



CONSIDERATIONS WHEN DEALING WITH WORKPLACE IMPAIRMENT

1. LEGALIZATION AND REGULATION OF MARIJUANA BY OCTOBER 2019

- a) Purchase fresh or dried cannabis, cannabis oil, plants and seeds for cultivation
- b) Possess up to 30 grams of dried legal cannabis or equivalent in public
- c) Cultivate up to 4 plants in own residence
- d) Alter cannabis at home in order to prepare cannabis products for personal use (edibles)

2. CRIMINAL STANDARDS RE: DRUG-IMPAIRED DRIVING

- a) 2 nanograms but less than 5 ng of THC per millilitre of blood within two hours of driving would be a separate summary conviction criminal offence, punishable only by a fine (up to \$1,000);
- b) 5 ng or more of THC per ml of blood within two hours of driving would be a hybrid offence (escalating penalties);
- c) combined THC and Alcohol: having a blood alcohol concentration of 50 milligrams (mg) of alcohol per 100 ml of blood, combined with a THC level greater than 2.5 ng per ml of blood within two hours of driving would also be a hybrid offence

3. GENERAL CONSIDERATIONS RE: WORKPLACE IMPAIRMENT POLICIES

- a) Provincially or federally regulated employee (provincial or federal human rights legislation)
- b) Employment contracts or collective agreements
- c) Local business vs. across provinces vs. across various countries
- d) Broad or narrow description of prohibited substance/intoxicants (e.g. legal and illegal intoxicants, alcohol, marijuana, other drugs and other intoxicant)
- e) Policy with clear prohibition against impairment at work (must be compliant with applicable law)
- f) Positive obligation on employees to report signs of impairment and medication that may reasonably cause impairment (for self/others)
- g) Determine safety concerns and mitigation of safety risks, based on scientific evidence to support workplace policies (use policy to maintain control)
- h) Cultural environment of workplace towards alcohol, marijuana, and other intoxicants

4. MEASUREMENT OF WORKPLACE IMPAIRMENT

- a) Determine pre-conditions for in-depth monitoring/assessment/testing (discernible impact)
- b) Need "reasonable cause" to demand drug and alcohol testing (articulate the reasonable basis for the test)
- c) Method of assessment: function testing/screening, drug testing, swab testing, THC breathalyser (rational, science-based methods of measuring impairment)
- d) Determine follow up procedures, when monitoring is appropriate, and when monitoring ends for the employee
- e) Training your personelle & enforce your policies: be clear, consistent, fair/reasonable
- f) (consequences for breach of policy)

5. ACCOMMODATION OBLIGATIONS UNDER HUMAN RIGHTS CODE (MEDICAL MARIJUANA; ADDICTIONS)

- a. Human Rights Code: "A person must not (a) refuse to employ or refuse to continue to employ a person, or (b) discriminate against a person regarding employment or any term or condition of employment, because of ... physical or mental disability..."
- b. Prohibition against making workplace decisions based upon stereotypes and stigma of those with mental or physical disabilities
- c. Accommodate underlying medical issues where medicinal marijuana is used as treatment
- d. Accommodate employees with addiction
- e. "Zero-tolerance" policies, pre-employment drug tests, and random/mandatory drug testing that have automatic terminations/dismissals do not meet employer's accommodation obligations
- f. Accommodation plans (e.g. medical treatment plans, rehabilitation plans, etc.) need to be based on fact/science and ideally created with input from employee (feeling of self-determination increase chance of success; need the social "buy-in")
- g. Undue hardship threshold to meet (to discharge accommodation obligation)

6. RISKS FOR THE EMPLOYER

- a. Wrongful dismissal or constructive dismissal claim (court)
- b. Human Rights violation complaint (tribunal)
- c. Negative impact on work environment (culture, efficiency, morale)
- d. Negative reputation within community; Public relations risks (longevity of company; turnover, negative attention media/social media)
- e. Criminal negligence (S. 217.1 of CCC: "Every one who undertakes or has the authority to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task.")
- f. Occupational Health and Safety Regulation/WCB Claims ("must not enter or remain" at work, while person's ability to work is affected by alcohol, a drug, or other substance")

7. BENEFITS FOR THE EMPLOYER

- a. Identifying and minimizing workplace safety problems
- b. Cultivating healthier workplace culture
- c. Creating more inclusive environment (less turnover in staff)

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