

**MEMORANDUM**

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| TO:  FROM:  DATE:  RE: | ABA Advisory Board  Bern Velasco  April 12, 2022  Legal Update: Terry v. UPS |

On March 31, 2022, the Arizona Court of Appeals decided *Terry v. United Parcel Service, Inc.*, in which it decided that the protections of the Arizona Medical Marijuana Act do not prevent an employer from terminating an employee who holds a medical marijuana card and tests positive for marijuana metabolites.

Terry was a sales director with UPS. After returning from vacation, Terry acted strangely during a meeting in which he made statements about seeing “a scorpion climbing up a wall,” “a scorpion run[ning] across the table,” and asking “Did anyone see that scorpion back there.” There was no scorpion. Terry’s speech was also slurred and he was generally incoherent, asking questions repetitively and losing his train of thought. Terry’s eyelids were heavy and his eyes were red.

Three employees filed complaints about his behavior and appearance, leading to a drug test that returned positive for carboxy-THC and amphetamine. Terry then explained he had a medical marijuana card; but UPS fired him anyway. Terry then filed suit.

After a long and convoluted pre-trial process, the trial court granted summary judgment in favor of UPS. On review, the Court of Appeals affirmed on the basis that the Arizona Employee Protection Act allows an employer to terminate at-will employee for good cause or no cause; the only limitation is that termination cannot be for “bad cause.” *See* A.R.S. § 23-1501. Under the Act, bad cause may include (1) breach of an employment contract; (2) in violation of state statute; or (3) in retaliation for exercising specified rights.

To prevail, Terry had to show that his termination violated the public policy set forth in the AMMA. But Terry’s termination was not simply for testing positive, but appearing to be under the influence or impaired while at work.

The case did not discuss the Arizona Drug Testing of Employees Act (related to actions taken in response to false positives).