
CANNABIS IN THE WORKPLACE

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420 ADVISORY MANAGEMENT

ALBERTA ASSOCIATION OF
SAFETY PARTNERSHIPS AGM
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INTRODUCING ROB



BONA FIDE OCCUPATIONAL REQUIREMENT (BFOR)

- BFOR is a legal term for the essential tasks required to perform a job.
- If an employer can establish a particular BFOR that cannot be modified/adapted for an accommodation, they may not have to accommodate a worker in that job.
- BFOR's are not preferences they are duties or elements essential to the job.

BFOR

- Before a BFOR defence can be established by the employer, they must show they cannot accommodate without undue hardship
- This requirement does not have to be maintained in legislation it is a requirement in all jurisdictions because of the Meiorin Supreme court decision.

MEIJORIN CASE - 1999

- This case arose as a grievance before a labour arbitrator. Tawney Meijorin was employed for three years as a member of the Initial Attack Forest Firefighting crew.
- Although she did her work well, she lost her job when the Government adopted a new series of fitness tests for forest firefighters. She passed three of the tests but failed a fourth one, a 2.5 km run designed to assess whether she met the Government's aerobic standards, by taking 49.4 seconds longer than required.
- The arbitrator also concluded that the Government did not show that it had accommodated Ms. Meijorin to the point of undue hardship.

SAFETY SENSITIVE POSITIONS

- A Safety-sensitive job is one in which incapacity due to drug or alcohol impairment could result in direct and significant risk of injury to the employee, others or the environment.
- Whether a job can be categorized as safety-sensitive must be considered within the context of the industry, the particular workplace, and an employee's direct involvement in a high-risk operation

STEWART V ELK VALLEY COAL , JUNE 15, 2016

- Steward worked as a loader in the Elk Valley coal mine operation
- Crashed loader – investigation required testing- tested positive for cocaine – terminated
- Appealed based on discrimination – drug dependent
- Appealed through lower courts to Supreme court
- Termination justified as the worker violated the substance abuse policy by not disclosing a dependency / addiction prior to the incident.
- Now a “sacred ground case”

DUTY TO ACCOMMODATE CONTD.

- An employer must accommodate up to the point where it becomes an undue hardship

UNDUE HARDSHIP – ALBERTA HUMAN RIGHTS COMMISSION

- Undue hardship occurs if accommodation would create onerous conditions for an employer or service provider, for example, **intolerable** financial costs or serious disruption to business.
- An employer or service provider must make **considerable** effort to find an appropriate accommodation for an employee.

UNDUE HARDSHIP CONTD.

- Accommodation that is reasonable in one case may not be reasonable in another. Every case should be handled and assessed in an individual manner and in consultation with employees

UNDUE HARDSHIP CONTD.

- Some hardship may be necessary in making an accommodation;
- Only when there is 'undue' hardship can the employer or service provider claim that they have tried all the accommodations available.
- To determine if undue hardship would occur, the employer or service provider should review factors such as:

UNDUE HARDSHIP CONTD.

Financial costs

- Financial costs must be **substantial** in order to be found to cause undue hardship. They must be so significant that they would substantially affect productivity or efficiency of the employer or service provider responsible for the accommodation.

Size and resources of the employer or service provider

- The cost of modifying premises or equipment and the ability to amortize such costs will be taken into consideration when assessing if there is undue hardship. The larger the operation, the more likely it is that it can afford to support a wider range of accommodations without undue hardship.

UNDUE HARDSHIP CONTD.

- **Disruption of operations**
- The extent to which the inconvenience would prevent the employer or service provider from carrying out essential business will be a factor when assessing undue hardship.
- **Morale problems of other employees brought about by the accommodation**
- Morale problems could be due to the negative impact of increased workload on other employees and a requirement to work too much overtime.

UNDUE HARDSHIP CONTD.

- **Substantial interference with the rights of other individuals or groups:**
 - A proposed accommodation should not **interfere significantly** with the rights of others or discriminate against them.
- **Interchangeability of work force and facilities:**
 - Whether an employer or service provider could **relocate employees** to other positions on a temporary or permanent basis is a factor in determining undue hardship. This may be easier for a larger company.

UNDUE HARDSHIP CONTD.

Health and safety concerns

- Where **safety is a concern**, consider the level of risk and who bears that risk.
- For example, consider if the accommodation would **violate health and safety regulations**.
- There would be an undue hardship if accommodation **sacrificed safety** for either the employee or others.

