

WHAT'S THE DOPE ON CANNABIS?

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#1- The Unfortunate Incident of Mr. Stoney Tokers

Stoney Tokers has worked in the steel mill for ten years. He had recently bid on a new position and was being trained as a crane operator on the 7-3 p.m. shift. The crane he was operating is 30 feet high and 100 feet wide and is capable of lifting 70 metric tons. It operates by remote control. Near the end of the shift, Stoney was moving a large box containing 50 tons of steel into a crib designed to hold the box. Instead of using the rise/lower lever on the controller, he accidentally used the east/west lever, causing the box to crash into a control room glass window. No one was in the control room at the time. He reported the incident to his supervisor, and the accident was classified as a “near miss” involving an employee in a safety-sensitive position.

When advised that Company policy required him to undergo drug and alcohol urine test that day, he told the Company that he would probably test positive for marijuana metabolites having smoked a joint the night before at around 6:00 p.m., as he was celebrating the legalization of cannabis in his state. The test results were received some six days later and showed negative for alcohol but indicated THC metabolite level of 48 ng/mL, considerably above the cut-off level of 15 ng/mL, as set out in the Company’s new Cannabis Use Policy.

In its investigation of the accident, Mr. Tokers’ supervisor informed the Company that he had not noticed any out-of-the-ordinary behaviors by Mr. Tokers at the morning staff meeting or during the shift. No had his trainer, who interacted frequently with Mr. Tokers that day. Both the Supervisor and the trainer had received training similar to the training police officers undergo for conducting standardized Field Sobriety Test to determine whether or not the driver of a motor vehicle is impaired.

Based on the test results, the Company discharged Mr. Tokers. The Union filed a grievance alleging unjust dismissal.

#2 – The High School Teacher who got Baked

John, a teacher at the local high school, brought two joints of marijuana with him to work for his personal use later that night, after work. They accidentally fell out of his pocket as he passed by the gym. They were almost immediately found by two students who proceeded outside to smoke them. The vice-principal found them smoking and the students claim that they found the joints by the gym. Video cameras showed that the joints came from the Grievant. The school board prohibits staff from bringing “controlled substances” onto school property, and John was given a 15-day suspension. The Union claims that marijuana is no longer a “controlled substance.”

#3 – The Wanna-Be Salesman

Now that marijuana is legal for recreational use where he lives, Johnny Budd wants to make a little extra cash. He prints a few flyers advertising, “No Ditch weed, Buy from Johnny” and loads up some plastic baggies of marijuana in the trunk of his car before heading to work. Once there, he passes out the flyers to a few coworkers who he believes enjoy an occasional blunt.

After lunch, he is approached by a foreman who asks Johnny if he is trying to sell illegal drugs while at work. Johnny replies, No, he is selling marijuana which is legal now. The supervisor asks where the stuff is and Johnny replies that it is all in his parked car in the company’s lot. Johnny asks why this is different than last week when Mamie was selling potted African violets. The supervisor replies, “It’s different because we have a zero-tolerance policy for using, selling, or distributing drugs on the company’s property.”

Johnny is given a three-day suspension and told not to return with drugs in his car. Would you uphold the discipline?

#4 - The Saga of Ms. Mary Jane and Medical Marijuana

Mary Jane Potts has worked for ten years as a full-time fork life operator in the Company’s warehouse. All positions in the warehouse are safety-sensitive jobs. Two years ago, Mary Jane took a medical leave of absence due to stress and depression, and her disability claim was approved by the Company’s insurance carrier. As part of her treatment, her family doctor prescribed (in Canada) or authorized (in the US) her to use two grams of medical cannabis per day with no restriction on THC content. This improved her symptoms and, some months later, she was cleared to return to work on a full-time basis.

When informed about her cannabis treatment and its continuation, the Company took the position that she could not work in her fork-lift position, or any position in the warehouse, as they were all safety-sensitive positions. If she wanted to work at the warehouse, she would have to stop using cannabis. At her return to work meeting, the Union suggested that the Company review whether any of the positions in the warehouse could be made non-safety sensitive. Instead, the Company offered her a non-unionized, non-safety sensitive position in another facility nearby. Mary Jane wanted to continue her cannabis use and did not want a non-union job.

The Union filed a grievance claiming that the Company improperly prevented her from returning to work as a fork-lift operator, and that it failed to accommodate her disability under the provisions of the *Human Rights Code* (in Canada) or the ADA (in the US) which provides that an employer has the duty to accommodate an employee who has a disability unless it can establish that to do so would be an “undue hardship” on it.

#5 – What is Impaired, Anyway?

Mary works in a safety sensitive job for a construction company. After she was involved in a minor workplace accident, she tested positive for use of cannabis. There was no evidence of impairment. Based on the Company's zero tolerance policy, she was fired. During the investigation, Mary admitted to smoking marijuana two days before the accident, as it is now legal to do so, but insisted she was not impaired.

Would it matter if she had claimed that she used cannabis oil for joint pain based on her family doctor's advice and prescription?

#6 – Who's Toking in the Parking Lot?

On April 20th, the Safety Director for a manufacturing plant wandered into the employee parking lot during a lunch break. As it was the first warm day of that spring, many employees were eating lunch in their cars in the parking lot with the windows rolled down. Some were listening to music and other lazily scrolled through their mobile phones. A few were smoking cigarettes.

Since smoking is not allowed on the company's property, the Safety Director headed toward a few the offenders to remind them to put out their cigarettes. The Safety Director testified that while heading toward one of the cars, he smelled the distinct odor of marijuana. He called the Director of Human Resources on his cell phone to see what he should do. She asked if Lou Bhang or Crystal Myth were in the parking lot. He said yes. The HR Director told him to bring them in to her office. While the Safety Director was on the phone, Purity Dutch joined Lou in his car to talk to him about their date last night. The Safety director asked all three of them to accompany him to the HR Director's office.

When Lou, Crystal, and Purity were brought in, they expressed shock upon hearing that they were being sent for drug tests. They all denied being high and asked to be checked for odor, signs of impairment, etc. They also all stated that they would likely test positive if tested for marijuana. Lou said to the HR Director, "I have a card on file for my back issues. You know that. I smoked last night before I went to bed, like I do every night." Crystal echoed Lou's statement, saying, "I have a medical marijuana card for migraines. I vaped yesterday afternoon after my mother-in-law visited." Purity then spoke up. She said, "I don't have a card, but I ate some edibles while I was cleaning my house over the weekend."

All three were tested; all three showed evidence of marijuana in their system. All three were fired for violation of the Company's zero tolerance policy for drug use. If the Union files grievances on their behalf, would you sustain Lou's grievance? Crystal's? Purity's?

Would your answer be different if the three were employed by a City government?