

FTR Views

Coverage for Medical Cannabis under Ontario's Workers' Compensation System [Video]

Date: April 1, 2019

The legalization of recreational cannabis, which came into effect on October 17, 2018, has raised many questions for employers about cannabis use in the workplace, as well as potential coverage of cannabis under benefit plans. In this video, [Mariana Kamenetsky](#) and [Kathryn Meehan](#) talk about coverage for medical cannabis under Ontario's workers' compensation system.

For more information on cannabis in the workplace, please visit our dedicated [Cannabis Topic Page](#).

Transcript

Hi, my name is Mariana Kamenetsky and today my colleague Kathryn Meehan and I will be speaking to you about coverage for medical cannabis under Ontario's workers' compensation system.

The legalization of recreational cannabis, which came into effect on October 17th of last year, has raised many questions for employers about cannabis use in the workplace, as well as potential coverage of cannabis under benefit plans.

Operational Policy No. 17-01-10

The Workplace Safety and Insurance Board's first policy on the coverage of cannabis for medical purposes will come into effect on March 1, 2019.

Section 33 of the *Workplace Safety and Insurance Act, 1997* states that an injured worker is entitled to such healthcare as may be necessary, appropriate and sufficient as a result of a compensable injury. Although medical cannabis has been legal for many years, the WSIB has denied coverage on the basis that there was insufficient research to support efficacy.

Workers who appealed these denials to the Workplace Safety and Insurance Appeals Tribunal, or WSIAT, were often successful in obtaining coverage, but the appeal process is long and cumbersome.

The WSIB's new Policy establishes a rigorous framework for the coverage of medical cannabis under the Act.

The Policy starts off by noting that medical cannabis is still not necessary, appropriate, or sufficient healthcare treatment for most medical conditions due to the lack of strong and consistent evidence of therapeutic efficacy, and the known harms of cannabis use.

However, the Policy recognizes that there are five designated conditions for which coverage may be provided.

Four of the categories are narrowly defined:

1. Those who are suffering nausea and vomiting associated with cancer chemotherapy
2. Those workers who have spasticity resulting from a spinal cord injury

3. Those who suffer a loss of appetite due to HIV or AIDS
4. Those who are in palliative care.

The fifth and widest category includes those workers who experience neuropathic pain. Neuropathic pain is defined in the policy as pain arising as a direct consequence of a demonstrable lesion or disease affecting the somatosensory system (for example, pain caused by a traumatic nerve injury);

This category would exclude many workers with significant pain symptomology.

Dosage and Administration

The Policy also speaks to dosage and administration. All five of the following criteria must be met in order for the cannabis use to be approved.

1. The route of administration must not involve smoking.
2. The daily quantity of dried medical cannabis must not exceed three grams per day.
3. The medical cannabis should be “CBD-rich” with minimal THC. For those of you not familiar with the terms, they are defined in the Policy itself. THC is a cannabinoid found in cannabis, which is reported to have therapeutic effects but to be chiefly responsible for the psychotropic effects of cannabis; whereas CBD means cannabidiol, a cannabinoid which is reported to have potential therapeutic effects but without any obvious psychotropic effects
4. The THC percentage of the cannabis must not exceed nine per cent.
5. The milligrams (mg) of THC per day should be no more than 30 mg, but in no case shall exceed 75 mg.

The Policy also requires that conventional treatments of the worker’s condition must have been tried and either have found to be ineffective or failed to alleviate the symptomology, that a clinical assessment has been undertaken and that the benefits of cannabis outweigh the risks for that particular worker.

Contraindications

The Policy identifies several contraindications for cannabis use, for example, a diagnosis of cardiovascular disease, a family history of psychosis, where the worker has a current or past substance abuse disorder. The Policy also identifies conditions that would increase the risk and must be weighed against the use of medical cannabis, such as the use of opioids or where the worker has a current mood or anxiety disorder.

The Policy also stipulates that in order to be covered, cannabis must be obtained from a licence holder with whom the worker is registered as a client or from a hospital. So, no payment will be made where the worker obtains or seeks to obtain cannabis from any other source, including personal production or a recreational cannabis retailer.

Where entitlement to medical cannabis is allowed and the person is approved to take it using a vapourizer, then the Board will cover the reasonable cost of the vapourizer, in addition to the reasonable cost of the medical cannabis. Pre-approval from the Board must be obtained before purchasing medical cannabis or equipment a vapourizer.

How Will the Policy Affect the Coverage of Medical Cannabis in Workplace Compensation Cases?

Firstly, it provides some additional clarity as to when cannabis will be approved. Because the Act prescribes that the tribunal must apply WSIB Policy, the introduction of this new Policy will significantly limit the impact of prior jurisprudence on this issue. Instead of continuing to develop its own case law, the WSIAT must now apply and interpret the language of the Policy. However, while some aspects of the Policy are rigid there remains significant room for discretion, specifically in weighing the

relative benefits and risks of cannabis use for a particular worker.

Secondly, coverage for cannabis may be provided much earlier in a claim, without the need for multiple appeals.

Finally, workers with other types of conditions other than the five listed in the Policy will continue to be refused coverage and may then turn to employer benefit plans in order to obtain prescribed medical cannabis. Thank you for watching. If you have any questions, please do not hesitate to contact us.