THE
NATIONAL LAW REVIEW

Connecticut Court Rules in Favor of Medical Marijuana User in Discrimination Case

Wednesday, January 2, 2019

A recent U.S. district court decision in Connecticut shows that drug testing applicants and employees in jurisdictions that authorize the use of legalized medical marijuana may present challenges. On September 5, 2018, Judge Jeffrey Alker Meyer of the U.S. District Court for the District of Connecticut issued an opinion granting a motion for summary judgment on an employment discrimination claim brought on the basis of a person's use of medical marijuana as authorized by Connecticut's Palliative Use of Marijuana Act (PUMA).

Background

In the summer of 2016, Katelin Noffsinger underwent mandatory drug testing after accepting an offer to serve as the activities manager at SSC Niantic Operating Company, LLC d/b/a Bride Brook Nursing & Rehabilitation Center. Noffsinger disclosed during the pre-employment process that she was approved under PUMA to use medical marijuana to treat her posttraumatic stress disorder (PTSD). When she tested positive for tetrahydrocannabinol, a chemical component of marijuana, the facility rescinded its employment offer, citing the federal prohibition against marijuana use. Through her subsequent lawsuit, Noffsinger alleged discrimination pursuant to the anti-discrimination provisions in PUMA.

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At the outset of the case, Bride Brook moved to dismiss the claims under PUMA on obstacle preemption grounds pursuant to the Supremacy Clause of the U.S. Constitution, arguing that the state statute is preempted by the federal Controlled Substances Act (CSA). In its 2017 opinion, the court held that, although the CSA regulates the use, possession, and distribution of marijuana, it does not regulate the employment relationship or make it illegal to employ a marijuana user. "Given that the CSA nowhere prohibits employers from hiring applicants who may be engaged in illegal drug use, defendant has not established the sort of 'positive conflict' between [PUMA] and the CSA that is required for preemption."

Following discovery, the parties cross-moved for summary judgment.

The Court's Ruling

Turning to the parties' cross-motions for summary judgment, Judge Meyer considered whether Bride Brook was exempt under the PUMA anti-discrimination provision because it is a federal contractor and must abide by the federal Drug-Free Workplace Act (DFWA). The DFWA requires federal contractors to make a "good faith effort" to maintain a drug-free workplace. The court held, however, that the DFWA does not actually require drug testing or prohibit a federal contractor from employing someone who uses illegal drugs outside the workplace, though both the DFWA and PUMA prohibit drug use at work. Thus, the DFWA did not require Bride Brook to rescind Noffsinger's job offer. Consequently, Bride Brook discriminated against Noffsinger in violation of the Connecticut statute.

Key Takeaways

This case may give some employers pause as medical marijuana laws are passed by more and more states. As of December 2018, laws in 33 states and the District of Columbia authorize the use of marijuana for medical purposes. In 14 states (Arizona, Arkansas, Connecticut, Delaware, Illinois, Maine, Minnesota, Nevada, New York, Oklahoma, Pennsylvania, Rhode Island, Utah, and West Virginia), it is unlawful (with few exceptions) for employers to discriminate on the basis of medical marijuana use. Thus, while employers in those states may continue to conduct pre-employment drug testing and prohibit employees from using or being under the influence of drugs during work hours, they may not refuse to hire, discharge, or otherwise take adverse action against a person solely because of his or her status as an authorized medical marijuana user.

Companies in other states may want to remain vigilant and keep an eye on their states' marijuana laws to ensure company drug policies and practices remain up to date in this rapidly changing environment.

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