

Employer Productivity Considerations for Managing Cannabis in the Workplace



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Abstract: In Canada and some American states, the legalization of cannabis for both medicinal and recreational uses is raising concerns for employers. Managing the safety and organizational culture risks presented by cannabis-induced impairment has been magnified, but the full extent of employer liability risks and productivity costs has not yet been identified. This article amalgamates perspectives from the fields of organizational psychology, medicine, and law to examine the potential workplace impacts of legalized cannabis, and it affords practical insights and advice to managers who may be questioning how to prudently approach this emerging complication.

Keywords: cannabis, employee, employer, human resources, workplace

The prestige of government has undoubtedly been lowered considerably by the prohibition law. For nothing is more destructive of respect for the government and the law of the land than passing laws which cannot be enforced. It is an open secret that the dangerous increase of crime in this country is closely connected with this.

-Albert Einstein

Whether cannabis is being legalized in Canada as a societal approach to save legal and incarceration costs, to increase tax revenue, or to provide society with another recreational alternative to alcohol is immaterial to employers. In the end, it is employers that are held accountable to manage the safety and business efficacy complications of employee cannabis use, to devise accommodations for those who use the drug in accordance with medical prescriptions, and to identify and manage the impacts of recreational influence. Once Bill C-45 (the proposed *Cannabis Act*) is passed and becomes law in 2018, employers in Canada will enter a new era of employee conduct and safety issues, whether ready or not.

This paper does not intend to advance a position on the legalization of cannabis. Rather, it considers the workplace safety implications of legalized cannabis use for both users and nonusers.

How Ready Is Your Organization to Manage the Risk That Legalization of Both Recreational and Medical Cannabis Use Brings to Your Workplace?

To fully understand the risks posed by cannabis use by workers, employers are advised to first develop a basic understanding of the nature and effects of the drug. Despite arguments to the contrary, it is not a harmless plant, a wonder drug or a safe recreational alternative drug.

Cannabis is a psychoactive drug, and when misused, whether for medical or recreational purposes, it can cause psychological and physical dependency. Although it may be used for medical applications, when used by workers it can have a negative impact on performance and workplace safety.

An example of the drug's effects can be found in a study that focused on airline pilot performance after smoking cannabis. The study found that only one of nine pilots in a test group had awareness of the intoxicating effect of a low-dose cannabis joint. Further, the results of testing done on the pilots in a flight simulator showed that after smoking one cannabis joint all nine pilots exhibited significant impairment of the motor skills required to land an aircraft (Leirer et al. 1991). This study illustrates that not only does cannabis consumption cause impairment, but the extent and duration of that impairment is not clearly understood for all users. The safety implications of cannabis use have been confirmed in a number of studies, including one that found that cannabis users are twice as likely as nonusers to have a car accident (The National Academy of Sciences, Engineering, and Medicine 2017).

The prevalence of cannabis use amongst employees, and hence the safety concerns it poses, may be surprising to some employers. The 2017 Canadian Cannabis Survey reported the following statistics: 23 percent of workers use cannabis; 39 percent of reported usage occurs within 2 hours of operating a vehicle; 21.5 percent of workers used cannabis to get high before or while at work; 39 percent reported having been a passenger in a vehicle operated by a driver under the influence of cannabis; and 7.7 percent reported using cannabis to get high before or at work on a daily or weekly basis (Government of Canada 2017.). In short, Canadian workers are already using cannabis in ways that impact their performance at work.

One question all HR leaders will be discovering firsthand after the legalization of cannabis is to what degree cannabis use in the workplace impacts resources (e.g., increase in the number of accommodations, discipline, support for employees experiencing financial stress because of daily costs incurred on medical cannabis) and dollars (e.g., increased testing, treatment support). Our thesis is employers will need to do more than update their drug and alcohol policies to be properly prepared to manage cannabis in the workplace, which is the only drug employers must monitor that has both a recreational and a medical use.

The purpose of this paper is to provide human resources leaders with information to assist in preparing the workplace for legalized cannabis in Canada. Recognizing that cannabis is a significantly different drug than alcohol, safe management of its use by employees will require more extensive training and preparation than having employees sign new, updated drug and alcohol policies. To prepare for the legalization of cannabis in the workplace, it is recommended that human resources leaders do more than consult lawyers. That typically will include discussions on policies for legal drug testing, reviewing updated drug and alcohol policies, validating procedures for discipline up to termination for misuse in the workplace, and human rights accommodations for employees with medical conditions. While we agree that these are important, we do not believe this is enough to prepare for the legalization of cannabis. We also suggest that HR leaders become educated on cannabis and explore workplace productivity strategies to assist in facilitating employees' education and prevention to reduce the risk of misuse.

