

## Court Finds Implied Wrongful Discharge Cause of Action Under PA Medical Marijuana Act



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In a recent decision, a Pennsylvania county court ruled that the state's Medical Marijuana Act creates a private cause of action for employees who have been terminated for their off-duty use of prescribed medical marijuana. *Palmiter v. Commonwealth Health Systems, et al.*, No. 19 CV 1315 (Pa. Com. Pl. Lackawana Cnty. Nov. 22, 2019). The ruling is the first of its kind in Pennsylvania, but follows a line of cases from other jurisdictions that have similarly found that lawful medical marijuana users can sue their employers under similar circumstances. Pennsylvania employers should take note of this important decision, as we continue to monitor and report on this developing issue.

The plaintiff in this case, Pamela Palmiter, worked as a medical assistant for Medical Associates of NEPA (Medical Associates). She suffered from chronic pain and fatigue and was certified to use medical marijuana under the Pennsylvania Medical Marijuana Act (MMA). The MMA was enacted in 2016, and allows for the use of marijuana with a physician's approval for treatment of specifically listed qualifying conditions. Section 2103(b)(1) of the MMA provides that "[n]o employer may discharge ... or otherwise discriminate or retaliate against an employee ... solely on the basis of such employee's status as an individual who is certified to use medical marijuana." P.S. § 10231.2103(b)(1).

Palmiter informed her employer that her doctor had authorized her to use medical marijuana to treat her conditions. Medical Associates accepted her off-duty use of medical marijuana, and, when the company was acquired by another consortium of health care providers, her approved use of medical marijuana was "grandfathered in."

Palmiter later applied for a new position with the new organization and was required to submit to drug testing as part of that process. She disclosed to the testing lab that she was on prescribed medical marijuana and provided a copy of the certificate she received from her doctor authorizing its use. She was then informed by the new organization that it would not allow her to work for them based on the results of her drug test. She filed suit shortly thereafter, alleging a violation of Section 2103(b)(1) of the MMA and, later, added additional causes of action claiming her employer violated public policy by terminating or failing to hire her because she tested positive for marijuana that she was authorized to use under the MMA.

In the early stages of the case, the employer moved to dismiss the case on the grounds that (1) the MMA does not expressly or impliedly authorize a private cause of action, since the law vests the sole authority to enforce Section 2103(b)(1) with the Pennsylvania Department of Health by way of civil penalties, and (2) there was no cause of action for violation of public policy because there was no "clear mandate of public policy" against simply firing someone for failing a drug test.

As to the first issue, the court observed that, even though the MMA does not expressly grant or deny a private right of action under Section 2103(b)(1), applying Pennsylvania law developed to determine whether an implied right of action exists revealed that "[r]ecognition of [such a right] is consistent with the MMA's stated purpose of providing safe and effective access to medical marijuana for eligible patients, while simultaneously protecting them from adverse employment treatment ..." The court noted that, contrary to the employer's argument, Section 2103 does not grant any state agency or commission — including the Department of Health — the power to enforce or regulate the employment protections in the MMA and that nothing in the law would allow an employee to recover lost wages or reinstatement by the Department of Health's civil penalty mechanism.

The court went on to find that Palmiter is a member of a class of people for whose special benefit

the MMA was enacted, and that it was consistent with the underlying purpose of the legislative scheme of the MMA to imply a private right of action. It also found that there was an implicit indication of legislative intent to establish a private right of action for wrongful termination in violation of the MMA. Since no Pennsylvania precedent existed on the issue of legislative intent of the MMA, the court reached its conclusion by looking to precedent from other states with medical marijuana laws that bar discrimination in employment but do not expressly create a private right of action — namely Connecticut, Rhode Island, Delaware, and Arizona. Precedent from each of those states found a cause of action must be implied, or the anti-discrimination provisions would be meaningless. The opinion concluded that, “[w]ithout the availability of an implied right of action for an employee who is fired solely for being certified as a medical marijuana user, the anti-discrimination directive in Section 2103(b)(1) would be rendered impotent.”

As to the second issue, the court noted Pennsylvania’s well-settled status as an at-will employment state but also that Pennsylvania law creates narrow exceptions to the at-will employment rule, including prohibiting an employer from discharging an employee when doing so is specifically prohibited by statute. The court concluded that since Palmiter alleged she was terminated on the singular ground that she was a certified medical marijuana user, and given that the MMA “distinctly states that ‘[n]o employer may discharge ... or otherwise discriminate or retaliate against an employee ... solely on the basis of such employee’s status as an individual who is certified to use medical marijuana’”... Palmiter should be permitted to maintain a claim for discharge in violation of public policy because her termination “‘implicates a clear mandate of public policy’ as declared by the General Assembly in the unambiguous language of P.S. § 10231.2103(b)(1).”

Although this ruling is not binding on other Pennsylvania courts because it is a county court decision, it is an important decision and a potential bellwether for how future Pennsylvania courts will address this issue. As we continue to monitor this case, as well as others that have recently been filed asserting similar causes of action, we will report on any major developments. In the interim, employers should be careful to review their hiring, advancement, and drug testing policies to address any potential claims that might follow in the wake of this decision.

The *Palmiter* opinion can be [read here](#).

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