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Marijuana in the Workplace: Tips to see through the smoke

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(Calgary, AB) The legalisation of recreational marijuana in Canada is projected for 2018. Naturally, employers across the nation are concerned how this will affect marijuana usage in the workplace, especially as it pertains to Occupational Health and Safety (OHS) and Human Resources (HR).

Unfortunately, at this time, available information is hazy with very few clear answers regarding usage of marijuana in the workplace. However, what we do know, is that 'impairment' is still prohibited in workplaces. What is unclear is that unlike a substance such as alcohol, which has clear degrees of impairment and certified methods of testing, there is currently a lack of research on marijuana impairment. Further to that, there is minimal direction, as of yet, from any government bodies in terms of changes in employment law, which means no reliable testing methods, no clear definition of levels of impairment, and possibly no changes to drug and alcohol testing policies, that are currently limited to safety-sensitive jobs.

As outlined by Human Resources Lawyer, Loretta Bouwmeester of Mathews, Dinsdale & Clark LLP, we need to remember that 'drug dependency' is a prohibited ground of discrimination in Alberta. But employers also have a duty to assist employees to address their dependency. This relates to marijuana because 'Impairment' may be a result of doctor-prescribed medical marijuana. That said, a prescription for medical marijuana does not immediately permit usage in the workplace. Medical marijuana prescriptions do not permit impairment at work. The required use of medical marijuana must be disclosed by the employee, and the employer must treat it as a regular duty to accommodate.

Employers will have to navigate the landscape of balancing safety needs with accommodation efforts, privacy laws, and Human Rights laws.

What can we do in the meantime?

According to Bouwmeester, there are steps, key legal tips, and reminders that employers can proactively implement and should consider:

- Work with your HR department to create or revise a policy on impairment that includes use of alcohol, legal, and illegal drugs.
Bouwmeester notes it's best to focus on the actual impairment rather than the source. The policy can be similar to existing alcohol policies – although it is a legal substance, usage during work hours, being at work while impaired (or experiencing residual effects such as hangovers) can be prohibited.
- **Follow through is key.** Implement your policy and do all that you can to properly educate, inform, and train all levels of management and staff so that they clearly understand the consequences of violating your organization's policy.

Progressive discipline can be used for violations and progress to termination. It's encouraged that your policy includes required formal reporting of suspected impairment.

- Engage supervisors and provide training to all staff to recognize signs of impairment. Implement a confidential reporting system and maintain the protocols of privacy laws.
- Having programs such as Employee Assistance Programs (EAP) can encourage your staff to disclose usage, and also be a preventative measure to discourage the use of drugs as coping methods for mental distress etc.

While we may not have definitive answers yet, it is clear that the possibility of this legislation will be on the minds of employers for a long time.

As the very strong probability of marijuana becomes legalized in Canada, AMHSA will continue to monitor the developments and keep you informed.