

Medicinal Cannabis in the Workplace



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As medicinal cannabis becomes a more popular form of treatment, patients have become more concerned with their rights as employees. In this article, you will learn about your legal rights and what actions you can and should take as a medicinal cannabis patient in your workplace environment.

Since legal medicinal cannabis has become more popular, an increasing number of patients and potential patients have begun to worry about their employment rights. Patient-employees from various industries wonder whether they can get fired for using medicinal cannabis. There is also a lot of fear about cannabis drug testing at work.

While we understand that cannabis, whether legal or illegal can be used as medicine, in this article we are focussed on legal medicinal cannabis and employee rights.

What are a medicinal cannabis patient's rights as an employee?

Unfortunately, there is no definitive answer to this question. There are the rights of employees at work and then the intersection of those rights with third-party rights. They fall into three categories:

1. Employee's private rights
2. Employer-employee rights
3. Third-party rights

For the topic of patients who are employees and their employer, their rights come down to the interaction of workplace policies. The question that must be answered is, "What does my workplace policy say?"

You must take the context of your work into consideration along with an understanding of your workplace policies. The two, in conjunction, will dictate what your rights are as an employee.

When to engage with your employer about medicinal cannabis

There are two things you need to do to get started. Firstly, determine whether you are comfortable waiving your privacy rights and secondly read all your workplace policies.

If it is a liberal policy that allows the consumption of prescribed medications, then you might choose to waive your right to privacy and openly engage with HR about the policies.

In an environment where there is a 'zero-tolerance policy', rather than waiting for an incident to occur and challenging policy based on murky laws, you may want to engage with your employer about the legal medicinal treatment that you are undertaking and how that interacts with your work.

Because ultimately it could be found that the mistreatment of an employee outside of very narrow circumstances, in which the consumption of cannabis, either recreational or medicinal would impair their ability to do their work might be discriminatory.

Can I be fired for telling your employer you have a cannabis prescription?

No. There is no basis for an employee to be dismissed by an employer for holding a legal prescription of any kind.

Here is another important aspect of the law. In some instances, if you have been suffering from substantial long-term impairment, you may be deemed by the government to have a disability.

If a prescription for any medication that helps your condition leads to you being treated differently for having that medicine, that may be considered discrimination.

What if my company has a drug declaration policy that does not include cannabis but allows other impairing drugs?

Firstly, if you do not want to talk about it with your employer then, that is okay because of your privacy rights. However, if you do not discuss it with them, you are relying on the 'unclear' law if you do end up in trouble.

Because the law is unsettled, a flexible workplace policy with the right engagement between employer and employee would protect both parties.

What are my rights with random drug tests?

Your rights as a medicinal cannabis patient are the same as any other employee. You may refuse drug tests at work, however, if you refuse a drug test in the context of a clear and defined policy you may be sanctioned by your employer.

Working backwards through that most negative outcome, if you are proactive about your engagement with your employer and you've disclosed your medicinal cannabis prescription and consumption, then there will be no reason to refuse a test. If there is a policy and you have not done the wrong thing, then stick to the policy.

Important: The rules around cannabis and driving, however, are black and white. It's illegal to drive with any THC in your system. This makes random drug tests for those who drive for a living more complex. It also makes getting the job of a driver more difficult.

How can I protect myself from employment issues relating to medicinal cannabis?

If you are about to start a job, make sure you read the workplaces policies before starting and make sure you are working within the policies.

If you are already in a workplace and you are prescribed medicinal cannabis, then be open to the extent that you feel comfortable with your employer.

If you cannot or do not get the outcome you want, then working with others in our collective community to help you in that advocacy piece, whether it is engaging with an online community or professionals, like a lawyer, might assist in the process as well."

The most key place, however, is to start by having a strong understanding of your workplace policies and how they impact you as a medicinal cannabis patient.

Workplace policies: what to look for and actions to take.

Most workplaces will call their policy a "Drug and Alcohol Policy", however, workplaces that have heavy machinery and higher risk activities will usually have various policies which deal with workplace intoxication and prescribed medications.

If you ask for your workplace policies in a digital format you can easily search the policies for buzzwords that relate to:

- Prescribed medications
- Substances of intoxication
- Controlled substances

Look for all of the various buzzwords which your HR professional might have used to either properly or improperly describe cannabis.

