

## Legalized Loophole – Is Legalized Marijuana Truly “Lawful?”

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On Sept. 30, 2014, the Colorado Supreme Court heard oral arguments in *Coats v. Dish Network*, a wrongful termination case centered on use of medical marijuana. In 2000, Colorado passed a law permitting medical marijuana and legalized marijuana for recreational use in 2012, but the drug is still prohibited under federal law.

Dish Network LLC fired Plaintiff Brandon Coats after he tested positive for the active ingredient in marijuana. Mr. Coats was aware Dish Network had a zero tolerance policy for prohibited substances, including marijuana, whether or not an employee is impaired while at work. Therefore, when the active ingredient in marijuana was detected in Mr. Coats's system following a random company drug test, he was subsequently let go. Mr. Coats, who has a medical marijuana card was given a prescription for marijuana by a physician to help cope with spasms and seizures resulting from quadriplegia. After his termination, Mr. Coats brought a suit against Dish Network for wrongful termination.

In his suit, Mr. Coats alleged the Dish Network violated Colorado's "off-duty conduct" law that prohibits an employer from firing an employee for "engaging in any lawful activity off the premises of the employer during nonworking hours." He argued that he used medical marijuana on his own time (outside of work) and not within the confines of Dish Network's property.

As an initial matter, the Supreme Court will likely answer whether using marijuana can truly be considered a "lawful activity" when it is prohibited by federal law. Two lower state courts have said it cannot – including the Colorado Court of Appeals, which ruled that an activity can be "lawful" under the Lawful Activities Statute *only* if that activity is legal under both state *and* federal law. Marijuana use is currently illegal at the federal level. Mr. Coats's case has garnered close attention by employers and marijuana advocates alike, as more states consider laws permitting marijuana use. Currently, medical marijuana is legal in 22 other states and the District of Columbia. Washington is the only other state to have approved the drug for recreational use. Courts in California, Oregon and Washington have held that employers can fire employees for medical marijuana use. A decision in the case will be handed down by the Colorado Supreme Court in 2015. Stay tuned...

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