

Association of Manitoba Municipalities: 2018 Municipal Officials Seminar

Cannabis Legalization: An Employer's Perspective



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People First HR Services

- Full firm HR Services
- Partnered with Association of Manitoba Municipalities in late 2017
- ‘On-Call’ Service available to all Municipalities
- Presenters:
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Balancing priorities

- Municipal officials working with the Provincial Liquor and Gaming Authority to set and implement community regulations
- Managing legalization within the cultural and social norms of your community
- Municipalities have to concurrently manage impact of legalization on your own workplaces

Outline for today's session

1. Building the foundation: Workplace drug and alcohol policy
2. Medical marijuana and the duty to accommodate
3. Question and answer



Workplace Health and Safety Legislation

- Employees do not have a right to impairment at work, even if the substance is legal
- Requires employers to ensure, so far as reasonably practicable, the safety, health, and welfare at work of all workers.
- Employees who are impaired at work may pose a risk to their own safety, health and welfare as well as to their co-workers
- Employers need to (within reason) identify and prevent that risk



Legalization – an Employer’s Perspective

Building the Foundation: Drug and Alcohol Policy

Drug and alcohol policy: best practices

- From an employer's perspective, legal cannabis will be managed like alcohol
- Legalization won't impact a good policy already in place
- Ensure language is inclusive - i.e. 'any drug that impairs one's ability to work'
- Alcohol and cannabis are not the only legal drugs that cause impairment – include prescription and 'over-the-counter' medications
- Needs to reference substance abuse and employer's duty to accommodate

Drug and alcohol policy: best practices

- Define terms: i.e. impairment, safety-sensitive positions
- Include reporting requirements for medical use – requiring employees to self-declare potential impairment (whether prescriptions or OTC)
- Focus on impairment vs. substance causing it
- Include disciplinary consequences
- Policy opens dialogue



Policy considerations

- Think through all the work-related times that employees might consume alcohol and 'substitute in' cannabis (i.e lunch, conferences)
- How might people in your workplace discriminate against others that use cannabis? (social media policy?)
- Assessing impairment with marijuana is extremely difficult
- Possession on Municipal property i.e. lockers, in personal belongings



Legalization – an Employer’s Perspective

Components to Consider: Drug and Alcohol Policy

Step One: Introduce your policy

RM of Piney: “Drug and Alcohol Free Workplace Policy”

The purpose of this Policy is to notify employees of the RM’s commitment to protect the safety, health and well-being of all employees and the public in maintaining a drug and alcohol free workplace. The policy also ensures that employees and other persons do not use Municipal facilities or vehicles while under the influence of drugs and/or alcohol.

Step Two: Policy statement

RM of Piney: “Drug and Alcohol Free Workplace Policy”

It is the policy of the RM to provide and maintain a drug and alcohol free workplace. Unless permitted by law and approved by resolution, no illicit drugs, cannabis and/or alcohol shall be consumed on Municipal property, or in Municipal facilities or vehicles.

Step Three: Include what is prohibited

Outline what is prohibited, i.e.

- *The manufacture, distribution, possession, sale or purchase of substances of abuse (illicit or non-illicit drugs or alcohol) and/or substance-related paraphernalia while performing (Municipal) business or while on (Municipal) property.*
- *Working or reporting to work, conducting (Municipal) business, being on (Municipal) property or operating a motor vehicle while under the influence of an illicit or non-illicit drug, or alcohol, or in an impaired condition.*

Step Three: What employees should do

As example, Employees shall:

- *Report fit for duty for scheduled and unscheduled work.*
- *Inform the (Employer) about their use of any medications or prescription drugs that may impair performance or compromise personal safety.*
- *Advise their immediate supervisor whenever they witness concerns about a co-worker's fitness for duty.*
- *Not engage in recreational use of alcohol or any drug that impairs performance.*
- *Not engage in any pranks that could cause harm to an employee*

Step Four: Accommodation

MUST include some references to accommodation:

- *(The Municipality) will assist and accommodate employees who voluntarily disclose a substance dependence. Assistance and accommodation will be coordinated with the (Designate). Employees who require rehabilitation for substance dependency will be encouraged to seek professional care and support through their health care professional. Employees also have an obligation to participate in a search for accommodation.*
- *Under Human Rights legislation, dependency on alcohol or drugs is treated as a disability and provincial statutes forbid discrimination based on physical or mental disabilities, which includes alcohol or drug addictions.*

Step Five: Consequences

Can state zero tolerance or similar:

- *Employees who present themselves as unfit for work due to substance abuse will be asked by (designate) to leave the workplace. The incident shall be documented and presented to the (designates of Municipality).*
- *Employees who refuse to cooperate in rehabilitation and / or who continue to present themselves as a safety risk to themselves or others shall be subject to progressive discipline in accordance with the Corrective Action Process outlined in Section XXX.*



Legalization – an Employer’s Perspective

Medical Marijuana and the Duty to Accommodate

Duty to Accommodate

- Human Rights obligation
- 'Undue Hardship'
- Duty to Accommodate – disability
- Workplace policy (this is not new – alcohol, OTC, prescription drugs)
- Duty to accommodate is to the underlying disability, NOT the prescription
- Employer can inquire into the availability of alternative treatments, request medical records to assess accommodation



Duty to Accommodate

- Employee needs to participate in search for accommodation
- You can REQUIRE medical use to be reported if could cause impairment
- As the strength of marijuana varies widely, employers who are accommodating disabled employees can ask employees to work with their doctors to determine the 'strain' they are using in order to ensure they are not impaired at work.

Duty to Accommodate

- As part of the inquiry, employers should require not only medical proof of prescription but also sufficient medical indication that the employee actually has to ingest marijuana during working hours, together with sufficiently detailed information regarding the frequency, volume and method of ingestion relating to such prescribed medical use.
- Assessment of impairment will very likely pose one of the greatest challenges in the crafting and implementation of policies concerning medical (and possibly non-medical) marijuana use in the workplace.

Cannabis and Benefit Plans

- Benefit plans are beginning to look at inclusion of medical cannabis for several reasons:
 - Cost-effective treatment for some conditions (MS, nausea from chemotherapy)
 - Coordination of prescriptions and patient treatments (no missing pieces)
 - Reduction in opioid prescriptions, and accordingly, opioid abuse

In closing

- Prepare policy now
- Cannabis prescriptions are likely to be expanded
- Ensure managers are capable of having these discussions
- Social norms in the workplace!





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