Rhode Island Company Liable for Refusing to Hire Marijuana User – Is Massachusetts Next?

Description

On May 23rd, the Rhode Island Superior Court ruled that a local company is guilty of discriminating against a prospective employee for refusing to hire the employee because the employee actively used medical marijuana pursuant to a state-issued medical marijuana card.

The ruling in the case of *Callaghan v. Darlington Fabrics and the Moore Company*, is the first of its kind in Rhode Island and makes clear that the state's Hawkins-Slater Medical Marijuana Act (the "Act"), which prohibits discrimination against card-carrying medical marijuana users, also protects the cardholder's *actual use* of marijuana. Despite the fact that using marijuana, even for medical reasons, is illegal under federal law, and despite the fact that the employee in question would be unable to pass the company's mandatory pre-employment drug test, the court found that the company acted illegally in refusing to hire the prospective employee.

Background

Christine Callaghan, a Masters student at the University of Rhode Island, sought an internship as a requirement of her graduate program. She met with a potential employer, Darlington Fabrics, and signed Darlington's Fitness for Duty Statement, acknowledging she would have to take a drug test prior to being hired. During her interview, Callahan told Darlington that she held a medical marijuana card authorized by the Act. During a follow up discussion between the parties, Darlington's representative asked Callaghan if she was currently using medical marijuana. Callaghan said that she was using medical marijuana and that her use would cause her to test positive on her pre-employment drug screening. Although Callaghan made clear that she would not use marijuana at work or even bring it to the workplace, Darlington informed her that it would not hire her because she could not pass the company's mandatory drug test and that she would not be able to comply with Darlington's drug-free workplace policy.

Callaghan filed a lawsuit claiming that Darlington's refusal to hire her was a violation of the Act. The company argued that it declined to hire Callaghan not because she merely *carried* a medical marijuana card (a clear violation of the Act), but rather because she *used* marijuana (an illegal substance under federal law). The company's argument was essentially that it could not be liable for refusing to hire someone because they would fail a pre-employment mandatory drug test administered to all prospective employees because the Act only prohibits discrimination based upon a person's status as a cardholder, but not based upon the actual use of an illegal drug.

Callaghan argued that the company's decision was illegal because the Act not only prohibits the company from refusing to hire a person because they *hold* a medical marijuana card, but that the Act also, by definition, protects a cardholder's *actual use* of the drug. In other words, Callaghan argued that the statute must be read to protect medical marijuana use since that is the whole point of having the card.

The Decision

Not surprisingly given the facts of the case, the court agreed with Callaghan, finding that the Act was designed to protect a medical marijuana cardholder's actual use of marijuana for medical purposes. The court went so far as to find that Darlington's attempted distinction between *holding* a card and *using* the drug to be "incredulous" and that such a reading of the law would render the Act almost meaningless.

It should be noted that Rhode Island is somewhat unique in its treatment of medical marijuana patients as employees using medical marijuana in some other states where medical marijuana is legal (for example New Mexico, Maine, Colorado and New Jersey), have been successfully fired or disciplined after testing positive for the drug. However, Rhode Island's statute is uniquely restrictive in that it explicitly prohibits businesses from discrimination based upon a person's "cardholder status," which essentially overrides any employer policy requiring the passing of a drug test as a condition of employment for medical marijuana patients.

The Silver Lining?

While the Act protects the cardholder's "use" in general, the Act does provide some protection to the employer, though even the protection provided is limited. First, the Act makes clear that the employer is not required to "accommodate the medical use of marijuana in any workplace." This is of some assistance. However, it is of note that while the Act does not require "accommodation" the Act does *not* state that an employer may discipline or terminate any employee under the influence of medical marijuana while at work. Second, the Act does not require or allow a person under the influence of medical marijuana to engage in certain work. But again, even this provision is limited as the actual language of the Act is that work is not permitted under the influence of marijuana "*when doing so would constitute negligence or professional malpractice*." This provision certainly may be read to imply that an employee must be allowed to perform "non-negligent" work while under the influence. Further, employers must still be cognizant of the fact that even if the termination does not violate the Act, a claim may still be brought under the state disability discrimination laws and Rhode Island has not decided whether medical marijuana use is protected by those laws.

Is Massachusetts Next?

Unlike the Rhode Island Act, the Massachusetts medical marijuana law does not address whether medical marijuana patients are entitled to protections against workplace discrimination. This uncertainty in the Massachusetts law is now under scrutiny by the Massachusetts courts and legislature. Specifically:

- The Massachusetts Supreme Judicial Court is presently considering whether general disability discrimination laws restrict a Massachusetts employer from terminating an employee for using medical marijuana outside the workplace. In *Barbuto v. Advantage Sales and Manufacturing*, the employer terminated the plaintiff after she failed a drug test and disclosed that she was a user of medically-prescribed marijuana. The plaintiff now challenges her termination, and claims that the employer failed to accommodate her underlying disability (Crohn's disease) by terminating her employment for using marijuana as a prescribed medical treatment for her disability. In defense, the employer contends that its actions were legitimate because there is no Massachusetts law that specifically extends workplace anti-discrimination protections to users of medical marijuana. Oral argument in the case took place in March 2017 and a decision from the Court is expected in the near future.
- Coincident with *Barbuto*, the Massachusetts legislature is now considering a bill that would expressly prohibit discrimination against medical marijuana users in employment, education, housing, and child welfare.

Although the applicable laws differ, the issues surrounding workplace protections for medical marijuana patients evaluated in *Darlington* are certainly comparable to the issues that are now being considered in *Barbuto*. Whether Massachusetts follows the lead of the Rhode Island Superior Court remains to the seen.

What do you do?

Darlington was not a surprising decision based on the law and facts of the case. It also may not be over. The decision was from the Superior Court. It may be appealed to the State Supreme Court and, as is often the case, the legislature may react to the decision by revising the Act.

The more vexing issue for employers will involve a cardholder's use of marijuana at lunch or before work. In such instances, employers are well-advised to treat medical marijuana users just as they would treat employees using prescribed narcotics such as painkillers. In both situations, the employee is legally using a prescription "medicine". In both circumstances, the employee may be protected by disability laws. And in both situations the employer may still require those same employees to perform the essential functions of their job and to follow the employer's safety standards.

While these general concepts are not new, the intersection between the emerging area of medical marijuana law and existing laws on accommodating disabilities, legal use of prescription narcotics, mandatory drug-testing and drug-free workplaces, will create a virtual mindfield for employers. Employers need to be very thoughtful and strategic when navigating these issues in order to avoid becoming the next "Darlington" in the wave of legal claims that will surely arise.

Date Created
May 25, 2017