

## Colorado High Court Finds Smoking Medical Marijuana a Drag on Employment

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The Colorado Supreme Court ruled that an employee who uses medicinal marijuana at home during non-working hours can be discharged for failing a drug test. While application may be limited by its heavy reliance on Colorado state laws, the decision is consistent with the few decisions from other jurisdictions – including the 6<sup>th</sup> U.S. Circuit – dealing with medical marijuana use and employment.

The plaintiff in the case, Dan Coats, is a quadriplegic who has been confined to a wheelchair since he was a teenager. He worked for Dish Network as a customer service representative. In 2010, during a random drug test, he tested positive for THC, a component of marijuana. Coats informed Dish that he was a registered medical marijuana user, and intended to continue using medical marijuana. Dish terminated his employment for violating its drug policy.

Coats then filed suit, claiming that Dish violated state law by terminating his employment because of medical marijuana use during non-working hours. Coats cited a Colorado state statute which prohibits employers from discharging an employee based on their engagement in “lawful activities” off the premises of the employer during non-working hours. He argued that the term “lawful activity” meant “lawful under state law, regardless of federal prohibitions.” Several other states, including Michigan and Illinois, have made limited use of marijuana legal under state law. Illinois, like Colorado also has a statute prohibiting retaliation for employees engaging in “lawful” activities.

The Colorado Supreme Court upheld two lower court decisions dismissing Coats’s claim, finding that “lawful activity” was not confined solely to state law, thus Coats’s use was not protected by the employment statute, and Dish could legally terminate his employment for it. Results may vary in other states depending on the exact parameters of the state laws easing marijuana use restrictions and the state’s respective employment retaliation laws.

We anticipate future developments relating to the recreational use of marijuana in states that have authorized it, and will continue to provide updates on any important decisions.

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