

Human Resources Legislative Update

Medical Marijuana in Your Workplace: Employer FAQs

Date: April 20, 2018

Today – April 20 (4/20) – marks cannabis culture’s unofficial day of celebration, and we thought “weed” mark the occasion by answering a few common employer questions.

When do I have to accommodate medical marijuana?

While employers have no obligation to permit recreational consumption of marijuana at work or tolerate impairment, they must appropriately accommodate its medicinal use. This requires balancing an employee’s rights under the *Human Rights Code* with an employer’s obligations under the *Occupational Health and Safety Act* to take every precaution reasonable in the circumstances for the protection of workers – obligations that are especially pronounced in workplaces that include safety-sensitive positions.

Employers are required to accommodate an individual’s disability to the point of undue hardship. The treatment of a disability cannot be separated from the disability itself. In the case of medical marijuana, this accommodation may include allowing individuals to use medical marijuana in situations where such use would otherwise be prohibited.

Does the incoming legalization of recreational marijuana impact my accommodation obligations?

No. There is no duty to accommodate the use of recreational marijuana. Marijuana for recreational purposes should be treated in the same manner as alcohol or other drug-related use or impairment in the workplace.

My employee told me that their doctor advised them to use marijuana while at work to assist with their back pain. What do I do?

Employers have the right to ask (and should ask) for supporting medical documentation addressing medical marijuana use during work hours, including but not limited to a copy of the licensing documentation. In certain circumstances, an employer may seek medical confirmation of whether the employee is fit to perform his or her duties while using medical marijuana.

I have an employee who performs safety-sensitive work who has just provided me with a prescription for medical marijuana. What should I do?

A prescription for medical marijuana does not entitle an employee to compromise their own safety, or the safety of others. Employers will have to confirm whether use of the drug will impact safety-sensitive tasks.

Employers must first determine if the essential duties of a position are safety-sensitive. If the essential duties of a position are safety-sensitive, no amount of impairment is tolerable. If the essential duties of an employee's position are not safety-sensitive, some degree of impairment may be acceptable.

Employers will need to demonstrate concrete safety risks in order to refuse accommodation. Speculative evidence will not be sufficient.

One of my employees only uses medical marijuana in the evenings when he is not at work. Is this a problem?

Marijuana consumption may have residual effects on concentration, attention and memory. Whether or not an employee is consuming on or off-site, or even if they do not feel impaired while working, employers will have to confirm whether use of the drug will impact safety-sensitive tasks. Employers should focus on the issue of impairment, rather than the source of the impairment.

Do I have to allow employees to smoke medical marijuana in the workplace?

No. Anti-smoking laws apply to smoking medical marijuana as well. We recommend consulting the anti-smoking laws in your jurisdiction before denying an employee's request to smoke marijuana to ensure that your denial is compliant.

Do I have to let an employee smoke medical marijuana at our workplace's designated outdoor "smoking area?"

No. If an employee needs to smoke medically-prescribed marijuana during the work day, where and when that takes place should be established in a manner that would not expose other workers to the dangers of second-hand smoke.

We encourage employers to be proactive. If you have any questions on accommodating medical marijuana in the workplace, contact Allison MacIsaac at allison-macisaac@hicksmorley.com, or your regular Hicks Morley lawyer.