

September 24, 2012

Appeals Court Affirms That Private Employers Are Not Subject To The Michigan Medical Marihuana Act

In 2008, Michigan passed the Michigan Medical Marihuana Act (“MMMA”), which provides certain protections for the medical use of marijuana. For private sector employers, the key question about the MMMA has been whether the MMMA protects an employee with a medical marijuana card from disciplinary action by the employer under its work rules or drug testing policy. Affirming a decision by a trial court, the Sixth Circuit Court of Appeals, on September 19, 2012, answered that question: the MMMA “does not regulate private employment” and, accordingly, does not protect an employee “against disciplinary action by a business.” *Casias v. Wal-Mart Stores*, 2012 U.S. LEXIS 19634 (6th Cir. 2012).

The MMMA states that an individual who has been issued a medical marijuana card “shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the medical use of marihuana in accordance with this act....” MCLA 333.26424(a).

In June 2009, Joseph Casias was issued a medical marijuana card. In November 2009, his employer, Wal-Mart, tested him for drugs after an on-the-job injury. Mr. Casias tested positive for marijuana, and Wal-Mart discharged him under its drug testing policy, which had no exception for the MMMA.

Mr. Casias filed a lawsuit in which he alleged that “Wal-Mart’s application of its drug use policy to him violated” the MMMA. He claimed that the MMMA “creates a new public policy in the State of Michigan that prohibits a private employer from taking disciplinary action against an employee based on conduct protected – or at least arguably protected – from criminal prosecution under the MMMA.” *Casias v. Wal-Mart Stores*, 764 F. Supp.2d 914, 31 IER Cases 1565, 1568 (W.D. Mi. 2011), *aff’d.*, 2012 U.S. LEXIS 19634 (6th Cir. 2012).

The trial court dismissed the lawsuit on the following basis: “...the MMMA addresses potential adverse action by the state; it does not regulate private employment.” The MMMA only provides a “potential defense to criminal prosecution or other adverse action by *the state*.” The MMMA, however, “says nothing about private employment rights. Nowhere does the MMMA state that the statute regulates private employment, that private employees are protected from disciplinary action should they use medical marijuana, or that private employers must accommodate the use of medical marijuana outside of the workplace.” Further, the MMMA “contains *no language* stating that it repeals the general rule of at-will employment in Michigan or that it otherwise limits the range of allowable private decisions by Michigan businesses.” *Casias v. Wal-Mart Stores*, 31 IER Cases at 1570-1571.

The Sixth Circuit Court of Appeals agreed with the trial court and found that the “MMMA does not impose restrictions on private employers....” It stated as follows: “The statutory language of the MMMA does not support” the “interpretation that the statute provides protection against disciplinary actions by a business, inasmuch as the statute fails to regulate private employment actions.” The appeals court also rejected Mr. Casias’ argument that due to the MMMA, his discharge was “contrary to public policy.” It observed that accepting Mr. Casias’ public policy argument “could potentially prohibit any Michigan business from issuing any disciplinary action against a qualifying patient who uses marijuana in accordance with

the Act.” *Casias v. Wal-Mart Stores*, 2012 U.S. LEXIS 19634, *15-20.

For Michigan employers, this decision means that the MMMA does not regulate private employers or, as the trial court stated, “create a new protected employee class in Michigan” – an employee with a medical marijuana card. A Michigan employer accordingly can lawfully enforce its work rules against the use of drugs and its drug testing policies against employees who have medical marijuana cards under the MMMA.

If you have any questions about the Michigan Medical Marijuana Act or what it means to employers, please contact your Butzel Long attorney or the author of this Client Alert.

Gary W. Klotz

313 225 7034

klotz@butzel.com

Copyright 2012, Butzel Long, a professional corporation
Any reproduction without permission of the author is prohibited.

The above news is only intended to highlight some of the important issues. This e-mail has been prepared by Butzel Long for information only and is not legal advice. This information is not intended to create, and receipt of it does not constitute, a client-lawyer relationship. Readers should not act upon this information without seeking professional counsel. This electronic newsletter and the information it contains may be considered attorney advertising in some states. If you feel you have received this information in error, or no longer wish to receive this service, please follow the instructions at the bottom of this message.

Attorney Advertising Notice - The contents of this e-mail may contain attorney advertising under the laws of various states. Prior results do not guarantee a similar outcome.

For previous e-news or to learn more about our law firm and its services, please visit our website at: www.butzel.com

Butzel Long Offices:

Ann Arbor
Bloomfield Hills
Detroit
Lansing
New York
Washington D.C.

Alliance Offices:

Beijing
Shanghai
Mexico City
Monterrey

Member:

Lex Mundi
