

## Don't Get Caught In The Weeds: Hiring Issues And Medical Marijuana

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According to the [National Conference of State Legislatures](#), 29 states have “comprehensive public medical marijuana and cannabis programs” and 16 states have more limited programs that allow for the use of “low THC, high cannabidiol” products for certain medical reasons. This legalization of medical marijuana has created challenges for employers and their hiring practices when many companies desire to have a zero-tolerance policy on drugs and alcohol in the workplace, especially for safety-sensitive positions. The courts also have weighed in regarding employers’ decisions not to hire individuals who have disclosed their use of medical marijuana. For example, in May 2017, a Rhode Island Superior Court granted summary judgment against an employer who refused to hire an applicant because of her use of medical marijuana. In [Callaghan v. Darlington Fabrics Corp., et al.](#), the applicant disclosed to the prospective employer that she was a medical marijuana cardholder and current user. The company elected not to hire the applicant, citing that passing a drug test was a mandatory condition of employment given its drug-free workplace. The applicant sued under both Rhode Island’s Civil Rights Act alleging disability discrimination and under Rhode Island’s medical marijuana statute known as the Hawkins-Slater Act. In [Callaghan](#), the Superior Court sided with the applicant and found that the company’s refusal to hire violated both the Hawkins-Slater Act solely because of her status as medical marijuana cardholder. The court also opined that the employer discriminated against the applicant and rejected the company’s argument that it was not required to reasonably accommodate her because of her use of a drug that is considered illegal under federal law. Similar to [Callaghan](#), an employer lost its motion to dismiss in a Connecticut court earlier this month after being sued for rescinding a job offer to an individual who tested positive for marijuana in a pre-employment drug screen. In the case, [Noffinger v. SSC Niantic Co.](#), the applicant had disclosed, after receiving an offer of employment, that she had a prescription for Marinol, a synthetic form of cannabis, because she suffered from post-traumatic stress disorder (PTSD). The applicant showed her registration certificate with the state, a requirement to be considered a qualifying patient under Connecticut’s medical marijuana statute known as Palliative Use of Marijuana Act (PUMA). The applicant also offered to provide additional medical documentation, but the company representative did not request it and, instead, scheduled a new-hire orientation. The applicant did all of this prior to undergoing a pre-employment drug screen, which was positive for cannabis. Upon learning of the results, the company notified the applicant that it was rescinding the job offer because of the positive drug test. The U.S. District Court for the District of Connecticut rejected the employer’s argument that the applicant’s suit, which included allegations related to violation of PUMA’s anti-discrimination provision, should be dismissed because the claims were preempted by three different federal laws: the Controlled Substances Act, the Americans with Disabilities Act, and the Food, Drug and Cosmetic Act. In particular, the employer argued that federal law preempted PUMA and, therefore, marijuana usage is illegal. The court flatly rejected this argument and allowed the applicant to proceed with her litigation. These two recent cases should serve

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as a cautionary guidance to employers in states where medical marijuana is legal. While having a zero-tolerance policy on drugs and alcohol, employers also must be mindful that such a policy could violate a variety of state laws, such as the medical marijuana statutes and anti-discrimination and lawful consumption laws. Instead, employers should consider ways in which it could hire a person who may have a medical marijuana prescription and reasonably accommodate that individual while balancing the company's interests in maintaining a drug- and alcohol-free workplace. In this consideration, employers can still require that the individual not use or be under the influence of medical marijuana while at work.