

Medical Marijuana Use in the Workplace

published 11/07/2017

*Author Colton Hnatiuk has accepted an in-house legal counsel position at People Corporation, effective February 28, 2022. Anyone wishing to contact Colton should contact Tanya Comeault at **tcomeault@tdslaw.com** or by phone at (204) 934-2376 and she will be delighted to assist you.*



An employee's legal ability to use cannabis for medical purposes was confirmed by the Supreme Court of Canada in 2015 in the decision *R v. Smith*[1]. As of August 24, 2016, the Access to Cannabis for Medical Purposes Regulations[2] (the "Regulations") replaced the Marihuana for Medical Purposes Regulations, and establishes the current legal framework that enables patients to obtain authorization to possess cannabis (marijuana) for medical purposes. The Regulations outline:

- a. who may possess cannabis (section 3);
- b. limits on the amount of cannabis that may be possessed (section 6); and
- c. the medical documentation required to qualify for cannabis use under the Regulations (section 8).

With the proposed Cannabis Act looking to legalize recreational marijuana in Canada in July of 2018, employers are wondering how the new legislation will affect their workplaces. Once passed, the Cannabis Act will permit Canadians who are 18 years or older to:

- a. possess up to thirty (30) grams of cannabis;
- b. share up to thirty (30) grams of cannabis with other adults;
- c. purchase dried or fresh cannabis from a provincially licensed retailer;
- d. grow up to four (4) cannabis plants; and
- e. make cannabis-infused food and drinks.

In the meantime, cannabis remains illegal other than for medical purposes. As the Cannabis Act bill moves through the legislative process, it is likely that a separate medical cannabis system will be maintained following the legalization of recreational cannabis. Although these provisions may be altered prior to July 2018, it is clear that employees in all types of

industries will have greater access to marijuana.

Under the proposed Cannabis Act, employees seeking accommodation will still be required to obtain a prescription to utilize cannabis for medical reasons. The prescription ought to outline:

- a. the practitioner's given name, surname, profession, business address and telephone number, the province in which they are authorized to practise their profession and the number assigned by the province to that authorization;
- b. the patient's given name, surname and date of birth;
- c. the address of the location at which the patient consulted the practitioner;
- d. the daily quantity of dried marijuana, expressed in grams, that the practitioner authorizes for the patient; and
- e. the period of use (specified as a number of days, weeks or months, which must not exceed one year, beginning on the day on which the medical document is signed by the practitioner).

It is important to note that strict application of zero tolerance rules, without consideration of accommodation needs, do not often withstand scrutiny. A Zero Tolerance Policy may offend The Human Rights Code ("The Code")[3] in circumstances where individuals may be legitimately using marijuana for medical purposes.

Employers can manage cannabis for medical use the same way as accommodation for other prescription medications. Further, cannabis use for medical reasons is classified as a disability under The Code, which provides that employers have a duty to accommodate such employees up to the point of undue hardship.

However, medical use of cannabis does not give employees a free pass to be impaired while at work, particularly where their impairment may endanger their own safety or the safety of their co-workers. Employers and employees still have an obligation under occupational health and safety legislation[4] to maintain a safe working environment. In particular, employees in safety sensitive positions must inform their employers if they are to be using medical cannabis.

So what does that mean for employers? Basically, employers can develop workplace rules regarding the use of medical cannabis as long as appropriate accommodation in line with The Code is provided (see our article, "Non-Medical Marijuana Use at Work" for more information). The policy can be modelled after any existing policies dealing with prescription medication and ought to:

- a. communicate employee entitlements and acceptable uses at the workplace;
- b. define "impairment" and "under the influence"; and
- c. outline disciplinary procedures for breaches of the policy.

It is recommended that a medical use of cannabis at work policy be constructed in consultation with any health and safety committee to ensure employees have input in the

policy, in accordance with The Workplace Safety and Health Act and its accompanying regulations. Some options that should be explored with the committee are:

- a. alternatives to smoking the medication,
- b. smoking it in designated areas,
- c. using the medication at designated times (scheduled breaks, lunch, etc.), and
- d. restricting situations employees can use the medication (while in company uniform, in view of the public, in a company vehicle, or in the vicinity of customers, clients or other employees).

Should an employee disclose medical marijuana use, the disclosure is to be treated confidentially. If disclosed, employers have the right to obtain certain information about the employee's needs, without getting into a specific diagnosis, such as:

- a. Do they have proof of their prescription?
- b. When, or how often, will they need to take the medication?
- c. How much of the medication will they need to take?
- d. Where will they be taking the medication?
- e. How long do they anticipate needing to take the medication?
- f. Will they be able to safely carry out their assigned duties while taking the medication?
- g. What is the prescribed method of ingestion?

The case law continues to evolve regarding marijuana use in the workplace, and will continue to evolve with the Cannabis Act coming into force in 2018. This will no doubt lead to further contentious issues between employers and employees, including elements of discipline, accommodation, and various other workplace policies.

Employers with strong workplace policies and procedures, which take into account Human Rights legislation, the current Access to Cannabis for Medical Purposes Regulations, and the proposed Cannabis Act, will be well-positioned to educate employees of their workplace responsibilities and expectations before the proposed Act becomes a reality. Educating employees and management on the policy changes and how they are to be administered is key.

[1] R v. Smith, 2015 SCC 34

[2] Access to Cannabis for Medical Purposes Regulations, SOR/2016-230

[3] The Human Rights Code (Manitoba), C.C.S.M. c. H175

[4] The Workplace Safety and Health Act, C.C.S.M. c. W210

Click here to read more: **[Non-medical Marijuana Use at Work](#)**

DISCLAIMER: *This article is presented for informational purposes only. The content does not constitute legal advice or solicitation and does not create a solicitor client relationship. The views expressed are solely the authors' and should not be attributed to any other party, including Thompson Dorfman Sweatman LLP (TDS), its affiliate companies or its clients. The authors make no guarantees regarding the accuracy or adequacy of the information contained herein or linked to via this article. The authors are not able to provide free legal advice. If you are seeking advice on specific matters, please contact Keith LaBossiere, CEO & Managing Partner at kdl@tdslaw.com, or 204.934.2587. Please be aware that any unsolicited information sent to the author(s) cannot be considered to be solicitor-client privileged.*

While care is taken to ensure the accuracy for the purposes stated, before relying upon these articles, you should seek and be guided by legal advice based on your specific circumstances. We would be pleased to provide you with our assistance on any of the issues raised in these articles.