



MANAGING MEDICAL & RECREATIONAL

# **CANNABIS IN THE WORKPLACE**

While medical cannabis has been legal for some time, on October 17, 2018, recreational cannabis became legal in Canada. This rapid change in legislation means new challenges for employers and the workplace as a whole.

Employers continue to have the right to manage their workforce and insist that their employees are productive and free of impairment. Employees are still prohibited from partaking in recreational cannabis during work hours and coming to work intoxicated.

This resource will help you navigate the murky waters and manage cannabis in your workplace appropriately. Here, we outline the obligations an employer has to their workforce as it relates to cannabis (both medical and recreational), and address the most common questions we've received about each.

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## RESOURCES USED IN THIS GUIDE

[Canadian Human Rights Act](#)

[Canadian Centre for Occupational Health and Safety: Workplace Strategies: Risk of Impairment from Cannabis](#)

[Canadian Human Rights Commission: Impaired at Work – A guide to accommodating substance dependence](#)

[Ordre des conseillers en ressources humaines agréés: How to adapt the workplace to the legalization of cannabis](#)

# EMPLOYER OBLIGATIONS - MEDICAL & RECREATIONAL CANNABIS

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As an employer in Canada, you have several obligations to your workforce as it relates to medical and recreational cannabis:

## 1. PROVIDE A SAFE ENVIRONMENT.

Employers must provide a workplace that is safe for all employees. Every reasonable precaution must be taken to protect the health and safety of employees and others in the workplace.

## 2. DUTY TO ACCOMMODATE.

The duty to accommodate<sup>1</sup> falls under the Canadian Human Rights Act, which states that every employer in Canada has a legal duty to accommodate an employee until undue hardship<sup>2</sup>. Employers are required to provide reasonable accommodation to an employee with a disability or medication taken due to that disability. As an example, an employee taking medical cannabis to reduce symptoms of nausea from chemotherapy treatment.

Ensuring a safe workplace, and your duty to accommodate **are not mutually exclusive.**



### **Does my duty to accommodate an employee extend to medical cannabis?**

Yes, the duty to accommodate extends to disabled employees who use medical cannabis. These employees must be accommodated in the same way you would accommodate any other disabled employee who has been prescribed medication for their condition.

### **How far does the duty to accommodate employees using medical cannabis extend?**

Your duty to accommodate employees using medical cannabis is equal to that of any other prescribed medication. Employers must find suitable, accommodated work for the employee just as they would for an employee for any other illness, disability or drug prescribed to treat a disability.

Employers should note that a prescription for medical cannabis **does not:**

- entitle an employee to be impaired<sup>3</sup> at work;
- entitle an employee to compromise his or her safety, or the safety of others;
- entitle an employee to smoke in the workplace - anti-smoking laws apply to cannabis in the same way they do regular cigarettes;
- entitle an employee to unexcused absences or late arrivals.

## **DEFINITIONS**

- 1 Duty to Accommodate**  
protects individuals in the workplace from discrimination on the basis of medical need, disability, age, sex or creed to the point of undue hardship.
- 2 Undue Hardship**  
an action requiring significant difficulty or expense that would impose a large inconvenience on the operation of the employer or their business.
- 3 Impairment**  
diminished in function or ability; a deterioration of an individual's judgment or physical ability.

## **What does accommodation for medical cannabis typically look like?**

An employee informs their manager or Human Resources (HR) department of a prescription for medical cannabis, which begins the process of accommodation for an employee. This process is a shared obligation between the employer and the employee:

- It is the responsibility of the employee requiring accommodation to make the accommodation request.
- The employer initiates the accommodation analysis process after receiving the employee's request. In order to accommodate, the employer requires sufficient information from a physician or medical professional. Information requests are limited to essential duties and accommodation needs. Employers share with the physician the employee's role and duties,

work schedule and if their position is classified as safety sensitive.

- The physician should provide details on:
  - » Specific accommodation requests.
  - » Any restrictions or limitations.
  - » Any implications from the treatment plan regarding behaviour, attendance or performance.
  - » The plan for return to work if the employee is off work.
  - » Whether or not the employee can safely perform the job, especially if safety-sensitive<sup>4</sup>.
- Work with the employee to assess the limitations and options available for accommodation. If there is more than one option, the final decision as to which option to choose is up to the employer.

## **What is the employer's role in cases of substance dependence?**

Employees with a genuine addiction to a substance such as alcohol or medical cannabis must be accommodated. An employee cannot come to work impaired, but an accommodation permitting them - through disability coverage or unpaid leave, depending on the nature of the group benefit coverage - to attend rehabilitation, can be made. Failure to take steps toward recovery or by dropping out of drug rehabilitation may be cause for dismissal, although this is the last step. This becomes part of the discipline section in your policy. Any employee with a dependency or substance abuse issue is encouraged to disclose to the employer immediately.

**Be sure to track expiry dates on medical cannabis prescriptions when developing an accommodation plan.**

### **Does an employee have to disclose that they have a prescription for medical cannabis?**

An employee does not have to disclose to their employer that they are using medical cannabis provided that:

- it is not used or consumed during work hours;
- it does not cause any impairment during work hours;
- the employee is not in a safety-sensitive role<sup>4</sup>.

It is a best practice to disclose the use of medical cannabis to an employer as soon as possible.

An employer can set organizational policies about the physical presence of cannabis products in the workplace. The legalization of recreational cannabis does not mean employees can bring it into the workplace, similar to alcohol. Establish a safe method for

employees to disclose the requirement for medical cannabis and make it known to employees.

