

DAGGA IN THE WORKPLACE

People may no longer be prosecuted for cultivating, possessing and using small amounts of dagga for private purposes. But what are the consequences for the workplace?

The recent decision of the Constitutional Court in *Minister of Justice & Others v Prince & Others* to decriminalise the cultivation, possession and use of dagga for private purposes set the cat among the pigeons for employers. Questions raised by employers include whether employees are now allowed to use marijuana (dagga) during working hours; whether possession of it on the employer's premises is permitted and whether an employer may still take action against an employee who is under the influence of dagga or has dagga in his system.

Right to privacy

What complicates matters is that the court declared that people have the right to consume cannabis 'in private' and not only in the privacy of their homes. This implies that one may also consume cannabis at places other than one's house, as long as it is not in public. However, as is the case with all human rights provided for in the Constitution, the right to privacy

is not an unlimited right.

Workplace rules

The employer's premises are not 'private'. Employers may, therefore, implement rules that regulate the possession and use of dagga at the workplace. This may include a total prohibition on its use and possession. In fact, the General Safety Regulation 2A of the Occupational Health and Safety Act commands employers not to allow any person who is or who appears to be under the influence of an intoxicating substance, to be allowed access to the workplace. Neither may an employer allow any person to have intoxicating substances in his or her possession in the workplace. Cannabis is an intoxicating substance.

If there is proof on a balance of probabilities that an employee is under the influence of dagga, the employer would be entitled to take disciplinary action. Depending on the circumstances – e.g. the frequency of transgressions and safety considerations – this could result in dismissal. If the employee can show that he or she has a dependency problem, the matter should – as is the case with alcohol

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Season's Greetings

During this season, we take time to reflect and appreciate the good things we have, like our relationships with great clients like you.

Our daily work is helping, supporting

and placing thousands of people in communities across the country, thereby helping countless families through our combined efforts.

We must remain focused on addressing unemployment, and creating a platform for skills development and upliftment, by giving people opportunities wherever we can.

At Express Employment Profession-

als we understand your need for flexibility and compliance, and will strive to ensure we meet all your business needs in 2019. It has been quite a year for us all and we hope the New Year brings happiness, fulfillment of hopes and dreams, and great success.

Carolyn Diaz
Managing Director
Express Employment Professionals

dependency – be treated as an incapacity (ill health) issue. The status quo regarding alcohol and drug possession and use, therefore, remains. Employers should, however, remove references to dagga as an ‘illegal’ substance from their policies and merely refer to it as an ‘intoxicating substance’.

‘Under the influence’

The active compound in marijuana, tetrahydrocannabinol (THC), apparently can linger in a person’s system for weeks and even months for heavy users. This means that an employee who legally used cannabis on a Friday evening is likely to show traces of the drug if tested at work on a Monday, but

will no longer be under the influence, and is unlikely to be impaired. In other words, even if a person is no longer ‘high’, he or she can still test positively for the substance.

The mere presence of dagga will not be sufficient to prove that a person is under its influence. Whether employers can take action against someone for allegedly being under the influence of dagga will depend on whether the substance is still affecting the employee’s ability to function and perform normally. It appears, however, that the tests for cannabis cannot accurately determine this effect. So what can employers do given this uncertainty?

Employers may continue to conduct random tests for alcohol and substance use, or test an employee ad hoc if there is reason to suspect that the employee may have consumed substances that are forbidden at work. Experts say that saliva tests have a relatively short cut-off level - it can show a positive result for THC for about six hours post-use, rather months as is the case with urine or blood tests. Employers should consult with experts in the field.

Dagga in system

One way of overcoming the difficulty of establishing whether an employee is under the influence of dagga, is to implement a rule that anyone who is found to have THC in his or her system after a saliva test will be guilty of a disciplinary transgression. Given the employer’s continuing duty under the



OHSA to ensure workplace safety, we believe that such an offence can justifiably be regarded as serious. While a first transgression probably will, in the normal course of events, not justify dismissal, a repeat transgression may well result in the ultimate sanction.

