employee, Brandon Coats, a quadriplegic who suffers from muscle spasms. Coats worked for Dish Network as a customer service representative for several years. During his employment Colorado amended its Constitution to allow for the sale of marijuana for medicinal purposes. Coats became a registered patient and consumed marijuana legally to alleviate his muscle spasms and

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associated pain. In May 2010, Dish Network required Coats to submit to a random drug test, which he failed. Coats explained to Dish Network that he was prescribed marijuana for his muscle spasms, and only consumed it at home during non-working hours. Dish Network acknowledged that Coats did not appear to be under the influence while at work, but nevertheless terminated him because Dish Network maintained a zero-tolerance, drug-free workplace policy and Coats, by testing positive for marijuana, had violated that policy.

Coats then sued Dish Network in Colorado state court, alleging that his termination violated Colorado's lawful activities statute, which prohibits employers from discharging an employee based on that employee's engaging in "lawful activities" off premises, during non-working hours. Coats argued that pursuant to Article XVIII of Colorado's Constitution, legalizing medicinal marijuana, his outside-of-work medical marijuana use was a "lawful activity," and therefore protected. Dish Network moved to dismiss Coats's lawsuit for failure to state a claim. The state trial court granted the dismissal, which was affirmed by the Court of Appeals.

The Colorado Supreme Court, after much anticipation, upheld Coats's firing. The Court ruled that for an activity to be "lawful", it must be legal under state *and* federal law. Since marijuana is still considered by the federal government as a Schedule I drug, meaning it has no medicinal value and a high likelihood for abuse, Coats' use was illegal under federal law and thus not a "lawful" activity. Dish prevailed, but it did so after litigating the issue for five years.

While Connecticut does not have a "lawful activities" statute, and thus a court could not rely on such a statute to find in favor of an employer in this state, were a situation like the one in *Coats* to arise in Connecticut, the employer could have a more difficult time defending its decision to terminate its employee given the apparent protections afforded by the anti-discrimination provision in our law. In any event, the *Coats* case provides a thorough analysis of some of the issues in play, as well as some interesting insight into how a court may view the competing interests at stake and the complications that arise from the fact that medical marijuana use remains illegal under federal law.

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