



Vitality

An EFAP Newsletter for Human Resource and Occupational Health Professionals, Program Administrators, Supervisors, and Key Personnel



Cannabis In The Workplace

Cannabis became legal for all adults in Canada on October 17, 2018. A year later, the majority of workplaces (86 percent) continue to ban cannabis consumption before and during work hours according to an ADP survey of 1,160 Canadian workers. The same study suggests that most Canadians believe recreational cannabis has had little to no impact at work. The survey found that recreational cannabis had a smaller-than-expected effect on workplace performance. Most Canadians believe recreational cannabis did not affect work in terms of health and safety incidents (75 percent), productivity (74 percent), absenteeism (71 percent) or quality of work (70 percent).

This data is in stark contrast to opinions held before legalization in 2018 when nearly half of working Canadians expected productivity and quality of work to decline, and health and safety incidents and absenteeism to increase.¹

Statistics Canada says that from mid-May to mid-June, 16 percent of Canadians aged 15 or older reported using cannabis in the preceding three months. In light of this new data, employers should be prepared to address the workplace risks created by cannabis use, and we're not alone. One recent survey conducted by the Conference Board of Canada and The Globe and Mail concludes that an employer's approach truly does matter when it comes to cannabis in the workplace.



The thorough five-month study gives us a cross-section of responses from 1,077 individuals and 158 employers. The six factors used to determine the importance of cannabis maturity on an organization include recreational and medicinal use of cannabis, alcohol and drug testing, disability management, impairment risk management, manager and employee training on cannabis and its workplace impacts, and substance use policy updates to the workplace.²

This particular study found that employees at organizations with more mature cannabis policies showed more discretion, better employee attendance and less presenteeism (people coming to work even though they're feeling ill).

A mature cannabis policy is one that considers all of the perspectives pertaining to cannabis in the workplace and has dedicated policies for each circumstance. A company with a mature policy is one where employees and their managers thoroughly understand and live those policies each day. Additionally, companies that demonstrated more sophisticated practices seemed to have strategies to manage recreational cannabis-related risks as well as clear and balanced guidelines on how to facilitate medical accommodations for their employees.³

Mature attitudes around cannabis seem to be predictive of health, engagement and productivity in those workplaces. Whereas the alternative approach - one where cannabis remains a taboo subject, and managers remain naive about potential risks - may cause employees to take measures to hide their recreational or medical use. A mature attitude toward cannabis does not refer to being for or against the use of cannabis. It suggests being comfortable talking productively about cannabis consumption and how the workplace handles instances of medical necessity, appropriate recreational use, and substance use disorder. A mature policy regarding cannabis, plus a mature attitude in the workplace environment, are both going to contribute to the overall cannabis maturity of the workplace.

The information we've curated in this article is a guide that should help to equip you in becoming a company that is considered mature and fair with law-abiding cannabis policies.

Recreational versus medical cannabis

A mature approach to cannabis in the workplace is especially relevant for those who use cannabis medicinally, meaning individuals who have authorization from a

physician to use cannabis for a qualifying condition and are registered with a Canadian licensed producer (LP) of cannabis to obtain those medicinal products.

Employees of organizations with significant cannabis maturity report missing significantly fewer days of work. In addition to this, the vast majority (84 percent) of workers who report using medical cannabis feel their quality of life is better with medical cannabis.

Confusing things even further, not every cannabis patient uses medically-designated products, particularly if they are supplementing their medical cannabis with similar recreational products. Furthermore, not everyone who uses cannabis medicinally has authorization from a physician. About 70 percent of people using medical cannabis report seeing a doctor for a recommendation. A recommendation is in place of a prescription, as cannabis does not have a drug identification number (DIN). That percentage decreases in incidents where an individual is utilizing cannabis for both medical and recreational purposes.⁴

There is much more work to be done by employers and employees to separate these two types of cannabis use and their effects on the workplace.

Occupational health and safety

In just over one year into adult-use legalization of cannabis in Canada, businesses are still facing challenges related to cannabis in the workplace.

