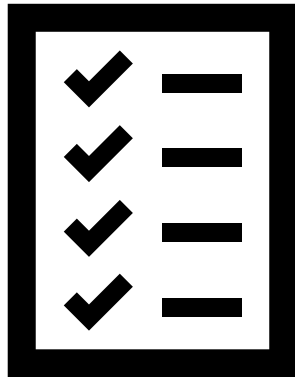

THE IMPACT OF MARIJUANA LEGISLATION ON THE INDIGENOUS WORKPLACE



MANON LAMONTAGNE
MLRB CONSULTING SERVICES
FEBRUARY 6, 2019

TOPICS



- The Cannabis Act (Bill C-45)
- Potential Impact on the Workplace
- Preparing for the New Law
- Employer's Obligations
- Drug and Alcohol Testing
- Accommodation
- Medical Marijuana
- Developing Alcohol and Drug Policies



THE CANNABIS ACT (BILL C-45)



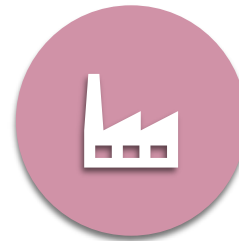
THE CANNABIS ACT (BILL C-45)



LEGALIZES AND REGULATE
ACCESS TO CANNABIS FOR
RECREATIONAL PURPOSES
ACROSS CANADA



COMES INTO LEGAL EFFECT
ON **OCTOBER 17, 2018**



LEGALISES CERTAIN
ASPECTS OF POSSESSION,
PRODUCTION,
DISTRIBUTION, AND RETAIL




EACH
PROVINCE/TERRITORY WILL
HAVE DIFFERENT
REGULATORY SCHEMES
FOR PRODUCTION,
DISTRIBUTION AND
RETAIL.



POTENTIAL IMPACT OF THE NEW LAW

- Among states that have legalized cannabis in recent years, cannabis use rose by at least 20% within the first year after legalization
- Anticipated impact of new law on workplace.
 - Increase use among employees
 - Confusion surrounding the new law
 - Loss of productivity
 - Increase in work-related accidents and critical incidents





CANNABIS USE AMONG THE POPULATION

“Canada has one of the highest rates of cannabis use in the world.

More than 40% of Canadians have used cannabis in their lifetime and about 12% have used it in the past year.

CANNABIS USE AMONG FIRST NATIONS



According to the First Nations Information Governance Centre: cannabis is used daily or almost daily by 12.4 per cent of First Nations adults



Treatment centres report that cannabis use by adults entering treatment is 64 per cent



For First Nations youth aged 12 to 17 entering treatment, cannabis is the number one substance used, 9 in 10 reporting frequent cannabis use.



CANNABIS USE AMONG INUIT

01

A study of cannabis use among the Inuit in Nunavik showed some of the highest cannabis use in the world, particularly among the youth.

02

60% reported having used cannabis in their lifetimes

03

7 out 10 Inuit youth under 24 years of age had consumed cannabis in the preceding year

04

45% reported consuming cannabis on a daily basis



EFFECTS OF CANNABIS USE

- Vary from individual to individual
- Physical and Psychological
 - impaired coordination;
 - slowed reflexes;
 - lapses of attention and concentration;
 - impaired memory;

In the most serious cases:

- disorientation, confusion;
- anxiety attacks, paranoia, hallucinations.

POTENTIAL IMPACT TO THE WORKPLACE

According to a survey of Human Resource Professionals, main concerns regarding impact include:

Increase in absenteeism

On-the-job accidents

Decreased work performance

Increased insurance claims.



The primary duty of all employees is to perform their job duties in a safe and professional manner.



EMPLOYER'S OBLIGATIONS

Health and Safety

Accommodation

Due Process in the case of discipline

Respect Employee's Privacy Rights



OCCUPATIONAL HEALTH AND SAFETY

- Employers have the legal duty to maintain a safe workplace
- An employer may
 - Establish reasonable policy regarding drug and alcohol use
 - Enforce policy by imposition of discipline
 - Request fitness for duty certification where there is reasonable grounds for concern





DRUG-TESTING



COMPETING CONCERNS



Employer's Obligations

- Performance & Efficiency
- Workplace Health & Safety

Employee's Rights

- Fairness (Due Process)
- Privacy
- Free from Discrimination



DRUG AND ALCOHOL TESTING



“Zero tolerance” policy to drugs and alcohol likely not lawful because it does not allow for accommodation



Often seen by courts to be discriminatory because the purpose of the testing is to single out individuals who test positive



Justifiable only in cases of “safety-sensitive” positions or industries



Accommodation is required.



