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Marijuana, Drug Testing, and UI Eligibility: The Michigan Experience

National UI Issues Conference - UWC
Wendy Block, MI Chamber

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MI Medical Marijuana Law

- **Michigan’s Medical Marijuana Act (MMMA) was approved by voters in 2008 via statutory initiative**
 - Initiated Law 1 of 2008
- **Allows those with “debilitating medical conditions” to use marijuana and not be subject to “arrest, prosecution, or penalty in any manner”**



MI Medical Marijuana Law (MMMA)

- **Act specifically states employers are NOT required to accommodate:**
 - Ingestion of marijuana at work
 - An employee working “while under the influence of marijuana”



The MMMA does **NOT**:

- Act does not allow users to:
 - Use marijuana in public
 - Use or possess marijuana on school grounds or in any correctional facility
 - Drive while under the influence



Business Groups Neutral on Prop 1

- **Proponents argued language allowed employers to refuse accommodation and to uphold zero tolerance drug policies**
 - Most of the funding came from D.C. – based Marijuana Policy Project (\$2 million)
- **No real organized opposition until late in the campaign**



Questions Raised Late in the Campaign:

Does the Act protect users from being subject to disciplinary action by an employer?

-OR-

Must employers accommodate an employee's use of marijuana **OUTSIDE** of the workplace?

-OR-

Does the MMMA expose Michigan employers to civil or other liabilities for discharging an employee engaged in conduct that is a federal felony?



The Courts: A Mixed Bag



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1st Major Case: *Casias v. Wal-Mart*

- **FACTS:**

- Joseph Casias tested pursuant to mandatory post workplace-injury testing program
- Tested positive for marijuana and admitted to medical marijuana use beginning in 2009
- Presented MMMA registry card post-injury
- Employer drug policy had no exceptions
- Casias' employment was terminated



Casias v. Wal-Mart

- **Employer's drug use policy – no exceptions for medical marijuana**
- **Employer's corporate drug screening department made the decision to terminate Casias' employment**
- **Individual store manager – no discretion to vary from termination decision**



Casias v. Wal-Mart

- **U.S. Court of Appeals (Sixth Circuit) held 2-1:**
 - **MMMA does not regulate private employment either expressly or implicitly**



Braska v. Challenge Manufacturing Co.

- ***Michigan Court of Appeals (3-0, unpublished)***
 - Court consolidated 3 cases
 - All dealt with situations where the employee was a MMMA patient, terminated and subsequently disqualified for UI benefits
 - **Finding: Although UI claimants testing positive for marijuana would ordinarily be disqualified for UI benefits under the UI law, the same does not hold true for employees using marijuana under the MMMA**



Medical Marijuana

- Court held that MMMA preempts MI UI law
 - Disqualifying a claimant for UI benefits due to a positive marijuana drug test is a “penalty” under the MMMA
 - MMMA reads: “A qualifying patient who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege....”



Impact of UI Decision

- **Decision puts employers in a dilemma**
 - Accommodate medical marijuana users and possibly jeopardize workplace or discharge those employees and pay their UI benefits and subsequently, higher UI taxes
- **No other state requires this type of accommodation**



Medical Marijuana: Take Away

- **Impact case will have on other areas of employment law**
 - Could MMMA card excuse someone of obligation under WC law to prove disability or look for work? Could any reduction in WC due to bad job seeking behaviors be seen as a “penalty”?
 - Can you send someone home for the day without pay if reported high to work?
 - Can worker be subjected to discipline under other provisions of the UI Act (e.g., job search activities) if claim medical marijuana use “prevented” him/her from conforming?

Medical Marijuana: Take Away

- **State of MI pursuing appeal!**
 - If left to stand, dramatic impact on private/public sector employers
 - Expect further challenges to the law as it relates to employment law
 - Legislative “fix” possible but difficult
 - 3/4th vote needed
 - **STAY TUNED....**



Questions?

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