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Medical Use of Marijuana Costs Some a Job

BY JENNIFER MASCIA

Residents in 14 states and Washington can now appeal to their doctors for prescriptions for medical marijuana to help them with their pain.

Their employers, however, may not be so understanding.

In some cases, workers have been fired for failing drug tests despite having prescriptions saying, in effect, that what they are doing is legal according to the laws of their states.

Though the number of such cases appears to be small, they are exposing a new legal gray area, with workers complaining of rights violations and company officials scratching their heads over how to enforce a uniform policy for a drug that the federal government has not recognized as having a legitimate medical purpose.

“The current state of affairs puts employers in a very difficult situation,” said Barbara L. Johnson, an employment lawyer in Washington. “But the reality is that there are no federal guidelines like there are when dealing with other types of prescription medications.”

Some workers have learned about this legal quandary first-hand, at the cost of their jobs.

Nick Stennet, 20, has a congenital disorder called Poland’s syndrome, which left him without a chest muscle on the right side of his body and with a right hand with fingers substantially shorter than those on his left.

Doctors prescribed one or two inhalations of marijuana each night before bed to relieve severe muscle stiffness and shooting pains in his arms.

Mr. Stennet said he told the human resources manager at the Home Depot in Hilo, Hawaii, about his prescription when he was being hired. But after his drug test came back positive for tetrahydrocannabinol, or THC, the active chemical in marijuana, he was out a job.

“Why would they send me down there when they know I am going to test positive?” he said. “I feel like they put me through ridicule when it was so avoidable.”

Steve Holmes, a Home Depot spokesman, said the company followed federal guidelines for its drug policy. Employees are allowed to take a leave if they choose to use marijuana to combat the side effects of treatment for a serious ailment. When they return, however, the THC must be out of their systems.

“It’s a safety issue for us,” Mr. Holmes said.

Cynthia Estlund, a professor of labor and employment law at New York University, said that only one state that had legalized medical marijuana had taken the additional step of saying explicitly that it was unlawful to fire someone for using a lawful substance.

At the same time, Ms. Estlund said, “Nothing in the law tells employers what to do, so they don’t have to fire them under federal law.”

That is the objection raised by Scott Michelman, a lawyer for the American Civil Liberties Union, on behalf of his client, Joseph Casias.

In 2008, Mr. Casias, a father of two who medicates with marijuana to relieve the pain of inoperable brain and sinus cancer, was named associate of the year at the Wal-Mart in Battle Creek, Mich. But when he injured his knee last year, company policy required a drug test. The positive result cost him his job.

In June, the A.C.L.U. filed a complaint in state court on his behalf, citing wrongful termination. He is seeking reinstatement and damages.

“The cancer is not what’s keeping him from earning a living — Wal-Mart is,” Mr. Michelman said. “There’s actually no law to require Wal-Mart to do what they did.”

Greg Rossiter, a spokesman for Wal-Mart, said: “This is obviously an unfortunate situation all around. But we have to consider the overall safety of our customers and our associates.”

On the broader legal question, Mr. Rossiter added: “As more states allow this treatment, employers are left without guidelines.”

Only the Rhode Island Medical Marijuana Act offers protection to medical marijuana cardholders for students, employees and tenants. Michigan’s law does not compel an employer to make accommodations for marijuana consumption “in any workplace” or for “any employee working while under the influence of marijuana,” according to the legislation.

While that addresses marijuana smoking at work or just before work, the Michigan law does not speak to what employees can do away from work. Mr. Michelman of the A.C.L.U. said he believed that there was no gray area and that federal law does not govern the relationship between a private employer and an employee.

“There is only one law governing this situation, and that’s Michigan law,” he said.

John Vasconcellos, a California state senator who was a leading advocate for medical marijuana legislation there, said lawmakers had not anticipated such a collision of state and federal law in employment practices.

“I think they’re hiding from common sense, and they’re hiding from the science that shows it might help their employee be more healthy and feel less pain,” Mr. Vasconcellos said of companies that fired employees with medical marijuana registry cards, prescriptions or endorsements from doctors.

In Colorado, the right to use medical marijuana for a debilitating medical condition is protected by the State Constitution — though with limitations — making it unique among states where it is legal. But Brandon Coats, 30, a phone operator at Dish Network who has used a wheelchair since he was paralyzed in a car accident 14 years go, was fired after a random drug test came back positive.

Mr. Coats’s doctors had recommended medical marijuana to control his involuntary muscle spasms and seizures after prescription drugs were no longer effective for him. A few puffs before bed allows him to work comfortably the next day, said his lawyer, Michael Evans.

Mr. Evans said that Mr. Coats — who, he said, had consistently received good performance reviews — was terminated for conduct that was legal and outside of work.

In an e-mail, Francie Bauer, the company’s corporate communications manager, said: “Dish Network does not comment on the specifics of employee matters. As a national company with more than 21,000 employees, Dish Network is committed to its drug-free workplace policy and compliance with federal law, which does not permit the use of marijuana, even for medicinal purposes.”

The issue has not worked its way through the Colorado courts.

Some companies have begun to recognize marijuana as a legitimate therapy. Jian Software, based in Chico, Calif., recently consulted with the National Organization of Marijuana Reform Laws, or Norml, in an effort to institute a drug policy that accounts for the medicinal use of marijuana.

This is necessary, said R. Keith Stroup, legal counsel for Norml, because the courts have not yet held that medical marijuana users enjoy “a legally enforceable, fundamental right” to smoke.

“Employers in states that have legalized the medical use of marijuana under state law unfortunately remain free to fire employees who test positive for THC,” Mr. Stroup said in an e-mail. “It is terribly unfair to these patients, but at this time it is not illegal.” ■

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