

# HONIGMAN

## SIXTH CIRCUIT RULES MICHIGAN'S MEDICAL MARIHUANA ACT DOES NOT PROTECT EMPLOYEES OF PRIVATE EMPLOYERS WHO FAIL DRUG TESTS

### ALERTS

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The United States Court of Appeals for the Sixth Circuit recently ruled that private employers may terminate an employee's employment for failing a drug test without violating the Michigan Medical Marihuana Act, Mich. Comp. Laws § 333.26421 et seq. (the MMMA). The court affirmed the trial court's dismissal of a lawsuit brought by a former employee of Wal-Mart Stores, Inc. (Wal-Mart), claiming wrongful termination in violation of the MMMA and under Michigan public policy. A copy of this decision is available by clicking [here](#).

In 2008, Michigan passed the MMMA that allows "qualifying patient[s]" suffering from a "debilitating medical condition" to possess and use marijuana for "medical use" upon receiving a "registry identification card" issued by the Michigan Department of Community Health. In the case decided by the Sixth Circuit, the plaintiff alleged to have been diagnosed with sinus cancer and an inoperable brain tumor. As a result, the plaintiff maintained he had obtained a registry card and began using medical marijuana to alleviate ongoing pain. The plaintiff claimed never using marijuana while on the job or otherwise reporting for duty at Wal-Mart under the influence. Nevertheless, Wal-Mart terminated the plaintiff for violating the company's drug use policy after he failed a drug test.

In affirming the dismissal of the plaintiff's lawsuit, the Sixth Circuit ruled the MMMA does not regulate private employment, only action taken by the State of Michigan. Moreover, the court rejected the plaintiff's argument that his termination contravened Michigan public policy and noted such a ruling would "mark a radical departure from the general rule of at-will employment in Michigan."

Although federal trials courts in Michigan must follow this decision, State of Michigan courts are not required to do so. Therefore, it is possible a state court could reach a different conclusion. Accordingly, before taking any action involving an employee who possesses a current Michigan medical marijuana registry card, including an employee who has failed a drug test, we encourage you to consult with an attorney.

If you have any questions regarding this issue, please contact one of Honigman's Labor and Employment attorneys listed [here](#).