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LABOUR NEWS

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HIGH AT WORK? WHAT SOUTH AFRICAN EMPLOYERS CAN (AND CAN'T) DO IN 2026

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072 349 9596

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MOVING BEYOND THE ***ZERO-TOLERANCE MYTH:*** HOW TO MANAGE CANNABIS LEGALLY AND SAFELY?



A PRACTICAL LEGAL UPDATE FOR BUSINESS OWNERS AND MANAGERS

THE SHORT VERSION

A positive THC test is not automatically proof that an employee is impaired at work. The current South African position requires a fact-specific assessment, taking account of the employee's role, workplace risk, evidence of impairment, the employer's policy and whether the policy and disciplinary response are fair, reasonable and legally justified.



KEY TAKEAWAY:

*Test result + practical evidence of impairment +
workplace risk + a fair, lawful policy = a much stronger
basis for action*

WHY?

THIS MATTERS FOR YOUR BUSINESS...

The courts have moved away from a blanket approach.

For office-based or low-risk employees, a positive test without evidence of impairment will generally not, on its own, justify dismissal. In safety-sensitive workplaces, stricter controls can be justified where they are connected to legitimate occupational health and safety requirements and consistently applied.



DID YOU KNOW ?

THC can remain detectable after the effects of cannabis have worn off. A positive test therefore does not necessarily tell an employer whether the employee is impaired at that moment.



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FIVE CASES **SHAPING THE CURRENT POSITION:**

1. Enever v Barloworld Equipment South Africa (LAC, 2024):

For an office-based employee, private cannabis use without evidence of impairment or inability to perform duties did not justify dismissal. A blanket zero-tolerance approach in those circumstances amounted to unfair discrimination.

2. City of Cape Town v SAMWU obo Mantis (LC, 2026):

The Labour Court upheld reinstatement where a learner law-enforcement officer tested positive for THC but there was no evidence of impairment, inability to perform duties or a proportionate basis for dismissal for a first offence.

3. SGB Cape Octorex (Pty) Ltd v MEIBC and Others (LAC, 2023):

In a high-risk setting, dismissal was upheld where the employee was alleged to have smoked cannabis at work, tested positive, worked at heights and held a supervisory role. The employer's consistently applied zero-tolerance policy was recognised.

4. Marasi v PetroSA (LC, 2023):

The Court upheld specified cannabis testing thresholds before access to a high-risk petrochemical facility, with the focus on fitness for duty and workplace safety.

5. NUMSA obo Nhlabathi and Another v PFG Building Glass (LC, 2023):

Dismissals were upheld in a hazardous glass-manufacturing environment, with emphasis on the dangerous nature of the workplace, the validity of the policy and employees' knowledge of it.

DON'T STOP AT THE TEST: ASSESS ACTUAL IMPAIRMENT

Because THC testing can show prior cannabis exposure without proving current impairment, employers should place meaningful weight on contemporaneous observations and practical impairment/sobriety assessments.

The aim is to record objective, observable facts rather than simply concluding that an employee is “under the influence” because a test is positive.



WHAT TO LOOK FOR?



The employee acting noticeably out of the norm for them — particularly where several signs appear together — is more useful than relying on the THC result alone.

PRACTICAL SOBRIETY / IMPAIRMENT ASSESSMENT

1. Observe behaviour:

Record whether the employee is acting out of the norm: unusually confused, inattentive, disoriented, unusually slow, unusually euphoric/anxious, or behaving in a way that is inconsistent with their normal presentation.



2. Check eyes and appearance:

FTC employees must generally have the same benefits as permanent staff unless justified otherwise.



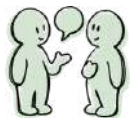
3. Assess balance and coordination:

Observe whether the employee can walk and move normally, maintain balance and coordinate movements. Cannabis can impair motor coordination and balance.



4. Assess responses and communication:

If work becomes ongoing, convert to permanent roles or risk legal challenges.



5. Record the overall picture:

Document the time, observations, specific behaviour, instructions given, responses, visible symptoms and any relevant safety concerns. Avoid relying on a single symptom.



IMPORTANT



These observations should support an impairment assessment, not be presented as a scientifically validated stand-alone "cannabis sobriety test". Symptoms can have other causes, so the surrounding facts and consistency of observations matter.

WHY VISIBLE SYMPTOMS MATTER — BUT SHOULD NOT BE USED ALONE

Cannabis intoxication can involve conjunctival injection (red/bloodshot eyes), impaired attention, slowed reaction time and impaired motor coordination. Red eyes occur because THC can cause vasodilation of blood vessels in the conjunctiva. Balance and coordination problems may also be observable. These signs should be considered together with behaviour, responses and the employee's job requirements — not treated as automatic proof of cannabis impairment.

POLICY FAIRNESS IS JUST AS IMPORTANT AS POLICY WORDING

A policy should be clear, but clarity alone is not enough. It must also be fair and reasonable in the circumstances and justifiable in law. Employers should consider whether the policy is appropriate for the specific workplace and role, whether its purpose is linked to genuine occupational health and safety requirements, whether employees knew and understood it, and whether it has been applied consistently.

LOW-RISK VS. SAFETY-SENSITIVE: THE PRACTICAL DIFFERENCE



OFFICE-BASED / LOW-RISK

A positive THC test without evidence of impairment will generally not, on its own, justify dismissal. The employer should be able to point to actual impairment or other relevant misconduct, together with a fair and reasonable policy and proportionate response.



SAFETY-SENSITIVE

Mining, manufacturing, construction, transport, petrochemical facilities and roles involving heavy machinery, working at heights, driving or firearms may justify stricter controls. Where a zero-tolerance policy is genuinely justified by safety requirements, consistently applied and known to employees, the employer's position is stronger.

BEFORE TAKING DISCIPLINARY ACTION



DO's

- Review the applicable cannabis/substance policy.
- Assess the employee's duties and workplace risks.
- Record contemporaneous observations of behaviour and symptoms.
- Use practical impairment observations to assess what is happening at work.
- Check consistency with previous cases.
- Consider whether the sanction is fair, reasonable and proportionate.



DON'Ts

- Treat a positive THC test as automatic proof of current impairment.
- Assume red/glassy eyes or one isolated symptom proves impairment.
- Apply the same rule mechanically to every role and workplace.
- Confuse cannabis testing with alcohol breathalyser testing.
- Ignore whether the policy is fair, reasonable and legally justifiable.

THE BUSINESS OWNER'S BOTTOM LINE

The safest approach is not “zero tolerance at all costs”. It is a clear, fair and legally justifiable policy supported by proper impairment assessment, appropriate workplace controls and a consistent disciplinary process.

NEED A POLICY THAT FITS YOUR BUSINESS?

Reach out to Contact Labour and let us draft a customised cannabis-in-the-workplace policy for your business — tailored to your workplace, roles and legal obligations.



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082 893 3365



pfm@netactive.co.za

T) 072 349 9596
admin@contactlabour.co.za
www.contactlabour.co.za