Schaffer Law, LLC
Labor and Employment Law

Connecticut Medical Marijuana Law Not Pre-empted by Federal Statutes

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In a case of first impression, the federal District Court of Connecticut held that the state's medical marijuana law is not pre-empted by federal laws prohibiting the use of marijuana for any reason. Noffsinger v. SSC Niantic Operating Co, LLC. As such, employers may no longer rely on federal law to automatically deny applicants employment, or terminate employees, testing positive for marijuana, provided such persons are considered "qualifying patients" under the Connecticut statute, referred to as PUMA, the Palliative Use of Marijuana Act, Conn. Gen. Stat. section 21a-408, et seq.

In Noffsinger, plaintiff was an employee who had a prescription for Marinol, a synthetic capsule form of cannabis, that she took each night at bedtime for PSTD. She was recruited by Defendant to work as a director of recreational therapy. She was made a job offer, contingent on passing a drug screen, and she disclosed her use of Marinol prior to taking the test. The test results came back positive for cannabis, and the job offer was rescinded. She then filed suit.

Defendants argued the rescission did not violate PUMA because PUMA was pre-empted by several federal laws overriding PUMA. In particular, they relied on the Controlled Substances Act that lists marijuana as a schedule 1 drug with no known medical use, the ADA which does not protect current users of illegal drugs, and the Food, Drug and Cosmetic Act which does not approve of the use of marijuana for any reason.

The Court, however, found none of these laws specifically governed the employment relationship, while PUMA specifically did. Therefore, there was no pre-emption, and the rights granted by PUMA must be observed.

As a result, Connecticut employers are prohibited from discriminating against authorized persons who use medical marijuana in compliance with PUMA. However, such right does not extend to being under the influence while on the job, or during work hours.

The Court went on to rule that a private cause of action may be brought under PUMA. By relying on the three Napoletano factors, it found plaintiffs like Noffsinger fall within the class for whose benefit PUMA was enacted; there was no indication of the legislature's intent to deny a private right of action; and a private right of action is not inconsistent with the underlying purposes of the legislative scheme, but in fact effectuates its purpose of preventing employers from discriminating against authorized medical marijuana users.

In sum, Connecticut employers should proceed cautiously when terminating employees or applicants for positive drug results. While no employee has the right to be under the influence while working, if cannabis remains in their system from medically prescribed off the job use, such use cannot form the basis for termination.

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