

Michigan Medical Marijuana User Fired for Positive Drug Test Lacks Claim against Employer, Appeals Court Affirms

By Maurice G. Jenkins and Emily M. Petroski

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An employee who was terminated after testing positive for marijuana (which he obtained and used pursuant to Michigan's medical marijuana law) has stated no legal claims against his employer, the U.S. Court of Appeals for the Sixth Circuit has ruled. *Casias v. Wal-Mart Stores, Inc.*, No. 11-1227 (6th Cir. Sept. 19, 2012). The Court affirmed dismissal of the plaintiff's wrongful discharge case against the employer.

Facts

Joseph Casias had worked at Wal-Mart for five years as an inventory control manager when, in 2009, he began using marijuana for medical purposes. He had qualified for and obtained a medical marijuana registry card in June 2009 under the 2008 Michigan Medical Marihuana Act ("MMMA"). He began using marijuana outside of work to treat ongoing pain after obtaining the card.

The employer's written drug testing policy provided that an employee injured at work must submit to post-accident drug testing. In November 2009, Casias injured his knee at work and was required to take a post-accident drug test. At the time of the test, Casias advised his manager and the drug testing staff that he possessed a medical marijuana registry card pursuant to the MMMA. He tested positive for marijuana. One week later, he was terminated, in accordance with the employer's policy.

Casias filed suit in state court, alleging wrongful discharge in violation of public policy and violation of the MMMA. The employer removed the action to federal court and requested dismissal of the action. The district court held the MMMA does not regulate private employment and dismissed the wrongful termination action. The plaintiff appealed.

The federal appellate court affirmed the lower court dismissal, finding "the MMMA does not impose restrictions on private employers...."

MMMA

The MMMA (Mich. Comp. Laws § 333.26424(a)) states:

A qualifying patient who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the medical use of marihuana in accordance with this act...

Plain Language

The plaintiff asserted that the plain language of the MMMA protects patients against disciplinary action in private employment for using marijuana, in accordance with Michigan law. He argued the word "business" in the law should be read independently from "licensing board or bureau." The appellate court disagreed. It stated, "Based on a plain reading of the statute, ... the word 'business' describes or qualifies the type of 'licensing board or bureau.'" The Court found the statute "is simply asserting that a 'qualifying patient' is not to be penalized or disciplined by a 'business or occupational or professional licensing board or bureau' for his medical use of marijuana."

The Court also rejected the plaintiff's argument that the plain language of the statute "somehow regulates private employment relationships, restricting the ability of a private employer to discipline an employee for drug use where the employee's use of marijuana is authorized by the state." It stressed

Meet the Authors



[Maurice G. Jenkins](#)

Principal
Detroit 248-936-1921
Email



[Emily M. Petroski](#)

Principal and Office Litigation
Manager
Detroit 248-936-1922
Email

the statute does not expressly refer to employment, “nor does it require or imply the inclusion of private employment in its discussion of occupational or professional licensing boards.” Moreover, the Court noted, other courts that have considered other similar state medical marijuana laws have found they do not regulate private employment actions.

Public Policy

The plaintiff asserted his termination violated the public policy of Michigan, as set forth in the MMMA. Declaring this interpretation unacceptably broad, the Court explained such an interpretation “could potentially prohibit any Michigan business from issuing any disciplinary action against a qualifying patient who uses marijuana in accordance with the Act.” The Court further reasoned, “Such a broad extension of Michigan law would be at odds with the reasonable expectation that such a far-reaching revision of Michigan law would be expressly enacted. Such a broad extension would also run counter to other Michigan statutes that clearly and expressly impose duties on private employers when the duties imposed fundamentally affect the employment relationship.” Accordingly, the Court rejected the plaintiff’s public policy argument and affirmed dismissal of the case.

* * *

Michigan is one of more than a dozen jurisdictions with medical marijuana laws. (These include Alaska, Arizona, California, Colorado, the District of Columbia, Montana, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, and Washington.) The language of these laws varies, and the courts have been interpreting them on a case-by-case basis.

If you should have any questions, or if you require assistance with your drug and alcohol testing program, please contact your Jackson Lewis attorney or a member of our Drug Testing and Substance Abuse Management Practice Group.

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