

Medical Marijuana, Okay To Be Legally High At Work?



Preparing for the highly anticipated change to the status of marijuana from a prohibited controlled substance in Canada to a legal one is an issue on the radar for many employers as they look down the road to 2017. However, addressing the use of marijuana by employees is not an issue for tomorrow, it is one for today.

The issue of marijuana use by employees generally centres around 3 types of marijuana use:

1. Employee personal/recreational use of marijuana
 2. Marijuana use that is a component of an addiction or substance abuse disability
 3. The use of marijuana for medical purposes, or medical marijuana use
1. **Personal/Recreational:** Many organizations already address the use of marijuana by employees on the job by prohibiting it completely, as they prohibit other controlled substances such as alcohol. With proper policies in place an employee who is under the influence of marijuana while working could face discipline or termination.
 2. **Addiction and Disability:** Where marijuana use is part of a diagnosed addiction or substance abuse issue, and therefor considered a component of a disability, organizations will need to make accommodations for the employee's use of marijuana. This does not mean organizations necessarily have to allow employees to use or be under the influence of marijuana while performing work. Accommodation for substance abuse could include providing the employee with access to employer resources such as the employment assistance programs, time off for rehabilitation, medical appointments or treatment and allowing employees to use vacation or short-term disability time for recovery.

An employee being accommodated for substance abuse would be expected to commit to treatment and to an appropriate accommodation plan and would still be expected to be able to perform adequately in the workplace.

3. **Medical Marijuana:** Across Canada medical marijuana use is a growing issue and a tricky one to navigate for organizations. The idea of allowing an employee to be under the influence of marijuana while at work makes many organizations very uncomfortable. An employee using marijuana may have impaired judgment, produce errors and generally expose the organization to increased risk. However, it can be useful to remember that many employees are already taking prescription drugs in the workplace

that can impact judgment and performance.

4 Steps to Managing Medical Marijuana Use in the Workplace

To begin to address the issue of medical marijuana use in your organization review these 4 steps.

- **Establishing Proof**
- **Conducting An Impact Assessment**
- **Creating an Accommodation Plan**
- **Employee Monitoring and Communication**

1. Establishing Proof:

Technically marijuana is not an approved drug or medicine in Canada. Medical marijuana users could obtain a *Marihuana for Medical Purposes Regulations* (“MMPR”) permit that allows an individual to use marijuana for medical purposes or they can obtain a prescription from their physician. As a result, an employee who has a prescription from a physician can have their prescription marijuana treated similarly to any prescription medication.

If your employee reports the need to use medical marijuana you may want to require your employee to:

- provide a prescription from a licenced medical professional
- provide proof that the Marijuana being used has been purchased from a licenced marijuana dealer

2. Impact Assessment:

An impact assessment will require you to consider the ways in which marijuana can impact your employee’s ability to safely and adequately perform the job and assess the impact, if any, to the safety of the employee and others. There may be elements of the employee’s job that you determine cannot be adequately or safely performed when the employee is under the influence of marijuana, as applies to any drug, and other elements you determine can safely be performed.

The impact assessment may be difficult to do without understanding how much marijuana the employee takes, how often and when. You may need a trained professional to assess how much, if any impairment is caused by marijuana use.

You may need to put in place a plan whereby the employee informs the organization of the timing of marijuana use and for a certain period of time thereafter restrictions are applied to their work or presence in the workplace.

Other elements of assessment include determining how and where your employee will store and use marijuana while in the workplace.

3. Accommodation:

As with any medical condition an employee who requires the use of medical marijuana may require workplace accommodations. These accommodations can include a flexible work schedule, time off for medical treatment and adjustments to work duties and tasks. In Ontario the *Occupational Health and Safety Act (OHSA)*, under section 25, states that employers have the duty to “take every precaution reasonable in the circumstances for the protection of a worker.” This means that your employees do not have a right to be impaired in the workplace if their impairment may endanger their own safety or the safety of co-workers.

Remember your employee is still expected to be able to perform the work required to do the job. If you believe you cannot accommodate the employee who is using medical marijuana you will need to demonstrate that you tried to accommodate your employee's medical marijuana use and the medical condition that precipitated the use of marijuana.

4. *Monitor and Communicate:*

As with any workplace accommodation plan it is vital to put in place a plan to monitor the employee's performance while respecting the employee's rights. Setting clear workplace performance expectations, within the scope of the accommodation, and communicating regularly with the employee about performance will be important elements of accommodation.

In many instances employees who use medical marijuana are able to adequately perform their job with accommodation. Don't forget to remind your employees that if they are using medical marijuana on the job they really should inform you or they may be subject to discipline and termination if caught or if their job performance suffers.

If you suspect an employee is using marijuana speak to the employee and find out what is going on. If an accommodation is required it is partially the organization's responsibility to make an effort to find out just what might be going on.