

ARBITRATOR RULES:

Employer has No Duty to Accommodate Medical Cannabis User

There is a clear risk for employers with employees who use medical marijuana in safety sensitive positions. What are an employer's obligations? Must they accommodate the employee? In the tension between the right of a user of medical marijuana to be accommodated and the requirement of an employer to maintain standards in a safety sensitive job, an early precedent clearly signals to employers that safety is paramount. In light of the current lack of sophisticated testing technology for cannabis impairment, employers may refuse to accommodate for cannabis use, if safety is at stake.

In the recent case of Lower Churchill Transmission Construction Employers' Association and IBEW, Local 1620, the arbitrator dismissed an employee's grievance concluding that medical marijuana testing imposed an undue hardship on employers for safety-sensitive positions.

In this matter, the grievor suffered from osteoarthritis and Crohn's disease. He was authorized to use medical marijuana (up to 1.5 grams with THC levels of up to 22% each day) to relieve his chronic pain and reported no impairment the following morning.

He applied for a labourer position with Valard Construction LP for the Lower Churchill Project but was not offered employment after his medical marijuana prescription was revealed in a pre-employment drug and alcohol test.

The arbitrator was satisfied that the grievor had explored other medical options to no avail and that Valard did not have non-safety-sensitive positions in its operations.

The arbitrator acknowledged that as an employer, Valard had a duty to accommodate but that the duty was subject to undue hardship limits. Having considered the known effect that THC has on judgment and motor skills, the arbitrator stated that it can cause impairment. However, the currently available technology and resources do not provide employers with a reasonable ability to measure impairment from cannabis. This inability to measure impairment and manage the risk of harm constitutes undue hardship.

How this will evolve is unclear. Certainly, as testing technology becomes more sophisticated, there may not be undue hardship to accommodate for medical use of marijuana in a safety sensitive position. For now, employers may rely on this decision to refuse accommodation even for medical use of marijuana where there is risk of impairment in a safety sensitive position.

Contact Hum Law for strategic guidance to design Employment policies to build your business.

DISCLAIMER: This does not constitute legal advice. Specific legal advice suited to the reader is strongly advised.