How Prevalent Is Cannabis Use In Canada?

In Canada, the use of cannabis for medical indications has been legal since 1999. However, the number of registered users has grown 1,500 times in size since statistics were first documented in June 2014 (HRPA 2017). According to Health Canada data, almost 167,000 Canadians were registered to purchase cannabis in the last quarter of 2016 to 2017 (HRPA 2017). Figure 1 provides a visual overview of the amount of dried cannabis and oil sold to patients from 2014 to 2017 as reported by Health Canada (Canadian Cannabis Industry & Market Snapshot Report n.d.).

Figure 1 provides evidence that the amount of medical cannabis being sold in Canada has rapidly increased. It will take a few years after legalization to fully understand the expected levels. The same will hold true for recreational sales.

Similarly to other prescription and nonprescription drugs, cannabis has been found to offer medical benefits and to cause unwanted side effects. Regarding its positive medical impacts, cannabis been found useful in the treatment of:

- Chronic pain
- Nausea and vomiting associated with cancer chemotherapy
- Anorexia and cachexia in HIV/AIDS
- Spasticity in multiple sclerosis and spinal cord injury

The benefits of cannabis use in respect of conditions such as epilepsy, pruritus (severe itchy skin), and depression are not well documented; however, the lack of obust scientific evidence so far does not indicate that cannabis has a low therapeutic effect for any particular condition. Further clinical trials are needed to provide scientific evidence to fully understand cannabis's true medical benefits by condition studied. Past studies of the impact of single cannabinoids and whole plant preparations (smoked cannabis, cannabis extract) have in some cases illuminated success by positive anecdotal patient stories. For example, the antiemetic, appetite-enhancing, relaxation-inducing, analgesic, and therapeutic uses of the drug in respect of Tourette's syndrome were all uncovered in this manner.

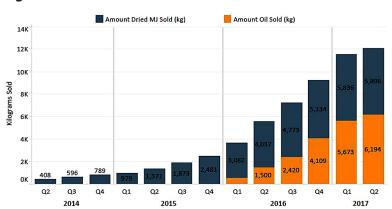


Figure 1: Amount of Dried Cannabis and Oil Sold to Patients

As the Canadian legalization of recreational cannabis use approaches, a significant increase in recreational consumption of cannabis is anticipated. A recent poll suggests that almost one quarter of Canada's adult population consumes recreational cannabis on an occasional basis, and an additional 17 percent of adults indicated a desire to try the drug when it is legalized. These data indicate that approximately 40 percent of adult Canadians are likely to engage in cannabis use in the future (Deloitte 2017).

What this means to HR leaders is there is a high probability that more of their workforces will be engaging in cannabis for medical or recreational use. The higher the numbers, the higher the risk for human error (e.g., coming to work under the influence) that can have a negative impact on the workplace.

How Prevalent Is Cannabis Use within Workforce Populations Today?

For all workplaces, even those that are nonsafety-sensitive, the collection of baseline data concerning cannabis use in the workforce is recommended. Insights provided by this data will illuminate the degree of risk and assist in developing strategies for managing cannabis in the workplace.

Misuse of cannabis can lead to a substance-use disorder like alcohol dependence (Coombs and Howatt 2005). One opportunity for employers is to allow employees to evaluate the relationship between medical and recreational cannabis use and their overall health. One of the driving motivations for Health Risk Assessments (HRA) is to provide employees with an opportunity to self-evaluate their risk so that they have the necessary information to make better lifestyle choices.

The Total Health Index (THI, https://www.morneaushepell.com/ca-en/total-health-index) is a next-generation HRA that has recently added a new item to the assessment. It asks employees to self-evaluate their

cannabis use, like nicotine or alcohol, including the characteristics of the user, the purpose (medical or recreational), and the daily grams dose. This lets employees know their degree of risk and any potential impacts on their total health. Employers can examine employees' aggregated results to understand and monitor the correlations between cannabis use and total health (physical, mental, work, and life).

It is suggested that employers develop a process for obtaining baseline information regarding why, how frequently, and how much cannabis is being consumed by their workforce and to monitor the impact on employees' health, engagement, and productivity. This kind of information can guide HR leaders to develop and evaluate policies, protocols, and programs for mitigating risk.

CANNABIS: BASIC INFORMATION

The following section provides basic information to assist HR leaders to better understand the impact of cannabis on its users.

