

Legalization of Cannabis: Municipal Impacts

Cannabis in the Workplace

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I. Introduction

- There is already cannabis in the workplace; but that will increase with 4.8 million Canadians age ≥ 15 expected to use in 2018. (Health Canada)
- Until recently marijuana was considered an illicit drug; now it is present as a medically authorized drug and in 2018 it will be a legal drug.

II. Medical Marijuana

- Medical marijuana has been around in various forms since 1999.
- Medical marijuana is different from other prescribed drugs because doctors do not prescribe it; they “authorize” it; albeit for medical purposes based on “sound clinical evidence”.
- Dried marijuana has no Drug Identification Number (“DIN”); nor is it approved by Health Canada.

Medical Marijuana

- Once marijuana becomes legal, there will be questionable need for physician authorization.
- Employers should deal with all prescribed medications by expecting that such do not have any negative impact on productivity/ safety, that the employee discloses the medication if they have such impacts, and that the employer goes through a risk-assessment and accommodation process.

III. Benefit Plan Coverage

- Medical marijuana is expected to remain an ineligible expense for health plans that limit eligible drugs to those with a DIN.
- There will be a lot of pressure on employers to have medical marijuana covered under plans.

IV. Legalization of Marijuana

- Legalization of marijuana changes everything.
- Employers should revise policies on Drug and Alcohol and Workplace Surveillance/ Search.

V. Adverse Effects of Marijuana

- Long term marijuana use can lead to addiction – approximately 9%.
- The effects of short term use are:
 - impaired short term memory;
 - impaired motor coordination;
 - altered judgement.

Adverse Effects of Marijuana

- Effects of long term or heavy use include:
 - addiction;
 - cognitive impairment with lower IQ;
 - diminished life satisfaction and achievement.
- Both immediate exposure and long term exposure to marijuana impair driving ability.

Adverse Effects of Marijuana

- Detection is challenging. Employers will need to rely on trained staff and reasonable suspicion “check lists”.
- Generally employers do not have the right nor do they “test” for drugs or alcohol other than for safety sensitive positions. That may change.

VI. ATU Local 113 v Toronto Transit Commission (2017 ONSC 2078)

- TTC dealt with an injunction application by ATU seeking to restrain implementation of random drug and alcohol testing. TTC had a policy which contemplated drug and alcohol testing of employees in safety sensitive positions:
 - when there was reasonable cause;
 - as part of a full investigation into a significant work accident or incident;
 - when employees are returning to duty after violating the policy;
 - when employees are returning to duty after treatment for drug and alcohol;
 - as a final condition of appointment to a safety sensitive position

ATU Local 113 v Toronto Transit Commission

- TTC later decided to amend its policy to require random drug and alcohol testing; (20% of employees would be tested each year).
- The Court did not grant the injunction. It was not satisfied that irreparable harm was proven. Any harm arising from random testing could be dealt with through a damages award.
- The balance of convenience did not favour granting the injunction.
- The Court was satisfied that an oral fluid test was capable of measuring impairment.

ATU Local 113 v Toronto Transit Commission

- Correct cut offs for oral fluid drug testing (i.e. 10 ng/ml for THC) showing a positive test could be associated with the use of that drug which is sufficiently recent that it falls within the known time frames for the impairing effects of marijuana.
- There was a demonstrated workplace drug and alcohol problem, which is hard to detect (and therefore factually different from the *Irving* decision).
- Cannabis was found to impair cognitive and motor abilities necessary to operate a motor vehicle and doubled the risk of crash involvement and that up to 24 hours following the use of marijuana a person's ability to drive or perform activities requiring alertness may be impaired.

ATU Local 113 v Toronto Transit Commission

“If random test proceeds, it will increase the likelihood that an employee in a safety critical position, who is prone to using drugs or alcohol too close in time to come into work will either be ultimately detected when the test result is known or deterred by the prospect of being randomly tested.”

VII. Policies

- Typical Alcohol and Drug policy contains the following elements:
 - Application;
 - Objectives of the policy – protect and promote healthy, productive and safe work environment;
 - Definitions;
 - Expectations;
 - Medications;
 - Prevention and assistance programs;
 - Consequences for policy breach.

Policies

- *Safety-Sensitive Position is one in which job performance requires the Employee to be alert, to be physically coordinated and to exercise good judgement and includes a position where impaired performance should result in considerable risk to...*

VIII. Conclusion

- Educate adverse effects of marijuana
- Educate for “reasonable suspicion”
- Review or create policies