

THE
NATIONAL LAW REVIEW

Michigan Court of Appeals Rules in Favor of Employer in Medical Marijuana Case

Wednesday, March 20, 2019

On February 19, 2019, the Michigan Court of Appeals issued a ruling in [Eplee v. City of Lansing](#), clarifying that [the Michigan Medical Marijuana Act \(MMMA\)](#) does not create “an independent *right* protecting the medical use of marijuana in all circumstances, nor does it create a protected class for users of medical marijuana.”

The plaintiff in this case, Angela Eplee, applied for and was conditionally offered a position with the Lansing Board of Water and Light (BWL). Subsequent to Eplee testing positive for tetrahydrocannabinol (THC), BWL rescinded its offer. Eplee sued under the MMMA, Section 4(a), which states, in relevant part, that a qualifying medical marijuana patient who has been issued and possesses a registry identification card may not be “denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau” for the medical use of marijuana. Eplee also asserted a breach of contract claim against BWL. The trial court dismissed the case pursuant to BWL’s motion for summary disposition for failure to state a claim. Eplee appealed.

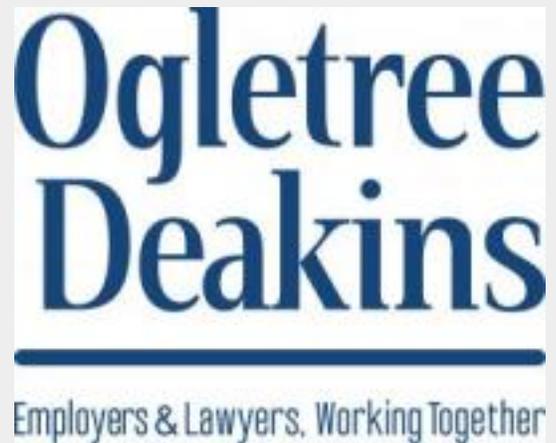
In affirming the trial court’s decision, the Michigan Court of Appeals held that Section 4 of the MMMA “does not provide an independent *right* protecting the medical use of marijuana in all circumstances, nor does it create a protected class for users of medical marijuana.” Furthermore, the court held that because Michigan is an at-will state, a conditional offer of employment could be rescinded for any reason or for no reason at all.

The decision is significant because it is the first time the Michigan Court of Appeals has held that the recently enacted MMMA does not create a private right of action for medical marijuana users in these circumstances.

Importantly, the court’s decision leaves open the question of whether an employee with a “just cause” employment contract, as opposed to an at-will employment offer, might have a cause of action where an offer of employment was rescinded under similar circumstances. Notably, the court distinguished this case from [a 2014 decision](#) in which it upheld an employee’s right to create and maintain a drug-free workplace in light of the MMMA but determined that an employee is not necessarily disqualified from receiving unemployment benefits if he or she tests positive for marijuana. In that case, the employee “show[ed] some pre-existing entitlement or right or benefit that has been lost or denied.” Since Eplee was offered an at-will employment arrangement, Eplee was not able to demonstrate a legal right to employment.

Employers that endeavor to maintain drug-free workplaces may want to establish and maintain clear drug-free policies set forth in their employee handbooks. Drug-free workplace policies are upheld under both Michigan and federal law, and in many cases provide ancillary benefits such as discounts on workers’ compensation insurance and the ability to enter into contracts with state and local governments.

© 2019, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., All Rights Reserved.



Article By
[Alexis Martin](#)
[Ogletree, Deakins, Nash, Smoak & Stewart, P.C.](#)
[Our Insights](#) [Administrative & Regulatory Health Law & Managed Care Litigation / Trial Practice Michigan](#)

Source URL: <https://www.natlawreview.com/article/michigan-court-appeals-rules-favor-employer-medical-marijuana-case>