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NEWS ALERT

LABOR & EMPLOYMENT

Medical Marijuana Users Can Sue Their Employers

By Michael C. Harrington & Madiha M. Malik | August 15, 2017

In a case of first impression, a federal trial judge has found that, under Connecticut law, an employer can be sued for refusing to hire an applicant who tested positive for medical marijuana use. See Noffsinger v. SSC Niantic Operating Company LLC (D.Conn. Aug. 8, 2017).

In the case at issue, Katelin Noffsinger alleged that she applied for and was offered a position of Director of Recreational Therapy at a local nursing home. Ms. Noffsigner had been diagnosed with post-traumatic stress disorder (PTSD) and was prescribed medical marijuana for her disability. Each night, as prescribed, Ms. Noffsinger ingested a capsule of synthetic cannabis.

Ms. Noffsinger informed the nursing home of her disability and that she was taking prescription marijuana. Not surprisingly, Ms. Noffsinger tested positive for cannabis in a pre-employment drug screen. Upon receiving the results of the drug test, the nursing home rescinded the job offer. Ms. Noffsinger, who had resigned from her prior position in reliance of the job offer, brought a lawsuit alleging, among other claims, that the facility had discriminated against her in violation of the state law allowing medical marijuana use. The nursing home challenged the lawsuit by arguing that the federal Controlled Substances Act (CSA), which prohibits any use of marijuana, preempts Connecticut's law permitting medical marijuana.

Connecticut's Palliative Use of Marijuana Act (PUMA) permits "qualifying patients" with certain debilitating medical conditions to use medical marijuana. While the statute allows employers to prohibit employees from ingesting marijuana in the workplace, the statute prohibits employers from discriminating against an employee/applicant who is either a qualifying patient or a primary caregiver of a qualifying patient.

Courts in other states, which permit medical and recreational use of marijuana, have held that because federal law prohibits all use of marijuana, employers may terminate or refuse to hire employees who tested positive for marijuana. For example, in Oregon, an employee was terminated one week after the employee disclosed that he used medical marijuana in compliance with Oregon state law. The Oregon Supreme Court held that the federal

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Controlled Substances Act prevailed over the state law permitting medical marijuana use and that a claim alleging discrimination based on medical marijuana use could not be brought under the state law. Similarly, the Colorado Supreme Court held that an employer could terminate an employee because of medical marijuana use because marijuana is not "lawful" under federal law.

Last month, the Massachusetts Supreme Court ruled that an employee cannot bring a lawsuit under the Massachusetts statute for an employer's adverse employment action because of medical marijuana use. However, the court determined that the employer's action could constitute handicap discrimination because it could have reasonably accommodated the employee's disability by making an exception to its drug policy. In that case, the plaintiff suffered from Crohn's Disease and was prescribed medical marijuana to treat her disability. Upon accepting a job, the plaintiff was instructed to take a required pre-hire drug test. Although the plaintiff had warned the employer that she would test positive for marijuana, the employer terminated the plaintiff for testing positive. Because the plaintiff claimed she was able to perform the essential functions of her job despite her medical marijuana use, the court found that making an exception to the employer's drug policy was a reasonable accommodation for the plaintiff's handicap.

TAKEAWAYS

Stay tuned as this issue in Connecticut is likely to be reviewed on appeal in the near future. For the time being, employers in Connecticut and Massachusetts run the risk of being sued under state law if they decline to hire or terminate a state-licensed medical marijuana user.

If you have any questions regarding the information included in this bulletin, please contact: Michael C. Harrington at 860.240.6049 or mharrington@murthalaw.com or Madiha M. Malik at 860.240.6164 or mmalik@murthalaw.com

Michael Colgan Harrington, Chair
860.240.6049
mharrington@murthalaw.com

Susan J. Baronoff
617.457.4031
sbaronoff@murthalaw.com

Emily G. Brown
617.457.4121
ebrown@murthalaw.com

Salvatore G. Gangemi
203.653.5436
sgangemi@murthalaw.com

Madiha M. Malik
860.240.6164
mmalik@murthalaw.com

Lissa J. Paris
860.240.6032
lparis@murthalaw.com

Rachel Faye Smith
617.457.4023
rfsmith@murthalaw.com

Sonia Macias Steele
617.457.4118
ssteele@murthalaw.com

Barry J. Waters
203.772.7719
bwaters@murthalaw.com

Kristen L. Zaehringer
203.653.5406
kzaehringer@murthalaw.com