

Legalized Marijuana: 5 key takeaways for your workplace

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Canada's federal government continues to move towards the legalization of recreational (non-medical) marijuana, with legislation expected to come into force by July 2018. The following are some key takeaways to help your organization prepare for the legalization of recreational marijuana:

1. Not a licence for poor behaviour: Although recreational marijuana will be legalized, this does not provide employees with a licence for poor behaviour. Just as your organization does not need to tolerate alcohol or smoking in the workplace, it does not need to tolerate:

- any recreational marijuana use;
- impaired employees or customers (subject to disability considerations); or
- marijuana or marijuana paraphernalia (subject to disability considerations).

2. Policies are important: You should not wait for a legislative solution to address marijuana in the workplace; robust workplace policies may be your only, and will certainly be your most effective tool. Good policies will help set expectations, control workplace use of marijuana, provide a basis for disciplining employees, and help your organization comply with its legal obligations, including obligations pursuant to occupational health & safety and human rights legislation.

3. Key terms to review and update: Your existing policies and procedures are likely well-equipped to handle the legalization of marijuana. However, policies and procedures should be reviewed and updated. Key policy terms to review, update, and consider include:

- The definition of "drug" – does recreational marijuana need to be separated?
- The definition of "workplace" – is it broad enough?
- Whether current prohibitions on the use of alcohol in the workplace and during the work day are sufficient to address recreational marijuana
- Whether exceptions to recreational marijuana use, similar to exceptions for alcohol use, will be permitted in the following situations:
 - during breaks or at lunch hours;
 - at client functions;
 - at company functions; or

- if there will be exceptions to using different forms of marijuana
- If your existing “fit for work” requirements are sufficient
- Whether a minimum “sober” time before work will be required
- If disclosure of marijuana addiction or medical marijuana use should be required
- Whether adequate accommodation provisions and processes exist to assist employees with addiction issues or disability-related medical marijuana use.

4. Implement and follow your policies: Your updated policies should be clearly communicated to employees, and your expectations regarding recreational marijuana and impairment in the workplace made clear. Employees should be trained on the policies and managers, supervisors, and front-line staff should be trained on detecting impairment. Policies should be consistently enforced and employees disciplined for breaching such policies.

5. Provide accommodation where required: From a human rights perspective, the duty to accommodate employees to the point of undue hardship has not changed. Accommodation issues with marijuana are likely to arise in two circumstances: (i) marijuana addiction; or (ii) medical marijuana being prescribed for a mental or physical disability. Employers remain prohibited from discriminating against an employee due to real or perceived addictions issues, or if an employee suffers from a disability. If marijuana is being prescribed by a physician, you are entitled to request further information from the employee and/or the physician to understand whether such prescription will cause impairment, how it must be taken, and if there are alternatives that will not cause impairment or will minimize impairment.

6. Bonus takeaway – a reminder for management: Occupational health and safety legislation across Canada requires employers to ensure a safe workplace. Directors and management can have personal liability under occupational health and safety legislation and the Criminal Code for not ensuring a safe workplace. In order to avail themselves of a due diligence defence against workplace safety-related personal liability, directors and managers need to, among other things:

- (i) take time to understand the effects of marijuana and the issues it can create;
- (ii) review, revise and adopt policies to address marijuana in the workplace; and
- (iii) ensure that policies to address marijuana are implemented and enforced.