



Employers May Now Prohibit Medical Marijuana Use in All States

A recent ruling by the United States Supreme Court means that employers may now enact and enforce national policies prohibiting the use of marijuana by employees, even if prescribed for medical reasons.

In *Gonzalez v. Raich* (2005), the Supreme Court reviewed California's Compassionate Use Act which authorized limited marijuana use for medicinal purposes. The law created an exemption from criminal prosecution for physicians as well as for patients and primary caregivers who possessed or cultivated marijuana for medicinal purposes with the recommendation or approval of a physician. Angel Raich and Diane Monson are California residents who suffer from a variety of serious medical conditions and who availed themselves of medicinal marijuana pursuant to the California statute. They were both being treated by licensed, board-certified family practitioners who concluded that marijuana was the only drug available to effectively treat their conditions.

On August 15, 2002, county deputy sheriffs and agents from the federal Drug Enforcement Agency ("DEA") came to the Monson home, and after a thorough investigation seized and destroyed all six of Monson's marijuana plants. Raich and Monson then brought suit against the Attorney General of the United States and the head of the DEA seeking injunctive and declaratory relief prohibiting the enforcement of the federal Controlled Substances Act ("CSA") to the extent it prevented them from possessing, obtaining, or manufacturing marijuana for their personal use.

After a series of appeals and reversals, the Supreme Court held that the CSA represents a valid and enforceable exercise of federal power, which means that individual states' laws inconsistent with the CSA are preempted by the CSA's provisions. Based on this ruling, state medical marijuana laws are invalid, and interpretations of employment and other laws based on now invalid state medical marijuana laws should not be binding going forward.

At least ten States had authorized the use of marijuana for medicinal purposes: Alaska, California, Colorado, Hawaii, Maine, Nevada, Oregon, Vermont, Washington, Arizona and Montana. In these states, employers may have been prohibited from firing employees who used medical marijuana, or



were required to provide reasonable accommodations for employees who used marijuana for medicinal purposes.

After *Gonzales v. Raich*, the Controlled Substances Act clearly trumps state laws that would allow the use of medical marijuana. Employers may now terminate employees who currently use marijuana in violation of company drug and alcohol policies even when state laws permit medicinal use.

Employer Notes: Companies with operations in multiple states should consider reviewing and updating their drug testing and use policies to conform to federal drug laws in light of this decision. Employers must still be cautious not to discriminate against employees who are not active marijuana users but who have a history of such use, as such discrimination will violate applicable state and federal disability laws.

If you have any questions about this topic, please contact either of the following Legge Farrow partners, both of whom are Board Certified in Labor and Employment Law by the Texas Board of Legal Specialization:

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