

New rulings on medical marijuana use go against employers

By: Associated Press | October 10, 2018

Connecticut health-care worker Katelin Noffsinger told a potential employer that she took medical marijuana to deal with the effects of a car accident, although when a drug test came back positive, the nursing home rescinded her job offer anyway.

A federal judge last month ruled that the nursing home, which had cited federal laws against pot use, violated an anti-discrimination provision of the Connecticut's medical marijuana law.

It was the latest in a series of clashes between U.S. and state laws around the country that came out in favor of medical marijuana users trying to keep or obtain jobs with drug-testing employers.

The Connecticut decision was the first ruling of its kind in a federal case and followed similar recent rulings against employers by state courts in Massachusetts and Rhode Island. Earlier rulings had gone against medical-pot users in employment cases by state supreme courts including those in California, Colorado, Oregon and Washington in the past few years.

Advocates hope new the new decisions are a signal of growing acceptance of cannabis' medicinal value.

"This decision reflects the rapidly changing cultural and legal status of cannabis, and affirms that employers should not be able to discriminate against those who use marijuana responsibly while off the job, in compliance with the laws of their state," said Paul Armentano, deputy director of NORML, a pro-marijuana group.

Noffsinger, of Manchester, Connecticut sued Bride Brook Health & Rehabilitation Center in 2016. She had been offered, and accepted, a job as recreation-therapy director at the nursing home, contingent on her passing a drug test.

She told the nursing home that she took synthetic marijuana pills — legally under state law and only at night — to treat the post-traumatic stress disorder she developed after the 2012 car accident. The company, however, rescinded the job offer after the drug test came back positive for THC, the chemical in marijuana that gets people high.

As a federal contractor, the nursing home worried that it could be cut off from that revenue if it employed somebody who tested positive.

On Sept. 5, U.S. District Judge Jeffrey Meyer in New Haven ruled Bride Brook discriminated against Noffsinger based solely on her medical-marijuana use in violation of state law. He denied her request for punitive damages. The case is now heading to a trial on whether Noffsinger should receive compensatory damages for lost wages from not getting the job.

A lawyer for the nursing home, Thomas Blatchley, declined to comment.

Noffsinger's attorney, Henry Murray, said Noffsinger would not comment on the lawsuit. He said Noffsinger has taken another job in the health-care industry that doesn't pay as much as the Bride Brook job.

In his ruling, Meyer said the federal Drug Free Workplace Act, which many employers including federal contractors rely on for policies on drug testing, does not actually require drug testing and does not prohibit federal contractors from employing people who use medical marijuana outside the workplace in accordance with state law.

The decision will likely be used in arguments in similar cases elsewhere, said Fiona Ong, an employment attorney with the Baltimore firm of Shawe Rosenthal.



“This is a very significant case that throws the issue in doubt for many of these federal contractors,” Ong said. “It’s certainly interesting and may be indicative of where the courts are going with this.”

Thirty-one states, Washington, D.C., Puerto Rico and Guam now allow medical marijuana, while 15 others have approved low-THC-level products for medical reasons in certain cases, according to the National Conference of State Legislatures. Nine states and Washington, D.C., have legalized recreational pot.

Only nine states including Connecticut, however, specifically ban employment discrimination against medical marijuana users, who could continue to face difficulties in obtaining or keeping jobs in the 41 other states, employment lawyers say.

In Massachusetts, the state’s highest court ruled last year that a sales and marketing company wrongly fired a worker after her first day on the job after she tested positive for marijuana, which she used under the state’s medical-marijuana law to treat her Crohn’s disease. Also last year, in Rhode Island, the state Supreme Court said a college student was wrongly denied an internship at a fabric company where officials refused to hire her after she acknowledged she could not pass a drug test because she used medical marijuana.

In both cases, the two women told the companies during the hiring process that they used medical marijuana, although they would not consume it while on the job.

The American Bar Association called the Connecticut, Massachusetts and Rhode Island cases “an emerging trend in employment litigation” and cautioned employers to consider state medical-marijuana laws when analyzing their drug use and testing policies.

Several bills are pending before Congress that would undo marijuana’s classification as a controlled substance with no medicinal value. Armentano, of NORML, however, said it is unlikely they will go anywhere while Republicans control Congress.

Some employers, though, have dropped marijuana from the drug tests they require of employees, saying the testing excludes too many potential workers in a challenging hiring environment.

Like what you read?
In print and online, Missouri Lawyers Weekly provides the latest in-depth coverage of the state’s legal community.
We help good lawyers become great!

CLICK TO SUBSCRIBE

MissouriLawyers
WEEKLY

Tweet

Like 0

Tagged with: MEDICAL MARIJUANA

Order reprint

RELATED POSTS

- New rulings on medical marijuana
- Elections: Initiative Petition -Medical
- Criminal Law : Supervised Release – Medical Marijuana



use go against
employers
© October 10, 2018

Marijuana –
Certification
© September 20, 2018

© July 25, 2018