



Policies that Address Cannabis in the Workplace

By Jason Sinukoff

Since October 17, 2018, condominiums across Ontario have been working to identify and address the emerging problems that have accompanied the legalization of recreational cannabis.



While condominiums have been proactive in implementing rules restricting cannabis use and production in units and on the common elements, many have yet to address recreational cannabis's potential impact on workplace safety by adopting or updating their workplace impairment and drug and alcohol policies.

As a condominium acts as both a home and workplace to many, such policies are important for a condominium corporation to carry out its duties to its residents and workers. One such duty is providing a safe environment for all persons on the premises.

Duties of a Condominium Corporation

A condominium corporation is assigned several different roles by different statutes. Each role is accompanied by specific duties that a condominium corporation must carry out.

First, pursuant to section 26 of the *Condominium Act*, 1998 (the "Act"), a condominium corporation is assigned the role of occupier of the common elements. When read in tandem with section 3(1) of the *Occupiers' Liability Act*, 1990 (the "OLA") it is clear that a condominium corporation owes a duty of care to all on the common elements to take the reasonable steps necessary to ensure that all persons are reasonably safe while on the common elements.

Second, a condominium corporation is assigned the role of employer pursuant to the *Occupational Health and Safety Act*, 1990 (the "OHS"). Working while impaired by cannabis

represents a hazard to the workplace and to the workers themselves. A condominium corporation, in its capacity as an employer, has a duty to address such hazards by providing its workers with a safe work environment.

Workplace and drug and alcohol policies aid condominium corporations in satisfying this duty by providing information and instruction to its workers to better protect their workplace health and safety.

A condominium corporation owes these obligations, regardless of whether the worker is an employee of the corporation or an independent contractor.

In this regard, a contractor may have its own policies in place. Condominium corporations should ask their contractors about the contractors' own policies and whether same apply to the contractors' staff working at the condominium. For example, a condominium may wish to rely on a condominium management

provider's policies with regards to its condominium manager.

The *Smoke-Free Ontario Act, 2017* assists condominium corporations in carrying out their statutory duties by prohibiting the smoking and holding of lighted cannabis in an enclosed workplace and a condominium's indoor common elements. The *Smoke-Free Ontario, 2017 Act* does not, however, contemplate situations where a worker smokes, vapes or otherwise consumes cannabis outside of the building. Such situations may result in a worker of a condominium corporation carrying out their work while impaired.

Workplace impairment and drug and alcohol policies can also provide condominiums with a mechanism to enforce penalties associated with non-compliance, up to and including the termination of workers, as well as third-party contracting companies.

Medical Cannabis

Medical cannabis is subject to different rules than its recreational counterpart. Condominium corpora-

tions, as employers, owe their disabled workers a duty to accommodate pursuant to the Human Rights Code (the "Code").

While said duty extends to medically prescribed cannabis, the duty to accommodate is not without its limitations. The Supreme Court of Canada has set out a three-step test to justify a discriminatory job requirement or rule as a bona fide occupational requirement. To establish that a requirement, such as not being impaired by cannabis at the workplace, is a bona fide occupational requirement, a workplace must establish that:

The requirement or rule was adopted for a purpose or goal that is rationally connected to performing the job;

The requirement or rule was adopted in good faith, in the belief that it is necessary to fulfil a legitimate work-related purpose; and

The requirement or rule is reasonably necessary to accomplish the work-related purpose.

Whether a worker must be accommodated will turn on the unique facts and circumstances. Any condominium

corporation that has received a request for accommodation in respect of cannabis use in the workplace should consult with its condominium lawyer.

Conclusion

Condominium corporations should make sure they have up-to-date workplace impairment and drug and alcohol policies that account for the recent legalization of recreational cannabis. Such policies are necessary to assist a condominium corporation in carrying out its duties pursuant to the Act, the OLA, the OHSA and the Code.

When drafting or updating workplace impairment and drug and alcohol policies, it is best to consult with a condominium lawyer. ■

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