Nevada Court Rejects Claim That Off-Duty Marijuana Use Is “Lawful” Because It Still Is Illegal Under Federal Law

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Friday, August 26, 2022

The Supreme Court of Nevada upheld the dismissal of a lawsuit by an employee who was terminated after testing positive for marijuana on a post-accident drug test. The Court rejected the employee’s claims that his use of marijuana outside of work hours was “lawful use” under state law. Ceballos v. NP Palace, LLC, No. 82797 (Nev. Aug. 11, 2022).
The employee worked as a table games dealer at a casino. After he slipped and fell in the break room, he was required to take a post-accident drug test. He tested positive for marijuana and his employer terminated his employment. He subsequently filed suit.

The employee’s first claim alleged that his termination violated the state’s lawful products law. That law prohibits employers from discharging an employee “because the employee engaged in the lawful use in this state of any product outside the premises of the employer during the employee’s nonworking hours, if that use does not adversely affect the employee’s ability to perform his or her job or the safety of other employees.” The employee argued that he did not use marijuana at work; and because marijuana was decriminalized in Nevada in 2017, his off-duty use was lawful. The court stated that it had to decide whether off-duty use of marijuana is “lawful” under Nevada state law.

The court held that because marijuana remains illegal under federal law, the employee’s off-duty use of marijuana could not have been “lawful use.” The court explained that if the legislature intended to protect all off-duty use of marijuana, it could have included the phrase “under state law” in the statute, but it did not.

The employee’s second claim alleged a common law tortious discharge claim based on a public policy violation. The Court rejected this claim as the case did not fall into the category of “rare and exceptional cases where the employer’s conduct violates strong and compelling public policy.” Among other things, Nevada’s recreational marijuana law permits employers to adopt and enforce workplace policies prohibiting or restricting the use of marijuana. If the state legislature had wanted to protect all off-duty use of marijuana, it could have done so.

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National Law Review, Volume XII, Number 238