Is An Employee In MA Protected For Using Medical Marijuana?

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Is An Employee In Massachusetts Protected For Using Marijuana?

The landscape of marijuana tolerance in the United States is no doubt changing. This includes those who advocate for the medicinal use of cannabis and those who are willing to tolerate its recreational use. We question, Is an employee in MA protected for using medical marijuana?

Currently there exist 23 different states that have passed some form of medicinal marijuana use law, not including the District of Columbia and the seven states where legislation is currently pending. That means an astonishing 30 states, or 60%, could have legislation legalizing the medicinal use of marijuana. Of the 23 states that currently allow for medicinal marijuana use, 4 states plus the District of Columbia have passed legislation allowing for the recreational use of marijuana.

While Massachusetts has not gone as far as to allow for recreational use of marijuana, they are 1 of 19 states which has decriminalized certain possession laws for small amounts of marijuana. In addition to its liberal views of marijuana, Massachusetts is also happens to be one of the most civil rights minded states, being one of the first states to implement anti-discrimination laws in education (1855), public accommodations and employment (1944).

So as one of the more lenient states in the country in their opinion of marijuana and their history of being pioneers in the fight against discrimination one could easily assume that Massachusetts would allow for the use of medicinal marijuana as a reasonable accommodation for those employees who are lawfully prescribed cannabis for treatment of serious and chronic disabilities, however that is likely not the case. Unfortunately that is an issue which has yet to be decided in Massachusetts.

Colorado was one of the first states to implement medical marijuana laws and became one of the first state (along with Washington) to allow for the recreational use of marijuana in 2012. In addition to their law allowing for recreational use, Colorado also has a law making it unlawful to terminate an employee for engaging in a “lawful” activity. This past summer the question was asked of the Supreme Court of the State of Colorado whether an employer could terminate an employer for the “lawful” use of medicinal marijuana. The answer was yes. In Coats v. Dish Network, the Court agreed with reason that because the law stated it was unlawful for an employer to terminate an employee for engaging in “lawful” conduct and under federal law (the Controlled Substances Act) the use of marijuana in any form was unlawful, Coats had failed to state a claim.

Because the Controlled Substances Act makes marijuana a Schedule I drug (meaning that it "has a high potential for abuse…has no currently accepted medical use in treatment in the United States there is a lack of accepted safety for use of the drug or other substance under medical supervision" [21 U.S.C 812(b)(1)) the use of marijuana cannot be deemed a reasonable accommodation under the ADA (Americans with Disabilities Act) and as such any use at all is deemed to be unlawful under federal law as it is the supreme law of the land. Massachusetts' laws are less lenient than Colorado, which is why it is likely that when the issue is heard in Massachusetts one can assume a similar outcome.

However all hope is not lost, as under Massachusetts' law, an employer would still need to show how the use of medical marijuana creates an "undue burden." This will be a daunting task for the employer and creates the best chance for an employee to establish that the use of medical marijuana should be seen as a reasonable accommodation under Massachusetts law.

If you or a loved one has experienced discrimination based upon the use of medical marijuana, having a trained and knowledgeable attorney can often prove the difference between being subject to unwarranted and unlawful discipline and being left to make your own medical choices for your debilitating medical condition. Call us at (508) 880-6677 or Request a Consultation

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