DEFINING SAFETY-SENSITIVE POSITIONS



No single definition used across jurisdictions



Canadian Human Rights Commission (2017a) defines a safety-sensitive position as one which



“if not performed in a safe manner, can cause direct and significant damage to property, and/or injury to the employee, others around them, the public and/or the immediate environment”.



Using job safety analysis to designate which positions are safety sensitive.



DRUG AND ALCOHOL TESTING

Types of Drug-Testing:

Pre-employment

Random

Reasonable Cause



PRE-EMPLOYMENT TESTING

- Generally not permissible
 - Even in safety-sensitive position / industry
 - Does not show future impairment or likely impairment
 - Only permitted in extremely limited circumstances in federal sector, e.g.
 - cross-border long-haul tour bus driver
 - deck hand on a commercial fishing boat



RANDOM TESTING



Generally not permissible



Even if safety sensitive position / industry



Possible exceptions:

part of broader program of accommodation / return to work agreement

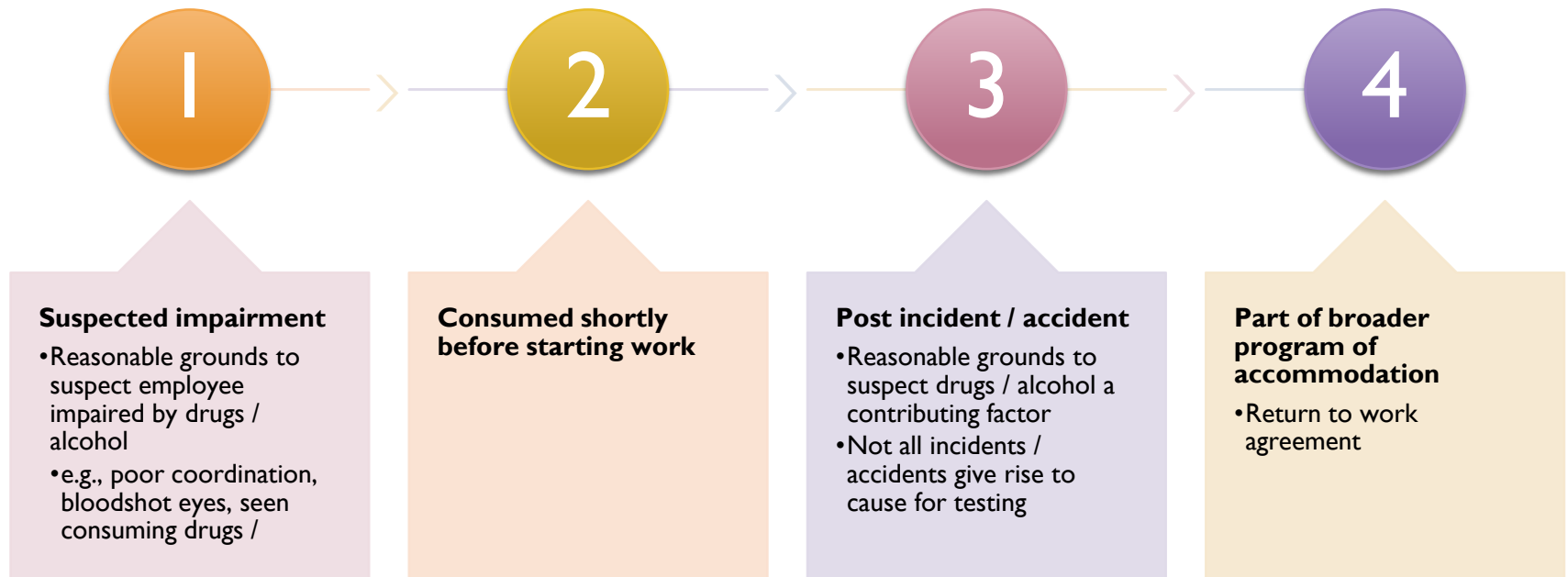
evidence of “pervasive problem” or “out-of-control drug culture” in workplace



Expect more court challenges



TESTING WITH REASONABLE CAUSE



SIGNS OF CANNABIS USE



It isn't always easy to detect the signs that someone is under the influence of cannabis.



