LEGAL UPDATES

PUBLISHED: JUNE 15, 2015

# Colorado Supreme Court: Employers Can Discharge Workers Using Medical Marijuana

Today, the Colorado Supreme Court unanimously held that Colorado's Lawful Off-Duty Activities Statute does not protect employees from discharge for using medical marijuana away from work. In a highly anticipated decision, *Coats v Dish Network, LLC*, No. 13SC394, the Colorado Supreme Court ruled that the plain language of the statute that protects employees engaging in "lawful off-duty activities," does not cover medical marijuana use, which is illegal under federal law.

The employee who filed the lawsuit, Brandon Coats, was a quadriplegic working in Dish Network's call center as a customer service representative. Coats had a state-issued medical marijuana license to treat muscle spasms. He alleged that he used marijuana at home during non-working hours and was never high at work. Dish discharged Coats after he tested positive for THC, the active ingredient in marijuana, in a random drug test, in violation of Dish's zero-tolerance drug policy. He argued that under the lawful off-duty activities statute, Dish was not permitted to discharge him for using medical marijuana during nonworking hours and off company premises.

In a straightforward and succinct opinion, the Colorado Supreme Court focused solely on the language of the lawful off-duty activities statute to decide that "lawful" refers only to activities that are lawful under *both* state and federal law. Justice Allison Eid declared "Coats' use of medical marijuana was unlawful under federal law and thus not protected by section 24-34-402.5," rejecting Coats's and others' arguments that the term "lawful" refers only to Colorado law. The court declined to address arguments about the underlying purpose of the statute, the medical need for individuals like Coats to use marijuana, and whether Colorado's medical marijuana amendment made its

use “lawful” or merely decriminalized under state law. The Supreme Court even declined to address one of the two questions it posed when granting certiorari: whether the amendment to Colorado’s constitution authorizing medical marijuana conferred a “right” to its use.

The decision did not address recreational use of marijuana, but the court’s interpretation of the lawful off-duty activities statute would appear to apply with equal force to the use of recreational marijuana, which of course is also illegal under federal law.

**What This Means to You**

For Colorado employers, the decision is unquestionably a victory. Employers who implement drug testing protocols retain the discretion to dismiss employees for use of marijuana. For those employers with employees in safety sensitive positions, such as in the mining or manufacturing industries, the decision affirms a tool some employers rely on to ensure a safe workplace. It also ensures that Colorado employers subject to the federal Drug Free Workplace Act of 1988 and U.S. Department of Transportation regulations are not put into the quandary of having to comply with conflicting state and federal requirements.

At the same time, employers should not read too much into the decision, as it is not a stamp of approval for zero-tolerance drug testing. Coats was a sympathetic plaintiff, and his position as a telephone customer service representative highlights that a one-size-fits-all drug testing protocol may not be in an employer’s best interests. Employers should continue to make thoughtful, individualized assessments about whether a zero-tolerance drug testing protocol is in the company’s best interest, even if such practices do not violate employee privacy statutes.

And in a final word of caution, this decision will likely have little impact on non-Colorado employers, even for those employers in states that have medical or recreational marijuana. Few states have employee privacy statutes like Colorado’s, and the court’s decision is restricted to the language of Colorado’s law.