



CALIFORNIA EMPLOYERS DO NOT HAVE TO ACCOMMODATE MEDICAL MARIJUANA USERS

by Carmen S. Sciabica

With Washington and Colorado recently legalizing recreational marijuana use, questions continue to arise regarding an employer's right to refuse to hire or to terminate an employee who uses marijuana, especially if that use is for a legitimate medical purpose. At least for now, employers in California retain the right to ban marijuana users from employment.

California enacted the Compassionate Care Act (Proposition 215) in 1996 legalizing the use of marijuana for medical purposes. However, marijuana use remains illegal under federal law. That tension between state and federal law has created uncertainty from employers concerned with anti-discrimination laws including the California Fair Employment and Housing Act and the Federal American's with Disabilities Act.

In 2008 the California Supreme Court issued a decision stating that while Proposition 215 protects an individual from state prosecution for medical marijuana use, it does not protect an individual from discrimination based on marijuana use under the Fair Employment and Housing Act. And just this past year, the Ninth Circuit Court of Appeals held that the Americans with Disabilities Act does not protect medical marijuana users from discrimination based on their use of marijuana for medicinal purposes.

Employers in California can continue to deny employment to marijuana users. However, several states, including Arizona prohibit discrimination based on medical marijuana use. It is not outside the realm of possibility that we will be seeing anti-discrimination laws enacted in California in the future.

About the Author:

Carmen Sciabica is a Senior Attorney at Wroten & Associates and has been an integral part of the Wroten & Associates team developing expertise in complex law and motion, witness preparation, case evaluation and development. Carmen also provides litigation support managing witnesses and evidence presentation at trial and arbitration.

Carmen earned her Juris Doctor at Whittier College School of Law in 1987. She was a member of Whittier College School of Law Moot Court Honors Board earning an award for Best Internal Written Brief, Fall 1985.

A Former member of the Idaho State Bar and U.S. District Court for the District of Idaho, Carmen has been a member of the California State Bar since 1991, and as a member of the U.S. District Court for the Central and Eastern Districts of California. She is also a member of DRI and ASHRM.