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New Mexico Court Finds Employer Had No Obligation to Accommodate Medical Marijuana Use

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Must a New Mexico employer allow an employee to use medical marijuana as a reasonable accommodation for the employee's disability? "No," according to a New Mexico federal district court. On January 7, 2016, the court held that New Mexico's medical marijuana statute and the New Mexico Human Rights Act do not require employers to accommodate medical marijuana use.

The decision joins a growing number of courts dismissing employment discrimination claims brought by medical marijuana users, including a recent Washington decision upholding the termination of an employee who tested positive for marijuana. However, nationwide employers must be mindful of state medical marijuana statutes, like those in Arizona, Connecticut and Delaware, that do require employers to reasonably accommodate disabled employees despite their use of medical marijuana.

The Decision

New Mexico's "Lynn and Erin Compassionate Use Act" (CUA) became effective on July 1, 2007. That statute legalized the use of marijuana to treat serious health conditions. Unlike other states, like California and Colorado, which authorize the use of marijuana for a wide range of medical conditions, New Mexico limits access to a smaller group of citizens with defined serious medical conditions. While some states have included in their medical marijuana statutes a mandate that employers accommodate medical marijuana cardholders, New Mexico's statute has no such language.

In *Garcia v. Tractor Supply Company*, the plaintiff's physician recommended that treatment of his condition (HIV/AIDS) include use of medical marijuana. The plaintiff applied for and was accepted into New Mexico's Medical Cannabis Program, and thereafter received a Patient Identification Card. The plaintiff then applied for a position with the employer. During his interview, the plaintiff advised the employer that he had HIV/AIDS and also that he participated in the Medical Cannabis Program. The employer hired the plaintiff and sent him to a testing facility for a drug test. After the plaintiff tested positive for marijuana, the employer terminated him.

Garcia was decided on the pleadings in a motion to dismiss. The only facts before the court were taken from the plaintiff's complaint, not from any evidence submitted by the parties. This being the case, the court assumed the truth of the plaintiff's allegations. In his complaint, the plaintiff alleged the employer terminated him based on a serious medical condition and his doctors' recommendation to use medical marijuana, and that this decision violated the New Mexico Human Rights Act.

The crux of the plaintiff's claim was that the CUA promotes the use of medical marijuana as part of the public policy of New Mexico, and thus, employers must accommodate the use of medical marijuana under the New Mexico Human Rights Act. The employer countered that the CUA only provides medical marijuana users limited immunity against state criminal prosecution and imposes no duty on employers to accommodate medical marijuana use. The employer also argued that requiring an employer to accommodate medical marijuana use is preempted by the federal Controlled Substances Act (CSA), which makes marijuana use illegal.

The district court found the employer's arguments persuasive and granted the employer's motion to dismiss. The court concluded that "[t]o affirmatively require [the employer] to accommodate [the plaintiff's] illegal drug use would mandate [the employer] to permit the very conduct the CSA proscribes." Moreover, the court addressed the policy implications of requiring a national employer to permit and accommodate drug use that is a violation of federal law. According to the court: "[w]ere the Court to agree with [the plaintiff], and require [the employer] to modify their drug-free policy to accommodate ... marijuana use, [the employer], with stores in 49 states, would likely need to modify their drug-free policy for each state that has legalized marijuana, decriminalized marijuana, or created a medical marijuana program. Depending on the language of each state's statute, [the employer] would potentially have to tailor their drug-free policy differently for each state permitting marijuana use in some form."

Practical Implications

While the decision is good news for New Mexico employers, a few points are worth noting:

- The opinion is not from a New Mexico state court and, thus, may be appealed to the U.S. Court of Appeals for the Tenth Circuit. It also is possible that a New Mexico state court, confronted with similar facts, may rule differently.
- While the employer's drug-testing policies were not at issue in *Garcia*, employers should carefully review their policies. For example, policies should carefully prohibit all illegal drug use, and not just drug use that occurs on work time or while at work, since most employer drug-testing programs measure only the quantity of drugs in a person's system, and cannot determine when the substance was ingested.
- Employers should carefully review their pre-hire paperwork, including offer letters, to ensure they are clear. Employers should also emphasize, and take measures to enforce, restrictions on allowing any applicant to start work before the conditions for the job offer have been satisfied.