



Americans for Safe Access

1322 Webster St. Suite 208
Oakland, CA 94612
www.SafeAccessNow.org
Phone: 510-251-1856
Fax: 510-251-2036

Joseph D. Elford
Staff Attorney
Americans for Safe Access
1322 Webster St. Suite 208
Oakland, CA 94612
(415) 573-7842

DATE

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

Dear *Supervisor/Owner*:

I am an attorney for Americans for Safe Access -- an Oakland-based non-profit that advocates for medical marijuana patients. Until *DATE*, *PATIENT NAME* was one such patient who worked for you. On or about that date, you terminated *HIM/HER* for testing positive for using *HIS/HER* doctor-approved medical marijuana.

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 & Safety Code § 11362.5(b)(1)(A). You have violated that policy by terminating *PATIENT NAME* for exercising *HIS/HER* statutory right, as your decision to discharge

.....
Defending Patients’ Access to Medical Marijuana!

www.SafeAccessNow.org

September 16, 2005

Page 2

HIS/HER appears to be based solely on *PATIENT NAME*'s positive testing for marijuana. 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 reinstate *PATIENT NAME*, with compensation for lost wages, and that you discontinue your indiscriminate firing of all employees who test positive for marijuana, regardless of their status as qualified medical marijuana patients. I also request that you not reveal the results of *PATIENT NAME*'s drug test to other potential employers, as this would violate California's Confidentiality of Medical Information Act. *See* Cal. Civil Code § 56.20(a) & (c). While I appreciate that your drug testing policy is motivated by the best intentions, I believe that it has run into problems in this particular case. 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*