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Michigan Medical Marijuana Act vs Employers' Drug Use Policy

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I recently conducted an employment law seminar for a group of my manufacturing clients. At the seminar, the majority of the questions centered around whether or not Michigan's Medical Marijuana Act ("MMMA") allows employees to use marijuana while on the job. Due to the numerous questions I received at the seminar I thought a quick article on this issue would be helpful.

In September, 2012, a Federal Court in Michigan held that Wal-Mart did not unlawfully terminate an employee who tested positive for marijuana in violation of the company's policy, even though the employee possessed a registry card under the MMMA. The Wal-Mart case was the first legal decision to address whether the MMMA provides any sort of employment protection for medical marijuana users. In the end, the Court found that the MMMA was directed at governmental action, such as protection from prosecution under certain circumstances, and that the MMMA in no way regulates private employment or private employers' policies. Specifically, the Court stated: "Nowhere does the MMMA state that the statute regulates private employers, that private employees are protected from disciplinary action should they use medical marijuana, or that private employers must accommodate the use of medical marijuana outside of the workplace."

Therefore, based on the Wal-Mart decision, the MMMA does not require an employer to accommodate an employee's use of medical marijuana, nor does it require the employer to accommodate an employee who is working under the influence of marijuana. The Wal-Mart decision is the first decision to rule on the MMMA in the workplace and it is unknown whether there will be future decisions. However, until the Wal-Mart decision is overruled on appeal and/or by another decision, employers should continue to develop and enforce their workplace drug testing policies and enforce any disciplinary action for violation of those policies.