SUBSTANCE ABUSE POLICY

Mandatory for all Safety Sensitive Position workers to disclose:

- Dependency
- Addiction
- Use of over the counter meds that result in impairment and significant risk of injury

TESTING

- Testing is the most effective way to enforce your organization's anti-drug and alcohol policies.
- The policy must be carefully drafted to withstand the all but inevitable legal challenges from the union and affected employees, especially if you impose the policy unilaterally.
- Must have reasonable grounds to assume a person is impaired or under the influence of a drug

TESTING POLICY

- This will be a very important document to your organization.
- Will set the framework for the dealing with policy violation
- Written to determine compliance with workplace safety and not simply catch impaired workers at work
- This is where we can help

THE AH HA MOMENT

At this point Rob had an Ah Ha moment

He understood the importance of BFOR, Safety Sensitive Positions, Substance Abuse Policy, Duty to Accommodate, Undue hardship and the legal need to have supporting documents in place.

Where are you in your thinking process....

INTRODUCING TONY



INTRODUCING TONY

No COR

Due Diligence

Safety management system-don't do anything stupid

Training – ya do your job the way I tell ya

Safe work procedures – ya do what I tell ya to do

Not aware the employer **MUST** maintain a safe work environment

Scenario – court case – did you do **EVERYTHING** you could do to prevent an incident

MEDICAL MARIJUANA

- Duty to accommodate
- Must be included in your Substance Abuse Policy
- Can ask for PROGNOSIS not diagnosis
- Can ask what affect this will have on the worker
- Can ask for substitution
- Can restrict use to certain areas in the workplace
- Cannot violate the safety – wellbeing of others in the workplace
- Must only use prescribed amount
- Cannot supersede other policies – distracted / impaired driving

RECREATIONAL CANNABIS

Legalization does not mean it is OK to be impaired at work!!

- October 17, 2018 – legal in Canada to possess up to 30 grams dried cannabis – share up to 30 grams dried cannabis with other adults
- Grow from licensed seed up to 4 plants per household for personal use
- Buy dried or fresh cannabis and cannabis oil from a Provincially licensed retailer
- Make cannabis products such as food and drinks so long as organic solvents are not used

RECREATIONAL MARIJUANA - DRUG IMPAIRED DRIVING

- June 21, 2018 Criminal Code new legislation related to drug impaired driving came into effect.

Penalties for drug-impaired driving

New Summary conviction offence

- | | |
|---|-----------------------|
| <ul style="list-style-type: none"> • 2 nanograms (ng) but less than 5 ng of THC per millilitre (ml) of blood | Maximum \$ 1,000 fine |
|---|-----------------------|

New Hybrid offences

- | | | |
|---|-------------------------------|---|
| <ul style="list-style-type: none"> • 5 ng or more of THC per ml of blood • Any detectable level of LSD, psilocybin, psilocin, ketamine, PCP, cocaine, methamphetamine, 6-mam • 5 mg/L of GHB | First offence | Mandatory minimum \$1,000 fine |
| | Second offence | Mandatory minimum of 30 days imprisonment |
| | Third and subsequent offences | Mandatory minimum 120 days imprisonment |
| <ul style="list-style-type: none"> • 50 milligrams (mg) of alcohol per 100 ml blood + 2.5 ng or more of THC per ml of blood | First offence | Mandatory minimum \$1,000 fine |
| | Second offence | Mandatory minimum of 30 days imprisonment |
| | Third offence | Mandatory minimum 120 days imprisonment |

Drug-impaired driving that does not cause bodily harm or death – Maximum penalties

- | | |
|---------------------------|------------------------|
| Summary conviction | 18 months imprisonment |
| Indictment | 5 years imprisonment |

Drug-impaired driving causing bodily harm – Maximum penalty

- | | |
|-------------------|-----------------------|
| Indictment | 10 years imprisonment |
|-------------------|-----------------------|

Drug-impaired driving causing death – Maximum penalty

Life imprisonment

Testing

Police can demand that a driver comply with either a standardized field sobriety test or provide an oral fluid sample if they reasonably suspect a drug is in the driver's body. If they have reasonable grounds to believe that an offence has been committed, they can demand a blood sample or a drug recognition evaluation.

DRAGER DRUG TEST 5000

- Drager Drug Test 5000 as the first saliva screening equipment to be used by law enforcement to test for THC, the main psychoactive agent in cannabis.
- The equipment will now be made available to police forces across the country, but the government says it will still be up to police forces to decide what testing equipment they want to use.
- Manufacturers have told the government that they could meet demand for roadside saliva testing equipment within four to six weeks.
- Legislation that passed Parliament in June allows for the use of roadside saliva tests to detect the presence of drugs like cocaine, methamphetamine and marijuana.

DRAGER DRUG TEST 5000

Limitations:

\$6000.00 per unit

4C- 40C Temperature range

Must be level anything over 10% off level will affect reading

Many concerns about false readings

Ontario Police currently refusing to use the device

OHS Insights Sept 2018

EMPLOYEE PERFORMANCE

Short term effects:

- Problems with memory and learning
- Distorted perception
- Difficulty in thinking and problem solving
- Loss of coordination

EMPLOYEE PERFORMANCE CONTD.

