



Road to the Legalization
of Recreational Cannabis –
**What Employers
Should Know**

The federal government announced that the legalization of recreational cannabis is effective on **October 17, 2018**. Employers should prepare for this change as it will impact Canadian businesses of all sizes.

Across Canada

Federal Bill C-45, *An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts*, permits legal access to recreational cannabis and controls and regulates its production, distribution and sale.

Starting October 2018, these changes will come into force and apply across Canada.

What Will Not Change

- Employers still have the legal obligation to provide a healthy and safe workplace for their employees.
- Employers can still expect and require that employees come to work fit for duty and remain fit throughout their work day while performing their duties.
- Just as is the case for alcohol, the legal status of cannabis does not entitle employees to use it at work, or be under its influence when they perform their work.
- Employees under the age of 18 (19 in some provinces) will still be prohibited from using or possessing cannabis.

What Will Change

- Possession of up to 30 grams of cannabis for recreational purposes will be permitted for individuals at least 18 years of age (or 19 in some provinces).
- Employers can no longer prohibit their employees from using cannabis outside work hours, as it will be a legal recreational drug; however, employees may not be impaired at work or while working.
- Employers will not be allowed to distribute, sell, encourage, tolerate the use of cannabis or make it available to employees at social events.
- Employees under the influence of cannabis at work-related social events will have to be treated in a similar manner to employees impaired by alcohol.

The Workplace

There is no established and precise legal framework within Bill C-45 regarding the use of cannabis in the workplace. General rights and duties to keep in mind are:

- The employer's right of direction.
- The employer's duty to provide its employees with a safe and healthy workplace.
- The employee's right to privacy.

In Each Province

Provinces have jurisdiction to regulate the possession, production, consumption and distribution of cannabis. They could choose to take the following actions:

Possession limits: set lower limits

Age limit: raise the minimum age of possession and consumption

Home cultivation: ban cultivation for personal use

Workplace safety: set up a separate framework to protect employees

Public consumption: set rules on public consumption in conjunction with the municipalities

What Does This Mean for Employers?

Employee productivity, absenteeism and discipline

Employers do not have to tolerate or allow recreational cannabis in the workplace simply because of its newfound legal status.

Employers should be educated and aware of the signs of cannabis impairment.

Workplace safety

Working under the influence can present health and safety issues for the impaired employee, other employees in the workplace, as well as the general public. Employers have a duty to provide a safe work environment. Vigilance is thus required.

Accommodation

Dependence on recreational cannabis can trigger a duty to accommodate, as long as the situation does not cause undue hardship to the employer.

In the case of cannabis use, undue hardship could take the following forms:

- The employee is unable to perform their work safely
- The employee's cognitive capabilities and judgment are affected, which impacts work performance

Drug testing

Testing should only be used in limited circumstances. Some examples are:

- After an incident/accident;
- For a safety-sensitive position;
- If reasonable grounds exist to suspect that an employee is working under the influence of a drug.

Random or arbitrary testing should be avoided altogether safe for exceptional circumstances.

Be Ready

Here are some steps Canadian employers can take in light of the legalization of recreational cannabis:

- **Prohibit** the smoking of cannabis in the workplace explicitly (in official policy and on signs in the workplace)
- **Amend** or **adopt** the drug and alcohol policy to explicitly include cannabis (both medical and recreational)
- **Continue** to apply current policies until the revised policies come into effect
- **Review** the obligations with respect to reasonable accommodation and human rights
- **Hold** compulsory internal training regarding the use of cannabis in the workplace
- **Take** a proactive approach in preventing drug-related issues in the workplace rather than enforcing discipline reactively
- **Educate** management on the use and the effects of cannabis in order to prevent stereotyping and prejudice associated with drug use, and to avoid engaging in wilful blindness towards an employee's potential addiction

Businesses with employees in more than one Canadian province must monitor provincial laws and regulations in order to adapt their policies and procedures according to each jurisdiction's specific set of rules.



Need Help?

BLG's experts across Canada have the expertise and practice knowledge to help you successfully prepare your workplace in light of the legalization of recreational cannabis.

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