

Cannabis Legalization: Are Workplace Concerns Overblown?

Unless you've been living under a rock, you know that recreational cannabis is legal in Canada as of October 17, 2018. In the leadup to legalization, much has been written on the potential impact on businesses, workers and society as a whole. A recent Conference Board of Canada [survey](#) reported that 52% of employers were worried about the impact of legalization. Are there valid reasons for this apprehension, and are concerns about the risks of legalized cannabis for Canadian workplaces overblown? In this issue of *FYI*, we explore the likely effects of cannabis for businesses and how employers should adapt to address the new reality.

Behind the Hype

Legalization will not introduce recreational cannabis use to Canada – it's already here. Twenty-two percent of respondents to Statistics Canada's [Canadian Cannabis Survey, 2017](#) reported using the drug for non-medical purposes in the previous 12 months – pre-legalization. While this number is likely to increase post-legalization, the bottom line is that most Canadians who want to use cannabis recreationally are already doing so.

What legalization will do is require employers to address cannabis use by employees head-on, something that most have not done to date. In a June 2017 [survey](#) of its membership conducted by the Human Resources Professionals Association, 45% of respondents indicated that they did not believe their current policies addressed potential issues arising from cannabis legalization. In addition, while medical cannabis has been legal since 2001, only 11% of respondents reported having a medical cannabis policy. At minimum, employers should revise (or draft) the following policies to address recreational cannabis legalization:

- Health and safety
- Disability and accommodation
- Drugs and alcohol

Up-to-date policies and procedures can, when accompanied by employee and managerial training, go a long way to address employer concerns about the impact of legalized cannabis on their workplaces.

Policy Review & Implementation

When conducting a policy review, employers should ensure that all policies specifically address both medical and recreational cannabis use and use both at work and during off hours. Some specific considerations for each type of policy are provided below.

Health & Safety

Safety requirements: Employers are responsible for keeping their workplaces safe. The extent to which cannabis use can impact workplace health and safety depends on the workplace and the type of work performed. In addition to industry-specific legislative requirements, the laws in British Columbia, Newfoundland and Labrador provide that employees cannot work if their ability to perform their duties is impaired by drugs or alcohol.

Defining impairment: A further complication is that there are currently no accepted methods to determine cannabis impairment – tests are only able to indicate whether the drug is present in a person’s system. It is therefore up to the employer to determine and clearly define what constitutes impairment on the job. As the assessment of impairment will be based, at least in part, on the observations and judgment of other employees and managers, providing training on potential signs of impairment, and steps to take when impairment is suspected, is key.

To test or not to test: Policies should address when, why and how testing will be conducted – for example, following a workplace incident where impairment is suspected. However, in light of the potential legal and human rights implications, employers should approach random drug testing with caution. Such testing should only be considered for safety-sensitive workplaces/positions and only after consulting legal counsel.

Disability & Accommodation

Required accommodation: While employers are not required to accommodate recreational cannabis usage, they must permit potentially impairment-inducing medical cannabis use and accommodate employees who use it unless that accommodation imposes undue hardship on the organization. Much like impairment, there is no one-size-fits-all definition of undue hardship – it will vary based on the circumstances of both the employer and employee involved.

Policy content: Accommodation policies should outline what documentation employees must provide to establish a need for accommodation, particularly where an employee must use medical cannabis during working hours. The provisions should mirror those in place for other prescription drugs that pose a risk of impairment (e.g. narcotic pain medications) – if policies do not already include these medications, they should also be addressed when making revisions.

Addressing addiction: Employers are obligated to treat and accommodate employees with addictions. The process for addressing employees with cannabis addiction can be dealt with through the disability and accommodation policy or through a separate substance abuse policy.

Drugs & Alcohol

Policy creation: Outside of employers in safety-sensitive industries (transportation, etc.), these policies are not common. Employers in all industries may wish to revisit the decision to have a drugs and alcohol policy in light of cannabis legalization.

Zero tolerance policies – approach with caution: Absent established safety concerns, an outright ban on cannabis consumption is likely discriminatory. Consideration should instead be given to requiring employees to refrain from using cannabis for set periods before work, where needed to ensure workplace safety.

Travel implications: Employees travelling for work should be reminded of the different laws on cannabis possession and consumption (both medical and recreational) in other countries. To minimize risk, employers may consider policies requiring that employees refrain from using recreational cannabis for specific periods before travelling for work and prohibiting transport of non-medical cannabis products when travelling. Any such policies should be developed with input from legal counsel.

Finally, even the best cannabis policies will be ineffective if employees and managers are not aware of their existence and trained on how to interpret and apply them. Ongoing and clear communication is a must.

Looking Ahead

While legalization of recreational cannabis should spur organizations to develop, review and/or revise a range of policies to address this new reality, it should not cause employers to panic or make stereotypical assumptions regarding cannabis use or users. A good starting point is to view recreational cannabis like alcohol – employees should not be expected to show up to work high any more than they are currently expected to show up to work drunk.

Employers should tailor their approach to legalized cannabis based on their particular circumstances and should be prepared to revise their approach based on experience and evolving knowledge.

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