



Americans for Safe Access

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DATE

Supervisor/Owner
Employer/Company/Organization
Address
City, State, Zip

Dear *Supervisor/Owner*:

I am an attorney for Americans for Safe Access -- a Bay Area-based non-profit that advocates for medical marijuana patients. *PATIENT NAME*, an employee at your company, recently contacted Americans for Safe Access. We have informed *PATIENT NAME* of *HIS/HER* rights as a medical marijuana patient under state law and provide to you the following information.

Under California law, “seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person’s health would benefit from the use of marijuana. . . .” Cal. Health & Safety Code § 11362.5(b)(1)(A).

While employers have broad discretion to determine whom they employ, that discretion is not unlimited. In particular, employers cannot make demands of their employees that violate public policy. *Gantt v. Sentry Insurance* (1992) 1 Cal.4th 1083, 1090, 4 Cal.Rptr.2d 874; *Foley v. Interactive Data Corp.* (1988) 47 Cal.3d 654, 665, 254 Cal.Rptr. 211; *Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167, 178-79, 164 Cal.Rptr. 839; *Soules v. Cadam, Inc.* (1991) 2 Cal.pp.4th 390, 401, 3 Cal.Rptr.2d 6.

In 1996, the California electorate declared as the public policy of this State the right of seriously ill Californians to obtain and use marijuana for medical purposes. Cal. Health

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Defending Patients’ Access to Medical Marijuana!

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& Safety Code § 11362.5(b)(1)(A). As such, a positive test results for marijuana should in no way hinder Ms. Smith's status as an employee of your company. Consequently, if she is terminated for exercising her statutory right as a medical marijuana patient, you will have violated that policy. This constitutes a wrongful discharge in violation of public policy. *See Semore v. Pool* (1990) 217 Cal.App.3d 1087, 1098, 266 Cal.Rptr. 280 (holding that an employee fired for refusing to take drug test may maintain tort action for wrongful discharge in violation of public policy against the employer because the termination violates the right to privacy); *Gould v. Maryland Sound Industries* (1995) 31 Cal.App.4th 1137, 1147-48 (same where employee was fired so the employer could avoid paying accrued commissions and vacation pay); *see also* Jeffrey Tanenbaum, *Marijuana in the Workplace The Impact of Proposition 215*, CALIFORNIA EMPLOYMENT LAW REPORTER (Dec. 1996) at 2 (stating that employers who discharge employees for medical marijuana usage run "a serious risk of a claim for tortious violation of public policy").

I write to request that you not take any action that would result in the dismissal of *PATIENT NAME* from your employment based on a positive test for marijuana, thereby ignoring *HIS/HER* status as qualified medical marijuana patient. While I appreciate that your drug testing policy is motivated by the best intentions, I believe that it in this particular case it must be reconsidered. I hope that we can work together to resolve this matter in a cordial and expeditious manner.

Sincerely,

Joseph D. Elford
Staff Attorney
Americans for Safe Access
(415) 573-7842

cc: *PATIENT NAME*