

## New Mexico Court Holds Employers Need Not Accommodate Medical Marijuana Use

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A federal court in *New Mexico* dismissed the lawsuit of an employee who was fired after testing positive for marijuana, even though he used medical marijuana in accordance with state law. ***Garcia v. Tractor Supply Company***, No. 15-cv-00735 (D.N.M. Jan. 7, 2016). The Court held that the employer did not violate New Mexico law or public policy by terminating a new hire for failing a drug test due to the employee's medical marijuana use. The Court's decision followed the holdings of similar cases in California, Colorado, Michigan, Oregon and Washington. Like those cases, the Court held that employers in New Mexico are under no duty to accommodate the use of medical marijuana by employees.

Rojerio Garcia applied for a position as a Team Leader with Tractor Supply Company. During the interview process, Mr. Garcia informed Tractor Supply's hiring manager of his **HIV/AIDS** diagnosis, as well as his resulting participation in the New Mexico Medical Cannabis Program, pursuant to New Mexico's Lynn and Erin **Compassionate Use Act ("CUA")**. Upon hire, Mr. Garcia was required to undergo a drug test, which was positive for cannabis metabolites. Tractor Supply thereafter terminated the employment of Mr. Garcia. Mr. Garcia filed a complaint in state court alleging that Tractor Supply terminated Mr. Garcia based on his "serious medical condition and his physicians' recommendation to use medical marijuana." Tractor Supply subsequently removed the lawsuit to federal court and moved to dismiss the case.

Addressing the "issue of first impression" in the District of New Mexico, the Court squarely rejected Mr. Garcia's claims, relying primarily on the absence of affirmative language in the CUA requiring employer accommodation of medical marijuana cardholders. The Court rejected Mr. Garcia's argument that the CUA makes medical marijuana an accommodation promoted by the public policy of New Mexico and therefore required under the New Mexico Human Rights Act. Additionally, the Court rejected the argument that Mr. Garcia was terminated because of his serious medical condition, as "using marijuana is not a manifestation of HIV/AIDS."

Instead, the Court found Tractor Supply's arguments more persuasive, particularly its public policy argument. The Court stated:

"Were the Court to agree with Mr. Garcia, and require Tractor Supply to modify their drug-free policy to accommodate Mr. Garcia's marijuana use, Tractor Supply, with stores in 49 states, would likely need to modify their drug-free policy for each state that has legalized marijuana, decriminalized marijuana, or created a medical marijuana program. Depending on the language of each state's statute, Tractor Supply would potentially have to tailor their drug-free policy differently for each state permitting marijuana use in some form."

In addition, the Court held that requiring Tractor Supply to accommodate Mr. Garcia's illegal drug use would require it to permit conduct that is prohibited under the federal Controlled Substances Act.

This case is welcome news for employers in New Mexico and joins a growing body of case law dismissing employment discrimination claims of medical marijuana users.

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