



A Guide for Employers on

Recreational Cannabis Use

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PENINSULA



A Guide for Employers:

Recreational Cannabis Use in Canada

In 2018, Canada became the latest jurisdiction to legalize the recreational use of cannabis. It is a significant policy shift that impacts social attitudes, community standards and workplace practices. Further, the new regulatory framework prescribes tight controls for the minimum age for purchase, possession, sharing, and use. So how does it impact the workplace?

The Changing Environment

There are two types of cannabis use. Medical cannabis has already been legal in Canada, while the recreational cannabis is a newer update. As an employer, it is important to understand the potential impacts on both your organization and operations.

Accessing Cannabis for Medical Purposes

Since becoming legal in Canada in 1999, the number of registered medical cannabis users has grown consistently ever since. Health Canada statistics show 20,000 in 2014 and 160,000 by the end of 2016.

- The laws for medical use allow Canadians with prescriptions to: Access quality-controlled cannabis from Health Canada or another licensed producer
- Produce a small amount for themselves
- Designate an individual to produce it for them

Regulations do not allow for purchase of medical cannabis from storefront locations. Employers have had a duty to accommodate employees who use medical

cannabis to the point of “undue hardship”. However, the definition of “undue hardship” is determined by courts on a case-by-case basis.

Recreational Use of Cannabis in Canada

On October 17, 2018, Canada passed the federal Cannabis Act to make the recreational use of cannabis legal across the country. It amends the Criminal Code, the Controlled Drugs and Substance Act, and several other statutes. Provinces and territories can create and enforce their own laws on the purchase age, retail stores, and other rules about consumption.

The new law allows adults at least 18 or 19 years of age (depending on the province or territory) to legally possess, grow and purchase limited amounts of cannabis for personal use. While this means your employees can legally consume cannabis on their own time, you have the right to act if they attend work under the influence.

On October 17, 2019, edible cannabis, cannabis extracts and cannabis topicals can now be legally produced and sold under the Cannabis Act, by:

- Provincial and territorial retailers; and
- Federally licensed sellers of cannabis for medical purposes.

Adults should only expect a limited selection of the products, and no earlier than mid-December 2019. To address the unique public health and safety risk posed

by these new cannabis products, they will be subject to strict regulations.

A major goal in legalizing a broader range of cannabis products is to displace illegal cannabis markets and keep profits out of the hands of criminals and organized crime. As an employer, it is important to understand how changing legislation will impact your business.

Ontario Workplace Laws on Cannabis

Ontario has imposed strict rules on where recreational cannabis is allowed.

Ontario's Bill 174, the Cannabis, Smoke-Free Ontario and Road Safety Statute Law Amendment Act, 2017, became law in 2018. The legislation amended the Highway Traffic Act and created both the Smoke-Free Ontario Act, 2017 and the Cannabis Act, 2017.

These laws impose new obligations on employers and employees regarding the use of cannabis in the workplace.

Cannabis in Ontario Workplaces

Consuming recreational cannabis at work remains illegal in Ontario. Employers and supervisors must know the rules for medical cannabis, as well as address workplace hazards under the Occupational Health and Safety Act (OHSA). If employees are unable or unfit to perform work safely, they could pose a danger to themselves or others in the workplace.

It is important to note that the definition of "workplace" under the OHSA includes "any land, premises, location or thing at, upon, in or near which a worker works". If an employee requires medical cannabis, employers should consider their obligations pursuant to the duty to accommodate under the Human Rights Code.

Smoke-Free Ontario Act, 2017

This law extends to the public and workplace smoking rules by including medical cannabis, along with the restrictions placed on smoking tobacco products indoors. Specifically, it prohibits individuals from smoking or holding lighted medical cannabis in several places, including an "enclosed workplace" or "enclosed public place".

The Act also requires employers to:

- Ensure compliance with smoking or holding lighted medical cannabis in enclosed spaces
- Provide notice to employees regarding the restrictions
- Post signs throughout the workplace
- Ensure there are no ashtrays or similar equipment in the enclosed workplace or area (other than a vehicle in which the manufacturer has installed an ashtray)
- Ensure that employees or other persons who do not comply with the above requirements are removed from the space

The Impact on Employers

As Canada adapts to a legalized cannabis environment, some concerns come to the forefront. For example, police services have been working diligently to understand the potential impact on traffic safety. Another main concern is the potential impact on the workplace.

