

Cannabis in the Workplace

Steps Employers can take to Maximize Employee and Organization Protection

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If you are uneasy about the legalization of cannabis, you are not alone. A *Globe and Mail* article on March 4, 2018, cited a Human Resources Professional Association survey that found that 71% of human resource professionals did not feel that their workplaces were ready for the legalization of marijuana this summer.

This article is provided to help you focus on how to get ready.

Remember that employers already have many of the tools needed to manage impairment issues involving alcohol abuse and prescription drug use. In the past, employers have had to assess an employee's ability to work and if the employee was impaired and how to accommodate and/or discipline.

Recommended Best Next Steps Before Legalization

1. Spend time now to determine what your culture is regarding cannabis in the workplace.
 - This requires leadership from the top.
 - Once marijuana is a legal substance, employers cannot assume that employees will know the rules or expectations.
 - It is the employer's responsibility to ensure that the expectations of the workplace are clearly outlined just as it does for a whole host of other workplace issues e.g. call in procedure and approving overtime.
 - Questions to consider: At your organization, can employees do their work if they are under the influence of a substance, like cannabis? Can employees bring cannabis to work? To their car in the Company parking lot? Can they smoke cannabis at Company sponsored social events? While on business trips? What about edible products? What happens if an employee does this? What are the safety implications for your work environment?
 - If it is now a legal substance, like alcohol, and alcohol is permitted and even supplied by the employer at certain events, do you have to distinguish the use of cannabis?
 - When developing the employer's approach to these issues, consider how the approach may vary for alcohol, recreational marijuana, prescription marijuana, prescription drugs, and over-the-counter drugs that impair ability to work and illegal drugs.
 - Consider the provincial laws that will impact possession and use.

2. Incorporate that culture into your written policy about drugs and alcohol in the workplace. This list focuses on the cannabis aspects of the policy, which should include:
 - Clearly sets out your expectations based on your company culture. In most companies, this will start with an absolute prohibition against use, possession or impairment in the workplace.
 - However, the policy must recognize the obligation to accommodate medical marijuana, other prescription drugs and employees suffering from addictions.
 - Firmly state obligation and commitment to provide a safe environment and refer to your separate safety policy where all employees, including management, have obligations to follow safety rules and report unsafe work conditions.
 - Place onus on employees to self-disclose use, addiction and/or impairment.
 - Place onus on employees to provide medical evidence of required use of medical marijuana at work. Get all the particulars you need if medical information is vague.
 - Reserve the right to remove from workplace and/ or modify duties to address impairment issues.
 - Outline steps if breach of policy and refer to separate progressive discipline Policy.
 - Reference the employee's right to privacy will be balanced with other obligations such as safety in the workplace.
 - Confirm commitment to assistance and counselling.
 - Testing process may be part of policy. Under what circumstances is the Company testing and how.
 - Reference an Accommodation Policy – where an employee has an obligation to disclose any disability which impacts their ability to perform their work and where the employer agrees on a modified plan for performing work.
3. If there is an existing policy check to ensure that updated. Old policies often refer to legal vs. illegal substances. This will no longer be an applicable distinction for cannabis.
4. Revisit all Job Descriptions and classify safety sensitive positions or duties.
5. Train Management:
 - Update skills through further training on signs of impairment – e.g. physical signs, performance of work, overall behaviour, comparing the employee's mannerism to other days when no performance issues.
 - Advise of obligation to act on any information obtained or perception of an employee's impairment.
 - Remind managers of their own personal obligations and liabilities under safety laws.
 - Stress importance of privacy re: medical information and disclosure of disabilities.
 - Train in the use of a centralized source for the collection and retention of medical or disability information e.g. Human resources so that the left hand and the right hand are working together.

- Provide managers tools/ procedures for managing a breach. Walk through the steps to be taken in the event of various scenarios.
 - Ensure any evidence of a breach is preserved.
6. Train Staff:
- Ensure the expectations in the policy are explained.
 - Zero tolerance / prohibition clear.
 - Outline resources available to assist e.g. Employee Assistance Programs (EAP).
 - Consider making a commitment of no reprisals for self-disclosure whether recreational or otherwise.
 - Ensure health and safety obligations are revisited regularly.
7. Consider retaining counselling / EAP program.
8. Plan your course of action if an employee was to self-disclose an addiction or produce a doctor's note:
- Understand what accommodations are needed
 - Obtain specific medical direction
 - Determine details of the use. May be flexibility to medicate at other hours (e.g. outside of work hours) or in other places, etc.
 - Consider sending the job description for the doctor's review to determine if safe to medicate for that job.
 - Review job description with employee to determine modifications required.
9. Balancing Interests:
- Other workers – concerns about second hand smoke and odours in the workplace.
10. Ensure that policy is enforced consistently - all aspects against all employees all the time.
11. Know your Rights:
- Where there is a zero tolerance policy, impairment from recreational use at work (if not an addiction and not prescribed for a disability), employers can discipline (and possibly fire) for breach of policy. If no disability and not prescribed, will not be a breach of the human rights laws.

We are here to assist you with the details or answer any questions.

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