According to a new survey of 5,710 businesses by the Canadian Federation of Independent Business (CFIB), 34 percent of companies still don't have a drug and alcohol policy in place.

One of the main challenges is the lack of resources addressing cannabis in the workplace. According to the findings of the CFIB study, over half of employers had a primary source of information relating to cannabis in the workplace, but forty-eight percent of employers did not.⁵ It may sound hopeful that only eight percent of the businesses who responded to the survey have experienced a cannabis-related incident in the workplace since October 17, 2018. However, that number increases to 22 percent for companies with over 100 employees. Not surprisingly, those who had a primary source of information felt better equipped to deal with cannabis in the workplace.⁵

It's suggested that employers examine their existing policies and practices regarding cannabis use to ensure they are prepared to address risks associated with cannabis use at the workplace, and how to report incidents when they occur. Interestingly, CFIB found that the hospitality and manufacturing sectors were most likely to report an incident. Still, at just a 16 percent rate of occurrence, improvements can be made across all industries.

Duty to accommodate

Some Canadians require medical cannabis to address certain qualifying health conditions. Under the Canadian Human Rights Act, employers must accommodate an employee who had medical authorizations to use cannabis, as well as individuals who experience cannabis substance use disorder (SUD).

That said, an employer's duty to accommodate must always be in balance with the responsibility to protect workers. Instances of "reasonable discrimination" against employees who require medical cannabis do occur in safety-sensitive positions and workplaces where employers can impose restrictions on cannabis use in the spirit of protecting both cannabis-reliant employees and their co-workers. For instance, employees must comply with anti-smoking laws at all times, including smoking medically prescribed cannabis.⁶

Employees do not have a right to decide to use medical cannabis at work unilaterally, or recreational cannabis in the case of a SUD. Instead, employees must proactively disclose to their employer their medical cannabis use or SUD and make their needs known to the employer. Meanwhile, failure to disclose one's SUD may lead to employment termination due to a breach of a drug and alcohol policy in organizations with established and communicated policies.

Zero tolerance

Most commonly, zero-tolerance policies address the use, possession, sale, and distribution of cannabis in the workplace. Constitutionally, and from a human rights perspective, most employers would have trouble justifying prohibiting cannabis use outside of work where risks aren't present.⁷ However, there are some cases where individuals must abstain from cannabis use for a set amount of time before starting work, timing may vary based on the individual's tolerance and level of consumption. In some instances, workers must abstain altogether. Safety-sensitive positions are often subject to such rules around drugs and alcohol.⁸

The Canadian Human Rights Commission (CHRC) created the 2017 definition of safety-sensitive position as one that "if not performed safely, can cause direct and significant damage to property and/or injury to the employee, others around them, the public and/or the immediate environment".⁹

It is important to remember that the human rights component to the legalization of cannabis will likely continue to evolve. Therefore, it is useful to stay abreast of precedents set in workplaces across Canada, particularly concerning the concept of safety-sensitive positions.

Impaired versus work function

In the Conference Board of Canada survey, nearly a quarter of recreational cannabis consumers, and over a quarter of those who require it medicinally, say they work in a safety-sensitive workplace. This data is significant, considering that 43 percent of employees using cannabis for medical purposes do not report their use to their employers.

With that in mind, employers should be aware of some further general guidelines for dealing with cannabis use by employees.

Impairment itself is not something that can be measured objectively, so we must use other means of observation. Visible cannabis consumption at work, erratic behaviour, or repeatedly making preventable errors are just a few signs that could indicate cannabis impairment. In cases where impairment is suspected, using an employee's performance deficit - the quality of work performed by the employee under normal circumstances, compared to that which results from working while possibly impaired. When impairment is suspected, actions should start with a private meeting between the employee and their union representative, manager or supervisor to discuss based on specific workplace procedures.

