

Legalized Cannabis— Fit for Work Solutions in the Haze

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Then God said, "I give you every seed-bearing plant on the face of the whole earth and every tree that has fruit with seed in it. They will be yours for food."

– Holy Bible, Book of Genesis, 1:29



“Everyone is on dope”

Mr. Hand, Ridgemont High School

October
17, 2018

- The sun did come up
- BUT! Less than 12hrs for the first DUI charges (Winnipeg)

Practical and Legal Issues

- USA Border is Federal Territory
- Marijuana users do not have a comparable bad behaviour reference
- Proponent advocacy has drowned out other voices
- Receptive to “pure” education
- Sophisticated media consumers, highly suspicious, unforgiving
- Non-linear processing, latency, fat solubility, compounding effects of regular usage, no obvious physical indicators

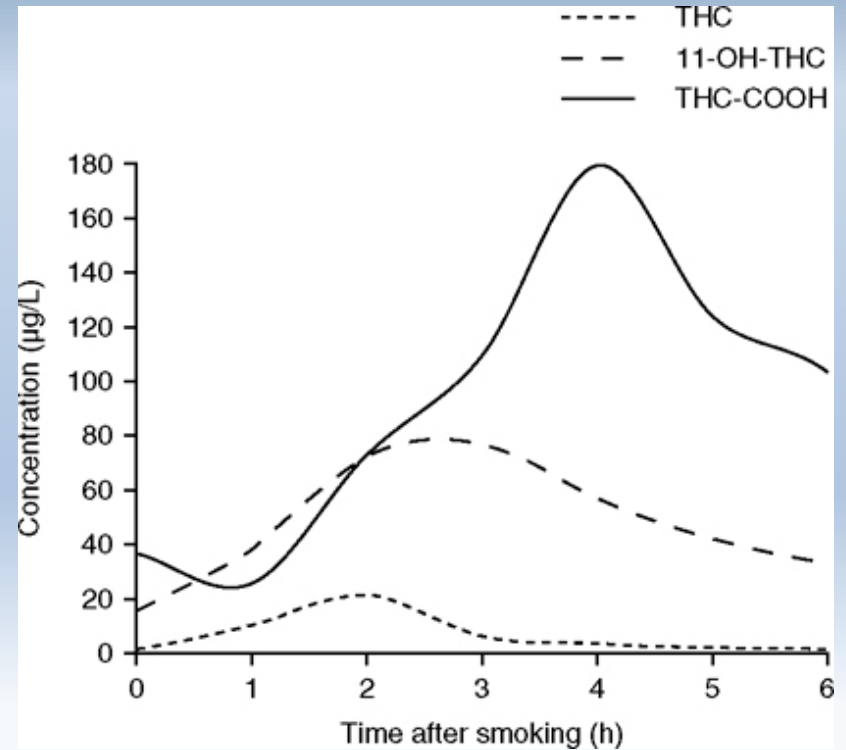
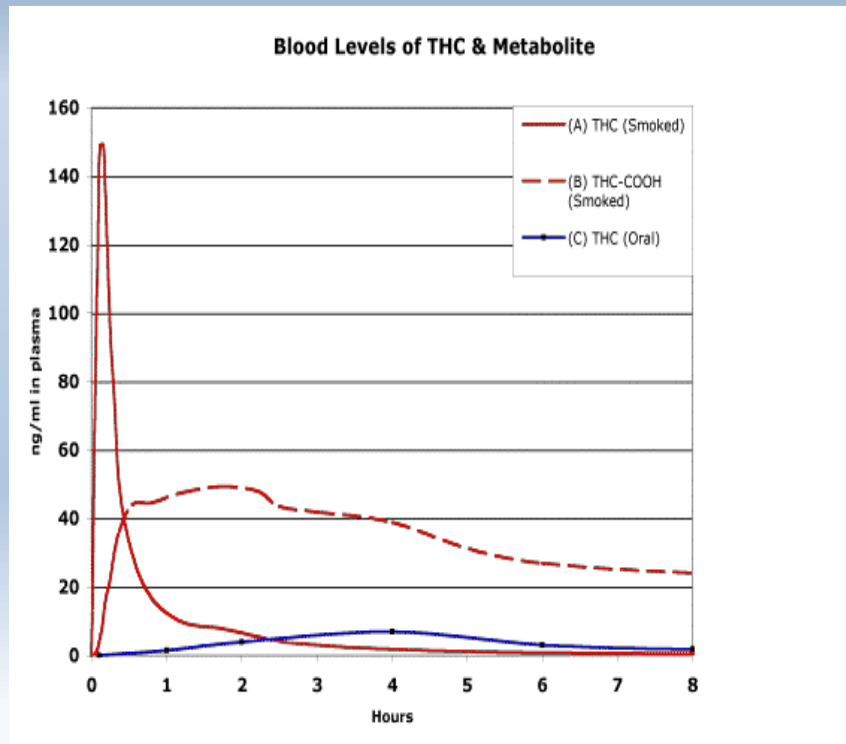
Coming to Canada? Legal Issues



