



# Medical Marijuana's Impact on Employment

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April 18, 2018

HR Conference

# What if your employee has a MJ Card?

- First the easy answers:
- There is no protected right either from the State or Feds to be under the influence in the work place.
- Reasonable suspicion testing.

# Your employee just tested positive...

- North Dakota provides NO added protection for medical MJ
- Is there any other Federal protections?
- How about American's with Disabilities Act?

# ADA 42 U.S.C. §12101

- Employers are required to provide **accommodations** that will allow an individual with a **disability** to perform the essential functions of the position.
  - Unless it imposes an **undue hardship** to the employer.
- Physical or mental impairment that **substantially** limits one or more major life activities.

# Qualifying Disability?

- NDCC §19-24.1-01(15)
  - “debilitating medical condition” for medical MJ
  - i.e. Cancer, Cirrhosis, Intractable nausea, Seizures
- Clearly substantial impact on life activities
- So would their condition qualify for ADA?
- And if so would use of MJ be a reasonable accommodation?



# Brandon Coats

- Quadriplegic from car crash
- Worked for Dish Network
- Customer Service
- Medical MJ card
- Smoked off duty
- Random drug test revealed THC
- Dish had a **zero** tolerance policy

# What have the Courts Said?

- Colorado Supreme Court
- “lawful” refers only to those activities that are lawful under both state and federal law. Therefore, employees who engage in an activity such as medical marijuana use that is permitted by state law but unlawful under federal law are not protected by the statute.
  - Coats v. Dish Network, 2015 CO 44

# US District Court for Connecticut

Section 12114(a) states that "[f]or purposes of this subchapter, a qualified individual with a disability shall not include any employee or applicant who is currently engaging in the **illegal** use of drugs, when the covered entity [employer] acts on the basis of such use."

- Noffsinger v. SSC Niantic Operating Co. LLC, 273 F. Supp. 3d 326

To be Blunt...Are Federal  
changes coming that change  
the underlying rationale? Stay  
tuned (up).....