Identifying impairment

For those whose employer allows the use of recreational cannabis, 63 percent of those who responded to the ADP Canada study of workers opinions indicated that they consume cannabis before work, 47 percent consume during work hours, and 72 percent consume after work.¹⁰

Legal recreational cannabis hasn't harmed workplace productivity in the way some Canadians expected; however, it is in the best interest of employers to know how to spot the signs of cannabis intoxication to protect the worker, their co-workers, and the workplace as a whole.

For instance, at the beginning of 2019, a large public service employer introduced random employee drug tests in which 62 percent of those within a specific 'safety sensitive' position tested positive for cannabis.¹⁰ The employer began random drug testing of employees several months before adult-use cannabis was legalized in Canada via Cannabis Bill C-45. The employer's parent organization announced that as of February 1, 2019, they will forbid workers in safety sensitive positions from using cannabis. The safety sensitive label applies to 137 different positions at the parent, although their "fit for duty policy" does not allow for random drug testing of employees.¹¹

Employers must ensure that their managers and supervisors are trained in the signs of possible cannabis impairment in the workplace. However, employee education is important too.

Over half of recreational users from the Conference Board of Canada survey admitted they didn't know the levels of THC in the cannabis they consume, although 35 percent also claim to have consumed THC-rich cannabis in some form within 12 hours of work. Depending on the actual number of hours before entering the workplace and the consumption method—*inhalation or ingested*—the risk for impairment can vary.

Because not all cannabis is consumed by smoking - an odorous method of consumption - managers and supervisors should know that odour is not the only sign that an individual is experiencing cannabis impairment. Other common symptoms of impairment include disorientation, diminished motor skills and perception, as well as sudden changes to behaviour.¹²

Oral consumption of cannabis typically impairs individuals at a different rate compared to smoking or vaping an equivalent amount. A person who consumes cannabis orally may only show signs of intoxication, if any at all, after a period of 15 minutes and up to two hours.

While there is interest in developing a reliable device that can tell whether an individual is impaired, a cannabis breathalyzer, perhaps, it is not likely to enter the Canadian workplace any time soon.¹³ There is concern over the accuracy, as the human body metabolizes the chemical constituents in cannabis in a very different way than conventional medications and linger longer than their immediate effect—sometimes up to a month after it was inhaled or ingested.

Document any signs of impairment. It's recommended that employers seek legal advice before implementing drug testing, as there are limited circumstances where drug testing is permissible. Documentation of impairment may assist in justifying further drug testing.

Long-term concerns

Asked the same questions before legalization on October 17, 2018, 46 percent of respondents felt productivity would decline, and 40 percent expected absenteeism to rise. However, we have yet to see what the long-term effects of ending prohibition will be and whether they will disrupt the Canadian workplace.

Executive summary of the cannabis act (c-45)

Employers seeking to mitigate the risks of cannabis use in the workplace should keep in mind the following principles:

While cannabis use may be legal for adults in Canada, that does not give employees a right to use cannabis at work, especially when it may impair their mental or physical abilities. Canadian employees are required to report to work "fit for duty," and in some cases, having abstained from cannabis.



Employers can establish policies prohibiting the possession or use of cannabis or other drugs in the workplace, if policies do not infringe on the employee's constitutional rights. If the workplace or position falls under the category of safety-sensitive, employees must be free from impairment while at work and, in some cases cannot be impaired, even when off-duty. To this point, employers would be wise to remain apprised of developments to the law regarding preventing employees from using cannabis while off-duty.

Keep in mind that cannabis can come in a variety of forms - including edibles, extracts, or topical products - and that some formulations do not cause intoxication at all because they do not break the blood-brain barrier or contain the most intoxicating component: Tetrahydrocannabinol (THC).

Cannabis policies may need to be applied flexibly or be subject to exceptions where an employee uses cannabis for medicinal purposes. This principle most commonly concerns employees with disabilities, up to the point of undue hardship on the employer. Similarly, employees with diagnosed SUD may require accommodation.

Finally, employers should outline standards and expectations for their employees on this issue, including in training and policies, to help protect themselves against the risk associated with employee use.

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