

# In the KNOW Bulletin

**WILLIAMS HR LAW**  
LEGAL EXPERTISE AT WORK

## Cannabis and the Workplace: What Employers Need to Know

Recreational cannabis use is now legal across Canada. Many employers are concerned about the impact of legalization on the workplace and how they can navigate the new landscape. Fortunately, the legalization of cannabis is unlikely to result in the hassles, headaches and liability some employers are worried about, provided that employers carefully consider and communicate conduct expectations.

### Employees Do Not Have the Right to Be Intoxicated at Work

One of employers' primary concerns surrounding the legalization of recreational cannabis is impairment in the workplace. However, there is no reason to believe that the legalization of cannabis will result in a sudden increase in impaired employees at work. A recent Statistics Canada survey found that 79 percent of respondents were no more likely to try recreational cannabis, or increase their consumption, as a result of legalization. Like cannabis, alcohol is an intoxicating drug that can be consumed legally, but the vast majority of employees do not report to work drunk or believe they are entitled to do so. The legalization of cannabis, similarly, will not give employees a license to come into work high.

However, although Ontario's laws generally forbid cannabis use in workplaces, they do not rule out cannabis *impairment* in workplaces. Therefore, employers should turn their minds to crafting policies that clearly convey expectations with respect to recreational cannabis.

### **WEBINAR** **Cannabis and the Workplace: What Employers Need to Know**

Williams HR Law's Laura Williams and Joel Smith hosted a free webinar on the topic of recreational cannabis legalization, and its implications for employers. Visit our website for a link to view a playback of the webinar.

Don't forget to subscribe to our , follow-us on , like us on  and connect with us on .

## Recreational and Medical Use Are Distinct

Employers should keep the important distinction between medical and recreational cannabis in mind. Businesses will be required to accommodate employees who use cannabis medically but are under no obligation to accommodate recreational users.

Accommodating medical marijuana use is an issue that employers in Ontario have faced since it was legalized in 2001. The Ontario Human Rights Commission has recently released a policy statement reiterating that employers will not be required to tolerate recreational impairment in the workplace but that existing rules around accommodating medicinal use have not changed. Generally, this means treating medicinal cannabis use in the same way as other legal, potentially impairing medications in the accommodation process.

On the other hand, employers should, for the most part, treat recreational cannabis in the same way they do alcohol, with certain variations where the employer deems it necessary (for example, employers that allow employees to drink alcohol at workplace social events do not have to allow recreational cannabis use in the same circumstances). As of October 17, 2018, recreational cannabis is a legal, impairing substance. However, employees will not have the right to use it in the workplace and employers can prevent employees from being impaired at work.

## Drafting a Policy

Employers should be proactive about setting out expectations regarding recreational cannabis use and impairment. When devising drug and alcohol policies to account for the legalization of recreational cannabis, employers should:

- differentiate between medicinal use, which requires accommodation, and recreational use, which does not;
- clearly state that recreational cannabis use and impairment will be prohibited in the workplace;
- explain the rationale for the prohibition (e.g., health and safety, productivity, etc.);
- if applicable, clearly set out the employer's policy with regards to recreational cannabis in situations where the employer allows alcohol consumption (i.e. whether

recreational cannabis use will be allowed at office parties, industry events, etc.);

- set out that the employer will accommodate those individuals with legitimate medical needs in good faith;
- require employees to disclose medical cannabis use that may result in impairment at work, and drug or alcohol addictions;
- reserve the right to seek medical information about medical marijuana use and, in the event medical information provided by a family doctor is not sufficient for the employer to fulfill its accommodation and/or health and safety obligations, reserve the right to require the employee to submit to an independent medical examination by a qualified medical professional; and
- state that discipline may be imposed as a consequence of violating the policy, up to and including termination of employment.

## Key Takeaways

Recreational cannabis legalization is unlikely to have the dramatic effects on workplaces that some have predicted, as long as employers are prepared. Employers that carefully consider their positions on recreational cannabis and reflect those positions in a well-drafted and properly communicated policy should have little to fear from its legalization. Ultimately, employers in Ontario should already be familiar with their accommodation obligations as they pertain to the use of prescription medications with impairing effects, such as medical cannabis, and with navigating the potential impacts of legal intoxicating substances like alcohol. Key to dealing with recreational cannabis is breaking down the approach to cannabis in the workplace to these two parts—medical and recreational. This will allow employers to continue to navigate their implications in largely familiar ways.

As always, we are happy to assist you in understanding your obligations or revising your drug and alcohol policies. You can also read more of what we have written about cannabis in the workplace by downloading the 2017 Year in Review, Summer 2018 and Fall 2018 editions of our *In the Know* newsletter from our website. ■