Several factors come into play, including frequency of use and the THC concentration of the substance inhaled or ingested.



Most studies however agree on the following signs:

bloodshot eyes;
talkativeness;
increased appetite;
hilarity;
euphoria;
lack of inhibitions.

ASSESSING IMPAIRMENT

Short-term performance effects:

- problems with memory and learning
- distorted perception
- difficulty in thinking and problem-solving
- loss of coordination
- Normally felt within minutes
- peak in 10-30 minutes
- high can last approximately 2 hours
- return to baseline within 3-5 hours

Impairment from cannabis use is different for individuals depending on a number of variables including how it is consumed. **Don't assume that the behaviour observed is due to drugs or alcohol.**

FREQUENT USERS MAY HAVE DIFFICULTY



STAYING FOCUSED



SHIFTING ATTENTION TO
MEET THE DEMANDS OF
CHANGES IN THE
ENVIRONMENT



REGISTERING,
PROCESSING AND USING
INFORMATION.



NOTE: THE LEVEL OF
IMPAIRMENT FROM
CANNABIS USE





ACCOMMODATION



DISABILITIES: DUTY TO ACCOMMODATE

- Under most Canadian Human Rights Legislation
 - **ADDICTION = A DISABILITY**
- Employers cannot discriminate against an employee who has an addiction.
- Employers have the duty to accommodate disabilities to the **POINT OF UNDUE HARDSHIP.**



ACCOMMODATION MEASURES

Time-off to get treatment

Change in working conditions

Other measures

Employers are not required to:

Pay for time-off to pursue treatment

Compromise the safety of the workplace or keep employee in job in which they do not perform

Enforce treatment plan

EMPLOYEE'S OBLIGATIONS



Disclose addiction & request accommodation



Provide information



Seek and attend treatment



Participate in accommodation process



Accept suitable, reasonable accommodation offered

MEDICAL CANNABIS



- Considered a prescription drug
- Employees who use medical cannabis to treat a medical condition need to provide medical documentation by a treating physician.
- Employers need to practice due diligence
 - Develop and use standard forms and questionnaires for treating physicians regarding fitness to perform job duties under medical cannabis
- Other potential accommodations





PREPARING FOR THE NEW LAW



WHAT EMPLOYERS CAN DO TO PREPARE



- Be Prepared – Know the laws that apply
 - Cannabis Act
 - Labour Code
 - Occupational Health and Safety
 - Human Rights Act
 - Privacy
- Review or Develop Alcohol and Drug Policies
- Define Safety-Sensitive Positions
- Communicate Policies to Managers and Employees
- Inform and Train Managers about Impairment Caused by Cannabis Use



REVIEWING DRUG AND ALCOHOL POLICIES



Update drug & alcohol policies



Include a duty to disclose (and not to conceal)



Determine safety-sensitive positions



Establish framework for testing for impairment, including triggering circumstances and testing methods



Develop protocols for accommodation of medical marijuana



Train management, supervisory, and all other staff on the application of all policies

DRUG AND ALCOHOL POLICIES

1. Purpose and General Principles
2. Scope
3. Definitions
4. Roles and Responsibilities
5. Safety-Sensitive Positions
6. Testing
7. Prevention and Self-Reporting
8. Medical Cannabis
9. Disciplinary and Administrative Measures
10. Employee Support
11. Appendices

INFORMING AND TRAINING MANAGERS



Work with health and safety professionals develop :

- A working definition of “impairment”
- A checklist of what to look for in cases of impairment
- Training with managers/supervisors on how to detect and assess impairment
- Talk to employees about issues of impairment



COMMUNICATING WITH EMPLOYEES

Good communication is essential if employees are to understand and accept the policy.

Make sure that the policy is presented in an objective manner.

Use it as a moment to encourage your employees to have an open dialogue about the matter.

Provide concrete examples of the policy.

Emphasize that the fundamental issues are about workplace safety and performance.

COMMUNICATING WITH EMPLOYEES



- Emphasize the obligation to disclose (and not to conceal)
- Demystify the law and discuss accommodation policies deal to with marijuana dependency
- Introduce protocols for accommodation of medical marijuana
- Explain the framework for testing for impairment, including triggering circumstances and testing methods
- Use concrete examples so that employees are better informed about what to expect





QUESTIONS & ANSWERS





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