

## Michigan Court Confirms that Public Employers May Enforce Zero-Tolerance Drug Policies

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The Michigan Court of Appeals has ruled that a public employer is free to deny at-will employment to a medical marijuana cardholder who fails a drug test in violation of a zero-tolerance drug policy. The court used sweeping language in its February 19, 2019 ruling to make clear that the Michigan Medical Marihuana Act (MMMA) does not provide a cause of action against a public employer for enforcing its zero-tolerance drug policy, because denying at-will employment is not a "penalty" under the statute.

The case, *Eplee v City of Lansing, et al.*, involved an applicant who received a conditional offer of at-will employment for an office job. One of the conditions of her job offer was to pass a drug screen. Ms. Eplee alleged that she eventually lost her job offer solely because her drug screen revealed marijuana use. She claimed that because she held a valid medical marijuana card, the rescission of her job offer violated the MMMA.

Affirming the trial court's decision to dismiss the lawsuit, the Court of Appeals focused on Section 4(a) of MMMA, which states that a medical marijuana cardholder "is not subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege" for the medical use of marijuana. The court emphasized that the MMMA protects against certain penalties but "does not create affirmative rights." The MMMA did not protect the plaintiff's job "because the harm she suffered was the loss of an employment opportunity in which she held absolutely no right or property interest." In short, because the plaintiff would have been an at-will employee, she had no right to her job, and her prospective employer therefore did not deny her any right when it withdrew her employment offer.

### **What does this mean for public employers?**

Following this decision, public employers should feel comfortable maintaining and enforcing zero-tolerance drug policies for their at-will employees, including medical marijuana cardholders. It is unclear from the court's opinion, however, whether the result would have been the same if the plaintiff had an employment contract that provided for employment other than at-will. If you have further questions about the impact of this decision on your organization, please contact the authors or your Miller Canfield attorney.