

Marijuana in the Workplace

While the possession of marijuana presently remains unlawful in Canada under the *Controlled Drugs and Substances Act*, its use for medical purposes is permitted under the Regulations to the Act. The Canadian government has also announced its intention to legalize the substance in the near future for non-medical use.

What does this mean for employers?

In the context of non-medical use, marijuana (whether legal or not) can be treated in substantially the same way as the use of alcohol under a workplace drug & alcohol policy. Employers have the right to prohibit the use of marijuana during work hours, and to further prohibit attendance at work while impaired. Breach of these prohibitions can properly be made the subject of progressive discipline, and in appropriate cases could result in termination of employment for just cause.

Where an employee is “addicted” to marijuana, however, such addiction will constitute a “disability” under human rights legislation, triggering the employer’s duty to accommodate the employee’s disability to the point of undue hardship. There have already been many cases in the unionized environment where employers have been required to reinstate employees fired for drug

use, based on the employer’s failure to accommodate the employee’s substance addiction as a disability.

With the advent of “medical” marijuana use, the situation for employers is further complicated. On the one hand, employers need to have policies in place permitting the medical use of marijuana in the workplace where supported by appropriate medical evidence. On the other hand, employers continue to have the right to prohibit impairment on the job, particularly in safety sensitive positions. It will not always be easy to balance these competing interests.

Pro-active employers will update their policies to address issues relating to both the medical and non-medical use of marijuana in the workplace. Where an employee claims medical need for marijuana, employers should require proof of prescription, together with specific information regarding the frequency, volume and method of ingestion relating to such medical use, for the dual purpose of assessing impairment and structuring appropriate accommodation.

For more information about this or any other employment or human rights issue, please contact Peter Straszynski. You can also check out his videos and other articles on our [website](#).



Peter C. Straszynski

Partner, Employment & Labour

PHONE

416 777 5447

EMAIL

pstraszynski@torkinmanes.com

Peter Straszynski is a partner of the firm in our Employment & Labour Group. He assists employers with all of their labour and employment issues, from the hiring to the post-termination stages of employment, in both the union and non-union settings.