

Court OKs Unemployment Benefits for Some Michigan Medical Marijuana Users

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An employee who has a registration identification card issued under the Michigan Medical Marijuana Act (MMMA) may collect unemployment benefits if he is fired for a positive marijuana test, the Michigan Court of Appeals recently ruled in *Braska v. Challenge Manufacturing Co.* Ordinarily, failing a drug test would disqualify a worker for unemployment benefits under the Michigan Employment Security Act (MESA).

The Court found that denying unemployment benefits is a civil penalty against persons who use medical marijuana in accordance with the MMMA, which is prohibited by that Act.

For employers, this ruling does not mean they cannot terminate an employee for testing positive for marijuana, even if he is a registered medical marijuana card holder. But employers will have a much harder time challenging the employee's right to unemployment benefits unless they can produce evidence that the employee's use violated the MMMA. For now, employers can and should continue to enforce their drug-testing policies and take appropriate action against employees who violate them.

The opinion marks the first time a Michigan appeals court has directly addressed how the MMMA impacts the workplace. The Court also addressed the U.S. Sixth Circuit's 2012 opinion in *Casias v. Wal-Mart Stores, Inc.*, which held that the MMMA did not prevent private employers from terminating employees for using medical marijuana. It distinguished *Casias* because that case involved the question of whether employers violated the MMMA by terminating the employees; the question here was whether the State of Michigan wrongfully denied unemployment benefits to these individuals.

But simply having a registration card does not entitle an employee to unemployment benefits if they are fired for failing a drug test. In *Braska*, none of the terminated employees displayed any signs of intoxication at work, actually ingested or inhaled marijuana at work, or refused a drug test. Similarly, none of the employers produced evidence that the employees tested positive due to non-medical use of marijuana. Had any of those things occurred, the employees may have been disqualified for benefits under other provisions of Section 29(1)(m) of the MESA. The MMMA also states that employers are not required to accommodate the ingestion of marijuana in the workplace or an employee working under the influence of marijuana.

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