### **Can an employer have a “zero tolerance” policy for medical cannabis?**

A zero-tolerance policy for cannabis is not possible and could be grounds for discrimination against employees who use cannabis to treat legitimate medical ailments and disabilities. However, an employer can (and should) have a zero tolerance policy for impairment in the workplace.

## **DEFINITIONS**

- 4 Safety-sensitive role**  
positions in which impairment due to drugs or alcohol could result in direct and significant risk of injury to the employee, others or the environment or workplace.

# Impairment in the Workplace

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One of the biggest challenges for employers will be spotting impairment from the use of cannabis. There is no standard definition of impairment, and unlike alcohol, there is no current consensus on safe limits for cannabis use.

## **Does the legalization of recreational cannabis mean that employees can be impaired at work?**

No. Employers will have to set rules for non-medical use of cannabis in the workplace. A good “rule of thumb” is to adopt the same stance as alcohol in the workplace.

## **Where will employees be allowed to use recreational cannabis?**

Each province will handle things differently, and employers must be aware of their individual province’s guidelines. Each municipality within the

provinces has the right to put by-laws in place that prohibit the use of cannabis in public places.

## **How do I know if an employee is impaired?**

The effects of cannabis on individuals varies widely depending on a variety of factors, including the Tetrahydrocannabinol (THC)<sup>5</sup> level, frequency of use, sex and weight of the person using it and more. Some observable effects are lack of concentration, impaired learning and memory, changes to thought formation and expression, and drowsiness.



# Testing for Cannabis & Impairment

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Testing for alcohol and drug use in a workplace is one of the most heavily debated and challenged issues in the Canadian workplace. Assessment of impairment at work is one of the most difficult aspects of designing and implementing a policy regarding cannabis in the workplace.

## **Is there a way to test for cannabis use?**

Yes, we can detect use. However, there is no definitive way to confirm cannabis impairment. Current testing methods can only determine if THC is present in a person, regardless of when the consumption took place. A common guideline for use prior to attending work is twelve hours following inhalation and twenty-four hours following ingestion, however, this is not universally accepted and is a guideline only. Until a reliable form of impairment testing is available, employers will need to continuously revisit their drug testing policies.

## **Can an employer implement a cannabis testing policy in the workplace?**

Yes. However, in order to fulfill your obligation as an employer of providing a safe work environment, there has to be some reasonable basis for invading employees' privacy in this manner. Substance testing is generally considered to be discriminatory on the basis of disability and perceived disability under human rights legislation and can be considered for safety sensitive positions and on a case-by-case basis.

## **Where will employees be allowed to use recreational cannabis?**

Each province will handle things differently, and employers must be aware of their individual province's guidelines. Each municipality within the provinces has the right to put by-laws in place that prohibit the use of cannabis in public places.

## DEFINITIONS

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- 5 Tetrahydrocannabinol (THC)**  
the main active ingredient of cannabis, and the principal psychoactive component.

# Crafting a Drug and Alcohol Policy

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With the legalization of recreational cannabis, employers will need to update their drug and alcohol policies to include cannabis. However, the impact need not be significant. In fact, if an employer already has a drug and alcohol policy in place, a simple amendment to include recreational and medical cannabis may be all that is required.

## What should be in your drug and alcohol Policy?

<input type="checkbox"/>	Policy Overview - create a statement on commitment, general principles
<input type="checkbox"/>	Objective of policy and scope
<input type="checkbox"/>	Employee expectations and requirements
<input type="checkbox"/>	Define main terms such as impairment and safety sensitive roles
<input type="checkbox"/>	Accommodation process
<input type="checkbox"/>	Substance abuse issues and addiction
<input type="checkbox"/>	Drug testing
<input type="checkbox"/>	Zero tolerance for Impairment
<input type="checkbox"/>	Consequences and discipline

***If you do not have a drug and alcohol policy in place, now is the time. Here's what we recommend:***

**1 Define what impairment means in your organization.** Create a clear statement of what constitutes impairment within your workplace.

**2 Safety-sensitive roles.** Define safety-sensitive positions within your organization. A good starting point is identifying any positions in which drug or alcohol impairment would put the employee, others, or the environment in danger. For example, machine workers, forklift operators, air traffic controllers or people working at heights.

**3 Create a discipline process.** For any incidents of suspected impairment, follow the proper protocols including incident reports, progressive discipline, and appropriate corrective action.

**4 Revisit policies.** Update your smoking policies to explicitly include the use of cannabis, as

it falls under smoke-free laws. Review existing scent policies to ensure it includes cannabis-related complaints.

**5 Update drug policies.** Update existing drug policies to outline appropriate uses of medical and recreational cannabis. Make sure the policy imposed is consistent with other forms of prescription medications.

**6 Establish substance categories.**

- Legal, non-medical substances that cause impairment, such as alcohol, certain over-the-counter drugs and recreational cannabis.
- Illegal, non-medical substances that cause impairment, such as cocaine, and heroin.

- Prescription substances that cause impairment, used legally, such as sleeping pills, opioids or medical cannabis, etc. and;
- Prescription substances that cause impairment, used illegally, such as opioid use without a prescription.

**7 Evaluate drug-testing policies.** If you have safety-sensitive positions, you may need a drug-testing policy in place to meet your obligation of providing a safe work environment.

**8 Investigate health plan options.** Employers can speak to their health-plan provider to expand traditional group benefits plans to include medical cannabis in some cases.

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**DISCLAIMER:** *This document is a general guideline and it is strongly recommended that legal and other professional advice be obtained to complement and clarify specific implementation of this guideline.*