

Claim of Massachusetts Employee Fired for Medical Marijuana Use May Proceed, State High Court Rules

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An employee fired after she tested positive for marijuana on a test administered in the hiring process should be able to proceed with her “handicap discrimination” claim under Massachusetts’ anti-discrimination statute, the Massachusetts Supreme Judicial Court has ruled. *Barbuto v. Advantage Sales & Marketing, LLC*, SJC -12226 (July 17, 2017). The Court’s ruling partially overturned the lower court’s decision to grant the employer’s motion to dismiss.

The state high court decision means the search continues for clarity in balancing safety in the workplace with the ever-growing number of workers seeking to continue use of medicinal marijuana in accordance with state laws.

Background

The plaintiff, Christina Barbuto, possessed a valid medical marijuana prescription under Massachusetts law to treat Crohn’s disease. She shared these facts with her prospective employer Advantage Sales and Marketing, LLC. ASM administered a urinalysis drug test and permitted Barbuto to begin work before receiving her drug test result. When ASM found out Barbuto failed the test, testing positive for marijuana, it terminated her employment.

Barbuto then brought suit against ASM alleging:

1. disability discrimination/failure to accommodate in violation of Massachusetts law;
2. invasion of privacy;
3. termination in violation of public policy; and
4. claims that ASM violated Massachusetts’ medical marijuana statute.

ASM moved to dismiss the suit. The Superior Court dismissed all of Barbuto’s claims, except for her invasion of privacy claim. The decision was viewed as consistent with other jurisdictions and as providing necessary clarity for Massachusetts employers.

Supreme Judicial Court Decision

On Barbuto’s appeal, the Massachusetts Supreme Judicial Court, relying upon its reading of the Commonwealth’s anti-discrimination statute, medicinal marijuana legislation, and state agency regulations, overturned the Superior Court’s dismissal of Barbuto’s disability discrimination/failure to accommodate claim under Massachusetts law. It affirmed the remaining portions of the lower court’s decision, including a finding that the Commonwealth’s medicinal marijuana statute did not contain an implied private right of action.

In reviving Barbuto’s discrimination claims, the Court expressly rejected the employer’s argument that, because marijuana is illegal under federal law, requiring an employer to accommodate medical marijuana use is *per se* unreasonable.

Instead, the Court held that, at a minimum, ASM owed Barbuto an obligation to engage in an interactive dialogue concerning her ongoing medicinal marijuana use before terminating her employment. The Court did not foreclose the possibility that accommodating medicinal marijuana use could pose an undue hardship on the employer (citing examples of associated significant safety risks or potential loss of contracts), but left that issue open for the employer to prove at a later date.

Lessons for Employers

This ruling provides a cautionary tale to employers, especially those operating in states where medical marijuana laws have not yet been fully tested through litigation.

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Employers should review their written policies and practices, as well as coordinate with their third-party drug testing entities about how they wish to handle positive marijuana tests.

This ruling also should prompt employers to consider providing new or refresher training to managers and human resources professionals on how to address hiring, drug testing, performance discussions, and termination decisions when the employee involved is a medical marijuana user, including when a decision should be “pushed up the chain” before being made.

While courts in other jurisdictions with similar medicinal marijuana legislation may reach a different result on this issue, all employers should note this development and consider their approach to medical marijuana issues.

Please contact a Jackson Lewis attorney with any questions.

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