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Colorado Supreme Court Ruling on Employee Marijuana Use Has National Implications

In a much anticipated decision, the Colorado Supreme Court reaffirmed an employer's right to enforce its drug policy even against a medical marijuana user. Because the court's decision on *Coats v. Dish Network, LLC* is rooted in federal law, it is likely to have national implications.

In 2000, Colorado voters passed Amendment 20, which permitted medical marijuana within limits. The plaintiff in the *Coats v. Dish Network, LLC* case, Brandon Coats, tested positive for marijuana in a random drug test and was discharged. He contended that his use was solely after hours at home, within Amendment 20's limits. There was no evidence suggesting impairment at work. Colorado has long had a Lawful Off-Duty Conduct statute, CRS 24-34-402.5, which prohibits discharging workers (with some exceptions not at-issue here) for "lawful activities" they undertake off-duty. Coats argued that his use of marijuana was permitted by Colorado's medical marijuana laws and therefore a "lawful activity" for which he could not be discharged under the Lawful Off-Duty Conduct statute.

The trial court, the Colorado Court of Appeals and now the Colorado Supreme Court disagreed. The Supreme Court held that marijuana remains unlawful, at least under federal law. Coats argued that the Lawful Off-Duty Conduct statute was a Colorado state statute and as such its phrase "lawful activities" should be read only in light of state law. In other words, he argued that the courts were not allowed to consider federal law when deciding whether an activity is "lawful." The Supreme Court disagreed, finding:

Nothing in the language of the statute limits the term "lawful" to state law. Instead, the term is used in its general, unrestricted sense, indicating that a "lawful" activity is that which complies with applicable "law," including state and federal law. We therefore decline Coats' invitation to engraft a state limitation onto the statutory language.

Accordingly, Coats' use was not a "lawful activity" protected by the Lawful Off-Duty Conduct statute. The Supreme Court affirmed the dismissal of Coats' lawsuit.

It should be noted that, in 2012, Colorado voters passed Amendment 64, which now permits recreational marijuana use as well, again within limits. The Colorado Supreme Court's ruling suggests the same holding for recreational marijuana users. In short, the Supreme Court's ruling reaffirms an employer's right to enforce its drug policies, even when an employee is using within the limits of Colorado's marijuana laws.

The decision is rooted in clear federal law and is likely to be persuasive in other states as well. As the Colorado Supreme Court notes, marijuana remains a controlled substance prohibited by federal criminal laws. That is true in Colorado as well as in all 50 states. It should be noted, though, that in some states the analysis is likely to be complicated by the language of their marijuana-permissive laws. For example,

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in Nevada, NRS 453A.800(3) requires employers to reasonably accommodate off-duty marijuana use unless such use poses a threat of harm or undue hardship or otherwise prohibits the employee from “fulfilling any and all of his or her job responsibilities.”

Headquartered in Denver, with offices throughout the western United States and in Atlantic City and the District of Columbia, Brownstein Hyatt Farber Schreck, LLP assists clients to navigate the growing array of marijuana laws, while maintaining compliance with federal, state and local law. To this end, Brownstein has developed a detailed 50-state survey of the different kinds of marijuana laws currently in effect. These laws vary widely, even with respect to states that allow the medical or recreational use of marijuana. Brownstein will continue to update the survey, monitor changing marijuana laws and provide periodic updates on significant developments in the area. If you or your company would like assistance with marijuana-related compliance issues, or would like to receive a copy of the 50-state survey and periodic updates, please email Bill Berger at bberger@bhfs.com.

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