

# Jackson Lewis

## Federal Court in Michigan Dismisses Medical Marijuana User's Claims Arising from Positive Drug Test

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An employee who was terminated after testing positive for marijuana (which he obtained and used pursuant to Michigan's medical marijuana law) has stated no legal claims against his employer, a federal court in Michigan has ruled. *Casias v. Wal-Mart Stores, Inc.*, No. 10-CV-781 (W.D. Mich. Feb. 11, 2011). The court dismissed the wrongful discharge case against the employer.

### The Facts

Joseph Casias had worked at Wal-Mart for five years as an inventory control manager when, in 2009, he began using medical marijuana for medical purposes. He had qualified for and obtained a medical marijuana registry card in June 2009 under the state's 2008 Michigan Medical Marihuana Act ("MMMA"). He began using marijuana outside of work to treat pain after obtaining the card.

The employer's written drug testing policy provided that an employee injured at work must submit to post-accident drug testing. In November 2009, Casias injured his knee at work and was required to take a post-accident drug test. At the time of the test, Casias advised his manager and the drug testing staff that he possessed a medical marijuana registry card pursuant to the MMMA. He tested positive for marijuana. One week later, he was terminated, in accordance with the employer's policy.

Casias filed suit in state court, alleging wrongful discharge in violation of public policy and violation of the MMMA. Wal-Mart removed the action to federal court and requested dismissal of the action.

The employer argued that the MMMA is preempted by the federal Controlled Substances Act (under which marijuana is illegal) and the federal Americans with Disabilities Act. It further argued that the MMMA does not create a private right of action and does not confer on medical marijuana users any employment protections. Casias argued that the MMMA provided an implied right of action and asserted the employer violated the public policy of Michigan, as set forth in the MMMA.

### Defense to State Prosecution, not Adverse Employment Actions

The federal trial court rejected Casias's arguments, holding that the MMMA does not regulate private employment; rather, it provides a potential defense to criminal prosecution or other adverse action by the state. The MMMA does not "de-criminalize" the use of medical marijuana, according to the court; instead, it provides an affirmative defense and other limited protections in the face of criminal proceedings.

The MMMA does not state that private employees are protected from disciplinary action should they use medical marijuana, or that private employers must accommodate the use of medical marijuana in the workplace, the court held. The court rejected Casias's suggestion that the law created a new protected employee class, which "would mark a radical departure from the general rule of at-will employment in Michigan."

Casias argued that the MMMA shielded him from employment termination, relying on language stating that a qualifying patient will not be "denied any right or privilege, including but not limited to civil penalty or disciplinary

action by a business or occupational or professional licensing board or bureau, for the medical use of marihuana in accordance with this act . . .” M.C.L. § 333.26424(a). The court was unconvinced, noting that although the word “business” is undefined in the law, it always appeared in the statute as part of the phrase “civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau.” This, the court held, “is thoroughly consistent with the overall structure and purpose of the Act to address potential criminal prosecution or other adverse action by the state.” In addition, other language in the MMMA underscores the fact that the statute contemplated discipline from boards and bureaus of the state – “not the entire realm of private employment.”

Casias also sought to rely on a section in the MMMA stating that nothing in the statute requires “[a]n employer to accommodate the ingestion of marihuana in any workplace or any employee working while under the influence of marihuana.” M.C.L. § 333.26427(c)(2). The court held this sole reference to employment did not mean that private employers are prohibited from disciplining employees who use marijuana away from the workplace. Indeed, the court stated, “Michigan voters could not have intended to enact private employment regulation implicitly, through a negative inference, when the rights of employees are never mentioned anywhere else in the statute.”

Noting that no other medical marijuana statute of any other state has been held to regulate private employment, the court concluded that Michigan voters did not intend to enact “sweeping legislation” regulating private employment and conferring an implied private cause of action. Had they meant to, the court said they “had to do so explicitly.” The court continued, “Instead, they enacted a statute whose language and purpose simply protects medical marijuana users from prosecution and other similar actions of state and local governments, and does not attempt to regulate private employment decisions.”

Because the court held the MMMA does not bestow the employment protections sought by Casias, it did not reach the federal preemption issue.

Casias’s attorney has stated that there will be an appeal.

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Michigan is one of 16 states with medical marijuana laws. (The other states are Alaska, Arizona, California, Colorado, Hawaii, Maine, Montana, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, Washington, and the District of Columbia.) The language of the laws varies from state to state, and the courts have been interpreting them on a case-by-case basis.

If you should have any questions, or if you require assistance with your drug and alcohol testing program, please contact your Jackson Lewis attorney or a member of our Drug Testing and Substance Abuse Management Practice Group.

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