



Medical Cannabis
Duty to accommodate
Legal Cannabis
Workplace testing update
Practical considerations & Policy development

Medical Cannabis

- Cannabis is used in the treatment of a variety of conditions, including pain, post-traumatic stress disorder, and epilepsy
- Cannabis has two main components which are of medical interest: delta-9-tetrahydrocannabinol (THC) and cannabidiol (CBD). These chemicals exist in varying concentrations, depending on the particular plant or strain of cannabis



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Medical Cannabis

- The Access to Cannabis for Medical Purposes Regulations (ACMPR) came into force on August 24, 2016, replacing the Marihuana for Medical Purposes Regulations as a result of the Federal Court's ruling in Allard v. Canada
- The ACMPR allow for reasonable access to cannabis for medical purposes for Canadians who have been authorized to use cannabis for medical purposes by their health care practitioner

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Medical Cannabis



- Reasonable access under the ACMPR includes purchasing cannabis from a licensed producer, producing a limited amount of cannabis for personal medical purposes, or designating someone to produce it for the patient
- To obtain medical cannabis, the ACMPR requires the patient to provide a "medical document", rather than a prescription



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Medical Cannabis

- Review and consider your prescription medication management policy; your existing policy addressing student prescriptions may be appropriate and applicable to medical
- The School Division is entitled to the prescribed dosing and frequency for students to determine if treatment is $% \label{eq:controlled} % \label{eq:controlled}$ necessary during the school day



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Medical Cannabis

- When receiving and storing medical cannabis in connection with a student's prescription, know that the label on the container must include:
 - · Patient's name
 - Name of prescribing healthcare practitioner
 - Name of licensed producer
 - Daily equivalent quantity of dried marijuana in grams prescribed
 - Expiry date of the patient's registration

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Duty to Accommodate

- Mental and physical disabilities are prohibited grounds of discrimination under the Alberta Human Rights Act
- Human rights protection will also extend to the treatment indicated and prescribed for a disability, including medical cannabis
- While addiction is protected, recreational use is not



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Duty to Accommodate

- The employee has an obligation to cooperate in the accommodation process
- In the accommodation process, it will be the employee's responsibility to:
 - Identify the need for accommodation;
 - Provide medical information substantiating the accommodation request, if required;
 - Cooperate with treatment recommendations; and
 - Accept reasonable accommodation



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Duty to Accommodate



- In the context of a request to accommodate medical cannabis, this will involve:
 - Disclosing medical restrictions and treatment regimen if it is relevant to current job duties or otherwise has a workplace impact;
 - Providing medical information supporting and outlining the treatment regimen, including support for workplace use, if required; and
 - Negotiating terms of use in the workplace to minimize

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Duty to Accommodate

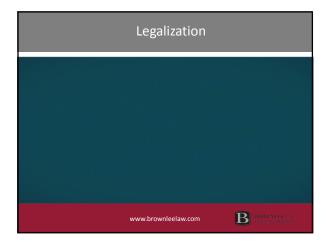
- The duty to accommodate requires employers to accommodate an employee's disability to the point of undue hardship
- Examples of hardship include financial cost, effect on employee morale, and safety risks
- A failure to accommodate is grounds for a human rights complaint



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Workplace Testing: current state of the law Pre-employment and Random Testing Where an employer has reasonable grounds to believe the employee is impaired by alcohol or drugs, drug and alcohol testing is typically upheld Automatic drug and alcohol testing post-incident without any line of inquiry or reasonable cause analysis has generally been held to be inappropriate and unenforceable Current case law is conflicting, evolving, and uncertain Likely at a <u>minimum</u>, the employer must establish: very safety-sensitive position; proof of the existence of drug However, even reasonable cause testing, as with the other forms of testing, should and alcohol issues in the • While the threshold may be low, there must at least be some analysis of the incident and the potential for it to be related to drugs or alcohol before post-incident testing will typically be justified and valid workplace; and that the testing program is likely to significantly mitigate the risk be encapsulated in a comprehensive drug and alcohol policy B BROWNEE LI Practical considerations: medical cannabis • Medical cannabis is no different than any other prescribed medication • The duty to accommodate analysis applies to an employee's medical condition and extends to the treatment prescribed • Employers will not be required to simply accept workplace impairment, where position is safety sensitive A properly drafted policy which applies to prescribed medication, and the use of both legal and illegal impairing substances will be critical www.brownleelaw.com Practical Considerations: legalization • Don't panic; in most respects, rules respecting recreational use for your workplace and student conduct will be similar to existing rules for alcohol • While addiction is protected under human rights law, recreational use will not be protected Alberta's Cannabis Framework will prohibit use on school property, and intoxication and possession can be addressed

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by school policy

Policy Development

- A discriminatory policy is grounds for a human rights
- Any testing an employer undertakes should be addressed by a policy which identifies and addresses recreational drug and alcohol use, prescription drug use and misuse, and accommodation
- Risks of an improper policy and/or testing conducted improperly include human rights complaints, wrongful dismissal litigation and punitive damages



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Policy Development

- · Key components of your policy:
 - Define "under the influence", "impaired", or "intoxicated"
 - Prohibit use of any intoxicant, including illegal drugs, improperly used prescription or non-prescription medication, legal drugs or alcohol while at work or during the work day, or any time when it could affect job performance
 - Ensure policy does not contain a blanket prohibition on cannabis

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Policy Development

- · Recognize prescription drugs, including medical cannabis, as a potentially impairing substance, require disclosure of prescribed drug use which has workplace impact
- Identify the employer's duty to accommodate, and employees' ability to access accommodation and
- Consider testing protocols founded in policy where reasonable suspicion of impairment exists
- Include disciplinary measures for violating policy, including failure to disclose



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