

CAREERS

The urgent need to take action on marijuana legislation

Legalization adds a new hurdle for employers grappling with workplace impairment

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OPINION

LEADERSHIP LAB

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This October, the legal, social and political landscapes of Canada will change dramatically when the purchase of recreational cannabis becomes legal. The latest data suggest roughly one in 10 Canadians were cannabis users in the past year, meaning few workplaces across the country will not be affected.

With employers still grappling with the complexity of managing addiction in the workplace as it pertains to alcohol and other drugs, the legalization of pot will add another hurdle.

RESPONSIBILITY OF EMPLOYERS

Firstly, employers must update their respective policies and procedures to include the prohibition of cannabis usage in the workplace. For example, employment contracts and company policies typically prohibit substance abuse at work. That must now include cannabis.

Secondly, according to occupational health and safety legislation across Canada, employers are statutorily required to ensure the safety of their employees in the workplace. Because of this, employers must be prepared to devote time and money to train their employees on cannabis consumption in the workplace, and inform them of changes to the terms of their employment in this realm. Additionally, employers must be prepared to extend training to their managerial and supervisory staff to teach them how to address issues of cannabis impairment at work, how to spot such impairment and the appropriate steps that need to be taken in response to concerns being raised.

Lastly, mandatory content in employment policies, requires provisions for disability-based accommodation when an employee brings to the attention of an employer that they require support due to an addiction or medical necessity. Drug and



While employers should be concerned about workplace impairment ahead of marijuana legalization, they also need to set policies that recognize the use of medical cannabis, such as products seen above from Vireo Health. DREW ANGERER/GETTY IMAGES

alcohol addictions are typically considered disabilities under human-rights legislation and as such are protected from discriminatory actions by employers and co-workers. Therefore, an addiction to cannabis will likely be considered a disability. Employers need to amend their employment policies to include cannabis, and must be prepared to accommodate an employee or put themselves at risk of being sued.

IMPAIRMENT AND TESTING

The issue of testing, and how impairment from cannabis is determined, remains problematic. It is not the same as testing the impairment from other drugs or alcohol. While there are tests to assess the level of THC (the chemical component causing the high) in an individual's body, an assessment of the exact level of impairment is not definitive.

According to human-rights law, employee drug and alcohol testing may only be permitted when the employees are operating in safety-sensitive employment settings and when a series of additional requirements placed on employers who conduct this testing have been met.

POLICIES AND PROCEDURES

It is important to note that a standard ele-

ment of employment policies, spanning diversified employment settings, is that employees cannot be impaired while at work and performing the duties of their employment.

Across Canada, law enforcement is also grappling with the issue of testing but the techniques being made available to police officers are unlikely to be permitted in the workplace. Therefore, employers will need to develop their own techniques to assess impairment of their employees.

It is also advisable that the focus be shifted from testing of impairment levels to an assessment of employee conduct. Employers need to familiarize themselves, and their staff, with signs of behaviour in the workplace caused by cannabis use. However, this raises a host of issues regarding who is authorized and qualified to be making these assessments on a daily basis.

Employers will also need to set policies that recognize medicinal cannabis use, including CBD oil (used to treat chronic pain), to ensure that they do not discriminate against employees who benefit from these treatments.

Over the next few months, it is important that employers include cannabis use in their workplace policies as well as procedures for assessing employees. One thing that employers can be sure of is that failing to appreciate the changes the Cannabis Act brings to the workplace will lead to greater human resource management issues and potential lawsuits.