

Quiz: Is It Discrimination Not to Hire a Legal Medical Marijuana User for a Safety-Sensitive Job?



SITUATION

Mel O'Drama is a reliable and proven excavation operator and Edifice Complex Constructors gladly hires him for its new construction project, provided that he passes the pre-employment drug test required for all safety-sensitive workers. Before taking the test, Mel reveals that each night after work he legally vapes medical marijuana to manage the pain caused by his Crohn's disease. Although sympathetic, Edifice is concerned by the risk of Mel's being impaired on the job, especially since his dose of 1.5 grams at 22% THC is enough to have lingering impairment effects for up to 24 hours. Edifice is willing to offer him a job that's not safety-sensitive but has absolutely nothing available So, it reluctantly revokes his offer in the interest of safety. The union files a discrimination grievance, claiming that Edifice failed to make accommodations for Mel's disability.

THE QUESTION

Did Edifice commit disability discrimination'

1. No, because legal use of medical marijuana isn't a disability
2. Yes, because Mel uses medical marijuana legally and only at night after his shift
3. No, because letting a legal medical marijuana user do a safety-sensitive job while impaired is undue hardship
4. Yes, because medical marijuana users have the right to do any jobs that non-marijuana users can do

ANSWER

3) Edifice didn't discriminate because letting marijuana users do safety-sensitive jobs while they're potentially impaired imposes undue hardship.

EXPLANATION

The point of this scenario, which is based on a Newfoundland case, is to help you reconcile the seemingly irreconcilable duties of accommodating workers' legal use of medical marijuana and ensuring a safe workplace. The general rule: Workers like Mel who legally use medical marijuana to treat a disabling condition are entitled to accommodations to the point of undue hardship. However, allowing such workers to do the *job while they're impaired*, constitutes undue hardship, especially if their job is safety-sensitive.

One accommodation that may be required would be to offer the worker a job that's not safety-sensitive. But Edifice couldn't do that since it had no such jobs available. As a result, the Newfoundland court dealing with this scenario ruled that it wasn't discrimination for the company to revoke the safety-sensitive worker's job offer after learning of his legal use of medical marijuana [*IBEW, Local 1620 v. Lower Churchill Transmission Construction Employers' Association Inc.*, 2019 NLSC 48 (CanLII), Feb. 22, 2019]. So, C is the right answer.

WHY WRONG ANSWERS ARE WRONG

1 is wrong because while use of medical marijuana isn't a disability, the condition it's used to treat probably is, in this case, Crohn's disease. In other words, the weakness of Mel's case is not that he's not disabled but that his requested accommodation of being allowed to do a safety-sensitive job imposes undue hardship on Edifice.

2 is wrong because even though Mel uses medical marijuana only at night after work, his dosage is potentially significant enough to keep him impaired for 24 hours, including when he shows up for his shift the next day. Had the dose been smaller, the case might have had a different outcome.

4 is wrong because legal medical marijuana users don't have the exact same employment rights as non-users. All they're entitled to is accommodations to the point of undue hardship. And undue hardship is reached when use 'however lawful' causes them to be impaired while doing a safety-sensitive job.