

CANNABIS LEGALIZATION: IMPACTS IN THE WORKPLACE

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Medical Cannabis as of February 2019

- In August 2016 the *ACMPR* came into effect. Health Canada licenses and oversees the commercial industry and registers individuals to self produce based on their prescription
- Currently governed by *ACMPR* and the *NCR*
- Under the *ACMPR* a person can access medical cannabis

- Under the *NCR* a health care practitioner can administer cannabis:
 - If patient is under their treatment
 - If cannabis is required for their treatment
- Includes fresh marijuana, dried cannabis and cannabis oil
- The Government of Canada has a self production calculator on its website

- Cannabis is NOT recognized as a prescription by Health Canada
- Cannabis has NOT been approved for use by Health Canada
- Cannabis is not included on the Manitoba Pharmacare Drug Benefits Formulary

Cannabis for Recreational Use as of February 2019

- On April 13, 2017 Bill C-45 (the *Cannabis Act*) was introduced into the House of Commons
- The *Cannabis Act* came into full force and effect on October 17, 2018

- The current program for medical marijuana will continue under the new *Act*
- In October 2017 the Federal Government released a full length summary for Bill C-45
- The summary is 29 pages long and includes a section on health effects and prevalence of use
- In June 2018 the Conference Board of Canada released “*Blazing the Trail*”, What Legalization of Cannabis means for Canadian Employers

What is Legal as of October 17, 2018?

- Possess up to 30g of legal cannabis, dried or equivalent in non-dried form, in public
- Share up to 30g of legal cannabis with other adults
- Buy fresh, dried or oil from a provincially licensed retailer (including online)
- Make cannabis products so long as organic solvents are not used
- Grow up to 4 plants per household (not in Manitoba)

- **Youth found in possession: \$672.00**
- **Cannot consume in public**
- **Cannot supply to youth**
- **Rules regarding transportation**
- **Cannot consume in a vehicle**
- **Cannot consume if supervising a driver**
- **Fines from \$113.00 to \$2,542.00**

The Manitoba Landscape

- *The Cannabis Harm Prevention Act (“CHPA”)* was given Royal Assent in June 2017. Parts were proclaimed in June 2017 and others in October 2018
- The *CHPA* amended various pieces of provincial legislation
- In 2018 *The Safe and Responsible Retailing Act* was passed, amending *The Liquor and Gaming Control Act* and *The Manitoba Liquor and Lotteries Act*.
- The amended *The Liquor, Gaming and Cannabis Control Act* is now in effect

Medical Cannabis and the Workplace

- Legal since 2001 so we can use this experience to, in part, predict the types of issues legalization of recreational cannabis may have on the workplace
- Be mindful of the use of medical cannabis to treat an illness or medical condition
- This may trigger the duty to accommodate
- Medical cannabis should be treated the same way as any other prescription medications that may cause impairment

- Should have a Fitness to Work Policy that reminds employees of their obligation to:
 - Attend at work sober (including hangover effect)
 - Check side effects of over the counter and prescribed medicine
- However, several interests must be balanced:
 - The legal duty to create a safe work environment (*The Workplace Safety & Health Act*)
 - The duty to accommodate disabilities (*The Human Rights Code*)
 - The right to privacy (*The Personal Health Information Act*)

- A prescription does NOT entitle someone to attend at work impaired
- It's the disability that triggers the duty to accommodate – not the prescription
- The duty may include accommodating the prescription or not i.e. safety sensitive position. More accommodation if not in a safety sensitive position
- There are approximately 350K registered users at present and this is expected to grow

Some Statistics

- **January 2018**
 - Approximately 23% of Canadians reported they used cannabis in 2017
 - Of those, 26% of males said yes and 20% of females
 - Approximately 41% of Canadians between 18 and 34 years reported they used cannabis in 2017
 - Dried flower is preferred over edibles
 - 94% of users said they smoked the drug
- **Between 2015 and 2018**
 - Registered medical users went from 24,000 users to 331,000
 - September 2018 there were 342,000 users, 13,129 in Manitoba
 - September 2018 there were 866 registered self-producers
 - Average is 2.1 to 2.3 grams per day

Considerations

- The legislation defines intoxication as when a person's mental or physical capabilities are significantly affected by liquor, cannabis or any other drug or substance
- Review policies to require employees to disclose their use of intoxicating medications
- Once declared, request the prescription. You do NOT have to accommodate illegal drug use

- **Make meaningful inquiries**
- **Consider a zero tolerance policy for safety sensitive positions**
- **Adjust your smoking and scent policies**
- **Review your benefits plan...prescriptions vs. medications**

Recreational Cannabis and the Workplace

- As with alcohol , employers may continue to expect their employees to show up sober and ready to work
- It is a criminal offence to be intoxicated in public
- Subject to medical conditions, employers will still be entitled to discipline employees when:
 - recreational use has an adverse impact on job performance (lateness, hangover effect, etc.)
 - recreational use contravenes legislation (use in public)
 - use and possession is contrary to established policy

What Should Employers do?

- Get educated
- Put aside old biases
- Balance liberal attitudes towards recreational use and conservative workplace values
- Review and amend existing workplace policies and procedures

- **Remove express policy references to cannabis usage as an “illegal off-duty activity”**
 - **Consider your safety sensitive and non-safety sensitive positions and zero tolerance policies**
 - **People who drive to and from work**
 - **People who drive for work**
 - **People who might cross the border**
 - **Address use at work, during work hours, attendance at work while impaired**
 - **Office functions**
 - **Address the issue of impairment**
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Use is Not Impairment

- **THC is the most prevalent psychoactive constituent in Cannabis**
- **THC causes behavioural toxicity or “high” feeling**
- **THC is quickly absorbed by the brain – effects are felt within minutes. Impairment peak is 20-40 minutes after inhalation and 1-1.5 hours after consumption, and can last in some for up to 24 hours**

- **THC can be stored in fatty tissues and can be arbitrarily released into blood and urine, even weeks after consumption**
- **THC can also be stored in the brain and remain undetected in the blood**
- **Chronic users can have high amounts of THC in their blood while not exhibiting any signs of impairment**

- **Bill C-46 (an Act to amend the Criminal Code) creates three new criminal driving offences of being at or over a BDC level within two hours of driving:**
 - A summary conviction offence (low drug levels)
 - A hybrid offence (higher/impairment drug levels)
 - A hybrid offence for a combination of low BAC and low BDC
- **For THC:**
 - 2 ng/ml or more but less than 5 ng/ml for summary conviction
 - For THC and alcohol combined, 2.5 ng/ml or more plus 50mg/ml or more
 - 5 ng/ml more for hybrid offence
 - 2 ng/ml reflects a public safety/crime prevention approval
 - 5 ng/ml is associated with some impairment

- **Case law is becoming clear:**
 - **A positive drug test conducted by urinalysis standing alone does not estimate impairment at the time**
 - **A positive drug test without corroborating evidence may not be enough to discipline or discharge an employee for just cause**
 - **Need corroboration or proof of impairment:**
 - **Bloodshot eyes**
 - **Fast heart rate**
 - **Sleepy, lethargic**
 - **Lack of coordination**
 - **Increased craving for snacks**
 - **Confusion, lack of focus**
 - **Unusually talkative**
 - **Misjudging time**
 - **Memory impairment**
 - **Smell**

Transport Canada

- Air
- Water
- Rail
- Road

Conclusion

- With all the changes come great consternation

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