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Florida HR Considerations: Marijuana in the Workplace

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Florida employers should take note of new developments regarding marijuana use.

First, a recent circuit court decision (which is now on appeal) held that the Florida Civil Rights Act (FCRA) requires employers to consider reasonable accommodations for off-duty medical marijuana use. In *Giambrone v. Hillsborough County* (Fla. 13th Cir. Ct. Dec. 10, 2024), the employee who worked for Hillsborough County as an Emergency Medical Technician (EMT) tested positive for marijuana following a random drug test. In accordance with an applicable collective bargaining agreement and the County's Drug Free Workplace policy, the employee presented his employer and the testing doctor with a valid medical marijuana card. The County nevertheless placed the employee on administrative leave without pay. It admitted in court proceedings, however, that there had been no allegations that the employee used marijuana during work hours or that his job performance was impacted by his off-duty marijuana use.

The employee sued the County, alleging a failure to accommodate in violation of the FCRA as well as wrongful termination and breach of contract for failure to accept his state-issued medical marijuana card. Analyzing the relevant provisions of the Florida Constitution and Florida statutes legalizing medical marijuana, the court found that while the plain language of the law does not require accommodation for on-siteuse, it does require employers to accommodate the qualified patient's off-site use of medical marijuana. Here, there was no factual dispute as to whether the employee met the definition of a qualified patient, as he suffers from anxiety, PTSD, and insomnia which "substantially limits one or more of his major life activities on a daily basis when he is not properly medicated". Therefore, the court concluded that the employee was protected under the FCRA and the County violated the law by failing to make a reasonable accommodation. The court was unpersuaded by the County's argument that marijuana remains illegal under federal law, specifically finding it significant that the employee's EMT license was supervised by Florida *state law* and that, under the collective bargaining agreement, the employee was entitled to report the use of prescription medications authorized under federal *or state law* to explain positive drug test results.

As noted above, the County has appealed this decision to Florida's Second District Court of Appeal; however, employers should proceed with caution in assessing adverse action against a medical marijuana user.

Second, on the heels of this decision, a bill was introduced in the Florida Legislature that would require public employers to consider reasonable accommodations for medical marijuana users, and there is a renewed effort to approve a 2026 voter initiative to legalize recreational marijuana for adults. While a similar measure failed to garner sufficient support in the November 2024 general election, the new initiative includes several updates to address prior criticisms, including making clear that smoking and vaping in any public place would be prohibited.

In light of these marijuana related developments, including employee marijuana use protections, Florida employers should consider reviewing their drug-free workplace policies and procedures.

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