Compositions and Effects of Cannabis

Cannabis contains 100 cannabinoids, the two most common of which are the following:

■ ∆9-tetrahydrocannabinol (THC)—the cannabinoid that most commonly produces the psychotropic effects of a euphoric high that is commonly associated with cannabis. THC comes from the female plant and is harvested from the part of the plant called cannabis trichomes. THC has been found to be effective for pain, spasms, and nausea, even though it is a psychoactive drug that can lead to physical and cognitive impairments. THC levels in medical cannabis can vary from low (3 percent) to high (25 percent). The higher the percentage, the stronger the psychoactive content. Recreational user levels can vary as well and, in some formats, can be found in levels that exceed 30 percent THC.

■ Cannabidiol (CBD)—often reported as a healing chemical component. CBD is nonpsychoactive; however, it can be antagonistic and synergistic to THC, based on dose or ratio.

The endocannabinoid system of the human body regulates inflammation, metabolism, and appetite. This system has three key parts: endogenous cannabinoids; cannabinoids receptors; and metabolic enzymes. Cannabis's effects on this system include psycho-activity focused on the CB1 receptors that are concentrated in the brain and the central nervous system.

The differences in CBD/THC impacts are dependent on how each interacts with the cannabinoid CB1 receptor. For example:

- THC binds well with CB1 cannabinoid receptors.
- CBD has low-binding affinity for CB1 receptors, which allows it to support the body in other ways.
- Like an electrical plug connecting to a wall socket, a THC molecule is perfectly shaped to connect with CB1 receptors. When that connection is made, THC stimulates the CB1 receptors and causes a psychoactive impact.

One major risk for employers is that physician-issued medical cannabis authorizations typically indicate a daily quantity of grams of cannabis (dried or oil form), often with no further instructions concerning THC levels. A complicating factor for employers is the lack of standardization in cannabis products and production. Purchasing cannabis is not the same as buying a medical product in a pharmacy, where two different brands have the same ingredients and consistent doses. Cannabis is available in many different dosage forms and strains, leaving it up to the consumer and physician (in the case of medical cannabis) to understand the proper dosage

based on several factors, including the following:

- a. While cannabis appears to be a natural product, it also does not at this time have a natural product number (NPN) from Health Canada that is given to all supplements (vitamins, minerals, organic and amino acids). However, once the Cannabis Act becomes law, the Government of Canada will rapidly move forward with regulation of cannabis that will include Natural Health Product Regulations (Government of Canada n.d.).
- b. How cannabis is utilized influences how it works in the body. When digested, THC is metabolized by the liver, resulting in a higher concentration when cannabis is ingested rather than inhaled.
- c. The onset, effect, and duration of impairment differ between inhalation and ingestion. For example, by inhalation (i.e., smoked or vaped) THC typically peaks within 4 hours, but when ingested it can remain in the bloodstream up to 24 hours.
- d. THC is a lipophilic (combines with fat) drug that can take several months to exit fatty tissues.
- e. Some regular users may maintain THC levels of approximately 80 ng/ml in blood, which can negatively impact performance. Without testing, these individuals may appear to be functioning but are at risk for increased motor skill errors.

When cannabis is accepted for medical treatment and accommodation, it is recommended that HR leaders get clarity on the following questions: (1) When will the employee take their cannabis dose? (2) What quantity will be consumed per dose? (3) How will the dosage be consumed? and (4) What are the CBD/THC levels? These kinds of questions can help educate and guide the employee to work with their medical doctor to make dosing decisions in a more thoughtful manner than just the number of grams per day.

Currently, cannabis is not a first-line therapy for any medical condition, although the best medical evidence for cannabis use is its ability to support patients with chronic pain, chemotherapy-induced nausea and vomiting, and spasticity symptoms in multiple sclerosis (National Academies of Sciences, Engineering, and Medicine et al. 2017).

CANNABIS IMPAIRMENTS

HR professionals do not need to be clinical experts on cannabis, but there is value in having a frame of reference for how this drug can impact the mind and body.

The following are some of the signs that can indicate that a person is under the influence of cannabis. The amount of cannabis ingested with respect to frequency, duration, and time (FDI) as well as the THC levels will impact the degree of the signs. People under the influence will typically display several. With misuse and regular use, the signs increase:

- Increased appetite
- Red bloodshot eyes
- Euphoria
- Anxiety
- Inappropriate laughter
- Loss of focus during conversations
- Drowsiness
- Lack of motivation and energy
- Altered sense of time
- Impaired memory
- Overly relaxed for situation
- Slowed reflexes and impaired motor skills
- Appear to be having a panic attack
- Delayed reaction times and abilities
- Distorted sense of perception
- Dry mouth
- Increased heart rate
- Cognitive impairments
- Possession of drug paraphernalia
- Evidence of financial hardship
- Paranoia
- Psychosis
- More-severe symptoms—can happen in people who take too much THC (e.g., digest

THC and do not get a feeling of high immediately so keep taking THC) and increase risk. THC can result in panic or paranoia, up to and including acute psychosis that is more common in people who have a preexisting psychiatric condition.

