

SJC rules in favor of employee fired for using medical marijuana

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The highest court in Massachusetts has affirmed an employee's right to use medical marijuana, saying that an employee who was terminated for her use of the drug could file a handicap discrimination lawsuit.

The Supreme Judicial Court's ruling sends the case back to Superior Court, allowing it to be heard.

Attorneys for the employee said that the decision represents a major win for medical marijuana patients, who are now protected from being outright terminated if they fail a drug test.

"The more important point is the court has recognized that the use of medically prescribe marijuana by a qualified patient is just as lawful as the use of any other prescribed medication," said [Matt Fogelman](#), an attorney with Fogelman & Fogelman. "Before this there was no protection in Massachusetts for employers firing them for a drug test even if they were using it for medicinal purposes."

Fogelman said that even if they lose the case in the lower court, the Supreme Court ruling would still protect employees that use medical marijuana, and that employers have to make a reasonable accommodation to someone who uses the drug medically.

The lawsuit began in September 2015, when [Cristina Barbuto](#), an employee at Advantage Sales and Marketing, filed suit against her employer a year after being fired — after her first day on the job — for using the drug. Barbuto said she was required to take a drug test in September 2014 to begin the job, and had told the employer that she

had a certificate for medical marijuana to help her manage her Crohn's disease.

Barbuto said she used marijuana off-hours, and not before or during work.

According to the decision, a supervisor said the marijuana use wouldn't be a problem, but Barbuto was dismissed from the job when the drug test came back positive for marijuana. She was told by a human resources representative that while medical marijuana is legal in Massachusetts, it remains illegal under federal law.

Barbuto initially filed a discrimination charge with the Massachusetts Commission Against Discrimination, but later withdrew the charge to file a complaint in Superior Court. A Superior Court judge dismissed Barbuto's complaint, and she appealed to the Supreme Judicial Court.

In a decision issued on July 17, the Supreme Court reversed the lower court's decision.

The court found that the employer would have to make accommodations for its employee to consume medical marijuana off-site, and that the federal illegality of the drug did not make it unreasonable as an accommodation.

“Even if the accommodation of the use of medical marijuana were facially unreasonable, which it is not, the employer here still owed the plaintiff an obligation under (Massachusetts law) before it terminated her employment, to participate in the interactive process to explore with her whether there was an alternative, equally effective medication she could use that was not prohibited by the employer's drug policy,” the court said. “This failure to explore a reasonable accommodation alone is sufficient to support a claim of handicap discrimination.”

The court specified that a lawsuit would be filed under the state's handicap discrimination laws, and not through the newly-created law legalizing medical marijuana.

Medical marijuana has been legal in Massachusetts since 2012. Last year, Massachusetts voters went a step further, legalizing recreational marijuana.

Jessica Bartlett covers health care, including hospitals, health IT, health policy and insurance, as well as the beer and marijuana industries.