September 11, 2018

Connecticut Federal Court Finds Employer Liable for Refusing to Hire Medical Marijuana User

Last week, the United States District Court for the District of Connecticut (the Court) granted summary judgment to a job applicant on her claim that an employer discriminated against her because of her approved use of medical marijuana pursuant to the Connecticut Palliative Use of Marijuana Act (PUMA).

Plaintiff Katelin Noffsinger suffered from post-traumatic stress disorder (PTSD) as a result of a car accident in 2012. In 2015, Noffsinger's doctor prescribed her medical marijuana to combat the PTSD's effects. Pursuant to PUMA's requirements, Noffsinger registered with the Connecticut Department of Consumer Protection as a "qualifying patient" to use medical marijuana.

In July 2016, defendant SSC Niantic Operating Co. LLC, d/b/a Bride Brook Nursing & Rehabilitation Center (Bride Brook), conditionally hired Noffsinger as its Activities Manager, pending, among other things, her passing a drug test. Prior to the drug test, Noffsinger disclosed that she had PTSD and legally used marijuana under PUMA and presented her registration card and an empty prescription bottle that indicated her dosage and name of the pills she took. Not surprisingly, Noffsinger's drug test came back positive for THC. After an independent lab confirmed the positive test—and the day before Noffsinger was scheduled to start work—Bride Brook rescinded the job offer because medical marijuana was still illegal under federal law.

Noffsinger filed a lawsuit alleging several claims, including that Bride Brook discriminated against her in violation of PUMA's anti-discrimination provision. PUMA's anti-discrimination statute provides, in relevant part, that "[n]o employer may refuse to hire a person ... solely on the basis of such person's or employee's status as a qualifying patient...." Noffsinger alleged that Bride Brook had rescinded her job offer based solely on her positive drug test. After Noffsinger filed suit, Bride Brook moved to dismiss Noffsinger's PUMA claim, arguing in part that PUMA was pre-empted by the federal Controlled Substances Act (CSA), which makes illegal the use, possession and distribution of marijuana. In August 2017 the Court rejected that argument, holding among other things that the CSA does not make it illegal to employ a marijuana user and does not purport to regulate employment practices. The parties subsequently proceeded with discovery, and ultimately both Noffsinger and Bride Brook moved for summary judgment.

Bride Brook raised several arguments in opposition to Noffsinger's motion for summary judgment, all of which the Court found to be without merit. First, Bride Brook argued that the federal Drug Free Workplace Act (DFWA), which requires federal contractors to make a "good faith effort" to maintain a drug-free workplace and which Bride Brook had adopted, exempts it from PUMA's anti-discrimination protections. In rejecting this argument, the Court held that the DFWA does not prohibit employers from hiring people who use federally prohibited drugs outside the workplace, especially when the drugs are used in accordance with state law. Second, Bride Brook claimed that the federal False Claims Act prohibits the employment of someone who uses marijuana in violation of federal law on the ground this would result in a fraud upon the government. As with the DFWA, the Court similarly found that the False Claims Act does not apply to the use of drugs outside work hours.

Bride Brook then argued that PUMA only prohibits discrimination based on an individual's status as a qualified patient and not on such patient's actual use of medical marijuana. To the Court, this argument "made no sense," because the use of medical marijuana is the very purpose of gaining status as a qualified patient under the law and this interpretation would nullify the statute's purpose and protections. In addition, the Court noted that PUMA permits restrictions on using or being under the influence of "intoxicating substances" during work hours, making it implicit that an employer cannot discipline an

employee for the use of intoxicating substances, such as medical marijuana or even alcohol, outside work. Bride Brook also attempted to contest Noffsinger's factual allegations, which the Court rejected because it found the material facts to be undisputed, namely that Noffsinger had a doctor's prescription for medical marijuana and that Bride Brook had rescinded her job offer based on her positive drug test. The Court indicated the next step in this case would be to schedule a trial on damages.

This case highlights a significant change in the landscape of laws governing workplace drug testing. PUMA specifically carves out protections for the use of medical marijuana. Where a job applicant or current employee has a prescription for medical marijuana, he or she is protected by that Connecticut state law despite the fact that the use, possession and distribution of marijuana remain illegal under federal law. Different states have very different laws with respect to both recreational marijuana use and medical marijuana use. Accordingly, employers should consult with counsel to ensure appropriate understanding and application of the laws governing their respective jurisdictions.

Authors



Daniel L. Schwartz

Partner

Stamford, CT | (203) 977-7536

New York, NY | (212) 297-5800

dlschwartz@daypitney.com