

Can Employees Use Cannabis at Work if the Product Is Legal?



On October 17, 2019, it officially became legal to not only smoke cannabis in Canada but also eat it. How does this new form of legalized cannabis consumption affect the workplace? Answer: While it expands the scope of legalization, the addition of cannabis edibles, extracts and topicals to the list of legal products doesn't change the basic employment rules that apply to smoked or vaped cannabis. Consider the following quiz (which reprises the scenario we used to illustrate the impact of legalized smoked/vaped cannabis).

SITUATION

A supervisor spots 3 safety-sensitive employees eating a cannabis-laced chocolate bar in a company van during lunch break. Recognizing that they've been caught red-handed, the employees don't bother with denials. But each offers up a different explanation:

- Bud reveals that he's addicted to cannabis;
- Herb explains that he has a valid authorization from his doctor to use medical cannabis for cancer-related pain; and
- Mary Jane admits that she's a recreational user (as opposed to an addict or medical user) but insists that she got the cannabis legally on the retail market.

QUESTION

Which, if any, employee(s) can you fire for violating your zero tolerance workplace drug policy?

ANSWER

All 3

RULE

Use of cannabis in the workplace is grounds for discipline up to and including termination regardless of how that cannabis is consumed.

EXPLANATION

There are legal restrictions on disciplining workers for cannabis use. But none

of these restrictions derive from the fact that the product is legal. Workplace use of or impairment by cannabis, whether legal or illegal, remains a serious offence worthy of discipline, especially if employees perform safety-sensitive jobs. Remember that just because alcohol is legal doesn't mean employees can drink and be drunk on the job. To explain the specific rules let's walk through each one of the employees in the scenario.

Bud, the Cannabis Addict

Human rights laws require employers to make accommodations for employees with disabilities. Addiction to drugs and alcohol is considered a disability under the law. But accommodations aren't required if they'd impose undue hardship. And while the line between required accommodation and undue hardship is determined case-by-case, the clear consensus from court cases and guidelines from provincial human rights commissions is that permitting employees to use or be impaired while at work would create an unacceptable health and safety risk, especially if they're safety-sensitive.

Herb, the Medical Cannabis User

The same disability analysis applies to Herb because cancer and most other illnesses, injuries and conditions for which cannabis is used as a medical treatment would constitute "disabilities" under the law. But while tolerating medical cannabis use or impairment away from work may be a required accommodation, tolerating it at work would probably be undue hardship—particularly if they do it on the sly without requesting and being granted an accommodation from the employer.

Mary Jane, the Casual User of Legal Recreational Cannabis

Disability protections don't apply to Mary Jane because she isn't an addict and doesn't use cannabis to treat a disability. She's only a casual user. The fact that she obtained the cannabis legally won't shield her from discipline for violating a zero tolerance policy banning drug use in the workplace.

THE BOTTOM LINE

Using or being impaired by cannabis at work in violation of a clear anti-drug policy is justifiable under neither disability discrimination nor cannabis legalization laws. This is true regardless of how employees consume the cannabis and regardless of whether they have an addiction or use the cannabis for authorized medical treatment.