

May Employers Weed Out Medical Marijuana Patients Through Drug Testing? Massachusetts Supreme Judicial Court Will Weigh In

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The ever-changing landscape of medical marijuana laws in states across the nation has given rise to several lawsuits regarding an employer's right to enforce anti-drug policies against employees who hold valid state-issued medical marijuana licenses. As the Employment Law Observer has previously reported, the [Colorado](#) Supreme Court and a federal district court in [New Mexico](#) previously held that these states' medical marijuana laws do not impose any duty on employers to accommodate medical marijuana use. The Massachusetts Supreme Judicial Court is set to weigh in on the issue next.

In the Massachusetts case, the plaintiff employee was interviewed for a sales and marketing position, and disclosed that she used medical marijuana, as prescribed by her doctor. She was advised that her lawful use of marijuana would not be an issue, and was hired for the position. Her employment was then terminated after an employer-required drug test came back positive for marijuana. The employee filed a complaint in Superior Court alleging discrimination based on her disability, invasion of privacy, wrongful termination, and violation of her rights under Massachusetts' medical marijuana statute. The Superior Court dismissed all claims except the invasion of privacy action.

As for the invasion of privacy claim, the court found that the employee stated a plausible claim for invasion of privacy because the employee's in sales and marketing duties did not appear to implicate workplace safety. As for the remaining claims, the court held the plain language of the Massachusetts medical marijuana law and discrimination statute do not require an employer to accommodate marijuana use. Appeal to the Supreme Judicial Court followed.

On appeal, the employee argued Massachusetts' medical marijuana law allows employers to prohibit the use of marijuana while on the job, but does not permit an employer to terminate an employee for using medical marijuana outside of work, as long as marijuana use does not affect job performance. She further argued that

Massachusetts' disability protection law requires employers to make reasonable accommodations for a disability and therefore she had a right to work even after failing her drug test.

In response, the employer argued Massachusetts' medical marijuana law only provides protection from criminal prosecution and civil penalties, and is silent on protections at work. In support of this argument, the employer cited to eleven other states that have anti-employment discrimination protections written into their medical marijuana laws, citing the absence from Massachusetts' statute as evidence that the legislature intended to not to restrict a company from firing an at-will employee for using medical marijuana. With respect to Massachusetts anti-discrimination statute, the employer argued the employee did not qualify as a "qualified handicapped person," and that it had no obligation to provide an unreasonable accommodation that would require it to modify its drug testing policy.

The Court has not said when it will issue a decision. Perhaps in anticipation of a holding in favor of the employer, a bill has been introduced to protect medical marijuana patients from discrimination in hiring, termination, or imposing any term or condition of employment solely for being a registered patient or caregiver. While both the Supreme Judicial Court decision and bill are pending, Massachusetts employers' right to terminate lawful medical marijuana users remains somewhat unclear. However, as long as marijuana remains illegal under the Controlled Substances Act, employers have a right to maintain a drug-free workplace.

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