



MARIJUANA IN THE WORKPLACE

WHAT EMPLOYERS AND EMPLOYEES NEED TO KNOW

By Aviva B. Abraham

Once recreational marijuana becomes legal this fall, a major increase in marijuana consumption is expected. According to a study conducted by Deloitte ([Recreational Marijuana Insights and Opportunities, 2016](#)), 22 per cent of Canadian adults currently consume recreational marijuana, at least on an occasional basis, and another 17 per cent would consider trying it after it is legalized. That's almost 40 per cent of the Canadian population! It's not surprising then that employers are concerned about how legalization will affect the workplace.

To date, the government has not specified any details about impairment guidelines; unlike alcohol consumption in the workplace, there is no effective way for employers to measure impairment on the job. It's still unclear how an employer may legally determine if an employee has come to work under the influence of marijuana, and what course of action to take. There is an even bigger concern with employees who operate in safety-sensitive roles such as operators of heavy machinery or workers on a construction site.

The use of medical marijuana has also risen the last few years and Health Canada expects the number of Canadians registered to

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possess medical marijuana in the next ten years to reach 450,000. There is growing evidence that medical marijuana helps alleviate pain and can be a viable alternative to prescription medications for various medical conditions and symptoms. Still, use of medical marijuana remains a sensitive matter for employers.

Here are five things employers need to know about marijuana in the workplace:

1. THE BURDEN OF RESPONSIBILITY LIES WITH THE EMPLOYER AND MANAGEMENT

Since Bill 148 (*Fair Workplace Better Jobs Act*) came into effect in January 2018, the responsibility lies with the employer to accommodate employees in various situations. Typical scenarios include:

- The use of medical marijuana during work hours
- Change in work schedules due to marijuana-related health issues
- Provision of a safe workplace environment for users and non-users
- The launch of an investigation if an employee files a complaint

Bill 148 provides employees with rights they didn't have before and means the burden of proof is on the employer and management to respond appropriately.

2. TAKING A PROACTIVE APPROACH MAY PROVE MORE COST-EFFECTIVE IN THE LONG RUN

Some employers, especially smaller businesses, have not yet updated their workplace policies. This could be due, in part, to the expense of dealing with HR consultants and lawyers. For those who have taken this step, proper communication of the new policies is critical in order to follow through with implementation and reporting.

Under the new law, should an issue arise, the government may be called in to investigate at the employer's cost. This would be significantly more expensive than hiring an HR professional to set

up proper HR policy in advance. Done correctly, it would remove ambiguity and – to a degree – protect an employer from potential legal action.

3. THE RULES FOR MEDICAL MARIJUANA ARE DIFFERENT THAN FOR RECREATIONAL MARIJUANA

Employers should be aware of the differences between medical and recreational users. The three main differences are:

- Users with a prescription for medical marijuana can carry one month's supply (up to 60 grams) whereas recreational marijuana users can carry only 30 grams in public
- Those who need marijuana for medical reasons can smoke in a tobacco-smoking area while recreational users (at least, in Ontario) can smoke only at home
- Medical marijuana users may be getting a rebate on their purchases in the future (still under discussion) and can currently claim any unreimbursed costs on their tax return under the medical tax credit. This, however, does not apply to recreational users

4. ADDING MEDICAL MARIJUANA TO A GROUP PLAN IS NOT OBLIGATORY BUT COULD POTENTIALLY SAVE EMPLOYERS MONEY

In a recent legal ruling (*Skinner v Board of Trustees of the Canadian Elevator Industry Welfare Trust Fund*), the Board clarified that adding medical marijuana to benefit plans is not obligatory under the human rights code. However, it can be advantageous for an employer to offer this coverage since a number of studies show the positive results of medical marijuana in treating pain and nausea in cancer, arthritis and MS patients. In 2017, the University of British Columbia published a study that showed 80 per cent of medical marijuana users switched to marijuana from prescription medication. Another study conducted by Canabo Medical Inc.,

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and partnered with external medical researchers, showed that 45 per cent of those suffering from pain and anxiety stopped using benzodiazepines (anxiety-reducing sedatives) within a year of starting to use medical marijuana.

Insurers and employers were concerned that adding coverage for medical marijuana will increase the cost of health plans. However, they found that such coverage actually replaces the use of similar or higher-cost prescription drugs, meaning the cost of the plan does not increase. What is also important, especially for the employer, is that employees who find relief of their symptoms with medical marijuana take fewer sick days and perform better.

For these reasons, medical marijuana is slowly being added as optional coverage to group benefit plans by the big insurers. In January 2018, Sunlife Financial announced that it was offering limited coverage (up to \$6,000 a person/year) for five specific conditions and symptoms.

5. EVEN WITH COVERAGE FOR MEDICAL MARIJUANA ON A GROUP PLAN, THERE ARE STILL CHALLENGES FOR EMPLOYEES

One challenge that employees face is the annual limit placed on reimbursements. If an employee is spending \$10,000 a year on medical marijuana, but the plan only covers \$3,000 a year, they are still out of pocket thousands of dollars. The remainder can be claimed at tax time as a medical tax credit, but the unreimbursed

cost is still a significant expense that patients may find difficult to manage.

What is also important is that in order to get reimbursed for medical marijuana on a plan, employees must first obtain prior authorization from the insurance company. They must submit their prescription from their doctor, provide some history explaining the condition and what other medications they previously used and proof that it was purchased at an approved supplier. Only after this information is reviewed and authorized can an employee receive reimbursement.

THE BOTTOM LINE?

Changes to the legal status of marijuana have created unique and unprecedented challenges for Canadian employers. Employers should establish clear policies and procedures in their organizations to protect themselves and their team. Likewise, employees who use or intend to use medical marijuana need to be aware of all the implications, both legal and otherwise.

There are still many ambiguities surrounding marijuana in the workplace. However, with time many of these uncertainties will be litigated and the courts will provide clearer guidelines about an employer's obligation while ensuring that the workplace remains safe and productive for all. ■

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