

Employers Tread Carefully! The Interplay between Federal and State Laws Regarding Medical Marijuana Usage

By [Darryl McCallum](#) on December 5, 2018

POSTED IN [HR COMPLIANCE](#), [LAWS & REGULATIONS](#), [LITIGATION](#), [REASONABLE ACCOMMODATION](#), [WORKPLACE TRENDS](#)



The U.S. Court of Appeals for the Ninth Circuit has a reputation as an employee-friendly forum. Yet that Court recently rendered a decision that employers should applaud. In [Carlson v. Charter Communications, LLC](#), the Ninth Circuit refused to revive a former employee's lawsuit against his employer in which he alleged that he was wrongfully terminated due to his legal use of medical marijuana. Interestingly, the panel of the Court that issued the decision consisted of two judges appointed by Presidents Clinton and Obama and one judge appointed by President George W. Bush. The case involved a Montana statute known as the Montana Marijuana Act, which allows patients with state-issued medical marijuana program cards to have a certain amount of marijuana in their possession.

Lance Carlson, the employee in this case, was fired for his legal marijuana use outside of work, in violation of the company's employment policies. He sued the employer for wrongful termination and discrimination. The district court dismissed Carlson's lawsuit and the Ninth Circuit affirmed the dismissal based on the fact that marijuana is still illegal under federal law; thus, it is not unlawful for an employer to have a policy prohibiting its use and to terminate an employee for violating that policy. The Court reasoned that since the Montana Marijuana Act contains no provision prohibiting employers from forbidding their workers to use marijuana nor does it allow employees to bring wrongful termination suits, then the statute does not prohibit the actions taken by the employer here.

An important caveat should be noted, however. Charter Communications, the employer in this case, was a federal contractor that was required to comply with the requirements of the Drug Free Workplace Act (“DFWA”). Interestingly, the Court did *not* hold that the DFWA preempts state law allowing medical marijuana use. It simply held that the state law itself “does not preclude a federal contractor from complying with all of the requirements” of the DFWA, such as by prohibiting the possession or use of marijuana in the workplace. Thus, the Court found no conflict between the two laws.

The Court’s decision here offers an interesting variation on the decision of the U.S. District Court for the District of Connecticut in [*Noffsinger v SSC Niantic Operating Company LLC*](#), where that court rejected a federal contractor’s argument that, despite Connecticut’s law allowing medical marijuana use, the DFWA prohibited it from hiring an applicant who tested positive on a pre-employment drug test. That court similarly found no preemption of state law, noting that the DFWA does not require drug testing or prohibit the employment of individuals using illegal drugs outside the workplace. In addition, the Connecticut statute, unlike the one in Montana, does in fact provide a private right of action to a person who suffers an adverse employment action based on medical marijuana use.

The bottom line here is that there are now at least two federal court decisions holding that the DFWA does not preempt state laws regulating the medical or recreational use of marijuana. Thus, all employers, including federal contractors, need to be aware of state laws governing the use of marijuana for recreational or medical purposes. For instance, the state of Maine has a statute specifically prohibiting employers from refusing to employ or otherwise taking adverse action against a person who uses marijuana outside of work, except where the employer is required to comply with federally mandated testing for marijuana for certain positions (*e.g.*, positions regulated by the U.S. Department of Transportation). Thus, depending on the language of the particular state statute at issue, an employer may face liability for taking an adverse action against an employee or applicant who tests positive for marijuana.