

You Make The Call: Cannabis Legalization Quiz



SITUATION

Assume it's September 2018 and recreational cannabis is now officially legal across Canada. But that does nothing to reduce the shock of catching 3 of your most safety-sensitive workers smoking cannabis in a company van during lunch break. Recognizing that they've been caught red-handed, the workers don't bother with denials. But each offers up a different explanation:

- Bud reveals that he's addicted to cannabis;
- Herb explains that he has a valid authorization from his doctor to use medical cannabis for cancer-related pain; and
- Mary Jane admits that she's a recreational user (as opposed to an addict or medical user) but insists that she got the cannabis legally on the retail market.

QUESTION

Which worker(s) can you fire for violating your zero tolerance workplace drug policy'

ANSWER

All three

RULE

Use of cannabis *in the workplace* is grounds for discipline up to and including termination.

EXPLANATION

There are legal restrictions on disciplining workers for cannabis use. And once recreational cannabis is legalized, use is likely to increase. But even after legalization takes full effect, using or being impaired by cannabis at the worksite will be no more acceptable than it is today, especially if workers perform safety-sensitive jobs. Remember that just because alcohol is legal doesn't mean workers can drink and be job on the job. The best way to explain the specific rules is to walk through each one of the workers in the scenario.

Bud, the Cannabis Addict

Human rights laws require employers to make accommodations for employees with disabilities. Addiction to drugs and alcohol is considered a disability under the law. But accommodations aren't required if they'd impose undue hardship. And while the line between required accommodation and undue hardship is determined case-by-case, the clear consensus from court cases and guidelines from provincial human rights commissions is that permitting employees to use or be impaired while at work would create an unacceptable health and safety risk, especially if they're safety-sensitive.

Herb, the Medical Cannabis User

The same disability analysis applies to Herb because cancer and most other illnesses, injuries and conditions for which cannabis is used as a medical treatment would constitute 'disabilities' under the law. But while tolerating medical cannabis use or impairment away from work may be a required accommodation, tolerating it *at work* would clearly be undue hardship.

Mary Jane, the Casual User of Legal Recreational Cannabis

Disability protections don't apply to Mary Jane because she isn't an addict and doesn't smoke cannabis to treat a disability. She's only a casual user. The fact that she obtained the cannabis legally won't shield her from discipline for violating a zero tolerance policy banning drug use in the workplace.

PRACTICAL IMPACT

Using or being impaired by cannabis at work in violation of a clear anti-drug policy is justifiable under neither disability discrimination nor cannabis legalization laws. This is true regardless of whether the user has an addiction or the use is medicinal.