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Colorado Supreme Court Rules Employers Can Terminate Employees Who Use Medical Marijuana in Their Off-Hours

Recently, the Colorado Supreme Court unanimously held that employers are still allowed to prohibit employee marijuana use and terminate employees who test positive for cannabis, despite state law permitting its recreational and medicinal use. In *Coats v Dish Network*, the Court issued an employer-friendly opinion that could have wide-ranging implications for employers around the country.

Brandon Coats was a customer service representative for Dish Network who was fired in 2010 for using medical marijuana to treat debilitating muscle spasms while off duty. Brandon was sixteen years old when he was in a horrible car accident where he lost the use of 80% of his body. As many quadriplegics do, he has ongoing complications from the spinal cord injuries. His mother, Donna, said her son cannot get out of bed in the morning without a treatment the night before. "He's rigid in the morning, his back is rigid, his whole body below his injury is as stiff as a board," she said.

At first, Coats used prescription drugs to combat the spasms, but over time he built up a tolerance and their efficacy waned. His doctors eventually recommended that he start using medical marijuana. Coats joined Colorado's medical marijuana registry in 2009, hoping that the cannabis would alleviate the persistent spasms. He stated that using medical marijuana changed his life. Smoking a small amount of cannabis each evening proved effective treatment, enabling him to go to work without discomfort the next day.

Coats' condition following the car accident made finding steady work a challenge. In 2007, Colorado-based Dish Network hired him to work in their customer service division as a telephone operator and by all accounts he did very well. Coats said he was ranked in the top 5 percent of his fellow telephone customer service representatives. He was eventually moved into a more prestigious commercial section of his department. "We have the proof that he was [a top performer] in his evaluations," his lawyer said. "I think he was late twice, and that was the extent of any discipline."

Three years after being hired, Coats was selected for a random employee drug test. It was the first time he was tested since working there. Before taking the test, Coats immediately and voluntarily told his examiner that it would come back positive for marijuana, explaining he was a patient on the state registry and had been for about a year. He emphasized he was never under the influence at work.

Dish Network admits that prior to the testing, Coats had been a model employee, but their zero-tolerance drug policy prohibits marijuana use, even for medical reasons. Because marijuana remains illegal on the federal level, employers can fire a medical marijuana patient who fails a drug test, even in states where it is legal for medical use. Coats explained to Human Resources how and when he used the medical marijuana, which was always off company hours.

Coats challenged his dismissal under a law called the Colorado Lawful Off-Duty Activities Statute. Coats sued Dish Network, alleging that he had been illegally fired. His attorney argued that the THC found in Coats' body during the drug test did not prove that he was intoxicated at work. He added that Coats never used marijuana on the job, never requested special accommodations for his medical marijuana use, never exhibited poor job performance and never endangered the health or well being of any person at Dish.

In February 2012, the Arapahoe County trial court dismissed the complaint on the grounds that use of medical marijuana is not a "lawful activity," even when in full compliance with Colorado's Amendment 20, which legalized marijuana for medical use in 2000. Coats appealed the decision, but the appellate court upheld the trial court's decision in favor of Dish in July 2013. The judge ruled that when it comes to marijuana, federal law trumps state law.

Finally, on June 15, 2015, the Colorado Supreme Court held that because medical marijuana use is unlawful under federal law, a Colorado employee who uses medical marijuana cannot seek protection under Colorado's Lawful Off-Duty Activities statute, and his/her employment can be terminated if the employee violates the employer's drug policies. Throughout the country, where state medical marijuana laws do not explicitly provide protected status to patients, state supreme courts have upheld companies' decisions to fire employees for their cannabis use outside the office. The highest courts in California, Montana, Washington, Oregon and now Colorado have heard these cases and consistently ruled in favor of the employers. The judges have said that medical cannabis laws only protect patients from criminal penalties, not from termination by their employers.

If you have any questions about this or any aspects of your current policies, please contact Peter Bennett (pbennett@thebennettlawfirm.com) or Rick Finberg (rfinberg@thebennettlawfirm.com) of The Bennett Law Firm for more information.