- After use—THC has a hangover effect, increased fatigue, and negative impact on cognitive and motor skills.
- Regular users who stop often experience physical withdrawal and challenges with concentration and motor skills. Cannabis withdrawal may last longer than that of most other drugs because THC stays in the body for several weeks instead of several hours. Therefore, certain symptoms of cannabis withdrawal can last for weeks or even months (Mason et al. 2015). Common signs of cannabis drug withdrawal can include the following:
 - Stomach discomfort
 - Sweating
 - Tremor
 - Fever and chills
 - Headache
 - Restlessness
 - Insomnia and nightmares
 - Fatigue
 - Diminished appetite
 - Irritability
 - Anxiety
 - Depression

CANNABIS AND DRIVING LAWS

In April 2017, the Government of Canada proposed amendments to its laws on impaired driving to include stronger legislation and more severe punishment for those who drive under the influence of drugs, including cannabis (Bill C-46 2017). The proposed new regulations purport to gauge impaired driving based on THC levels per milliliter (mL) of blood:

- 2 to 5 ng/mL within 2 hours of driving could have a maximum fine of up to \$1,000.
- 5 ng/mL or more within 2 hours of driving would be considered an offence and could result in prosecution.

- THC and alcohol: A combination of more than 2.5 ng/mL of THC and 50 mg/100 mL of blood alcohol within 2 hours of driving would be a chargeable offence.
- The legal standard for a chargeable offence regarding the presence of cannabis (as measured by a urine test) is 50 ng/mL or 5 ng/mL in a saliva test.

EMPLOYER CONSIDERATIONS IN THE FACE OF CANNABIS LEGALIZATION

As a starting point, employers should recognize that, except in the case of cannabis use prescribed by a physician, there is no obligation to allow consumption of the drug on work premises. In the same way that employers are entitled to ban alcohol from their workplaces, they can also prohibit cannabis. However, it is acknowledged that the same complexities regarding cannabis use and impairment that have caused general regulatory uncertainty have also affected employers' approaches and rules concerning the drug.

The Canadian Model for Providing a Safe Workplace (hereinafter the "Canadian Model"; Construction Owners Association of Alberta 2014) is frequently referenced as a standard for employer regulation of cannabis use. A general rule put forward in the Canadian Model is as follows:

ALCOHOL AND DRUG WORK 3.0 **RULE**

An employee shall not 3.1

- a. use, possess or offer for sale alcohol and drugs or any product or device that may be used to attempt to tamper with any sample for a drug and alcohol test while on company property or at a company workplace,
- b. report to work or work
 - (i) with an alcohol level equal to or in excess of 0.040 g per 210 L of breath,

- (ii) with a drug level for the drugs set out below equal to or in excess of the concentrations set out below:
- (iii) while unfit for work on account of the use of a prescription or non-prescription drug,

c. refuse to

- (i) comply with a request made by a representative of the company under 4.3, or
- (ii) comply with a request to submit to an alcohol and drug test made under 4.4, 4.5, 4.6 or 4.7, or
- (iii) provide a sample for an alcohol and drug test under 4.8,
- d. tamper with a sample for an alcohol and drug test given under 4.8.

The Canadian Model has been upheld by labor arbitrators in unionized work contexts (Fluor Constructors Canada Ltd. and I.B.E.W. 2001; Clearwater Fabrication GP Inc. v. United Assn. of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada 2013). However, when employers can test for the presence of cannabis in employees' bodies remains a challenging question. Currently, the state of the law in Canada is that, in unionized workplaces, testing is justified when there is a provable history of cannabis use amongst employees, where the workplace is safety-sensitive in nature, following an accident or significant incident, or when reasonable cause exists (Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd. 2013). In this regard, employers may take some comfort from the observation of Arbitrator Surdykowski in Mechanical Contractors Association Sarnia:

The jurisprudence has evolved to the point that reasonable cause, nonrandom evidence based post-incident, and return to work monitoring post-treatment alcohol and drug testing are no longer controversial. There is no longer any question that an employer can unilaterally implement these sorts of non-arbitrary testing so long as it is a component of a broader approach and assessment of workplace related alcohol and drug use. The debate in that respect is closed (*Mechanical Contractors Association Sarnia* 2013.).

