

# Up in Smoke: New Mexico Federal Court Rejects Claim that Employer Failed to Accommodate Medical Marijuana Use

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Thursday, March 3, 2016

As more states legalize marijuana for medicinal and recreational use, the interplay among such laws, accommodation requirements under the Americans with Disabilities Act (ADA) or equivalent state laws, and employers' drug-free workplace policies is playing out in the courts.

With regard to medicinal marijuana use and the ADA, employers are faced with a challenging and novel question regarding whether they are required to accommodate marijuana use for medicinal purposes that otherwise would violate their drug-free workplace policies.

This question was addressed most recently by a federal court in New Mexico. In *Garcia v. Tractor Supply Co.*, the court considered whether an employer acted lawfully when it terminated an employee who failed the mandatory drug test for all new employees as a result of his prescription use of medical marijuana. Critically, New Mexico's Compassionate Use Act, which legalized the medicinal use of marijuana, does not expressly require employers to accommodate medicinal marijuana use. However, hoping to defeat the company's motion to dismiss, the plaintiff argued that, because the use of marijuana for medicinal purposes was supported by New Mexico's public policy, employers should be required to accommodate the medical use of marijuana related to a serious health condition. The plaintiff sought a ruling

that the employer's failure to accommodate his use of marijuana for medicinal purposes was a violation of the state equivalent of the ADA, which protects employees with disabilities from discrimination and mandates that employers provide reasonable accommodations to such employees.

The court, however, was not convinced. It pointed to two recent cases in Colorado federal courts which opined that employers are not required to excuse employee conduct in violation of company policies (here, marijuana use) simply because that misconduct relates to or treats the underlying disability. The court also found that the plaintiff was not terminated as a result of his serious medical condition, which would have constituted a violation of the state's ADA equivalent statute. The plaintiff suffers from HIV/AIDS and, as the court pointed out, "using marijuana is not a manifestation of HIV/AIDS."

Notably, the court also relied heavily on the fact that federal law continues to criminalize marijuana use. Were marijuana use to be decriminalized at the federal level, or if the medicinal use of marijuana were lawful under federal law, the court likely would have reached a different conclusion. Likewise, the court might have reached a different decision if New Mexico's Compassionate Use Act expressly required employers to accommodate employees' lawful medicinal marijuana use. Currently, only two states (Connecticut and Delaware) have passed medicinal marijuana statutes that mandate employer accommodations. Thus, employers in those states should be mindful of the obligations imposed by these laws and revise their drug-free workplace policies and practices accordingly.

Additionally, employers in states in where marijuana has been legalized for recreational purposes should review their current policies preventing employees from reporting to work under the influence of drugs or alcohol. Such policies should be revised to prohibit employees from reporting to work while under the influence of illegal drugs, marijuana and/or alcohol.

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