



LEGAL UPDATE Jun 4, 2020

Rhode Island Court Upholds Termination of Medical Marijuana User for Refusing a Reasonable Suspicion Drug Test

By: Jennifer L. Mora

Seyfarth Synopsis: *On May 29, 2020, the Rhode Island Supreme Court affirmed dismissal of an employee’s lawsuit against his former employer after it terminated him for refusing to submit to a reasonable suspicion drug test, even though his “bizarre” behavior could have been attributed to other causes. As employers are becoming increasingly concerned about marijuana use in states with recreational or medical marijuana laws, the decision serves as a reminder to employers to develop a process for making and defending a reasonable suspicion determination (including manager and supervisor training and objective and clear documentation).*

Facts

The plaintiff, who worked as a “supply delivery driver,” suffered an injury to his arm and back while making a delivery. As a result of injuries he sustained while in the military, he previously had applied for and received a medical marijuana card. Although he used marijuana for medicinal purposes, the plaintiff claimed he never used it “on the clock or the job” and was never “under the effects of marijuana” while working. While his managers questioned him about the work-related injury, the plaintiff exhibited “bizarre” behavior, prompting them to request that he submit to a drug test. The plaintiff admittedly got quite angry as a result of their request and had sworn “excessively” during the conversation. Once at the drug testing site, the plaintiff submitted to a breathalyzer, but refused to submit to a urinalysis drug test. The employer terminated him for refusing the test.

The plaintiff claimed in his lawsuit (*Colpitts v. W.B. Mason Co., Inc.*) that the employer did not have reasonable suspicion to send him for the drug test. Rhode Island's drug testing statute states that employers may require employees to submit to a drug test if the employer "has *reasonable grounds* to believe based on specific aspects of the employee's job performance and specific contemporaneous documented observations, concerning the employee's appearance, behavior or speech that the employee may be under the influence of a controlled substance, which may be impairing his or her ability to perform his or her job . . ." The plaintiff argued that his behavior was not indicia of drug use, and seemed to suggest on appeal that the behavior on which an employer relies to support a request for a reasonable suspicion drug test "must lead ineluctably to the conclusion that the employee is under the influence of a controlled substance and not to any other conclusion."

The Trial and Supreme Court Uphold the Termination

The trial court admittedly struggled with the case because some of the plaintiff's behavior could have been due to substance use but also could have been due to the pain he suffered as a result of the work-related injury. In finding for the employer, however, the trial judge said that "reasonable grounds [do not] have to be the only grounds," and that while there might have been competing explanations for the plaintiff's behavior, this does not mean the employer's request was unreasonable.

The Supreme Court agreed with the trial court based on what it described as contemporaneous observations and other evidence concerning the plaintiff's appearance, including: (1) testimony at length about the plaintiff's "odd" behavior; (2) the plaintiff's failure to call the warehouse to report his injury despite it being his habit to do so; (3) the plaintiff's inability to clearly articulate what had occurred when he was injured; (4) the plaintiff's bending over, repeated use of obscenities, staggering and saying that he was going to "puke"; and (5) his superiors' belief that he was under the influence.

Turning to the issue of whether the behavior could have been the result of pain from the injuries, the Supreme Court wrote:

The employee's behavior does not need to be such that it could lead to *only* a conclusion that he or she is under the influence of a controlled substance. The statute at issue clearly and unambiguously does not require actual knowledge that the employee is definitely under the influence, nor that the employee manifest the specific symptoms usually associated with being under the

influence; the statute requires only that there be reasonable grounds to believe that the employee is under the influence of a controlled substance.

To hold otherwise, according to the court, would require managers and supervisors to “possess that degree of medical sophistication” that would allow them to distinguish between symptoms of pain and symptoms of drug use.

Employer Takeaways

Given that marijuana legislation is sweeping the nation, many employers are presently updating their policies and procedures as they expect to see increased marijuana usage among their employees. There is a state law trend towards requiring employers to prove impairment to justify adverse action based on marijuana use. This follows from the widely recognized view that a marijuana-positive result by itself says virtually nothing about impairment at work. As a result, a best practice for employers who test current employees for marijuana, or any drug, is to establish a strong record of impairment independent of a positive result. That would include thorough, contemporaneous documentation of the reasons employees are sent for reasonable suspicion testing. It also could include an accident investigation report that rules out non-drug-related causes where circumstances warrant that conclusion.

Employers should consult outside counsel for help in revising policies, addressing new marijuana challenges in the workplace, and ensuring compliance in states (like Iowa, Minnesota, and Rhode Island, among others) with comprehensive and highly technical drug and alcohol testing statutes.

Authors



**Jennifer L.
Mora**

Senior Counsel

Related Practices

Employment

Background Checking & Drug Testing

Related Key Industries

Cannabis

Related Trends



Cannabis Goes Mainstream