

Medical Marijuana in the Workplace: Recent RI Ruling

Getting High with a Little Help From Your Friends

By Sara Wilkinson, Duffy & Sweeney

Medical v. Regulated Recreational Marijuana

Medical Use – When marijuana is used to treat a disease or improve a condition

- The majority of states have legalized some form of medical marijuana

Regulated Recreational Use – When marijuana is used for non-medical purposes

- 8 states and Washington D.C. have legalized marijuana for recreational use (some cities and towns have their own ordinances for decriminalizing small amounts of marijuana)

Rhode Island – **Medical Marijuana Only**

Federal Controlled Substances Act

Marijuana remains a Schedule I controlled substance under the federal Controlled Substances Act, so possession of marijuana is still illegal under federal law, prescription or not.

Rhode Island Case - Callaghan v. Darlington Fabrics Corporation and The Moore Company (May 23, 2017)

- Plaintiff meet with Defendant regarding an internship as part of her degree program at URI in June 2014.
- During the interview, Plaintiff signed a Fitness for Duty Statement, acknowledging that she would have to take a drug test prior to being hired. During that meeting, Plaintiff disclosed that she held a medical marijuana card, authorized by the State's Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act.
- During a subsequent telephone call, Plaintiff responded affirmatively when asked if she was currently using medical marijuana, and she said that as a result, she would test positive on the pre-employment drug screening.

Rhode Island Case - Callaghan v. Darlington Fabrics Corporation and The Moore Company (May 23, 2017)

- Defendant's HR representative responded by saying that a positive result would prevent the Company from hiring her.
- Plaintiff informed the Defendant that she was allergic to many other painkillers and she would neither use marijuana or bring it in to the workplace.
- Later that day, Plaintiff was informed that the Defendant was unable to hire her:

BECAUSE MS. CALLAGHAN PUT THE CORPORATION ON NOTICE THAT SHE WAS CURRENTLY USING MARIJUANA, WOULD NOT STOP USING MARIJUANA WHILE EMPLOYED BY THE COMPANY, AND COULD NOT PASS THE REQUIRED PRE-EMPLOYMENT DRUG TEST, AND THUS COULD NOT COMPLY WITH THE CORPORATION'S DRUG-FREE WORKPLACE POLICY, THE CORPORATION DID NOT HIRE HER.

- Plaintiff filed suit alleging employment discrimination with respect to not hiring her for an internship position because she held a medical marijuana card, among other claims.

Callaghan v. Darlington Fabrics Corporation: Ruling

Court ruled that a prospective employer may not refuse to hire a prospective employee simply because the prospective employee would fail the employer's pre-hire drug screen due to the use of medical marijuana pursuant to the State's Medical Marijuana Act.

“... this Court gleans that the Hawkins-Slater Act provides that employers cannot refuse to employ a person for his or her status as a cardholder, and that right may not be denied for the medical use of marijuana.”

Callaghan v. Darlington Fabrics Corporation: Ruling (con't)

But there are limits:

“The Hawkins-Slater Act shall not permit ‘[a]ny person to undertake any task under the influence of marijuana, when doing so would constitute negligence or professional malpractice. Sec. 21-28.6-7(a)(1). If an employee came to work under the influence, and unable to perform his or her duties in a competent manner, the employer would thus not have to tolerate such behavior.”

Callaghan v. Darlington Fabrics Corporation: Ruling (con't)

“[t]his Court agrees that Defendants are not required to make any accommodations for Plaintiff as they are defined in the employment discrimination context. **They do not need to make existing facilities readily accessible. Sec. 42-87-1.1(4)(i). They do not need to restructure jobs, modify work schedules, reassign to a vacant position, or acquire or modify devices or examinations. Sec. 42-87-1.1(4)(ii). They do not even need to alter their existing drug and alcohol policy, which prohibits ‘the illegal use, sale or possession of drugs or alcohol on company property.’** While that policy provides that ‘all new applicants who are being considered for employment will be tested for drug or chemical use,’ it does not state that a positive result of such test will be cause for withdrawal of the job offer.”

Callaghan v. Darlington Fabrics Corporation: Ruling (con't)

“the Hawkins-Slater Act does not require ‘[a]n employer to accommodate the medical use of marijuana in any workplace.’ Sec. 21-28.6-7(b)(2). Marijuana need not enter the employer’s premises. Indeed, this is all that is required to maintain a drug-free workplace See 41 U.S.C. 8101(a)(5) (defining “drug-free workplace” as “a site of an entity... at which employees of the entity are prohibited from engaging” in federally-prohibited uses of controlled substances). **What an employee does on his or her off time does not impose any responsibility on the employer.**”

Massachusetts and Connecticut - Similar Rulings

Similar rulings were since issued by MA and CT Courts:

- Massachusetts: *Barbuto v. Advantage Sales and Marketing, LLC and Joanne Meredith Villaruz* (July 17, 2017)
- Connecticut: *Katelin Noffsinger v. SSC Niantic Operating Company, LLC d/b/a Bride Brook Nursing & Rehabilitation Center* (August 8, 2017)

What does this mean?

- Prior to the Callaghan ruling, employers had taken solace in the notion that regardless of if marijuana (medical or recreational) was legal in a state, it was still illegal under Federal law so employers believed they could continue to refuse to hire candidates who failed pre-hire drug screens due to marijuana use – even if it was prescribed.
- With the recent RI/MA/CT rulings, employers must revisit their pre-hire drug screen policies.

NOTE: Ruling may be appealed!!

What Should Employers Do Now?

Policies should consider the following:

- Is the employer required to test for marijuana by any law or government contract?
- Does off-duty medical marijuana use pose a safety risk for the employee/candidate's role?
- Consider if you even want to test for certain roles
- Consider exceptions

What kind of policy has gone up in smoke?

Drug Test Policy Language:

“An offer of employment by Company is conditioned on the prospective employee testing negative for all illegal substances.”

“Any positive test result will be cause for withdrawal of the job offer.”

What policy is okay?

Drug Test Policy which states all new applicants who are being considered for employment will be tested for drug or chemical use – but that is silent on what will happen in the event of a positive result.

OR

Drug Test Policy which states that all new applicants who are being considered for employment will be tested for drug and chemical use and in the event of a positive result for medical marijuana, where required by law, the Company will engage in the interactive process to determine if there is a reasonable accommodation that can be made.

What policy is okay?

General Policies which state that the use, distribution or possession of illegal drugs (including medical marijuana) on company property or being under the influence of these substances when reporting to work or during work hours is prohibited.

Sample Medical Marijuana Policy

The Company does not discriminate against employees with registry identification cards for the use of medical marijuana under the direction of a physician; however, employees are prohibited from medicating during work hours or while at work. An employee may not manufacture, distribute, purchase, transfer or possess medical marijuana while in Company facilities, while operating a motor vehicle or machinery for any job-related purpose, while on the job or while performing Company business.

Questions??



Sara Wilkinson
401.455.0700



swilkinson@duffysweeney.com