

Florida Employers Should Consider Accommodations for Off-Duty Use of Medical Marijuana, Court Rules

Article By:

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Florida law requires employers to consider accommodations for off-duty use of medical marijuana, a Florida state court has held and granted the plaintiff's motion for summary judgment. *Giambrone v. Hillsborough County*, No. 20-CA-4719 (Fla. 13th Cir. Ct. Dec. 10, 2024).

The plaintiff, Angelo Giambrone, was employed by Hillsborough County as an emergency medical technician (EMT) and was selected for a random urine drug test. He tested positive for marijuana. In accordance with an applicable collective bargaining agreement and Hillsborough County's Drug Free Workplace Policy, Giambrone presented his employer and the testing doctor with a valid medical marijuana card.

Hillsborough placed Giambrone on administrative leave. It never alleged Giambrone used marijuana during the course and scope of his employment as an EMT or that his job performance was negatively affected by his use of cannabis outside of work. After Giambrone's positive drug test, Hillsborough reported him to the EMT licensing board. The board subsequently dropped their investigation for lack of probable cause based on Giambrone's possession of a medical marijuana card.

Giambrone sued the employer, alleging disability discrimination for failure to accommodate under the Florida Civil Rights Act. He also alleged wrongful termination and breach of contract for failure to accept his state-issued medical marijuana card as justification for his positive drug test result. Hillsborough argued that a medical marijuana card does not immunize an employee from both federal law and employee discipline.

The court noted Giambrone was a qualified patient suffering from anxiety and insomnia that "significantly impacts his day-to-day life when unmedicated." The court further noted the plain language of Article X, Section 29 of the Florida Constitution states that it does not require accommodations for any *on-site use* of medical marijuana "in any place of education or employment" The court concluded the Florida State Constitution requires employers to accommodate the *off-site use* of marijuana by qualified patients. Thus, any legislative ban on the private off-duty use of medical marijuana by qualified patients would be unconstitutional under state law. Accordingly, Giambrone was protected under the Florida Civil Rights Act and was entitled to a disability accommodation.

The court was unpersuaded by the argument that marijuana is illegal under federal law, because Giambrone's EMT license was supervised by the state of Florida, not federal law. The Florida Department of Health dropped its investigation of Giambrone because he held a valid medical marijuana card. In addition, the court noted that language in the collective bargaining agreement permitted employees to report the use of prescription medications that are authorized under federal *or state law* to explain their positive drug test results.

Florida employers should review their policies and practices with respect to positive drug test results caused by the off-duty use of medical marijuana.

Law Graduate Yori Johnson assisted in the preparation of this blog post.

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