

Massachusetts State Court Rejects Medical Marijuana Suit

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In another win for employers with regard to medical marijuana use by employees, a Massachusetts state court rejected a former employee's legal claims under the state's medical marijuana law. *Barbuto v. Advantage Sales and Marketing, LLC, et al.*, No. 15-02677 (Mass. Sup. Ct. May 31, 2016).

The plaintiff, Christina Barbuto, possessed a valid medical marijuana prescription under Massachusetts law to treat Crohn's disease. When her employer, Advantage Sales and Marketing, LLC ("ASM"), terminated Barbuto's employment after testing positive for marijuana, she then brought suit alleging: (1) disability discrimination/failure to accommodate in violation of Massachusetts law; (2) invasion of privacy; (3) termination in violation of public policy; and (4) claims that ASM violated Massachusetts' medical marijuana statute.

In deciding whether an accommodation for medical marijuana was required, the Superior Court looked at the plain language of the medical marijuana statute at issue, as well as the state's anti-discrimination statute generally, to conclude that there was no obligation under state law to accommodate such marijuana use. In reaching this conclusion, the Superior Court also noted federal precedent holding that disability discrimination does not extend to medical marijuana use because such use remains illegal under federal law. Moreover, the Court held that the Massachusetts medical marijuana law provided no private right of action to employees, and that there was no clear public policy that would prevent an employer from discharging an employee who uses medical marijuana.

The Court did not, however, dismiss Barbuto's invasion of privacy claim. In Massachusetts, courts will balance an employee's privacy rights against the employer's competing interest to determine whether employees are using drugs. In general, employers do not violate employees' privacy rights when the testing is being conducted to maintain workplace safety. Here, Barbuto alleged that the drug test was unreasonable and inappropriate, given her job duties (which were not identified in the decision) and the type of business in which ASM is engaged.

While this decision is welcome news for Massachusetts employers, it also highlights that an employer must ensure that its drug and alcohol testing policy complies with all applicable laws. In states with privacy rights in the context of workplace drug testing, employers should not conduct "suspicion-less" testing such as post-accident testing and random testing, unless the employees to be tested are "safety-sensitive," *i.e.*, their job duties pose a threat to the health or safety of themselves or

others if they were to perform the job while impaired by drugs or alcohol.

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