Because of the high risk associated with intoxication in respect of certain occupations (e.g. operating heavy machinery, pilots, medical staff or other circumstances where an intoxicating substance poses a risk to the property of the employer or the safety of the employee or others), it is arguable that the mere presence of dagga or any other intoxicating substance in the blood may render the employee unsuitable for the job. An employer could, in respect of such occupations, implement a rule stating that a first transgression of a positive test may justify summary dismissal. However, dismissal remains a measure of last resort and all circumstances should be taken into account before a decision is made to dismiss the employee.

Test

As with alcohol abuse, an employer may take disciplinary action against an employee, without a test, if the effects of cannabis are clearly observable.

Where an employee is tested, such test must comply with s7 of the Employment Equity Act, No 55 of 1998. The employer must also ensure that testing for

cannabis is voluntary and confidential. The employer may introduce a condition of employment that makes it obligatory to undergo regular medical testing if employment conditions justify this.

Conclusion

The Constitutional Court judgement has given rise to much speculation and confusion. Employers should

therefore educate employees about the implications of the judgment and how it affects them.

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MAINTAIN A HEALTHY MIND, BODY & SPIRIT DURING THE HOLIDAYS

From juggling family obligations to finishing up end-of-the-year projects at work, it's easy to get overwhelmed when the holiday season is upon us and a new year is just around the corner.

It's important to take time to focus on maintaining a healthy mind, body, and spirit so you don't burn out. Here are a few quick tips to remember.

Mind

Know your stress triggers

Whether its work, family, finances, or a combination of several factors, it's important to identify your holiday stress triggers early. From setting aside a few rands of every paycheck to working ahead at work, there are a variety of proactive steps you can take to be prepared and impact the severity of stress during the holidays.

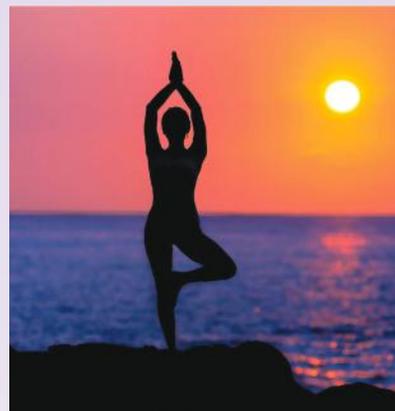
Take time for yourself

Yes, the holidays are supposed to be about family, friends, and togetherness ... but that doesn't mean you don't need to plan a little time for yourself. According to Psychology Today, alone time comes with a range of benefits, including improved concentration, time to think, and an opportunity to simply "reboot your brain."

Body

Say "no" to - or at least share - the holiday treats

The holiday months are notorious for weight gain. From treats at holiday parties to treats from family and friends, we're surrounded by heavy meals and sugary confections week after week. So, it's important to learn how to put your foot down and say "no"



to the onslaught of goodies the holidays bring.

Be proactive to stay active

As hard as it's going to be among the holiday cookies and turkey, stuffing, or Christmas ham,

make a commitment to stay active throughout the season. Jump start your resolutions now by getting into an exercise routine that will make it easier to stay healthy through the holidays and start the new year off on the right foot.

Spirit

Make a point to visit old friends

According to the Mayo Clinic, research has shown that friends are good for our health. From boosting happiness and self-worth to coping with stress or mental health, friends play a key role in maintaining an overall healthy lifestyle. And what better time to reconnect than the holiday season?

Focus on giving

It's no secret that, to most people, giving feels good. The holidays are often full of opportunities to take some time from the hustle and bustle to focus on giving back. In fact, research has shown that giving can have a significant impact on our mental and physical wellbeing.

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One less thing to worry about this **Holiday Season** ...



The Holiday Season is fast approaching and, depending on your business, staff are either going on leave or this becomes the busiest time of the year.

Here are Express tips to plan for the holiday season:

- Listing a job as early as possible will provide enough time to conduct interviews and check references.
- When hiring seasonal workers, time is everything. There is often not enough time for employers to provide lengthy training or a probationary period, so having an effective screening process may help prevent issues later on. We at Express ask various questions during the interview and conduct thorough background screening checks to identify the best candidate for the job.

- Enlisting the help of Express is a quick, transparent method when you need to bring on temp staff in a crunch. We minimize hiring missteps while adopting the tedious legwork and administrative tasks.
- As the client, you are paying to use our applicants for as long as you wish without the permanent HR commitment. If you are considering a permanent hire, this is your chance to observe performance, qualifications and work habits prior to offering a permanent position.

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