

LABOR & EMPLOYMENT

SIXTH CIRCUIT UPHOLDS WAL-MART'S TERMINATION OF EMPLOYEE FOR USING MEDICAL MARIHUANA

by: Christina K. McDonald
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In a case of significant importance, on September 19, 2012, the United States Court of Appeals for the Sixth Circuit held that a private employer may fire an employee for testing positive for medical marihuana in violation of the employer's drug use policy under the Michigan Medical Marihuana Act ("MMMA"). The court's holding in *Casias v. Wal-Mart Stores, Inc.*, sets the precedent that users of medical marihuana are not a protected class in the private sector and that the MMMA only protects users of medical marihuana from state action, such as arrest and prosecution, for legal use of the drug.

Joseph Casias worked as a Wal-Mart employee in Battle Creek, Michigan for a little over five years when he was terminated for violating the company's drug use policy. Mr. Casias suffers from sinus cancer and an inoperable brain tumor and endured ongoing pain as a result of his condition. Mr. Casias' oncologist recommended that he try medical marijuana to treat the pain associated with his medical condition, so Mr. Casias obtained a medical marihuana registry card from the Michigan Department of Community Health under the MMMA, which was enacted in 2008.

Mr. Casias complied with the state laws governing the use of medical marihuana and never used marihuana at work nor did he come to work while under the influence of the drug. During his employment, Mr. Casias took a drug test in accordance with Wal-Mart's drug use policy, and he tested positive for the use of marihuana. Wal-Mart did not honor Mr. Casias' medical marihuana registry card and terminated his employment because the use of marihuana violated the company's drug use policy. Mr. Casias sued Wal-Mart for wrongful termination.

The federal District Court for the Western District of Michigan held that Wal-Mart's decision to fire Mr. Casias was lawful because the MMMA only provides medical marihuana users with protection from state action, and not from private action. The court held that "[w]hatever protection the MMMA does provide users of medical marijuana, it does not reach to private employment." *Casias v Wal-Mart Stores, Inc.*, 764 F. Supp. 2d 914, 926 (W.D. Mich. 2011)(internal citation omitted).

In affirming the district court's decision, the Sixth Circuit specifically held that the MMMA "does not impose restrictions on private employers, such as Wal-Mart." The court noted that similar medical marihuana laws in other states do not regulate private employment

actions either. Finally, the court held that Wal-Mart's decision to terminate Mr. Casias' employment was not against public policy.

The full text of the court's opinion is available at <http://www.ca6.uscourts.gov/opinions.pdf/12a0343p-06.pdf> (last accessed September 28, 2012). Clients should consult with an attorney before taking any action against an employee for use or suspected use of medical marihuana.

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