



June 10, 2011

### *MEDICAL MARIJUANA*

## **WASHINGTON SUPREME COURT HOLDS THAT WASHINGTON'S MEDICAL MARIJUANA ACT PROVIDES NO JOB PROTECTION**

On June 9, 2011 the Washington Supreme Court held that Washington's Medical Use of Marijuana Act (MUMA) does not create any employment protections for applicants or employees. This means that, consistent with the federal ADA, Washington 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 [\*Roe v. TeleTech Customer Care Management\*](#).

### **The Underlying Facts**

"Jane Roe" used medical marijuana pursuant to Washington's MUMA. She suffered from painful debilitating migraine headaches, from which over-the-counter and prescription medications had provided insufficient relief. In June 2006 Roe became a patient of The Hemp and Cannabis Foundation Medical Clinics, which issued an authorization for her to possess marijuana for medical purposes. (Interestingly, Roe told the clinic that before June 2006 "she already used cannabis more than four times a day, totaling around one gram" and that "she would use '50%' more cannabis if it were easier and cheaper to obtain.")

In October 2006 TeleTech made a contingent offer of employment to Roe. One of the contingencies was the results of a drug screening to be conducted pursuant to TeleTech's drug policy, which required a negative drug test result; anyone with a positive drug screen would be ineligible for employment with TeleTech. Knowing that she could not pass a drug screen, Roe told the company that she was a medical user of marijuana and offered to produce a copy of her legal authorization. TeleTech declined that offer and required her to undergo a drug test. TeleTech then allowed Roe to begin working pending the outcome of the test. After receiving the positive drug screen results, TeleTech terminated Roe.

### **Lower Court Decisions**

In February 2007 Roe sued the company in Washington state court, alleging that TeleTech's termination of her employment (1) violated the MUMA and (2) constituted a wrongful termination in violation of public policy. TeleTech filed a motion summary judgment, which the trial court granted. It held that MUMA does not create any employment protection. Rather, it provides an affirmative defense to criminal prosecution under state drug laws and does not imply any civil cause of action. On Roe's appeal, the Washington Court of Appeals affirmed the grant of summary judgment.

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### **The Washington Supreme Court Decision**

Roe appealed to the Washington Supreme Court, which also affirmed. In its decision, the Washington Supreme Court rejected Roe's contention that the MUMA prohibits an employer from discharging an employee for medical marijuana use authorized by the MUMA. In a lengthy examination of the law, the court found that: (1) the MUMA's clear purpose is to provide an affirmative defense against prosecution under state criminal laws; and (2) the explicit statement that the law does not require employers to accommodate in the workplace use of medical marijuana does not allow for an inference that the law requires employers to accommodate outside of the workplace use of medical marijuana.

Regarding this second finding, the Washington Supreme Court also rejected any inference that the MUMA requires accommodation where the outside of the workplace use of medical marijuana does not create a safety threat in the workplace. "One would expect any statute creating employment protections for authorized medical marijuana users might include exceptions for certain occupations or permissible levels of impairment on the job. Indeed, describing MUMA's alleged employment protections, Roe argues an employer only has a duty to accommodate an employee's off-site medical marijuana use if the employee's use would not affect job safety or performance. But nothing in MUMA suggests the drafters or voters considered such issues or contemplated the regulatory scheme suggested by Roe's proposed safety and performance exceptions. This statutory silence supports the conclusion that MUMA does not require employers to accommodate off-site medical marijuana use."

### **Practical Thoughts for Employers**

The Washington Supreme Court's decision eliminates any confusion regarding the MUMA's workplace implications. It does not require Washington employers to accommodate the medical use of marijuana or to engage in the interactive process regarding the potential accommodation of the use of medical marijuana.

Some Washington employers likely have been accommodating the medical use of marijuana by employees (e.g., by excusing a medical user of marijuana from the consequences that otherwise would result from the use of marijuana). In the wake of this decision, it is likely that some of these employers will want to change their practice or policy. The best approach in this situation would be to provide some form of notice to the entire workforce that the employer's policy or practice is changing.

For a discussion of the state of the law in Oregon, please see our [April 16, 2010 Bullard Alert](#).

Bullard Law will 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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