



Can Michigan Employers Terminate Employees Who Lawfully Use Medical Marijuana?

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Foster Swift Employment Labor & Benefits News

January 25, 2018

Since 2008, when the Michigan Medical Marijuana Act (the “MMMA”) went into effect, employers in Michigan have been presented with new and nuanced issues related to how the new marijuana law would impact employment-related decisions.

In this article we’ll cover an issue that many employers have faced in the post-MMMA world: Can an employee with a medical marijuana card be fired for testing positive for marijuana and, if so, can the employee collect unemployment benefits?

Can an Employee with a Medical Marijuana Card be Fired for Failing a Drug Test?

The MMMA does not place any limits or restrictions on workplace drug testing. Therefore, regardless of whether an employee may lawfully use medical marijuana, they may be tested for drugs in accordance with established drug testing programs. This includes unionized employees, although drug testing is a mandatory subject of collective bargaining.

An employee who fails a drug test may be fired for violating a drug free workplace policy - again, regardless of whether they have a marijuana card or not. The MMMA does not regulate private employment nor protect against termination from private employment. It only provides a potential defense against criminal prosecution or some other adverse action by the state.

An employer terminating an employee for marijuana use must still proceed carefully. Just because its actions may not violate the MMMA, they may still give rise to, for example, a claim for discrimination or retaliation, or a claim for defamation if the reason for termination is publicized and the test result was a false positive.

Can a Terminated Employee with a Medical Marijuana Card Collect Unemployment Benefits?

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An employee who possesses a valid marijuana card and is terminated solely for testing positive for marijuana may be able to collect unemployment benefits. The Michigan Court of Appeals considered this issue in the recent case of *Braska v. Challenge Manufacturing Co.* In this case, the court stated:

"Claimants tested positive for marijuana and would ordinarily have been disqualified for unemployment benefits under MESA (Michigan Employment Security Act), however, because there was no evidence to suggest that the positive drug tests were caused by anything other than claimants' use of medical marijuana in accordance with the terms of the MMMA (Michigan Medical Marijuana Act), the denial of the benefits constituted an improper penalty for the medical use of marijuana under the MMMA."

Thus, employees in Michigan who possess a medical marijuana card but are discharged for testing positive may be entitled to unemployment benefits.

The MMMA implicates a number of hiring, firing, and other employment-related issues. Employers should approach these issues with caution and work with an experienced attorney to craft policies and make employment decisions to ensure that they don't run afoul of the law and expose themselves to liability. If you have any questions about these issues, please contact a labor and employment attorney at Foster Swift.
