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October 16, 2018

Human Rights Commission confirms employers can set clear expectations regarding cannabis

On the eve of cannabis legalization in Canada, workplaces are establishing expectations regarding use of the soon-to-be legal drug. The Manitoba Human Rights Commission issued a new guideline on drugs and alcohol in the workplace today that reassures employers they have every right to expect their employees will not report for work impaired and that there will be serious consequences for doing so.

The new guideline covers the right of an employer to prohibit drug and alcohol use in the workplace, regardless of whether the drug is legal or illegal.

“We have been clear in our messaging that human rights laws do not in any way restrict an employer from enforcing policies that ensure the safety of the workplace and that the legalization of cannabis has no immediate impact on that well established right, said Executive Director, Isha Khan.

Addiction or substance dependence is recognized as a form of disability. Manitoba’s human rights law accordingly prohibits discrimination against a person who has, or is perceived to have, an addiction or substance dependence, unless that discrimination can be justified. The new guideline provides typical examples of discrimination that involve an employer refusing to hire a person who is perceived to have a substance use problem or dismissing an employee with an addiction, where it may have been reasonable to offer them the opportunity to attend a rehabilitation program and return to work, with monitoring and conditions.

Employees who have been prescribed cannabis to manage symptoms related to a health condition must be able to substantiate that using cannabis is a disability-related need. Employers are within their rights to ask for information that supports the employee’s need, but also to discuss with the employee, in consultation with their health care provider, where, how often and in what form the employee needs to take the drug.

In this way, employers should engage in an accommodation process in the same way they would for any other disability-related need such as a mobility restriction or other condition that involves taking a medication that might affect their ability to perform their duties safely.

The Manitoba Human Rights Commission is an independent agency of the Manitoba government responsible for educating the public about the rights and responsibilities in The Human Rights Code, and promotes the principle that we all have the right to be treated with dignity and should have equal opportunities to succeed.

“Employers generally understand human rights principles and why we need to enforce them in the workplace. They seem to get uncomfortable when it feels like those principles compromise the ability to maintain safe and efficient operations. This guideline should assure employers they can still set strict expectations about being impaired in the workplace, regardless of the substance, in the same way they always have. It suggests however that employers should tread carefully however, where a person needs some flexibility to deal with an addiction or needs to use cannabis to deal with disability-related symptoms”, says Khan.

The new Guideline for employer is available at: www.manitobahumanrights.ca. The Manitoba Human Rights Commission has guidelines on Reasonable Accommodation in the Workplace and Human Rights Considerations for housing providers, all of which touch on these issues.

For more information or to arrange an interview please contact hrc@gov.mb.ca or (204) 945-5815.