Emerging Concerns

Employers across Canada are already facing the legitimate challenges of managing the impact on their organizations. Some of the top issues are:

- Workplace safety, including using equipment and vehicles
- Work performance, including attendance, fitness for duty and impairment
- Disciplinary matters, including performance issues and termination
- Accommodating employees using medically-prescribed cannabis

Although almost half of HRPAs members surveyed do not believe current workplace policies address potential issues, employers can help ensure they remain productive, safe and fulfilling with some planning, focus and communication.* Further, despite the legalization of recreational cannabis, the following two workplace rules will not change.

Employers must ensure safety: Employers are responsible for all employees' safety and recreational cannabis should be treated like any other controlled substance, such as alcohol.

Reporting to work without impairment: Employers will continue to have the right to require employees report to work sober and without any form of impairment.

*Clearing the Haze. The Impacts of Cannabis in the Workplace. Human Resources Professionals Association. www.hrpa.ca

What if your employee is impaired?

One of the biggest challenges is assessing whether someone is impaired at work. Testing for drug and

alcohol remains one of the most contentious issues of Canadian workplace law. We recommend consulting your legal counsel if you believe someone is impaired at work.

Employers have a duty to accommodate. What does that mean?

Human rights legislation requires employers to try finding suitable workplace accommodations for disabled employees who have prescriptions for medical cannabis use. The accommodation responsibility extends to the point of "undue hardship." This is the same as any other disabled employee who has been prescribed medication. Accommodation is also required for disability due to an addiction.

Employers facing an accommodation request may consider providing similar accommodations as they do for other disabled employees:

- Moving the employee out of a safety-sensitive position
- Providing more frequent breaks
- Altering the employee's duties

However, a medical cannabis prescription does not entitle an employee to:

- Be impaired at work
- Compromise his or her own safety or the safety of others
- Arrive late or take unexcused absences

An employer may request medical information from the employee's doctor or an independent medical examiner about fitness for duty and/or appropriate accommodations.

Can an employer enforce a zero-tolerance policy?

No, employers cannot prohibit use among their employees. However, they are responsible for workplace safety and should enforce a zero-tolerance policy against impairment or intoxication at work. Where a disabled employee has been prescribed medical cannabis, the employer must accommodate to the point of “undue hardship”. Even a medical prescription does not permit impairment while working.

Your Employee Policies

It is important to communicate expectations to employees clearly, as well as revisit drug and alcohol workplace policies to ensure you incorporate and address both recreational and medical cannabis:

1. Review your existing policies
2. Revise them to add cannabis to the relevant areas
3. Communicate openly with your employees

The good news is, employers do not need to drastically change their policies.

Step 1: Review your existing policies

Employers may need to revisit workplace policies by focusing on two key responsibilities:

1. Accommodate disabled employees where medical cannabis is used to treat that disability
2. Ensure safety of the workplace and their right to prohibit impairment on the job; you must strive to find a balance between these two competing obligations

Step 2: Revise your policies

If you already have the foundation, your current policies set the framework. Employers maintain the right to set rules for non-medical use of cannabis in the workplace, just as they can for alcohol.

Start by Mirroring Your Current Policies

For medical cannabis, an employer can refer to its policies for accommodating an employee who has been prescribed drugs that may impair their work. For non-medical cannabis, employers can review the policies it currently maintains for practices related to alcohol, prescription drugs or cigarettes. Employers cannot enforce a zero-tolerance policy on employee’s personal cannabis use. However, since they are responsible for workplace safety, they can enforce it for work use, intoxication or impairment.

Step 3: Communicate with your staff

Make sure your staff understand their legal rights and responsibilities, as well as your expectations and responsibility to ensure workplace safety. Your communication can be both formal, informal, or both. You may wish to discuss these matters at a staff meeting, around the water cooler, or through resource materials. The key point is ensuring your message is consistent and transparent.

Potential Policies to Review and Revise

Every industry and organization has different standards and practices, which means there is no standard set of policies to review and revisit. These may include:

- Employment handbooks
- Orientation guides
- Performance evaluation processes
- Recruiting and onboarding materials
- Workplace safety materials
- Equipment instructions

Learn more

If you have questions about cannabis in the workplace, call Peninsula today. We are dedicated to providing small business owners with health & safety support.

1 (833) 247-2652

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Schedule A Callback

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