Legal Update Article

Refusing to Hire Medical Marijuana User Violates State Law, Connecticut Court Holds

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September 6, 2018

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Refusing to hire a medical marijuana user because she tested positive on a pre-employment drug test violates Connecticut's medical marijuana law, a federal court in Connecticut has held, granting summary judgment to the job applicant on her employment discrimination claim. ***Noffsinger v. SSC Niantic Operating Co., LLC, d/b/a Bride Brook Nursing & Rehab. Ctr.,*** No. 3:16-cv-01938, 2018 U.S. Dist. LEXIS 150453 (D. Conn. Sept. 5, 2018).

However, the court declined to award the applicant any attorneys' fees or punitive damages. The court also dismissed her claim for negligent infliction of emotional distress.

Background

Bride Brook, a federal contractor, made an offer of employment to Katelin Noffsinger contingent on her passing a pre-employment drug test. Noffsinger told Bride Brook that she was a registered qualifying patient under the Connecticut Palliative Use of Marijuana Act (PUMA) and she has used medical marijuana since 2015 to treat post-traumatic stress disorder.

When the pre-employment drug test came back positive for marijuana, Noffsinger was not hired because the employer followed federal law holding that marijuana is illegal.

Noffsinger filed a complaint in state court, alleging, among other things, a violation of PUMA's anti-discrimination provision.

The provision states:

> [U]nless required by federal law or required to obtain funding: ... No employer may refuse to hire a person or may discharge, penalize or threaten an employee solely on the basis of such person's or employee's status as a qualifying patient.

The court denied Bride Brook's motion to dismiss. *Noffsinger v. SSC Niantic Operating Co., LLC, d/b/a Bride Brook Nursing & Rehab. Ctr.,* 273 F.Supp.3d 326 (D. Conn. Aug. 8, 2017). The court held:

1. PUMA provides a private right of action to aggrieved medical marijuana patients; and
2. Federal law does not preempt PUMA's prohibition on employers' firing or refusing to hire qualified medical marijuana patients, even if they test positive on an employment-related drug test.

After that decision, the case proceeded with discovery, and both parties moved for summary judgment.

Federal Drug-Free Workplace Act Did Not Require Withdrawal of Job Offer

Bride Brook argued that its refusal to hire Noffsinger is allowed by an exception to PUMA's anti-discrimination provision (when "required by federal law or required to obtain federal

funding"). It argued that the federal Drug-Free Workplace Act (DFWA) barred it from hiring Noffsinger because that law prohibits federal contractors from allowing employees to use illegal drugs. Marijuana is illegal under federal law. The court rejected Bride Brook's argument, noting that the DFWA does not require drug testing and does not regulate employees who use illegal drugs outside of work while off-duty.

Similarly, the court rejected Bride Brook's argument that hiring Noffsinger would violate the False Claims Act. It held that hiring an employee who uses medical marijuana outside of work while off-duty would not defraud the federal government.

Bride Brook also argued that it did not violate PUMA because it did not discriminate against Noffsinger based on her *status* as a medical marijuana user; rather, it had relied on the positive drug test result. The court dismissed this argument, concluding that acceptance would render a medical marijuana user's protection under the statute a nullity.

While the court held the employer had engaged in employment discrimination, it declined to award Noffsinger attorneys' fees or punitive damages because those types of damages are not expressly recoverable under PUMA.

Additionally, the court dismissed Noffsinger's claim for negligent infliction of emotional distress because the employer did not engage in "unreasonable conduct" and Noffsinger chose to give notice to her prior employer that she was resigning before she had advised Bride Brook of her medical marijuana use.

Implications for Employers

Noffsinger illustrates that employers (including federal contractors) should not rely solely on federal law or their status as a federal contractor when making employment decisions with regard to applicants and employees who use medical marijuana. Courts in Connecticut and certain other states will enforce state laws against discrimination with regard to medical marijuana use.

Employers in Connecticut and elsewhere should consider the marijuana laws affecting their workplaces now, *before* an issue arises, and adjust their policies as necessary.

Jackson Lewis attorneys are available to answer inquiries regarding this case, workplace drug testing, and other workplace developments.