

## Court Decides Michigan Medical Marijuana Act Doesn't Apply in Private Employment Settings

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February 15, 2011

On February 11, 2011, the U.S. District Court, Western District of Michigan (Honorable Robert J. Jonker) issued a much anticipated Opinion and Order dismissing a Wal-Mart employee's wrongful discharge suit filed pursuant to the Michigan Medical Marijuana Act (MMMA). The Court determined that while the MMMA was meant to provide some limited protection for medical marijuana users from State actions, primarily arrest and prosecution, the MMMA does not regulate private employers or employment decisions.

In *Casias v Wal-Mart Stores, Inc., et al*, Wal-Mart fired Mr. Casias, an at-will employee, under its drug use policy after Mr. Casias tested positive for marijuana after he was injured while at work. During the drug testing process, Mr. Casias admitted that he used marijuana for medical purposes after he qualified for and received a registry card under the MMMA. Mr. Casias used medical marijuana after work, not during work hours. After his termination for violating Wal-Mart's drug use policy, Mr. Casias filed a lawsuit contesting his termination.

Mr. Casias based his claim for relief on two theories; first arguing that the MMMA provided him with an implied right of action and under the second theory that Wal-Mart's actions violated the public policy of Michigan, as found in the MMMA. Wal-Mart argued that the MMMA is preempted by the federal law; that the MMMA does not create a private right of action under these circumstances; and the MMMA does not confer any employment protections on medical marijuana users.

The Court examined the language of the MMMA initiative and determined that none of the declarations indicated that it was meant to address employment decisions or discipline. Further, the Court determined that the MMMA does not indicate a general policy on behalf of Michigan to create a special class of civil protections for medical marijuana users. The Court ruled that Mr. Casias could not establish that the MMMA contains either statutory right without a remedy or an implied private cause of action. The Court also determined that, contrary to Mr. Casias' assertion, the impacts of any private employment regulation in the MMMA would be broadly felt and would extend the statute's protections much further than the MMMA meant to do. The Court agreed with Wal-Mart that the MMMA does not bestow the employment protections which Mr. Casias was seeking but declined to reach the issue of the MMMA's preemption by federal statutes.

### Guidance for Employers

Since the law was passed in 2008, many employers have sought guidance as to how the MMMA would affect an employer's drug use policies and employment decisions. This decision, which is consistent with rulings in other states with similar medical marijuana laws, supports an employer's decision to refuse to accommodate an employee's use of medical marijuana and to continue to enforce the employer's policies prohibiting the use of marijuana, including medical marijuana.

Employers should recognize, however, that this decision provides limited precedential effect. Other Courts in Michigan, including State Courts, are not legally bound to follow this Federal Court Opinion. Moreover, the decision is likely to be appealed.

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Employers should review their policies to ensure they are clear, up to date and adequately state the employer's drug policy concerning medical marijuana.

We will continue to follow this case as well as other cases addressing employer's rights and obligations under the MMMA.

Kurt P. McCamman