



e2r Alert!

The 'High' Price of Cannabis use in the Workplace

The law continues to develop around the use of cannabis (or THC products) in the workplace. While the science is still developing on how to measure the intoxicating effects of THC and the impact it can have on safety in the workplace, legal decisions continue to refine an employer's obligations with regards to its use. According to a study done by the National Institute of Drug Abuse (NIDA), among employees who tested positive for marijuana use (compared to those who tested negative) there were 55% more industrial accidents, 85% more workplace injuries and 75% greater absenteeism. While cannabis may be more socially and legally acceptable, it need not be acceptable in the workplace from a health and safety perspective.

Termination for Refusal to participate in process under Drug and Alcohol Policy

In a recent Alberta decision (*Quong v. Lafarge Canada Inc, 2024*), Mr. Quong, a very long service employee (43 years' service), was involved in a minor automobile accident on a worksite. Lafarge had a long-standing (since 2009) drug and alcohol policy (the 'policy') in place to ensure workplace safety. Part of that policy required drug and alcohol testing post-accident in the workplace.

Following the accident Mr. Quong underwent the prescribed testing and was found to have THC in his system above the threshold established in the policy. Further to its policy and practice, Lafarge would require Mr Quong to participate in a substance abuse assessment and participate in a substance abuse program before he would be permitted to return to work. It is worth noting that these requirements are in line with commonly understood requirements under human rights legislation across Canada and it is also worth noting that there was no intention to fire Mr. Quong for testing positive.

Mr. Quong refused to participate in the drug assessment and rehabilitation program. Lafarge terminated his employment for just cause due to his failure to participate – not for the use of THC or in relation to any addiction Mr. Quong may have had.

Mr. Quong argued that the policy was unreasonable, that he was not bound by the policy, that Lafarge acted contrary to the policy and that he should have been subjected to progressive discipline and not termination.

Importantly the court set out the test to determine if a policy can form an implied term of employment and they determined that Mr. Quong was bound by the policy as it was an implied term of his employment that he would abide by Lafarge's policies as long as those policies were 'reasonable, unambiguous, well published, consistently enforced, and the employee must know or ought reasonable to have known of the policy including consequences for breach" (citing *Stonham v. Recycling Worx Inc*, 2023 ABKB 629).

The court found the policy to be a reasonable, and commented:

[54] In many circumstances, Mr. Quong's submissions would have merit. The difficulty in the present circumstances was his wilful refusal to participate in the SAP and submit to random drug testing during the return to work period. Faced with an employee who had a positive drug test, Lafarge had no alternative but to insist on compliance with its Drug and Alcohol Policy which I have found to be reasonable. Lafarge is required by law to maintain a safe workplace and could not, in the face of a positive drug test, accede to Mr. Quong's position that he not be required to participate in the SAP or be subject to random drug testing in the return to work period. Returning Mr. Quong to work on a safety sensitive job site in any capacity was not a viable option. Further, pursuant to human rights law, Lafarge has a duty to accommodate employees with disabilities, including substance use disorder. Mr. Quong's refusal to undergo a substance abuse assessment as part of the SAP prevented Lafarge from meeting its human rights law obligations.

In short, Lafarge did everything correctly in handling this matter. Good processes and consistent practices are critical in these situations.

Denial of Employment Insurance for Refusal to participate in process under Drug and Alcohol Policy

In another case out of Alberta (*Gould v. Canada (Attorney General)*, 2024) similar to the above case, the employee was involved in an automobile accident and the employer, Proform Concrete Services, required him to take a drug and alcohol test as per its policy. The employee refused and he was terminated under the policy for the refusal. The employee applied for employment insurance and appealed the denial of benefits up the Federal Court.

In this decision, the Court concluded that his refusal was in fact deliberate and willful misconduct that would disentitle him from employment insurance benefits.

Based on the above, particularly in a safety sensitive environment, employers need to ensure they have a clear and communicated policy on drugs and alcohol, document all interactions, and enforce their policy accordingly.

If you would like to discuss any of the above with regard to your business in greater detail, we recommend reaching out to speak to an e2r™ Advisor. We are here to help.