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# Benefits *Bulletin*

*Benefit News to Keep You in the Know and the Now*

May 2017

## **Marijuana in the Workplace**

Any discussion about marijuana must first acknowledge that there are two different facets: recreational marijuana and medical marijuana. Different uses require different approaches to how to address marijuana in the workplace.

### **Recreational Use**

Marijuana remains an illicit drug. Legislation has been tabled but not yet passed decriminalizing the possession, distribution, and/or use of the drug. Corporate policies governing alcohol and drug use would also apply to marijuana now and in the event of its decriminalization.

The standard that is applied for discipline is not that of use but rather of intoxication in the workplace. The challenge lies in how to determine intoxication. With alcohol, a simple test will tell you if an employee has a blood alcohol level above a set threshold. However, with marijuana, the effects can remain in the system for up to 24 hours but the level and duration of intoxication can vary widely by person making it difficult to determine.

### **Medical Marijuana**

Medical marijuana is permitted by law. It is dispensed and delivered by the government to ensure safety.

It may be taken in various forms – oral, topical creams, and the traditional way – inhaling. It is often used to manage chronic pain, sleeplessness, and to help alleviate the effects of chemotherapy.

Like any employee suffering a medical condition who continues to work, an employer must accommodate their requirements up to the point of undue hardship. This may include providing a secure place to administer treatment and store their medicine. This may also involve keeping other employees safe from second-hand smoke and ensuring the distinctive smell of marijuana does not impact others. If the employee is in a safety-sensitive position, the employee may require modified duties.

Medical marijuana has not been issued a Drug Identification Number (DIN) by Health Canada. This means that it is not typically covered by a group insurance plan. Most plans require a prescription to include a DIN before it is considered to be eligible.

However there have been cases where it has been covered. In one such instance, the employee was a member of a Health and Welfare Trust and the plan repeatedly declined the claim based on the fact that it did not have a DIN. The language of that trust did not specifically require a prescription to have a DIN in order to be eligible. As such, the plan was required to cover the cost as it would any other eligible drug expense.

Health Care Spending Accounts do not typically have the same restrictions as a traditional plan. Subsequently prescriptions without a DIN are eligible.

### **Benefit Policy Review**

Employers need to establish whether medical marijuana is something they wish to cover under

their plan and make sure that the language of their policies reflects that position. For the most part, until a DIN is issued by Health Canada, medical marijuana is not an eligible expense. Once this changes, insurance companies will have to determine if it is something that they will include on their standard drug formularies (list of covered drugs) and if so, if it will be treated as a special authorization drug and/or a treatment of last resort requiring medical evidence before approving coverage.

## **Budget Changes to Parental Leave**

The Federal Budget included changes to the Employment Insurance plan with respect to parental leave benefits. Currently parents can collect up to 55% of their earnings while on leave for up to 12 months. The proposal will allow parents the option to extend the leave to 18 months but at a proportionately reduced rate (i.e. 33% for 18 months vs. 55% for 12 months). This will also require an adjustment to provincial Employment Standards Acts that currently provide job protection for 12 months.

### **Employer Impact**

Depending on how policies are drafted, an employer top-up plan may end up paying more. For example, if a plan tops the employee up to 95% of earnings, under the current plan they are paying 40% of earnings for 12 months. However under the new plan, an employee taking 18 months with EI paying 33% means that the company could be topping up 62% for 18 months. Perhaps the wording needs to be changed so that the total employer payout is pro-rated over the duration of the leave be it 12 or 18 months, or maybe the top-up is at one level for the first 12 months and something else for the remainder.

Other benefits such as vacation accruals should be reviewed as well. Until the provincial ESAs fall in line with the new leave period, accruals may only be required for 12 months but employers may wish to allow for accrual during the additional 6 months.

These are options and issues that companies need to review to be prepared.

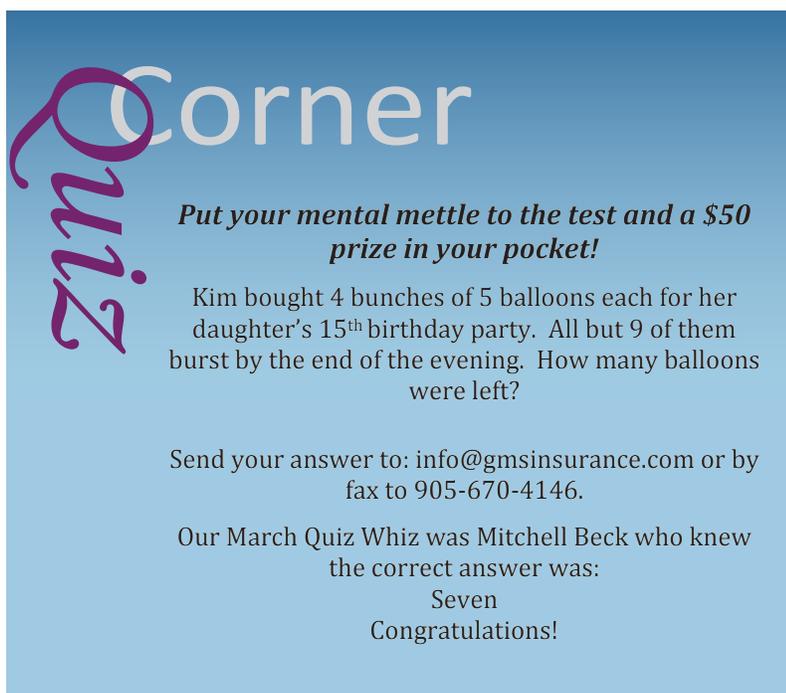
### **Opposition**

The proposal has faced opposition from parent advocacy groups because they say that more needs to be done in terms of income replacement, child care availability, and financial subsidies for that care. For many, finances become tight during a parental leave and extending the duration of a leave without making changes to the amount of coverage only benefits the wealthy. There is also a concern for those who may not qualify for EI benefits such as those who work part-time (a growing portion of today's labour force) and the self-employed.

Businesses have also voiced their concerns about the change because it will allow parents to work part-time during the leave. This presents a challenge for employers trying to find replacement coverage.

Whether the government proceeds with the changes as per the budget or make revisions based on this feedback remains to be seen.

GMS Insurance will continue to monitor developments in both areas.



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