



April 16, 2010

## *MEDICAL MARIJUANA*

### **OREGON SUPREME COURT HOLDS THAT OREGON DISABILITY DISCRIMINATION LAW DOES NOT REQUIRE EMPLOYERS TO ACCOMMODATE THE MEDICAL USE OF MARIJUANA**

On April 14, 2010 the Oregon Supreme Court held that Oregon employers are not required to accommodate the medical use of marijuana and are not required to engage in the interactive process regarding potential accommodations. See [\*Emerald Steel Fabricators, Inc. v. BOLI\*](#). This decision resolves years of confusion and brings Oregon law into step with the federal ADA.

#### **The Underlying Facts**

The case arose after Emerald Steel terminated a temporary steel press operator in 2003. Unbeknownst to Emerald Steel, the temporary employee had obtained a valid medical marijuana card through the Oregon Medical Marijuana Program and used marijuana on a regular basis. While working for Emerald Steel the temporary “employee used medical marijuana one to three times per day, although not at work” but his “work was satisfactory, and [Emerald Steel] was considering hiring him on a permanent basis.” The temporary employee knew that passing a drug screen was a condition of permanent employment and knew that his marijuana use would be detected. For that reason, he told his supervisor about his medical marijuana card and his marijuana use, explained that other forms of treatment had not been successful, and asserted that he did not use marijuana at work. “One week later, the supervisor discharged employee.”

#### **Lower Court Decisions**

The temporary employee filed an administrative complaint with the Oregon Bureau of Labor and Industries alleging that he is an individual with a disability and that Emerald Steel’s termination of his temporary employment constituted disability discrimination in violation of ORS 659A.112. He also contended that Emerald Steel failed to reasonably accommodate his disability

BOLI agreed with the temporary employee and brought formal charges. In the administrative trial, the ALJ found that Emerald Steel did not terminate the temporary employee because he is an individual with a disability. However, it also found that Emerald Steel failed to provide reasonable accommodation and failed to engage in the interactive process regarding potential reasonable accommodations.

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Emerald Steel appealed the decision to the Oregon Court of Appeals. It argued that the Oregon's disability discrimination laws are to be interpreted in a manner consistent with the federal Americans with Disabilities Act, which does not protect persons who are currently engaged in the illegal use of drugs. Since marijuana possession is illegal under the federal Controlled Substances Act, marijuana is an illegal drug and the protections of the ADA do not apply to persons using marijuana. Construing Oregon law in a manner consistent with the ADA, Emerald Steel argued that the protections of Oregon's disability discrimination laws also do not extend to persons who are currently engaged in the use of marijuana since it is an illegal drug under federal law. On a technicality, the Court of Appeals declined to reach that argument.

### **The Oregon Supreme Court Decision**

Emerald Steel appealed to the Oregon Supreme Court, which agreed to review the matter. On review, the Supreme Court reversed the lower appellate court decision. Specifically, the Oregon Supreme Court found that marijuana is an illegal drug under federal law (although the Oregon Medical Marijuana Act contains a limited exemption from prosecution under state criminal laws) and that the protections of Oregon's disability discrimination laws also do not extend to persons who are currently engaged in the use of illegal drugs, like marijuana. Consequently, Emerald Steel's termination of the temporary employee for using illegal drugs did not violate Oregon's disability discrimination laws. Emerald Steel did not have an obligation to accommodate the use of medical marijuana and had no duty to engage in the interactive process with the temporary employee regarding potential accommodations.

### **Practical Thoughts for Employers**

The Supreme Court's decision eliminates the confusion that had existed. Since at least 2006 Oregon employers have been required to reasonably accommodate the medical use of marijuana or face possible liability under Oregon law (not under the ADA) for unlawful disability discrimination. This will no longer be the case. Following the Supreme Court's decision, an individual who is currently engaged in the use of illegal drugs, including medical marijuana, is not protected by Oregon's disability discrimination laws (and continues to not be protected under the ADA). Further, the obligation to engage in the interactive process related to the potential accommodations does not apply to medical marijuana use.

Bullard Law will continue to continue to follow medical marijuana issues and to report on new developments. Please also feel free to contact us with any questions or concerns about any other employment, labor relations, and employee benefits issues.

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