Heavy users may have increased difficulty in:

- Sustaining attention
- Shifting attention to meet the demands of changes in the environment
- Registering, processing and using information

DURATION OF EFFECTS



- Normally felt in minutes
- Peak in 10-30 minutes
- High lasts approx. 2 hours
- Return to baseline within 3-5 hours

■ Torikin /Manes webinar May 2018

GENERAL SIGNS OF IMPAIRMENT BY CANNABIS

- Red eyes, odor of cannabis, or paraphernalia seen
- Delayed or decreased reaction time
- Decreased short-term memory
- Poor hand-eye coordination
- Lack of concentration
- Decreased perception of time and distance

SAFETY MANAGEMENT CHANGES

Policies

- Substance abuse - Reflective of the new cannabis legislation
- Testing

Training

- Signs of use and impairment
- Conducting Investigations / interviewing workers suspected of use

SAFETY MANAGEMENT CHANGES

- Safety Policy
- Hazard assessment – include Safety Sensitive positions
- Discrimination Policy – support the Substance Abuse Policy
- Discipline Policy- support the Substance Abuse
- Workplace violence / Harassment – support the Substance Abuse Policy

JOB POSITION HAZARD ASSESSMENT

FOUR20 General Manager	HAZARD CATEGORY: Health - H Safety - S	Safety Sensitiv e Position	Hazard / Mechanism of hazard	Potential Results of the Hazard	LIKELIHOOD (CHANCE)	EXPOSURE: FREQUENCY	CONSEQUENCE: OUTCOME OR RESULT	88.4	METHODS OF CONTROL				
					1. Almost Imp	1. Yearly	1. First Aid	RISK VALUE div by 3	ENGINEERING	ADMINISTRATIVE	PPE	TRAINING REQUIRED	
					2. Not Likely	2. Monthly	2. Medical Aid		Elimination	Policies (POL)	Eye		
					3. 50/50	3. Weekly	3. Lost Time (S.T.D.)		Substitution	Procedures (PRO)	Head		
					4. Very Possi	4 Daily	4. Disabling (L.T.D.)		Design	Training (TR)	Foot		
					5. Almost Cer	5. Continuous	5. Fatality			Work Permits (WP)	Visibility		
				Restricted Areas (RA)	Fall Protection	YES	NO						
Created June 14 - 18													
Driving for work related purposes	S	Yes	Motor Vehicle Accident	Injury / Fatality	3	4	3	3.3	Design	TR - POL- Safe Driving		Formal	
Fueling Vehicle	S	Yes	Struck by Moving Veh.	Injury / Fatality	3	4	3	3.3	Design	PRO -		on the job	
	H		Chemical exposure	Fumes / Burns / Injury	2	3	5	3.3	Design	TR - WHMIS		Formal	
	S		Fire / Explosion	Burns	2	3	3	2.7	Design	PRO - First Aid		Formal	
Walking to and from Office	S	Yes	Wet Floors, Items to trip on	Injury from slips and falls	2	4	1	2.3	Design	PRO - housekeeping		on the job	
	S		Struck by Equipment	Injury	2	4	3	3.0	Design	Policies - investigation		Formal	
Computer Work	H		Ergonomics	Muscle Strain	1	5	1	2.3	Design	Procedures		on the job	
	H		Glare from computer screen	Eye Strain	1	5	1	2.3	Design	Policies		on the job	
House Keeping	S		Wet Floors, Items to trip on	Slips/Falls	2	3	1	2.0		Policies		on the job	
	S		Sharp objects	Cuts / Bruise / Slivers	2	3	1	2.0		Policies	Gloves	on the job	
	S		Lifting / Bending / Reaching	Muscle Strain	2	3	2	2.3		Policies		on the job	
	H		Dust	Respiratory concerns	1	3	1	1.7		Policies	Dust Mask	on the job	

SUMMARY

- Don't be a Tony. Be proactive.
- You **MUST** train your workers in your expectations of medical marijuana and recreational marijuana use.
- Train workers, Supervisors and Managers in the signs of impairment and determine what you will do in terms of testing.



ABOUT US

420 ADVISORY MANAGEMENT

- 420 AM advises companies, governments, and organizations shape cannabis legalization across North America and the world. Education is the cornerstone of our practice and supports our work to ensure the safe, responsible and profitable implementation of this new industry. Our team of experts is uniquely qualified to help businesses thrive in the emerging and constantly changing legal cannabis environment.
- We have extensive experience, from government regulations, licensing and compliance, to managing public safety and youth education. We have a deep understanding of the science behind the cannabis plant and its medical applications, as well as industry best practices, operations, and workplace health and safety.



Thank You



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