

# IF EMPLOYEES ARE IMPAIRED BY CANNABIS AT WORK, CAN WE TERMINATE THEM?

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**The short answer is: it depends.** On the face of it, an employee who is impaired at work has likely violated their employment contract in some fashion (for example, a requirement to be fit to perform their job duties). Depending on the circumstances, such as the severity of the incident or the nature of the workplace, an employer may have just cause to terminate based on even one instance of impairment. At the same time, employers can face obstacles in these situations, particularly if the employee is prescribed cannabis by a doctor and/or has a disability related to their cannabis use. Each case will turn on its own circumstances.

The law is clear that there is no absolute right to use cannabis at work, even with a prescription. However, the issue gets complicated by a few other key factors. One main consideration is whether the impairment at issue is somehow connected to a disability, which is a protected status under human rights legislation. For example, does the employee have a disability such as chronic pain that they treat with cannabis? Is the person addicted to cannabis? These considerations will impact an employer's duty to accommodate under human rights legislation. (For more information, see the article titled "To what extent must employers accommodate medical marijuana in the workplace".)

Human rights obligations notwithstanding, decision-makers in termination cases are live to the issues surrounding work-related impairment, specifically in safety-sensitive workplaces. As such, requiring employees to agree to "zero tolerance" policies, or, in the case of addictions, pre-incident addiction disclosure policies, has proven to be an effective way of policing drug use on the worksite. Having these types of policies in place has allowed some decision-makers to refute allegations of discrimination by finding that the employee was terminated for violating a workplace policy, rather than because of a disability. Despite their name, however, "zero tolerance" policies generally should not prescribe automatic termination in the event of a breach. Human rights law still requires that the policy provide some flexibility for the employer to consider requests from employees who require accommodation.

In other words, such policies will still be scrutinized if challenged. The focus will be on whether the duty to accommodate has been discharged appropriately. Safety will always be a big consideration here. For example, accommodating an employee's disability by allowing them to be impaired at work in a safety-sensitive

workplace has been found to cause an employer “undue hardship”.

The bottom line: a clear policy on workplace impairment – acknowledged and signed by every employee at the outset – is a must-have for any employer. It sets out parameters and shows that employees knew or ought to have known that their behavior was in violation of the rules. Although disabilities complicate things, such policies have helped employers navigate and control workplace impairment.

### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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