

Medical Marijuana In The Workplace: What Employers Need To Know



The *Marihuana for Medical Purposes Regulations* that became effective on April 1, 2014, could substantially increase the number of Canadians who are using lawfully prescribed medical marijuana. As the number of prescribed users increases, the greater the likelihood that an employer will have one of its employees requesting to use medical marijuana in the workplace. The purpose of this update is to review some of the workplace issues that both employers and employees need to consider regarding the use of medical marijuana in the workplace.

1. **Take Requests Seriously** – Medical marijuana is a prescribed medication and employers need to take requests for accommodation seriously and should not dismiss employee inquiries without proper consideration.
2. **Don't Stigmatize Medical Marijuana** – Medical marijuana is similar to other prescription drugs, such as, Percocet or Oxycontin that may be used for pain relief and that have the potential to impair an employee's ability to perform their duties and responsibilities.
3. **No Right to be Impaired at Work**– The right to use prescribed medical marijuana to treat a disability or medical condition does not entitle any employee to be impaired at work or in the course of performing his or her duties.
4. **Safety Sensitive Roles** – Special circumstances apply, and it may be appropriate to request an independent medical review or third-party medical examination, if the employee requesting accommodation is employed in a safety sensitive position.
5. **Update Policies** – Employers need to consider updating their policies relating to drug and alcohol use including:
 - outlining acceptable use of prescription (including marijuana) and non-prescription medication;
 - outlining when notice to the employer of prescription and non-prescription medication use is required; and
 - confirming that employees cannot come to work or perform their duties impaired.
6. **Where Can Employees Use Their Medical Marijuana?** – This is a complicated issue that will have to be considered in the context of each workplace and each request for accommodation. A variety of potential legislation and obligation needs to be considered including:
 - *Smoke-Free Ontario Act* – As currently drafted, marijuana is not a tobacco or tobacco product for which the use is currently prohibited in an enclosed

space.

- *Human Rights Code* – The duty to accommodate requires reasonable accommodation and not necessarily the employee's mere preference. A balancing of interests will likely need to be considered.
- *Occupational Health and Safety Act (OHSA)* – There is a general obligation under OHSA to take every reasonable precaution to protect the health and safety of workers and one employee's request to use medical marijuana in the workplace will need to be balanced with the duty to protect the health of all workers (e.g., right not to work in environment with exhaled smoke).

The above is a general overview of issues to consider in the workplace and it is important to remember that each workplace is different and each request for accommodation will be based on its own facts and circumstances (e.g., union or non-union, safety sensitive role, province in which the employee is employed, etc). At Bennett Jones we have a team of professional advisors that can provide guidance to employers regarding their obligations and best practices as the workplace adapts to the lawful use of medical marijuana.

Last Updated: July 7 2014

Article by Carl Cunningham, Hugo M. Alves and Michael D. Lickver

Bennett Jones LLP