

Medical Marijuana Quiz



Can You Fire an Employee for Legal Use of Medical Marijuana?

SITUATION

Herb Potts, an employee of ABC Corp, tests positive for marijuana. He denies using or being high at work and notes that he has a legally valid prescription to use medical cannabis at home to treat his epileptic seizures. Although his bosses are sympathetic, ABC immediately fires Herb for violating its “zero tolerance” drug policy. Herb sues.

QUESTION

Does Herb have a valid case against ABC?

- A. Yes because medical marijuana users can’t be disciplined for employment-related drug offences
- B. No because zero tolerance leaves no room for legal use of medical marijuana
- C. Yes because ABC likely committed disability discrimination
- D. No because the positive drug test shows he was high at work

ANSWER

C. Yes because firing an employee for medical marijuana use without offering any accommodations is disability discrimination.

EXPLANATION

Federal law gives doctors the right to prescribe and patients the right to use marijuana to treat designated conditions including cancer, HIV/AIDS, severe arthritis and epilepsy. This scenario, which is purely hypothetical, illustrates the rules employers must navigate to enforce a zero tolerance drug policy against an employee for engaging in legal medical marijuana use.

The chief legal obstacle is the fact that the underlying medical condition justifying the employee’s use of marijuana would likely be considered a “disability” for which employers must make reasonable accommodations under human rights laws. Such accommodations would almost surely include bending zero tolerance for legal medical marijuana use. Since ABC fired Herb without offering any accommodations, it committed disability discrimination.

WHY WRONG ANSWERS ARE WRONG

A is wrong because medical marijuana laws do not exempt patients from their employers' drug policies. Thus, for example, patients could still be disciplined for showing up to work high. In this case Herb *wasn't* high at work; he was fired for legally using medical marijuana at home.

B is wrong because an employer's zero tolerance drug use policy does not cancel a disabled employee's right to accommodations.

D is wrong. While making allowances to zero tolerance to accommodate an employee's off-site use of medical marijuana would be "reasonable," allowing the employee to be under the influence AT work would impose undue hardship. The reason D is wrong is that unlike with alcohol, a positive drug test doesn't prove the employee was impaired *at the time of testing*.