Employers should nevertheless be aware that the existence of one or more of the circumstances that may justify testing does not automatically do so but, instead, simply provides a basis on which to apply a proportionality analysis to weigh the value of testing against employee privacy rights (Bill C-46 2017). As an example, positive results arising from required testing by an employer as the result of an employee's "erratic" behavior were found insufficient to justify dismissal after an arbitrator determined that the behavior in question was due in part to the employee's depression, a condition that was known to the employer when the drug testing was ordered (Resources Development Trades Council of Nfld v. Hebron Project Employers' Assn 2014). Similarly, in United Steelworkers, Local 5890 v. Ervaz Regina Steel (2014), an accident in which an employee rubbed a guardrail with the bumper of a truck he was backing up was found to be insufficient to justify drug testing. The crucial point to be taken from the jurisprudence to date is that the validity of cannabis testing by employers will be subject to potential challenge on an initial basis if it does not constitute a proportional response to the particular circumstances of the case. Hence, employers are able to impose drug testing when it is warranted, but cannot do so without careful analysis.

The existence of a real or perceived addiction to cannabis and the medically prescribed use of cannabis are two additional complications for employers that wish to impose drug testing. In cases where

an employee is found to have been under the influence of cannabis at work but has a medical explanation to warrant the conduct, the employer will have a duty to accommodate the employee to the point of undue hardship, which may require supporting the employee through a drug treatment program (Bill C-46 2017).

A response to employer concerns regarding potential employee cannabis consumption and impairment at work is found in the 2017 case of *Stewart v Elk Valley Coal Corp* (2017). In that case, the Supreme Court of Canada determined that the respondent employer had not discriminated against the employee by dismissing him after a workplace safety incident, in spite of the fact that the employee claimed to have been under the influence of cannabis as a result of an addiction. The Elk Valley Drug and Alcohol Policy imposed an opportunity on employees to disclose such addictions, which Stewart failed to accept:

If an employee tests positive in a test administered under this Policy, or if the Company investigation otherwise determines conduct contrary to the Rules of Conduct of Employees, the Company will decide whether the employee will be terminated or continued in employment. This decision will be based on all relevant circumstances, including (but not limited to) the following: (i) the employment record of the employee; (ii) the circumstances surrounding the Positive Test; (iii) the employee's stated pattern of usage; (iv) the likelihood that the employee's work performance has been or may be adversely affected; and (v) the importance of deterrence of such behaviour by other employees.

If the Company determines that the employee's conduct will be addressed in a disciplinary manner, the Company will place primary importance upon

deterring similar behaviour by other employees and will terminate the employee unless termination would be unjust in all of the circumstances.

If the Company decides to continue the employment of the employee, the Company will require the employee to undertake whatever steps are necessary or appropriate to avoid the risk of workplace impairment in the future. If reasonable in the circumstances, an employee may be required to undergo periodic and / or random testing. The pattern and duration of such testing will be determined by the Company on an individual basis, having regard to what is reasonable in the circumstances.

The Company will assist its employees with problems of abuse, dependency, or addiction associated with Alcohol, Illegal Drugs and Medications, with an aim to preventing these problems. The Company, through its Employee Assistance Program, will provide access to treatment resources to its employees and will encourage employee participation in effective prevention and rehabilitation programs where appropriate.

No employee with a dependency or addiction will be disciplined or involuntarily terminated because of the employee's involvement in a rehabilitation effort or for voluntarily requesting rehabilitative help in overcoming the problem. Involvement in a rehabilitative effort or seeking rehabilitative help for an abuse, dependency or addiction problem after a Significant Event has occurred, or after a demand is made for the employee to undergo testing for reasonable cause under this Policy, will not prevent an employee from being disciplined or terminated. An employee's use of the Employee

Assistance Program or other rehabilitation efforts does not eliminate the requirement of meeting satisfactory performance levels or compliance with this Policy (Policy Part, "Prevention"; Stewart v. Elk Valley Coal Corporation, 2015).

Because the employee in the case had not disclosed his alleged addiction to cannabis before the workplace safety incident occurred, he did not obtain the protection from discipline offered under the policy and, as such, was dismissed for just cause. This type of policy may be useful for employers in that it requires early disclosure of addictions that could affect safety so that the employer can assist in managing the condition.

Preparing Workplaces for Cannabis

Many employers already have policies and procedures for managing employee impairment at work. For that reason, they should not approach cannabis legalization as an issue that requires a fundamentally different approach but, rather, some maintenance and adjustments.

