



on the job

TRACKING DEVELOPMENTS IN EMPLOYMENT LAW

Medical Marijuana is a Reasonable Accommodation

By: Bruce A. Truex and Dane Lepola

August 15, 2017

The Massachusetts Supreme Court reversed a lower court's dismissal of a handicap discrimination claim against an employer who fired an employee due to her use of medical marijuana. *Barbuto v Advantage Sales and Marketing, LLC*, 477 Mass 456 (2017). In so doing, the court found an employee's use of medical marijuana was not facially unreasonable.

Plaintiff Cristina Barbuto suffered from Crohn's disease, but found relief from her symptoms via the use of medically prescribed marijuana. She informed her employer that she would test positive for marijuana, and that she was prescribed marijuana by a doctor pursuant to Massachusetts law. When Plaintiff's drug test came back positive for marijuana she was fired. As a result, she filed suit alleging, amongst other things, handicap discrimination.

The trial court granted a motion to dismiss this claim, but the Massachusetts Supreme Court overruled, finding that the possible accommodations to allow Plaintiff to work with her disability did not rise to the level of "facially unreasonable." However, the court did note that its holding did not "necessarily mean" that Plaintiff would prevail in proving handicap discrimination. If, for example, an employer were able to prove that the use of marijuana impaired an employee's performance, caused harm to other employees, or infringed on the employer's contractual obligation, it may be able to show that the accommodation is unreasonable.

SECRET WARDLE NOTES

Although the federal government still views marijuana as a Schedule I narcotic, a vast number of states allow its use in a medical context. The Massachusetts Supreme Court compared firing someone due to their use of marijuana to firing someone because of insulin usage, therefore, putting marijuana on the same level as any other prescription drug. The use of marijuana in a medical context has been approved by voters in numerous states, and the Massachusetts Supreme Court has upheld an employee's right to work while using medical marijuana, so long as the reasonable accommodations do not cause an undue hardship to the employer. Employers should consider the issue of undue hardship and the danger to other employees when considering such an accommodation.

Although the court found that Plaintiff's handicap discrimination claim was strong enough to survive dismissal, it upheld dismissal of Plaintiff's claims of violation of public policy and that the employer's action gave rise to a separate, private cause of action. The court reasoned that allowing the private action under the Medical Marijuana Act and wrongful termination claim would do nothing more than create potential confusion.

The Massachusetts Supreme Court was careful to state that it was only reversing a dismissal. It noted that if the employer could show that an employee's marijuana use could cause an undue hardship, it would justify termination. The Court reasoned that a decision on the issue of undue hardship must await either a motion for summary judgment or trial, not a motion for dismissal.

PLEASE CLICK HERE TO SIGN UP FOR SECREST WARDLE NEWSLETTERS PERTINENT TO OTHER AREAS OF THE LAW



**We welcome your questions -
Please contact Bruce A. Truex at
btruex@secrestwardle.com
or 248-539-2818**





Secret Wardle



Email



YouTube



LinkedIn



Twitter



Troy 248-851-9500
Lansing 517-886-1224
Grand Rapids 616-285-0143
www.secretwardle.com

CONTRIBUTORS

Employment Law Practice Group
Bruce A. Truex, Chair
Christopher M. Hogg, Co-Chair

Editors
Linda Willemsen
Sandie Vertel

This newsletter is for the purpose of providing information and does not constitute legal advice and should not be construed as such. This newsletter or any portion of the newsletter is not to be distributed or copied without the express written consent of Secret Wardle.

Copyright © 2017 Secret Wardle. All rights reserved.