Cannabis in the workplace – for managers



As the use of cannabis for medical reasons has become legal, even commonplace, in many jurisdictions, there has been increased pressure on federal, state and provincial governments to legalize and regulate recreational marijuana use. Advocates argue that from a health perspective, cannabis is less harmful than tobacco or alcohol and from a social perspective decriminalization unclogs courts, saves taxpayer money and puts money into government coffers instead of criminal pockets.

Canada will become the first G7 country to decriminalize the use of cannabis for recreational use (to date only nine U.S. states have done so). As the new legislation looms, many organizations, especially those in safety sensitive industries such as construction, transportation and health care, are concerned and unsure about their rights and responsibilities regarding the use of cannabis in the workplace or with their duties regarding accommodating medical use. Some issues, such as an employer's right to conduct mandatory drug testing, have yet to be decided by the courts but others are more clear cut.

The rights of the employer

The most important point for organizations is that the legalization of recreational marijuana use will not give people the right to use in the workplace. Most companies already have strict health and safety guidelines regarding the use of alcohol or drugs in the workplace and zero tolerance policies for impairment. The decriminalization of cannabis will not change the fact that employees are expected to show up sober, stay sober and perform to expectations – and will face disciplinary measures if they do not. This includes during breaks and lunch hours and at company and client functions.

Duty to accommodate

There is specific federal, provincial and state human rights legislation that governs an employer's duty to accommodate disabled employees. Accommodations can include moving the employee out of a safety-sensitive position, providing more frequent breaks, implementing alternative scheduling or altering the employee's duties.

Preparing for decriminalization

A 2017 Canadian Cannabis Survey of nearly 10,000 people found that 23 per cent of full and part-time workers admitted to smoking marijuana and 39 percent said they had driven under the influence of cannabis. Some wonder if these figures will increase after the legalization of recreational cannabis use but others think those numbers may actually decrease because decriminalization allows organizations to create and communicate clear policies and procedures regarding recreational cannabis use in the workplace as well as more detailed disciplinary measures for impairment.

To fully prepare for legislative changes, organizations can also:

- **Provide in-house information sessions to employees**. Everyone needs to be aware of legislative changes, revised health and safety regulations and the organization's expectations regarding sobriety and codes of conduct.
- **Provide training to managers, supervisors and front-line staff** about detecting impairment, their duty to accommodate employees using cannabis for medical reasons and what measures to take if employees contravene organizational policies and guidelines.
- **Establish awareness programs**. Communicating the dangers and legal consequences of impaired driving and the risks associated with the abuse of any substance is part of any comprehensive workplace health and safety strategy.
- **Have resources available** for employees who need more information on medical or recreational marijuana or help with a substance abuse issue. Let both employees and managers know that their Employee Assistance Program can offer a wide range of assistance and resources.

The bottom line

Both businesses and business leaders can be found liable under the Criminal Code and health and safety legislation for not ensuring workplaces are physically or psychologically safe. Due diligence means keeping abreast of changes in legislation and/or health and safety guidelines, updating and amending existing workplace policies, training front-line supervisors to detect impairment and implementing and enforcing policies regarding the use of alcohol or drugs in the workplace.