While the legalization of cannabis for medical and recreational use will not demand radical changes to many existing drug and alcohol policies, some changes are prudent, as legalization does bring a new level of focus, social acceptance, and risk for employers. Due diligence must be exercised to ensure that employee conduct policies are appropriate to address the complications that arise from the variety of cannabis compositions and forms and means of consumption, and then to adequately educate workers on their obligations under the amended rules and the consequences of noncompliance.

Several steps for employers to consider to mitigate cannabis safety-related risks:

1. Do not assume employees understand how THC can impact their performance and put them at risk. As referenced earlier, the science of cannabis impairment is

- confounded by its numerous compositions and forms and means of consumption. Many employees are likely to be undereducated regarding the effects of particular cannabis products.
- 2. Educate managers regarding "fitness for work" in the cannabis context. Managers should be educated about the risk posed by different THC levels, how THC is taken into the body, and the impact on THC levels within their bloodstream. They should also be informed about the impact cannabis has on cognitive function. When a fitness-for-work question or concern arises, managers should understand how they can (and must) intervene in order to immediately reduce safety risks and to request further evaluation.
- 3. Anticipate cannabis bias. Some employees and managers may be biased against cannabis use and consequently judge employees who use cannabis medically or recreationally. Employers who anticipate this can be proactive to reduce the stigma of cannabis by providing education. Employers can leverage change management strategies to create an approach to engage the workforce to be more open and accepting of cannabis users to reduce the risk of social injustice, stigma, and conflict.
- 4. Revisit employer benefit plans. Employers can determine whether and how their sponsored benefit plans will cover medical cannabis prescriptions. While at least some of the complications that arose in the human rights case of Skinner v Board of Trustees of the Canadian Elevator Industry Welfare Trust Fund (2017) will likely be resolved with the legalization of cannabis, recognition of potential discrimination pitfalls is nevertheless important.
- 5. Educate employees on health risk spending accounts, if available. Employers who provide health spending accounts (HSAs) are recommended to provide information to educate employees on how they can use their HSA to cover

- medical cannabis purchases as an approved Canada Revenue Agencyeligible medical expense.
- 6. The prospect of human error in dosing. Not every employee taking medical cannabis will adhere to prescribed dosing instructions 100 percent of the time. Medical cannabis requires the same level of diligence, preparation, and education as does any other medical drug. Employees who have elected to use medical cannabis can benefit from education on dosage compliance as well as levels of accountability to adhere to agreed-upon workplace accommodations when applicable. A policy provision to address how employees will be dealt with for any failure to comply with accommodated use should be considered.
- 7. Accident prevention. Employees who are under the influence of THC are at greater risk of causing accidents. Consequently, it is crucial that employees watch out for coworkers' behavior that may indicate cannabis impairment so that, as much as possible, a safe workplace is maintained.
- 8. Substance abuse prevention and early intervention. Employers are advised to educate employees on the risk of cannabis use and how this drug can lead to both psychological and physical substance dependency.
- Update smoke-free law and policies. It is important to ensure clear boundaries by updating smoke-free policies to ensure employees who are using medical cannabis understand they must adhere to smoke-free policies as in the case of regular cigarettes.
- 10. Disciplining employees who ignore warnings and come to work under the influence of cannabis. Even with diligent employer preparation, some employees may still elect to come to work under the influence. These employees face a higher risk of increased levels of presenteeism (not functioning at one's full potential).

- Employees who are regular users can experience withdrawal symptoms during working hours that can negatively impact their performance. Employers are encouraged to take proactive action to prepare their leaders to detect employees who may be under the influence of THC in the workplace.
- 11. Anticipating increased risks for users (recreational and medical). Employers may be at risk of spending more dollars on EAFP resources to support employees who are experiencing financial trouble because of their daily cannabis medical use. Some employees may call EAFP for themselves or because a family member is experiencing a cannabis abuse or dependency issue. Employers can anticipate increased numbers of employees losing their driving license as a result of driving under the influence of cannabis. Furthermore, employees who elect to drive motor vehicles under the influence of cannabis face a higher risk of having accidents at work and off work. Finally, employers are at increased risk of discipline issues or terminations, as well as of requiring more HR resources to support and provide more employees workplace accommodations for their medical cannabis use. The more employers can step back and consider these risk factors and prepare, the better placed they are to assess their level of readiness and identify the gaps they need to close so they are prepared to manage cannabis in the workplace.
- 12. Understand there will be three types of users in the workplace. HR leaders would be well advised to understand and acknowledge three types of cannabis users in the workplace: casual users, medical users, and abusers. All three types can be dangerous in the workplace, depending on the circumstances, the type of work, and dosage. Paying attention to all three types can be helpful for HR leaders to understand the different kinds of risk profile. The following are some examples