Then read those policies in-depth and ask your peers and HR what their policing processes are. If you're

on-site, talk to a site foreman or someone who's been working there for a while. Ask the following questions:

- What is the policy for drug testing?
-
- What happens if you are tested positive to various substances?
-
- What's the history of the employer's response to testing positive?

Remember, it's not just about what the policy is, but also about the nature of work that you do and the history of the employer, and also their response. These will all play a factor into not only your rights but also what could happen if you were to test positive without having spoken to your employer first.

What can I do if I have a problem with drug testing and my employer?

If you are having trouble with your employer prior to drug testing or if you have tested positive, the first step is to obtain legal advice.

There is a multitude of lawyers who provide pro bono legal advice for those that are in financial distress. And, if you have just lost your job, you may qualify for their pro bono programs. Community centres or legal aid centres may also be able to help.

If recent case law has shown anything, it is that it is not a dead set outcome even if you have been dismissed because of testing positive on a drug test at work.

Conclusion

If you are an employee who has a legal script for medicinal cannabis, it really depends on what you do for a living and the type of medication you consume.

CBD has been found to be non-impairing and often is not tested for in drug tests, mouth swabs and urine. If you are at a desk and doing work where some drugs of impairment (ie. alcohol, opioids or benzos) are acceptable or acceptable via a drug declaration policy, then medicinal cannabis should not be a concern – speak with your employer.

If you are operating heavy machinery or driving for a living this is an overly complex area. The advice is still to engage with your employer because you are not doing anything illegal by having a script.

You will, however, need to have a strong understanding of your workplace policies and be prepared to spend time with your employer going through the policies. This road could put you in a tricky situation, however, it is likely to be worth it once you and your employer are on the same page.

With any employment matters where you could potentially lose your job, it is important you get any help you might need. Working with your HR team or representative, colleagues and most importantly a legal professional is going to get you the best outcome for both you and your employer.

Basic Cannabis Information For Employers



The following information explains the basics of cannabis and will give you some idea about your employee's use of medical cannabis.



CBD



THC

VS

Cannabidiol, CBD, is a non-impairing cannabinoid in cannabis. CBD's properties are:

1. Anticonvulsant
2. Antiemetic
3. Antipsychotic
4. Antidepressant
5. Anti-inflammatory

CBD's impact on cognitive/work functions
CBD does not cause any impairment and should not have an impact on an employee's ability to perform their duties whether it be office work or operation of machinery.

Delta-9-tetrahydrocannabinol, THC, is the cannabis known for impairment. THC's properties are:

1. Antiemetic
2. Antidepressant (in low doses)
3. Anti-inflammatory
4. Antispasmodic
5. Improves sleep
6. Improves appetite

THC's impact on cognitive/work functions
While it's known for its impairing properties at very low doses. THC does not impair.

Product Types & Impairment

Product Types:	impairment:
1. CBD only	1. No impairment
2. High CBD low THC	2. Highly unlikely to impair
3. Balanced CBD & THC	3. Impairment possible
4. High THC	4. Impairment possible

Impairment window and cannabis in your system

Cannabis being found in an employee's system does not mean impairment. Research has shown the following average impairment windows:

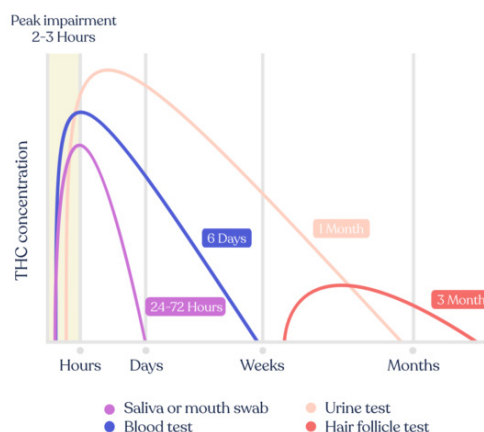
Cannabis smoked

Onset: within minutes
Impairment: 30min-1 hour
Duration of effect: 2-4 hours

Cannabis consumed orally

Onset: between 30-90 minutes
Impairment: 2-4 hours.
Duration of effect: up to 6 hours

Cannabis Detection Window by the best type



Information from www.honahlee.com.au