

Weed At Work

As W-Day approaches, there seems to be more and more discussion ongoing amongst employers and employment lawyers about what we can expect when marijuana use is legalized. Personally, I can't decide whether something truly disruptive for workplaces is about to occur or, at the other end of the spectrum, nothing at all will happen.

In the past, whenever I've thought that some legislative change was going to turn the workplace upside down, that has never come to pass. I had that thought when personal information legislation was introduced, provincially and federally, a decade ago. Personal information policies were developed but, otherwise, not a lot happened.

I also envisioned workplace disruptions when the concept of mandatory retirement was abolished. Again, the world didn't come to an end. When workplace harassment and bullying protections were added to workers compensation legislation, I really thought life was going to become difficult for employers. Did it? Not so much.

So, when marijuana use is legalized across Canada on July 1, 2018 (or some date soon thereafter), will the sky fall? Maybe, but probably not, especially if employers are prepared.

The Status Quo

It's worth remembering that people use marijuana in a variety of ways, already. (It's shocking, I know, that anyone in Canada would knowingly violate the law, but it happens.) And, of course, there are many folks who have some version of a medical marijuana prescription.

So, marijuana use is already out there – it isn't going to abruptly fire up on July 1st. Which probably means that some members of your workforce are already using marijuana. Which means that the problem you're foreseeing come July already exists.

There are all kinds of other intoxicants out there, too, from alcohol to various other illegal substances. People are ingesting those things. Those people work at your company.

And, of course, all kinds of people consume prescription and over-the-counter narcotics and medications every day. Very, very few employers monitor employees' use of such medications (I can't recall a single instance of one of my clients informing me that it does so). Very few employers know who is using them, which ones are being used, and whether they are producing any kind of impairment.

My point is that people already have access to, and are making use of, all kinds of substances which can produce impairment in the workplace. The "problem" (if it is a problem) already exists. If it hasn't caused enormous issues in your workplace just yet, it may well be that July 1 will come and go without any noticeable impact.

Impairment In The Workplace

Without a doubt, having impaired people in the workplace is problematic. Depending on the setting and the extent of impairment, it can range from being simply annoying and unproductive to being downright dangerous.

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But, as mentioned above, people have access to all sorts of impairment-producing substances right now. And, generally speaking, they don't seem to come to work in an impaired state (in my experience, anyway). So, unless people are suddenly going to start thinking that Justin Trudeau has made it okay to show up at work in a state of impairment, I don't really anticipate a wave of incidents.

Having said that, and all joking aside, workplace impairment is an issue and in any sort of a safety-sensitive setting can be extremely dangerous for the impaired employee, for his/her co-workers, and for the general public. That being the case, employers should be considering implementing policies addressing impairment in the workplace.

Impairment Policies

A well-written impairment policy will inform employees of their responsibility to assist the employer in ensuring that the workplace is, and remains, safe for everyone. It will put them on notice that the employer does not condone the presence of impaired employees or the possession or consumption of intoxicants of any kind on company property, in company equipment or vehicles, or otherwise in the course of employees' performance of their duties or representation of the company.

Employees' responsibilities should be stated to include...

- taking reasonable care to protect his/her health and safety and the health and safety of other persons who may be affected by his/her acts or omissions at the workplace;
- ensuring that his/her ability to work without risk to his or her health or safety, or to the health or safety of any other person, is not impaired by alcohol, drugs or other causes; and
- reporting any actual or reasonably suspected contravention of the policy by any other person at the workplace.

The policy will prohibit...

- being present in the workplace while affected by, or under the influence of, alcohol or narcotics (prescribed or otherwise);
- consuming, at the workplace, any alcohol or narcotics (prescribed or otherwise) which might result in impairment;
- being present in the workplace when otherwise physically or mentally impaired and, as a result, unfit to perform their duties in a safe manner; and
- promoting, offering for sale, or distributing any form of alcohol or narcotic at the workplace.

The policy will also assert the employer's discretion to require testing of the employee (bad news – there is no known test, yet, which accurately measures present impairment as a result of marijuana use) in appropriate circumstances and will warn employees of the ramifications of violating the policy.

An impairment policy isn't the only thing employers may want to do before July 1, 2018, but it represents a very good first step. And it may prove to be all they need.

This item is provided for general information purposes only and is not intended to be relied upon as legal advice. Informed legal advice should always be obtained about your specific circumstances.

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