- of the effects of cannabis abuse in the workplace:
- Impacts on judgment, alertness, perception, motor coordination or emotional state and decision making
- Aftereffects of substance use (hangover, withdrawal) affecting job performance
- Absenteeism, illness, and/or reduced productivity
- Preoccupation with obtaining and using substances while at work, interfering with attention and concentration
- Increased risk of illegal activities at work, including selling illicit drugs to other employees

Moving from Preparation to Action

HR leaders who are educated about cannabis and have taken time to consider the above kinds of factors can put themselves in position to move from preparation to action. The following are the actions employers can take to be ready to manage cannabis in the workplace:

- 1. Integrate substance abuse and mental health strategies. Many organizations are talking about mental health strategies without discussing or considering how to also manage and prevent substance abuse risk in their workforce. Looking at these two issues together helps to determine what prevention and support programs are in place, available resources for treatment, and how the organization will facilitate prevention, early intervention, and support.
- 2. Consider adopting the Canadian Psychological Health and Safety (PHS) Standard. Employers who are currently using or considering adopting this system can create a framework to evaluate any potential risk factors impacting employees' psychological and physical health. A PHS program can uncover conformity issues and risks such as the percentage of employees at risk of breaching workplace substance use policies. It can also evaluate the effectiveness of the employer's education and

- programming for preventing cannabisrelated accidents and substance abuse and disorders that can have a negative impact on both the employer and the employees. A PHS program can also be aligned with an organization's occupational health and safety (OHS) program with respect to reporting, management reviews, and internal audits.
- 3. Update substance use policy using a structured outline. A defendable substance use policy will include objectives and scope, prevention, observations, support, return to work, noncompliance, review and evaluation elements and meet legal requirements. It can be helpful to get a legal professional to review and validate it and provide coaching and recommendations if necessary. If drug and alcohol testing (e.g., safety-sensitive) or other specified positions are needed, the policy must be clear:
 - Where there is reasonable cause to believe alcohol or drug use resulted in the employee being unfit for duty;
 - As part of a full investigation into a significant work-related accident or incident;
 - Where an employee is returning to duty after violating the policy;
 - Where an employee is returning to duty after treatment for drug or alcohol abuse:
 - As a final condition of appointment to a safety-sensitive position; and
 - Determine if random testing will be used and ensure that legal grounds for doing so are defendable.
- 4. Define a gifting policy regarding workplace or organizational funded functions. What if an employee gives a coworker a bag of cannabis, a bottle of oil, or gummy bears laced with THC? Employers are recommended to make clear their position on such gifting. However, they are advised to consider how their rules may generate bias against cannabis users versus alcohol consumers or even chocolate consumers.

- 5. Monitor and measure substance abuse policies. By monitoring and measuring how effective substance use policies, training, and enforcement are working to achieve a safe workplace, employers will better understand what conditions exist in their workplaces and how rules might be improved. For organizations that are not adopting the Standard or implementing a PHS, another alternative is to leverage the existing occupational health and safety program to assist with uncovering conformity issues, provide reporting, assist in creating protocols to create a safe workplace, and to facilitate continuous improvement initiatives. This can provide senior leadership with clarity on the impact of cannabis on workplace safety.
- 6. Accommodations readiness. A significant challenge for some managers is likely to arise in respect of understanding and acting on actual or potential medical cannabis and/or cannabis addiction situations. To guard against instinctive and uninformed managerial decision making, organizations should ensure that their human resources advisors and managers are aware of the human rights protections that are attracted by cannabis dependency and medical use. The employer accommodation duty extends to the point of "undue hardship," a legal test that varies based on several factors, including the size and nature of the subject organization. Given the complexity of human rights law applications, it is advisable for employers to obtain legal advice regarding any potential discrimination issues.
- 7. Implement "reasonable suspicion" protocols. Managers require training in early detection of cannabis intoxication and guidance on how to intervene and support employees at risk or with a substance use dependency issue. This training can help managers to know how to recognize signs early as well as to know when and how to confront and deal with employees

- who may be under the influence of cannabis with respect to early detection and intervention. As with any drug, it is helpful to ensure frontline managers are clear about what they are expected to do and are provided guidance and tools to intervene with employees who may be under the influence.
- 8. If testing, determine testing methodology and application. Ensure the testing methods and implementation plan are clear about why, what, and how testing will be done in the workplace. Currently, there is no one test that measures the degree of impairment accurately. However, some organizations have created and are holding tight on fit-for-duty policies by which safety-sensitive-job employees can be randomly tested with an oral fluid test. The organizations claim that, based on their expert evidence, this test is sufficient to infer that an employee is likely impaired by cannabis (Vander Wier 2018).
- 9. Consider Infographic: Cannabis testing (Caplan, and B.A. Goldberger. 2001). See Table 1.

