

It's time to be realistic about employee use of marijuana

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If you wanted to nudge the courts to establish a right to use medical marijuana in states where it is legal, you couldn't pick a more sympathetic plaintiff than Brandon Coats of Colorado. As a teenager, Coats was in an automobile accident that left him severely disabled. Now 34, Coats is a quadriplegic who has had a state medical marijuana card since 2009. He worked as a customer service representative for Dish Network from 2007 to 2010, when Dish fired him after he tested positive for marijuana use during a random drug test.

Coats sued Dish. On Tuesday, attorneys argued his case before the Colorado state Supreme Court.

"We're not arguing that it's a constitutional right," Coats' attorney, Michael Evans, told the court, "but we are arguing that it's lawful (to use marijuana outside the workplace)." Dish maintains that it fired Coats in keeping with its zero-tolerance drug policy, which comports with federal law and even Colorado law, which provides only an "affirmative defense" for marijuana.

When I asked marijuana activist and entrepreneur Aaron Houston whether he thinks marijuana use is a right, he told me he wasn't sure how to answer, but he was sure there is a "a right to use the medicine your doctor recommends for you." But it's "perfectly reasonable" to restrict use "for safety-oriented jobs," Houston added. He just flew into Washington, D.C., and didn't want a pilot who was stoned.

Coats maintains that he never used marijuana on the job. He worked in a Dish call center, not installing equipment on roofs. Colorado law prohibits employers from firing workers for engaging in legal off-duty conduct, which means that if Coats wins, recreational marijuana users would be likely to gain job protections.

Houston looks at the Dish policy as outmoded, unscientific (as traces of marijuana in the body do not signify impairment) and bad for business. He noted that in May, FBI Director James Comey told a conference that computer programmers with a taste for weed "should go ahead and apply" for jobs at the bureau, despite a ban on the hiring of those who have smoked marijuana in the past three years.

The Wall Street Journal reports that Comey said, "I have to hire a great workforce to compete with those cyber-criminals, and some of those kids want to smoke weed on the way to the interview."

I don't think Dish should have fired a call center guy for testing positive for marijuana, but I have to agree with the Cato Institute's Walter Olson, who told me that as a libertarian, he doesn't like corporate zero-tolerance policies, but he truly abhors “the endless proliferation of laws telling employers” what reasons they can use to pick their workers.

Consumers, on the other hand, are free to tell Dish what they think of the company's firing a quadriplegic for testing positive for medical marijuana. Maybe the company can take a hint from the FBI.