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SJC Ruling Opens the Door for Medical Marijuana Employment Discrimination Claims

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On July 17, 2017, the Massachusetts Supreme Judicial Court held in the case Barbuto v. Advantage Sales and Marketing, LLC that a qualifying patient who has been terminated from her employment because she tested positive for marijuana as a result of her use of medically prescribed marijuana may pursue a claim of handicap discrimination in violation of the Massachusetts anti-discrimination statute.

The plaintiff in this case, Cristina Barbuto, suffered from Crohn's disease and had been prescribed medical marijuana by her physician. Initially, Ms. Barbuto was told by ASM that this would not be a problem and she began working for ASM. Ms. Barbuto's drug test was positive for marijuana and, as a result, ASM terminated her employment.

In finding that Ms. Barbuto could pursue a handicap discrimination claim against ASM under Massachusetts law the SJC rejected ASM's argument that Ms. Barbuto's requested accommodation, her continued use of medical marijuana, is a federal crime, and therefore is facially unreasonable. Instead, the SJC held that because Ms. Barbuto's physician had, in prescribing medical marijuana concluded that it was the most effective medication for the employee's debilitating medical condition, an exception to the employer's drug policy to permit its use is a facially reasonable accommodation. However, the SJC also held that its ruling that an employee's use of medical marijuana is not facially unreasonable as an accommodation for her handicap does not mean that an employer cannot show that an employee's use of medical marijuana is not a reasonable accommodation because it would impose an undue hardship on the employer's business. Specifically, the SJC recognized that an undue hardship might be shown if the employer can prove that the use of marijuana by an employee would violate an employer's contractual or statutory obligation and thereby jeopardize its ability to perform its business.

Anyone with questions on medical marijuana and employment law can contact Rich May, P.C. attorneys J. Allen Holland, Jim Finnigan, Frank Gaeta and Nathaniel Donoghue.



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