

June 15, 2017

## Rhode Island Superior Court Rules on Job Applicant's Medical Marijuana Use

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In a case of first impression in the state, the Rhode Island Superior Court recently ruled an employer is prohibited from refusing to hire a prospective employee because the employee would potentially fail a pre-employment drug test due to the employee's use of medical marijuana. In *Callaghan v. Darlington Fabrics and the Moore Company*, the court held the state's Hawkins-Slater Medical Marijuana Act (the "Medical Marijuana Act"), which prohibits discrimination against medical marijuana users, also protects the cardholder's actual use of marijuana. Even though using marijuana is still illegal under federal law, the court held that employers that refuse to hire card-carrying prospective employees due to their use of medical marijuana may be subject to liability under the Medical Marijuana Act.

### Background

In June 2014, the plaintiff, then a master's student at the University of Rhode Island, sought an internship as a requirement of the program. The plaintiff applied for the position and, on June 30, 2014, met with the defendant's human resources coordinator. At this meeting, the plaintiff signed the defendant's Fitness for Duty Statement, acknowledging that it required applicants to pass a pre-employment drug test prior to being hired. During this meeting, the plaintiff also disclosed that she held a medical marijuana card, authorized by the Medical Marijuana Act.

On the morning of July 2, 2014, the HR coordinator called the plaintiff about the position. During the conversation, the HR coordinator asked the plaintiff if she was currently using medical marijuana, to which the plaintiff responded in the affirmative. The plaintiff informed the coordinator that a pre-employment drug screening would be positive for marijuana, but she would not use or possess marijuana in the workplace. Nevertheless, the HR coordinator informed the plaintiff that a positive drug test would "prevent the Company from hiring her." Later that afternoon, the HR

coordinator called the plaintiff to inform her that because she could not pass the pre-employment drug test, the defendant was unable to offer her the internship.

On November 12, 2014, the plaintiff filed a three-count complaint against the defendant. Count I sought a declaratory judgment that the failure to hire a prospective employee based on his or her status as a medical marijuana card holder and user is a violation of the Medical Marijuana Act. Count II alleged the defendant violated the Rhode Island Civil Rights Act (the “RICRA”). Count III alleged employment discrimination in violation of the Medical Marijuana Act.

### **The Court’s Hawkins-Slater Act Analysis**

After a lengthy analysis, which ultimately concluded the Medical Marijuana Act contained an implied private right of action, the Superior Court turned to the question of whether the defendant violated the Medical Marijuana Act when it refused to hire the plaintiff due to her use of medical marijuana. Section 21-28.6-4(d) of the Medical Marijuana Act prohibits employers from refusing to employ “a person solely for his or her status as a cardholder.” The defendant argued that it did not refuse to hire the plaintiff because of her status as a medical marijuana cardholder, but because of her admitted inability to pass the mandatory pre-employment drug test. The defendant further argued that the Medical Marijuana Act should not be interpreted to require employers to accommodate medical marijuana use, citing that their manufacturing facility contains dangerous equipment and employees under the influence of marijuana may jeopardize workplace safety.

The Superior Court rejected both arguments. The court read §21-28.6-4(d) in conjunction with §21-28.6-4(a), which provides, “[a] qualifying patient cardholder who has in his or her possession a registry identification card shall not be . . . denied any right or privilege . . . for the medical use of marijuana.” By reading these two sections of the Medical Marijuana Act together, the court “glean[ed] that the Hawkins-Slater Act provides that employers cannot refuse to employ a person for his or her status as a cardholder, and that that right may not be denied for the medical use of marijuana.” According to the court, “[t]he statutory scheme is premised on the idea that ‘State law should make a distinction between the medical and nonmedical use of marijuana.’” The court emphasized the fact that if the statute was not interpreted in this broad manner, then medical marijuana users would not be protected because they could be screened out by a facially neutral drug test, which a nonmedical user could pass by refraining from smoking just long enough to pass.

The defendant’s workplace safety argument also failed, as the court pointed to the language in the statute that explicitly states the Medical Marijuana Act shall not permit “[a]ny person to undertake any task under the influence of marijuana, when doing so would constitute negligence or professional malpractice.” R.I. Gen. Laws § 21-28.6-7(a)(1). Thus, according to the court, “[i]f an employee came to work under the influence, and unable to perform his or her duties in a competent manner, the employer would thus not have to tolerate such behavior.” The court granted the plaintiff’s motion for summary judgment and concluded that the defendant violated the Medical Marijuana Act by denying the plaintiff an employment opportunity based on the fact that she would not be able to pass a drug screening.

### **No Federal Preemption**

The court concluded the Medical Marijuana Act was not preempted by the federal Controlled Substances Act because the Medical Marijuana Act did not require employers to accommodate the use of medical marijuana in the workplace, and the two statutes occupied two completely different areas of the law. While the Controlled Substances Act seeks to outlaw the “illegal importation, manufacture, distribution, and possession and improper use of controlled substances,” the Medical Marijuana Act is intended to function in the realm of anti-discrimination and employment law. Since it was not impossible to comply with both the federal and

state law, and since the Medical Marijuana Act did not frustrate the purpose of the Controlled Substances Act, the court rejected the defendant's federal preemption argument.

### **The Court's Analysis under RICRA**

The court also ruled that the plaintiff was disabled under the RICRA. The RICRA prohibits, inter alia, discrimination based on disability in the making and enforcement of contracts, and has been interpreted to provide protections against all forms of employment discrimination. The defendant argued that active drug use is not a disability under RICRA, and thus its refusal to hire the plaintiff was not discriminatory. The court rejected this contention, and made clear that in order to be a medical marijuana cardholder under the Medical Marijuana Act, one must suffer from a "debilitating medical condition." To qualify as a "debilitating medical condition" under the Act, the condition must necessarily "substantially limit [] one or more . . . major life activities." Examples in the Medical Marijuana Act itself include severe ailments, such as cancer, glaucoma, HIV/AIDS, and related symptoms, such as chronic pain and seizures. Thus, the court concluded that if a person qualifies for a medical marijuana card, it necessarily follows that he or she has a debilitating medical condition that qualifies them as disabled under the RICRA.

### **Conclusion**

Callaghan is the first case in Rhode Island to conclude that the Medical Marijuana Act protects disabled individuals from discrimination not only because of their status as a medical marijuana cardholder, but also because of their actual use of medical marijuana. While the case does not require employers in the state to make accommodations for medical marijuana use in the workplace, it may nonetheless have a significant impact on employers in the hiring process. More states are making the medical use of marijuana and/or the general use of marijuana legal. Marijuana remains illegal under federal law and there may be more aggressive enforcement against marijuana use under the Trump administration. These countervailing forces will create a difficult landscape for employers to navigate so stay tuned for further developments.