

MEDICAL MARIJUANA IN WASHINGTON WORKPLACES

By overwhelming majority, the Washington Supreme Court held that the Washington Medical Use of Marijuana Act (“MUMA”) does not prevent Washington employers from enforcing employer drug policies. The Court held MUMA does not protect medical marijuana users from discipline or termination for failure to comply with employer drug policies.

MUMA was passed in 1988 by Washington voters. It provided an affirmative defense against criminal prosecution of medical providers who prescribed medical marijuana or patients who lawfully use medical marijuana. MUMA left employers in limbo: Could employers suspend or terminate authorized medical marijuana patients who violate employer drug policies?

In *Jane Roe v. Teletech Customer Care Management (Colorado) LLC.*, a prospective employee sued Teletech for terminating her employment offer based on failing a employer mandated drug test. The employee used medical marijuana under physician prescription in compliance with MUMA. At the time of the pre-employment drug test, she provided Teletech with a copy of her marijuana use authorization, but her employment offer was revoked when she failed the drug screen.

The Court held while MUMA provided an affirmative defense to criminal prosecution, the law does not address the actions or duties of private entities. In other words, MUMA does not give private rights of actions to employees disciplined or terminated for medical marijuana use in violation of an employer drug policy.

The Washington decision is akin to a 2010 Oregon Supreme Court decision, *Emerald Steel Fabricators, Inc. v. Bureau of Labor and Industries*, which held Oregon employers do not have to accommodate the use of medical marijuana in the workplace. SBH will continue to monitor for new legislation which might alter employer obligations in both Oregon and Washington. Should you have questions regarding an employee authorized to use medical marijuana, contact the SBH employment team.

PREVENT EMPLOYEE THEFT

Multiple sources estimate that 75% of employees steal from their employers. This ranges from theft of time or office supplies to substantial theft of intellectual property or money. Contrary to common assumptions, theft is more prevalent in smaller businesses, and the thief is a trusted, “ideal” employee. Cunning embezzlers are adept at concealing their acts and convincing management they are star employees. So, what can you do to prevent employee theft?

Hire smart. Run a background check on all employees who will have access to financial accounts, credit cards, or proprietary information. Verify past employment, degrees, and licenses.

Foster a theft-free culture. Clearly outline allowed use of time, equipment, and purchasing. Encourage employees to view theft from the company as theft against everyone - and encourage reporting. Many thefts are uncovered by coworker reports.

Establish checks & balances. Use of good accounting practices and supervision will make it harder for employees to steal and will uncover thefts earlier.

Require a full week of vacation. It sounds funny, but theft is often discovered while the thief is absent due to vacation or illness. The most successful thieves - those who have tricked management into thinking they are the most valuable employees - often work long hours and hardly ever take a day off. They control access to the evidence of their acts! When someone else has to step in and cover during absences, theft may be discovered.

Consider an audit. CPA audits are usually not focused on theft, and thus may not uncover it. Similarly, it may take a while for an internal accountant to notice something wrong. An internal audit focused on theft or an audit by a forensic accountant may be worth an employer’s time and money.

updates for employers and hr professionals

SBH ALERTS

- ▶ The Washington state legislature recently passed industrial insurance reform allowing lump sum payments.
- ▶ According to the EEOC, the most common claim brought by employees in 2010 was a claim of retaliation.
- ▶ Are your I-9 forms in order? Audits of I-9s are on the rise nationally.

Court Denies Discrimination Class Action

Since 2004, employers and attorneys for employers have closely monitored the path of the largest employment class action lawsuit ever brought. In *Wal-Mart Stores, Inc. v Dukes et. al.*, a class of nearly 1.6 million female employees of Wal-Mart claimed gender bias in promotion and pay. The Ninth Circuit Court of Appeals affirmed the district court's certification of the class in 2007, but this June, the US Supreme Court reversed that decision.

The Court held the class of would-be plaintiffs did not fulfill the "common question of law or fact" requirement for class certification. Essentially, the Court found the plaintiff class did not prove a general policy of discrimination company-wide; quite the opposite, the Court pointed to evidence of corporate policies against sex discrimination and discretion given to local supervisors in making employment decisions. The Court found it unlikely that nationwide all managers would exercise that discretion in a singular way without some evidence that the corporation directed them to do so. The Court's decision makes sense because discrimination claims typically rely on specific interactions between individuals and supervisors.

The lesson for employers? Make sure corporate policies - written and unwritten - clearly instruct that decisions based on protected characteristics are unacceptable. In addition to preventing discrimination, this may also help prevent a claim by a single employee from turning into a claim by an entire class of employees.

The information contained within this newsletter is not legal advice, but a resource to help you stay informed about legal developments affecting your job. If you have a specific issue or concern, please contact your attorney for advice.

SBH Employment Practice Group

Expertise. Excellence. Accessibility.

Sather, Byerly & Holloway, LLP is a litigation firm representing Oregon and Washington employers in all matters relating to employment. SBH believes client service matters-it is the core of our business and the reason why the firm was founded.

SBH furnishes a full range of services to assist employers with their workforce. Our targeted advice and training will help you avoid disputes. We offer guidance on managing difficult employees; hiring and firing; complying with disability and leave laws; dispute resolution, policy drafting and records management. And when a claim or lawsuit does arise, SBH will be there to aggressively defend your interests.

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