

November 2018, Vol. 14 Issue 6

INTRODUCTION OF CANNABIS

With the announcement that Canadians will be able to smoke cannabis recreationally without criminal penalties starting on October 17, 2018, some employers are wondering what this may mean for their workplaces.

DOES THE LEGALIZATION OF CANNABIS MEAN THAT WORKERS CAN SMOKE (OR OTHERWISE CONSUME IT) AT WORK?

Once recreational cannabis is legal in Canada, people in PEI will only be allowed to consume or smoke it in private homes or yards, or vacant land, with the consent of the occupant. Provincial legislation also restricts smoking of any substance, including recreational cannabis, in most workplaces.

CAN AN EMPLOYER HAVE RULES OR PENALTIES AGAINST HAVING CANNABIS AT WORK OR DURING WORK HOURS?

Yes, just as an employer can have rules against employees having alcohol or non-prescription drugs at the workplace, the employer can also prohibit the possession of non-medical cannabis on employer property, in employer vehicles, or at employer's client premises while on work time. Once legalized, the penalties for breaking these rules should be the same for cannabis as for any of the other drugs that are similarly prohibited.

DOES IT MAKE A DIFFERENCE AT THE WORKPLACE IF AN EMPLOYEE HAS A MEDICAL AUTHORIZATION FOR CANNABIS?

Maybe. Medical Cannabis should be addressed in the same manner as prescribed medications that may impair a person's thinking, reaction times, or otherwise degrade their ability to work safely; If an employee indicates that they have a medical authorization for cannabis while at work, the employer needs to (and has a right to) engage in a conversation with the employee and get answers from the employee's health care provider regarding:

The purpose of the medication (is it related to a health issue that would be considered a disability? If so, does this trigger a duty on the employer to explore accommodations?)

The timing of dosages (the prescription might only be intended for pre-bedtime dosing and therefore not impact work time) and

The impact of the medication on a person's ability to function safely, effectively and efficiently (some cannabis-based medications do not involve THC –

The psychoactive typically associated with recreational cannabis).

The law does not require employers to tolerate/accept any kind of drug use that puts the lives of others at risk. However, the burden is on the employer to prove that its workplace and the employee's work is safety sensitive and cannot be accommodated. Employers who are dealing with this scenario are advised to see professional advice from legal counsel before taking steps to discipline or terminate an employee.

CAN EMPLOYEES COME TO WORK WHILE THEY ARE IMPAIRED BY CANNABIS (OR THEY SMOKE IT/INGEST IT OFF-SITE WHILE ON THEIR LUNCH BREAK?)

No. Employers have the right to require employees to come to work mentally and physically capable of performing their work safely, efficiently, and to the standard of quality required of the employer's workforce. Coming to work under the influence of cannabis can be dealt with in the same manner as employees coming to work under the influence of alcohol or any other mind-altering drug. However, the burden is on the employer to prove that the employee is not fit for work.

EMPLOYERS ARE ENCOURAGED TO ENSURE THAT THEIR POLICIES REGARDING ANY FORM OF DRUG OR ALCOHOL USE ARE CLEAR.

The Office of the Employer Advisor assists employers and employer associations with the statutory interpretation and application of the *Workers Compensation Act* and the *Occupational Health & Safety Act*, as well as board policies, procedures and practices.

Our office can provide you with independent advice and assistance in the areas of:

- Claims Management
- Assessments
- Workplace Health & Safety; and
- Appeals

Services available from our office include:

- Education & training
- Representation at appeals
- Research and analysis; and
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