There are tests that can detect recent cannabis use. Each organization, based on their policies and need, will need to determine what kind of tests and what vendor(s) will be used. Employees must have no doubts at all as to why, when, and how they will be tested. It is advisable to train employees in this to increase their awareness and to reduce anxiety on what the test is for and how the results are used. Also, this must be clearly spelled out in organizational policies that have been vetted by lawyers who can help ensure the employer is not at any future legal risk. Finally, it is important to ensure all employees tested know that their medical information is protected and confidential and that their manager will not and cannot discuss any results. Any breaches by a manager can result in discipline up to and including termination.

- 10. Set clear attendance expectations. For employees who are using medical cannabis as a part of their treatment protocol, it can be helpful to ensure they understand their attendance in the workplace will be managed like that of other employees with respect to expectations around being on time for work and unexcused absences. Any differences with regard to these norms would need to be put into an agreed-upon accommodations plan.
- 11. Support employees to cope better with stress. Some employees who struggle to cope with the demands of work and life may experience increased levels of stress, anxiety, and depression. Workplace stress factors that can lead to substance abuse when coping skills are exhausted are as follows:
 - Manager-employee relationship
 - Exposure to incivility
 - Traumatic events
 - Bullying
 - Work demands
 - Career challenges—"poor job fit"
 - Violence
 - Job insecurity

One way to assist employees to deal with stress is to discuss medical cannabis with their physician or use of cannabis recreationally to cope better. Employees may be provided with access to programs that can help them develop their resiliency and coping skills. Employers who are proactive in supporting and promoting employees' mental health can gain their trust and help them obtain the knowledge and skills to manage their mental health.

FINAL THOUGHTS

Our advice to all HR leaders is not to assume that simply updating their substance abuse policy will be enough to be ready to manage medical and recreational cannabis use in the workplace. Our recommendation to employers and HR leaders is to take the time required to get educated and prepared and then put an action plan in place with specific steps. We also encourage

Table 1: Testing Considerations for Urine, Fluid, Hair, and Sweat Cannabis Testing

Specimen	Advantages	Disadvantages
Urine	 Drugs and drug metabolites are highly concentrated Extensive scientific basis (or testing methodology) Performance testing is liberally practiced Results are frequently accepted in court Uniform testing criteria (e.g., cutoffs) established Easily tested by commercial screening methods 	 Period of detection 2–3 days No dose–concentration relationship Drug concentration influenced by the amount of water intake Susceptible to adulteration and substitution
Oral fluid	 Useful in the detection of recent drug use Results may be related to behavior/performance Ready accessibility for collection Observed collection Detects parent drugs and metabolites 	 Detection window may be shortened Contamination following oral, smoked, and intranasal routes of drug administration Collection volume may be device dependent Performance testing under development
Hair	 Provides a longer estimate of time of drug use Detects parent drugs and metabolites (e.g., 6-acetylmorphine) Observed collection Ease of obtaining, storing, and shipping specimens Second specimen can be obtained from original source 	 Inability to detect recent drug use Potential hair color bias Possible environmental contamination for some drug classes Susceptible to adulteration by treatment prior to collection Performance testing under development
Sweat	 Provides cumulative measure of drug exposure Ability to monitor drug intake for a period of days to weeks Detects parent drugs and metabolites (e.g., 6-acetylmorphine) Noninvasive specimen collection Collection device is relatively tamper-proof 	 Large variation in sweat production Specimen volume unknown Limited collection devices High intersubject variability Risk of accidental removal Risk of contamination during application/removal Cannot detect prior exposure Performance testing under development

employers to leverage their existing OHS programs to assist in monitoring and measuring employees' health and safety risk in the workplace with respect to direct or indirect cannabis use.

We believe that employers and HR leaders must take every reasonable precaution to ensure the safety of their workplaces and to continue to have the right to prohibit impairment on the job.

We suspect that the full impact of cannabis in the workplace will not be fully understood for 3 to 5 years from the time

the Cannabis Act becomes law. It will take organizations this period of time to gather their baseline data and year-over-year records and learn how to manage cannabis in the workplace, and for all employees to become better educated and informed on cannabis. We do not believe it is wise to begin this conversation assuming that this drug is 100 percent safe. Any psychoactive drug when misused can be dangerous.

The better HR leaders are prepared and ready, starting with education, the more

likely they will be able to safely manage cannabis in the workplace. All HR leaders would be well served to keep a well-known phrase uppermost in mind: "An ounce of prevention is worth a pound of cure."

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