“Per Se?”

- Limits for DUI set at 2ng/ml and 5ng/ml, blood sample BUT....
- No evidence-based replicated long term impairment studies
- So - how can government defend 5/2ng/ml?
- So - how can employers *ever* hope to justify “zero tolerance?”

Blood v. Urine



What, Exactly is “Fit For Work?”

100% physically and mentally?

Impaired?

physical?

psychological?

How do you know?

Industry Practice

- Focus on fact– physical and caused by substance use
- Compensable focus: G/MRTW, Stay at Work
- “Accommodate everything” *if its work related*
- Variable to non-existent sick leave / absence policies
- Little to no non-comp payment or DSB management for non-comp injury and illness

Legal Context – Employment Standards Act

- BC Law Institute report submitted
- Several hundred pages, 80 recommendations
- Expect expansion of leave provisions for a variety of settings (narrow scope)
- Expect mandatory sick leave for a given number of days per year
- Unsure if paid / unpaid leave

Legal Context – HR Code

- Disability is not defined
- No discrimination = no adverse T+C
- HR Code prohibited grounds include physical and mental injury and illness
- Also, “perception” of disability
- Prima facie case, reverse onus

Legal

Context –

HR Code

- Duty to Accommodate is a principle, not articulated
- Applies to ALL elements of the employment relationship
- So – if you accommodate *ANYTHING* if it's compensable...
- You have demonstrated an ability to accommodate *ANYTHING* during the hiring process, non-comp illness and injury, and termination processes

Legal Context – WC Act

- Discriminatory Action prohibited
- No discipline, termination, adverse change to T+C of employment for a worker who “exercises a right or carries out a duty prescribed by law.”
- WCA S. 116 requires a worker to declare impairment
- OHSR 4.19 + 4.20, in part, require a worker, to declare **any** physical or mental impairment arising from the use of alcohol, drugs or other causes

Legal Context – WC Act

- So....let's do the math!

Declare impairment = no adverse effect

- ❑ Physical (sports injury?)
 - ❑ Psychological (death of a spouse?)
 - ❑ Impaired (addiction or not?)
 - ❑ Fatigue (Tired, man?)
- Does this mean we have a mandatory 100% funded leave program?
 - Must affect ability work safely
 - Subject to performance management
 - How do you manage disability?

So... Put it Together

- Compensable, non-compensable, illness, physical or psychological, the law applies
- What's the lens – working safely, or able to work?
- “Zero Tolerance,” “Never” and “Always” should be eliminated from your disability management vocabulary
- Given our demographic shift, you'll be doing this anyway!
 - ❑ Employer of choice
 - ❑ Lack of full time, decades of commitment

Put it all together and I challenge you:

Stop asking if your employees are fit for work, and instead ask yourself how you can make work fit for them.