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U.S.

# Workers Can Be Fired for Marijuana Use, Colorado Court Rules

By **JACK HEALY** JUNE 15, 2015

DENVER — Even in one of the country’s most marijuana-friendly states, smoking pot off the job and away from work can still get an employee fired.

That was the unanimous conclusion of the Colorado Supreme Court on Monday, in a closely watched workplace lawsuit involving a customer service worker who uses medical marijuana to help soothe the painful spasms he has suffered since a car accident left him paralyzed. The worker, Brandon Coats, was fired from Dish Network in 2010 after testing positive for marijuana in a random drug test.

The court’s decision was a blow to marijuana advocates, who have consistently seen court rulings go against them, with judges in Colorado and elsewhere saying that companies have the right to create their own drug policies. The loss by Mr. Coats highlights the limits of marijuana legalization at a time when more states are approving medical or recreational uses of a drug that is still outlawed as a Schedule I controlled substance by the federal government.

“The federal government has in many ways the last say,” said Sam Kamin, a law professor at the University of Denver who studies legal issues swirling around marijuana’s growing place in society. “As long as that federal prohibition is in place, the states can only do so much.”

Twenty-three states allow medical marijuana, and Colorado is one of four that have legalized the drug’s recreational use for adults. But Colorado is now confronting a backlash from two neighboring states, sheriffs, rural property owners and a hotel company who argue in separate lawsuits that Colorado’s network of state-licensed

marijuana retailers and dispensaries is illegal, bad for property values and public safety, and should be dismantled.

In another backlash, dozens of cities in Colorado and Washington State have banned marijuana dispensaries from their limits.

Despite those conflicts, the regulated marijuana industry has become a presence here. There are marijuana-themed yoga classes, cooking seminars and gallery events, and the state is taking in millions in tax dollars from marijuana sellers. Federal law enforcement officials have largely allowed states to proceed with their efforts to regulate medical and recreational marijuana.

But the federal prohibitions on the drug have made it difficult for dispensaries and regulated growers to get bank accounts or lines of credit, and have forced marijuana businesses to pay abnormally high tax bills. Marijuana advocates said the court's ruling on Monday highlighted the legal gray areas where marijuana intersects with employment law and other matters, such as custody disputes and housing cases.

Lawyers for Mr. Coats argued that his medical marijuana use should have been covered by a Colorado law aimed largely at protecting smokers from being fired. It says that employers may not fire workers for "any lawful activity" outside the workplace.

Mr. Coats, who said that marijuana had worked "like a miracle," had a medical marijuana card from the state, and said he smoked only at home, away from work, and that his use did not affect his job performance answering calls from cable-service customers.

But though marijuana may be legally grown in basements here and sold in downtown Denver dispensaries, the state's high court ruled that the clash in state and federal laws meant that Mr. Coats's use was not "lawful."

"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," Justice Allison H. Eid wrote in the court's 6-to-0 decision.

The Colorado Supreme Court's ruling upheld two lower-court decisions. In a statement, Mr. Coats's lawyer, Michael Evans, said that the decision was "devastating," but that it at least clarified the boundaries of marijuana use for employees.

Lawyers said the ruling could have wide ripples in Colorado. Cathy Klein, a lawyer in the Denver area, represents a nurse who was fired after testing positive for marijuana. Ms. Klein said that the state nursing board has been trying to order her client into a drug treatment program, and that Monday's decision would reinforce societal images of marijuana users as low-level criminals.

“The fact that it is a crime under federal law, that part of the decision is going to be persuasive,” she said.

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