

Medical Marijuana Update: Colorado Supreme Court Upholds That Employers May Enforce Drug Free Workplace Policies

Labor & Employment Law Update

on June 16, 2015

On June 15, 2015, the Colorado Supreme Court upheld the appellate court's ruling that employers can lawfully terminate employees for use of medical marijuana outside of work in compliance with a drug free workplace policy in *Coats v. Dish Network*, 2015 CO 44 (June 15, 2015).

This is an important decision for employers as many of the state laws "legalizing" marijuana for medical and/or recreational use have been recognized as providing protections from criminal laws, but are unclear as to how much, if any, civil or employment protections are provided to employees under those laws and other state laws.

In *Coats v. Dish Network*, an employee in an administrative position tested positive during a random drug test. The employee advised the employer that he had a state-licensed medical marijuana card and only used marijuana at home outside of work. After reviewing this information the employer terminated the employee for violating its drug free workplace policy.

The employee then sued the employer under Colorado's Lawful Activities Act, Colo. Rev. Stat. Ann. § 24-34-402.5 (West), which prohibits employers from disciplining or terminating an employee for lawful activities engaged in off the premises of the employer during non-working hours. Colorado's Lawful Activities Act is similar to many other state laws, including Illinois, California, Minnesota and New York, which were primarily enacted to prohibit employers from having policies that would prohibit employees from engaging in lawful activities, such as tobacco and alcohol use, outside of work.

The Colorado Supreme Court held that the Colorado Lawful Activities Act only protected outside-of-work activities that are lawful under both Colorado law and federal law. As such, any activities that are unlawful under federal law, like the use of marijuana (medically or recreationally), are not protected under Colorado's Lawful Activities Act.

This is important, as Colorado employers are able to enforce drug free workplace policies without violating Colorado's Lawful Activities Act. Additionally, it provides employers in other states some indication that their state courts may follow the Colorado Supreme Court's lead and find that employers may still enforce drug free workplace policies without violating their state laws. It should be noted that the Colorado Supreme Court relied in part on the federal classification of marijuana as a Schedule I drug that has no medically accepted use, a high risk of abuse and a lack of accepted safety for use under medical supervision, and that a change to the federal classification of marijuana could impact this decision.

The takeaway from the *Coats v. Dish Network* decision for employers is that until there is clear statutory language or case law stating otherwise, employers are able to enforce their drug free workplace policies. That being said, since this is an issue in which case law is still developing and each state has different statutory language and regulations, employers should consult with legal counsel in addressing these types of issues prior to making any discipline or termination decision.

Medical
Marijuana
Update:
Colorado
Supreme
Court
Upholds
That
Employers
May Enforce
Drug Free
Workplace
Policies