

Resource Guide

Compassionate Use Act: passed as Proposition 215, codified as Health & Saf. Code 11362.5 et. seq.

People v. Kelly: 163 Cal. App. 4th 124 (2010).

Medical Marijuana Program Act: Health and Saf. Code 11362.7-11362.83. Verification database at www.calmmp.ca.gov.

Proposition 65: Health and Saf. Code 25249.5 et. seq.

Controlled Substances Act: 21 U.S.C. 802.

Memo, California Attorney General Edmund G. Brown:

http://ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf

Gonzales v. Raich: 545 U.S. 1 (2005).

Memo, U.S. Deputy Attorney General David Ogden: <http://blogs.usdoj.gov/blog/archives/192>

Ross v. RagingWire Telecommunications, Inc.: 42 Cal. 4th 920 (2008)

Ross v. RagingWire Telecommunications

Facts: Plaintiff is a disabled individual as defined under FEHA and receives disability benefits. Plaintiff, whose physician recommended he use marijuana to treat chronic pain, was fired when a preemployment drug test required of new employees revealed his marijuana use. Plaintiff alleges that his disability and his use of marijuana to treat the pain do not interfere with his ability to perform the essential functions of the job.

Issues: (1) Does an employer violate FEHA by failing to make a reasonable accommodation for an individual's disability by denying employment based on testing positive for illegal drugs which were medically prescribed to combat the disability? (2) Does the Compassionate Use Act apply to the employment context? (3) Does an employee who has been terminated because he failed a preemployment drug based on the presence of a substance he has been medically prescribed under state law have a cause of action for wrongful termination in violation of public policy?

Holding: Plaintiff who was fired when a preemployment drug test revealed his marijuana use does not have a cause of action against his employer for disability-based discrimination under FEHA or for wrongful termination in violation of public policy. There is no textual or historical basis that suggests that the Compassionate Use Act should be extended to the employment context. Employers are free to use preemployment drug tests and deny employment based on the presence of illegal drugs.

Reasoning: The Compassionate Use Act does not give medical marijuana the same standing as any other legal prescriptive drug. While the Act exempts individuals from criminal liability, marijuana still remains an illegal drug, and FEHA does not require employers to accommodate the use of illegal drugs. The Compassionate Use Act does not extend to the employment context. Additionally, the Act does not require that an employer accommodate the employee who uses marijuana at home.

The wrongful termination based on violation of public policy argument also fails as it has been settled that the Compassionate Use Act does not speak to employment law. The decision of the employer to not hire an individual does not impair the individual's ability to use prescriptive marijuana.