

Commentary

June 30, 2015

Colorado Supreme Court Provides a Moment of Sanity on Marijuana

In a unanimous (6-0) decision on June 15, 2015 in *Coats v. Dish Network*, the Colorado Supreme Court, ruled that an employer could fire an employee for testing positive for marijuana in that state despite the legality of both medical and recreational marijuana, even if the marijuana use were based on a physician's recommendation and even if the marijuana use were limited to nonworking hours away from the workplace. The Colorado state marijuana laws are in conflict with the federal law, under which marijuana is an illicit substance and in this Supreme Court ruling, marijuana use was therefore considered "illegal." This finding is expected to have wide impact in Colorado and throughout the country in other states with varying marijuana laws.

In 1987 the federal government took the lead in promoting drug-free workplaces through landmark legislation which set rules for federally-sponsored workplace drug tests. Since that time, many employers have implemented drug-free workplace policies under which marijuana use is prohibited. The disputed issue of workplace drug testing was recently reviewed in a report released by the Institute for Behavior and Health, Inc., *Workplace Drug Testing in the Era of Legal Marijuana*.¹ This report noted the disputed legal ground and the still-evolving law on this topic while encouraging employers to maintain their drug-free workplace drug policies, including the use of drug testing, for the health, safety and productivity of the workplace and employees. The report recommended use of the *per se* zero tolerance drug-free workplace standard that has been in use in safety-sensitive jobs and in federally regulated workplace drug testing programs for three decades. Under this standard the federal law is followed. Marijuana use is strictly prohibited in all 50 states.

While the recent Colorado Supreme Court has thwarted advocates for marijuana legalization, this decision is part of a series of court decisions from around the country which consistently have affirmed employers' rights to establish their own policies regarding drug use, including prohibiting marijuana use because the sale, use and production of marijuana, including use for medical purposes, remains illegal under federal law. There is ample precedence for a conclusion that when state laws and federal laws conflict, the federal law prevails. This was affirmed with respect to marijuana use for medical purposes in the US Supreme Court ruling in *Gonzales v. Raich* in 2005.

The movement to legalize medical and recreational marijuana argues bizarrely that smoking marijuana is healthy and safe. State ballot initiatives are the leading edge of the movement to add marijuana to alcohol and tobacco as a third legal drug. Such initiatives are misleading and lavishly funded. Marijuana is a widely abused, impairing drug, the use of which produces high social costs. For example, over 61 percent of Americans age 12 and older with a substance use disorder for drugs other than alcohol are dependent on or abuse marijuana, making it by far the most prevalent illicit drug of abuse in this country.²

There are many serious short- and long-term effects of marijuana use³ which pose serious threats to workplace health and safety. Interpreting the results can be confusing. The typical workplace urine drug test identifies an inactive metabolite of marijuana (carboxy-THC). When that metabolite is in the urine, the psychoactive and impairing component in marijuana (tetrahydrocannabinol or THC) is in the fatty tissue of the body, including in the brain, of the urine donor, making the detection of the THC metabolite useful in workplace drug testing programs.⁴

The Colorado Supreme Court got it right in *Coats v. Dish Network*. This important decision is one of many that are needed to provide employers the necessary guidance on how they can successfully address the threat of marijuana use to the health, safety, and productivity of the workplace and workforce.

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¹ DuPont, R. L. (2015). *Workplace Drug Testing in the Era of Legal Marijuana*. Rockville, MD: Institute for Behavior and Health, Inc.

² Substance Abuse and Mental Health Services Administration. (2014). *Results from the 2013 National Survey on Drug Use and Health: Summary of National Findings*, NSDUH Series H-48, HHS Publication No. (SMA) 14-4863. Rockville, MD: Substance Abuse and Mental Health Services Administration.

³ Volkow, N.D., Baler, R.D., Compton, W.M., & Weiss, S.R.B. (2014). Adverse health effects of marijuana use. *The New England Journal of Medicine*, 370(23), 2219-2227.

⁴ DuPont, R. L. (2015). *Workplace Drug Testing in the Era of Legal Marijuana*. Rockville, MD: Institute for Behavior and Health, Inc. Available: http://datia.org/advocacy/IBH_workplacetesting.pdf