March 26, 2024

Connecticut Employee's Claims That She Was Terminated Based on Medical Marijuana Use Go Up in Smoke

Many Connecticut employers have grappled with the interplay between the state's Palliative Use of Marijuana Act (PUMA) and laws prohibiting discrimination based on disabilities and requiring accommodation of disabilities. The Connecticut Appellate Court recently issued a decision bearing on these issues, affirming the dismissal of claims brought by an employee who had been prescribed medical marijuana and was fired for being under its influence at work. The employee alleged that her employer had failed to accommodate her disability and discriminated against her based on her disability and her use of medical marijuana in violation of the Connecticut Fair Employment Practices Act and PUMA.

Connecticut's Palliative Use of Marijuana Act

PUMA (Conn. Gen. Stat. Sec. 21a-408 et seq.) allows "qualifying patients" to engage in the palliative use of marijuana and prohibits employers from refusing to hire a person or terminating, penalizing or threatening an employee "solely on the basis of such person's or employee's status as a qualifying patient." "Qualifying patient" is defined as a Connecticut resident diagnosed with a debilitating medical condition who is 18 years of age or older, an emancipated minor, or has written consent from a parent or guardian. However, PUMA specifically states that it does not "restrict an employer's ability to prohibit the use of intoxicating substances during work hours or restrict an employer's ability to discipline an employee for being under the influence of intoxicating substances during work hours."

Bartolotta v. Human Resources Agency of New Britain

Facts

In *Bartolotta v. Human Resources Agency of New Britain, Inc.*, AC 46091 (Conn. App. Ct. Mar. 19, 2024), the plaintiff, Alyssa Bartolotta, was a teaching assistant working in a preschool classroom for the nonprofit defendant, Human Resources Agency of New Britain, Inc. (HRANB). Bartolotta had a medical marijuana prescription to treat seizures that she suffered as a result of her epilepsy. She did not, however, disclose her prescription or her use of medical marijuana to HRANB when she was hired.

At the time of her hire, Bartolotta was provided with a copy of HRANB's handbook, which contained policies prohibiting working under the influence of alcohol or drugs, and she signed an acknowledgement of HRANB's drug-free workplace policy.

One day, a teacher witnessed Bartolotta call a child by the wrong name. When the teacher asked Bartolotta about this mistake, Bartolotta said that she was "just out of it." Bartolotta also told the teacher that she uses medical marijuana and that her "head is just not right from it yet." The teacher reported the incident to a supervisor, and HRANB conducted an investigation into Bartolotta's purported drug use. During the investigation, Bartolotta admitted that she had reported to work impaired because she had taken more "puffs" of marijuana the prior night than she was prescribed. HRANB immediately suspended Bartolotta's employment at the conclusion of her interview. During the investigation, another teacher reported that she had observed Bartolotta "to be forgetful, droopy, and unsteady on her feet" and was concerned regarding the safety of the children in Bartolotta's care.

After the investigation, Bartolotta provided HRANB with a letter from her physician confirming that she had been prescribed marijuana for anxiety and seizures. HRANB nevertheless terminated Bartolotta's employment for failing to follow company policy and procedures and for violating the standard of care in protecting the children in her classroom by showing up to work while impaired.

Bartolotta filed suit alleging a violation of PUMA, disability discrimination and failure to accommodate. The trial court granted summary judgment to HRANB on all of Bartolotta's claims, and Bartolotta appealed to the Connecticut Appellate Court.

Connecticut Appellate Court Decision

The Connecticut Appellate Court affirmed the trial court's decision that Bartolotta could not establish her claims. The Appellate Court held that in order to establish a violation of PUMA, a plaintiff must show that they were discharged *solely* because of their status as a qualifying patient. The Appellate Court further held that "while the palliative use of marijuana is authorized under Connecticut law, employers nonetheless may prohibit qualifying patients from being under its influence in the workplace." The Appellate Court noted that HRANB's policies clearly notified employees that they were prohibited from being under the influence of drugs or alcohol in the workplace, and Bartolotta had violated this policy. Accordingly, HRANB did not violate PUMA by terminating Bartolotta for reporting to work in an impaired state even though she was a qualifying patient under PUMA.

The Appellate Court also affirmed the trial court's dismissal of Bartolotta's disability discrimination claim, finding that she could not show that her disability played a substantial role in the employer's decision to terminate her employment. Similarly, the Appellate Court held that Bartolotta could not show a failure to accommodate because she had not requested an accommodation for her medical marijuana use. The Appellate Court also noted that it was unclear what, if any, accommodation the employer could provide short of allowing her to appear impaired in the workplace, which is not required under PUMA and was not permitted under Bartolotta's own medical marijuana prescription.

Takeaways

While the Connecticut Appellate Court's decision appears to have been driven somewhat by the facts, there are a few important takeaways for Connecticut employers. Notably, the Appellate Court reiterated that under PUMA, employers may prohibit employees from being under the influence of medical marijuana in the workplace, even if the "use" occurred outside working hours and not on the employer's premises. The Appellate Court also found significant that the employer had established and communicated clear policies prohibiting employees from being impaired while at work. This is a timely reminder for employers to review their workplace policies and ensure that they establish clear guidelines regarding permissible (and impermissible) conduct in the workplace.

Authors

James M. Leva
Partner

Parsippany, NJ | (973) 966-8416

Stamford, CT | (973) 966-8416

jleva@daypitney.com

Howard Fetner
Counsel

New Haven, CT | (203) 752-5012

hfetner@daypitney.com

Lindsey A. McCarthy
Associate

Hartford, CT | (860) 275-0211

lmccarthy@daypitney.com

Heather Weine Brochin
Partner

Parsippany, NJ | (973) 966-8199

New York, NY | (212)-297-5800

hbrochin@daypitney.com

Francine Esposito
Partner

Parsippany, NJ | (973) 966-8275

fesposito@daypitney.com

Rachel A. Gonzalez
Partner

Parsippany, NJ | (973) 966-8201

New York, NY | (212) 297-5800

rgonzalez@daypitney.com

Daniel L. Schwartz
Partner

Stamford, CT | (203) 977-7536

New York, NY | (212) 297-5800

dlschwartz@daypitney.com

Glenn W. Dowd
Partner

Hartford, CT | (860) 275-0570

gwdowd@daypitney.com