

“DUDE, WHERE’S MY JOB?” THE SIXTH CIRCUIT COURT OF APPEALS REJECTS EMPLOYEE’S CLAIM FOR PROTECTION UNDER MEDICAL MARIJUANA LAW

FORMER EMPLOYEE WITH MEDICAL MARIJUANA CARD CLAIMS FREEDOM FROM DISCIPLINARY ACTION.

The Michigan Medical Marihuana Act ("MMMA"), enacted by referendum, permits an individual with a qualifying medical condition to use or possess a limited amount of marijuana for medicinal purposes if the patient holds a valid registration card obtained after proper physician certification.

In 2009, a Wal-Mart employee, whose physicians diagnosed him with sinus cancer, reported debilitating pain that traditional medications would not alleviate. At the suggestion of his oncologist, the employee obtained a certification and registration card permitting him to use marijuana for medicinal purposes. After he twisted his knee at work while pushing a cart, he tested positive for the presence of marijuana in his blood. As a result, Wal-Mart discharged him for violation of the company's drug-free workplace policy.

The former employee brought an action against Wal-Mart claiming, in part, that the MMMA protected him from discharge because the law prohibited "disciplinary action by a business or occupational or professional licensing board or bureau, for the medical use of marijuana in accordance with this act..." The argument centered on whether the reference to "disciplinary action by a business" contemplated restrictions against disciplinary action by a private employer or, on the other hand, whether the reference to "a business" merely modified the words "licensing board or bureau." The district court dismissed the case.

U.S. COURT OF APPEALS REJECTS THE CLAIM.

The U.S. Court of Appeals for the Sixth Circuit upheld that decision in *Casias v. Wal-Mart Stores, Inc.* (Sept. 19, 2012). The Court concluded that the word "business," under the language of the MMMA, simply modifies the phrase "licensing board or bureau," and that the MMMA therefore "is simply asserting that a 'qualifying patient' is not to be penalized or disciplined by a 'business or occupational or professional licensing board or bureau' for his medical use of marijuana." Since a private employer does not constitute a "business licensing board or bureau," the MMMA does not protect an employee from disciplinary action. The Court of Appeals further noted that courts in other states (including Montana, Washington and California) had likewise indicated that their medical marijuana laws did not regulate private employers.

EMPLOYERS CAN REST A LITTLE EASIER.

The Sixth Circuit's decision should give comfort to Michigan employers wishing to discipline or discharge employees who test positive for marijuana but who offer medical marijuana registration cards as excuses. Although the *Casias* decision does not clear all legal hurdles to disciplinary action against employees, it does clarify one important question that has simmered since the law's enactment four years ago.

If you have questions about this topic, please contact Jonathon Rabin at (248) 457-7835 or jrabin@hallrender.com or your regular Hall Render attorney.