WSIB Begins Providing Coverage For Medicinal Cannabis

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School boards in Ontario are already adapting to the introduction of legal cannabis in Ontario through the adaptation of school policies that permit the sale and use of cannabis by adults, while continuing to accommodate medical cannabis users.

The subject of cannabis continues to evolve, particularly with respect to insurance coverage. In that regard, on March 1, 2019, the Ontario Workplace Safety and Insurance Board (WSIB) introduced a new policy entitled "Cannabis for Medical Purposes" (the Policy). This will require employers, including school boards, to understand the Policy and how it applies to employees injured at work who qualify to receive medical cannabis.

The New WSIB Policy on Cannabis

Though the WSIB did reimburse claimants for the cost of medical cannabis prior to implementing the Policy, eligibility was determined on a case-by-case basis. The new Policy establishes a comprehensive decision-making framework which will govern entitlement to, review of, and payment for medical cannabis.

The Policy establishes a number of criteria which must be satisfied in order to qualify for entitlement to medical cannabis. First, the worker must have one of five "designated conditions" of which there is evidence of the therapeutic efficacy of medical cannabis. These conditions are:

- neuropathic pain;
- spasticity resulting from a spinal cord injury;
- nausea and vomiting associated with cancer chemotherapy;
- loss of appetite associated with HIV or AIDS; or
- pain and other symptoms in palliative care.

The condition must also be clinically associated with a work-related injury/illness or the treatment of a work-related injury/illness in order to qualify for entitlement under the Policy. Though only these five conditions currently qualify under the Policy, the WSIB notes that more conditions may be approved as scientific research continues to progress.1

There are several other conditions which must be satisfied for the WSIB to consider a worker's eligibility for medical cannabis:

- the worker must have exhausted conventional medical treatments, except in the case of palliative care;
- the worker's treating health professional must authorize their use of medical cannabis;
- the worker must undergo an appropriate clinical assessment and, to support ongoing entitlement, must undergo subsequent reassessments;
- the therapeutic benefits of consuming medical cannabis must outweigh the risks. This will generally not be the case where the worker is under 25, is pregnant or breast feeding, has certain medical conditions, has a strong family history of psychosis or has a current or past substance use disorder; and
- the worker must have a valid medical document or a written order, which must conform to the Policy's dosing and route of administration criteria.

The Policy's limits on dosing and administration are as follows:

- the route of administration must not involve smoking. Where the approved route of administration is vapourizing, the WSIB will cover the reasonable cost of a vapourizer;
- the daily quantity of dried medical cannabis must not exceed three grams per day;
- the medical cannabis should be CBD-rich with minimal THC;
- the THC percentage of the medical cannabis must not exceed nine per cent; and
- the milligrams (mg) of THC per day should be no more than 30 mg, but in no case shall exceed 75 mg.

There are also specific rules as to how a user may access or obtain prescribed marijuana under the Policy. Medical cannabis must be obtained from a licence-holder with whom the worker is registered as a client or from a hospital in order to be covered, as the Policy will not allow for coverage for cannabis obtained from any alternative source. The Policy does not provide for a maximum entitlement, but does require that approval be obtained by the worker prior to making any purchases. If entitlement is allowed, the WSIB will pay for the reasonable costs of medical cannabis.

Finally, the Policy provides for regular monitoring and review of entitlement to ensure medical cannabis treatment remains necessary, appropriate, and sufficient for the work-related condition. Except in cases of palliative care, the WSIB will review a worker's entitlement to medical cannabis no later than three months after initial entitlement is allowed, as well as after an adjustment to the person's dosage. Subsequent reviews will be conducted no later than six months after the last entitlement review. Ongoing entitlement may, in some cases, be allowed.

Comment

The new Policy provides insight into the circumstances in which medical cannabis will be approved by the WSIB, and points to a greater trend amongst insurance providers in Canada who now either offer, or are planning to offer, medical cannabis coverage in both the public and private sectors. Sun Life Financial, Manulife, Desjardins, Green Shield Canada, and Great-West Life are amongst the insurers who currently provide

some extent of coverage for medical cannabis. School boards should review internal employment and insurance policies to determine whether, and to what extent, medical cannabis may be covered. Employers should be aware of cannabis as a medically-recognized treatment option and the ramifications of such treatment on legislative compliance, including in the context of workplace safety and accommodation for persons with disabilities. The Policy provides a new perspective on what is considered medically appropriate treatment using cannabis.

Under the *Smoke-Free Ontario Act,*smoking or vapourizing cannabis is prohibited in schools, on school grounds, and in all public areas within 20 metres of these grounds. It is also prohibited in an enclosed workplace.2In addition, health and safety protections under the *Occupational Health and Safety Act* remain applicable to impairment from substance use for teachers and other school staff where it forms a hazard in the workplace. The Ministry of Labour has published material to help employers understand their obligations under the *Occupational Health and Safety Act* when addressing the issue of workplace impairment due to substance use, including cannabis.3

As with alcohol and other drugs, employers can normally expect employees to be free from cannabis impairment while at work. However, employers have a duty under Ontario's *Human Rights Code* to accommodate the disability-related needs of employees who use cannabis for a medical purpose up to the point of undue hardship. As such, the Ministry of Education has stated that school staff should continue to be able to use medical cannabis at school and on school property in a non-smoking and non-vaping form (*e.g.*, cannabis oils, capsules). Employers should also be aware that addiction, including addiction to cannabis, is a disability that is protected under the Code.4

As more and more providers move towards coverage of medical cannabis, school boards, as employers, should ensure their workplace policies are complying with their obligations under both occupational health and safety and human rights legislation. Workplace issues related to cannabis generally need to be tackled on a case-by case basis, keeping the above concerns in mind.

1 WSIB, "Explanatory Note for Operational Policy Manual (OPM) #17-01-10, Cannabis for Medical Purposes,".

2 *Smoke-Free Ontario Act,*2017, S.O. 2017, c. 26, Sched. 3, s. 12(2).

3 Ontario Ministry of Labour, "Impairment and Workplace Health and Safety".

4 Ontario Human Rights Commission, "Policy statement on cannabis and the Human Rights Code," July 2018.

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