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Massachusetts and Rhode Island Courts Agree – and Disagree – on the Rights of Medical Marijuana Patients in the Employment Context

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Two recent decisions by state courts in Massachusetts and Rhode Island on medical marijuana and the workplace agree on one major issue, but disagree on another.

Massachusetts and Rhode Island state courts agree that an employee receiving an adverse employment action as a result of lawful medical marijuana use is entitled to seek a civil remedy under each state's disability discrimination laws. They differ, however, on whether the respective medical marijuana laws create implied private rights of action available for the employee.

I. Massachusetts

On July 17, 2017, in *Barbuto v. Advantage Sales and Marketing, LLC, et al.*, the

Massachusetts Supreme Judicial Court took up on appeal the issue of whether an employee who was a qualified medical marijuana patient and who had been terminated from her employment because she tested positive for lawful medical marijuana use had a civil remedy against her employer.

Reversing the lower court's dismissal of the plaintiff's discrimination claim, the Supreme Judicial Court held that the employee may sue her employer for disability discrimination in violation of Massachusetts General Laws c. 151B. The Court declined, however, to find an implied statutory private right of action against an employer under the Massachusetts medical marijuana act and affirmed dismissal of the implied private right of action claim.

II. Rhode Island

Two months prior, on May 23, 2017, the Rhode Island Superior Court in *Callaghan v. Darlington Fabrics Corp., et al.* held, similar to the SJC in *Barbuto*, that a qualified medical marijuana patient who had her job offer rescinded solely because of her participation in the state's medical marijuana program was entitled to sue her employer under the Rhode Island Civil Rights Act (Rhode Island General Laws § 42-112-1), which prohibits, among other things, discrimination on the basis of disability.

Unlike the Massachusetts decision in *Barbuto*, however, the Rhode Island Superior Court also found an implied statutory private right of action under Rhode Island's medical marijuana act. The private right of action relates to enforcement of the rights enumerated in Rhode Island General Laws § 21-28.6-4(d), which states: "No school, employer, or landlord may refuse to enroll, employ, or lease to, or otherwise penalize, a person solely for his or her status as a cardholder." The Superior Court interpreted these protections to extend beyond cardholder status and to include medical marijuana use, but notes that the statute does not require accommodation of medical marijuana use in the workplace and does not permit undertaking any task under the influence of marijuana when it would constitute negligence or professional malpractice (see Rhode Island General Laws § 21-28.6-7). Nevertheless, the Superior Court's finding of a private right of action is noteworthy because the enumerated protections to patients under the medical marijuana act are arguably more robust than may be otherwise available under disability discrimination jurisprudence.

Defendants' counsel in *Callaghan* stated to the press that they intended to appeal the decision to the Rhode Island Supreme Court.

III. The Takeaway

Based on these recent decisions, Rhode Island and Massachusetts courts agree that medical marijuana patients who receive adverse employment actions solely due to lawful off-site medical marijuana use may be entitled to bring discrimination claims against their employers under state law.

They appear to disagree at this time, however, on whether each state's law provides for an implied private right of action, as well as the scope of required employer

accommodation of medical marijuana use where it might impact job performance short of negligence or malpractice.

Courts in Massachusetts and Rhode Island – like many courts around the country – continue to grapple with the application of medical marijuana laws in the employment context. As cases continue to wind their way through the courts, practitioners should expect that the case law in this field will continue to develop, and remain unsettled, for some time.