

COLORADO EMPLOYERS CAN FIRE WORKERS FOR OFF-DUTY MEDICAL MARIJUANA USE

The Colorado Supreme Court ruled on June 15, 2015, that an employee can be fired for using medical marijuana even though the drug is legal in Colorado and the employee was not at work at the time. The unanimous decision upholds lower courts' opinions that an employer has the right to terminate an employee for violating a company's zero-tolerance policy for controlled substances, despite a Colorado law protecting employees from being punished for legal, off-duty activities.

This decision is significant because it confirms an employer's right to terminate an employee who violates a company's drug policy, notwithstanding Colorado's legalization of marijuana. Colorado is one of only four states to date to legalize marijuana for both medical and recreational use. The Court's ruling, which is similar to a California decision, provides support and guidance for non-Colorado employers who may have employees travelling to Colorado for work or recreation. Other states are in various stages of considering legalizing medical and/or recreational marijuana.

At issue before the state's highest court was a suit filed by Brandon Coats, a former employee of Dish Network, LLC, whose employment had been terminated by Dish after a random drug test revealed the presence of THC, the psychoactive chemical in marijuana, in Coats' system. Coats was a registered medical marijuana patient who consumed medical marijuana at home, and after work, and in accordance with his license and Colorado state law.

In his suit against Dish for wrongful termination, Coats argued that the company violated Colorado's "lawful activities statute," which makes it an unfair and discriminatory labor practice to discharge an employee based on the employee's "lawful" outside-of-work activities. Dish filed a motion to dismiss, arguing that Coats' medical marijuana use was not lawful for purposes of the statute under either federal or state law. The trial court granted Dish's motion and dismissed Coats' claim.

The Colorado Court of Appeals, in a split decision, affirmed the lower court's dismissal of Coats' lawsuit, but on a different ground. It found that because the use of marijuana is prohibited under the federal Controlled Substances Act, Coats' conduct was not a "lawful activity" protected by the Colorado statute.

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The Colorado Supreme Court agreed with the Court of Appeals that “lawful” for purposes of Colorado’s “lawful activities statute” means activities that comply with applicable law, including state and federal law. Because Coats’ use of medical marijuana was unlawful under federal law, it was not protected under the Colorado statute.