

Cannabis is Legal: 5 THINGS GROCERS SHOULD KNOW



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1 Just because it's legal doesn't mean recreational cannabis is permissible in the workplace.

The federal *Cannabis Act* came into force on October 17, 2018, decriminalizing recreational cannabis consumption and possession.

Each provincial jurisdiction has its own legislation governing where cannabis may be consumed. In Ontario, for example, cannabis may be smoked in any non-enclosed area of a workplace (i.e., where workers may currently smoke or vape tobacco). Smoking or vaping cannabis in an “enclosed workplace” is prohibited.

If a manager wishes to prohibit the consumption of cannabis at the workplace while workers are representing their employer, the manager should clearly communicate that prohibition in a workplace policy.

2 An employer can implement a scent-free policy to prohibit a worker attending work smelling of cannabis (or tobacco).

Even if there is no concern about workplace impairment, a worker attending at work smelling of cannabis can be a distraction and uncomfortable for other workers and customers. To address this, a manager can implement a policy to address scents in the workplace, including the odour of cannabis.

3 There is no need to create a new set of protocols specifically for cannabis use.

It may be necessary to amend your drug and alcohol policy to address the use of legal recreational drugs, such as

cannabis. However, beyond that, if you suspect a worker is under the influence of cannabis, you should address him or her in the way you would any other worker you think may be under the influence of any legal or illegal drug (e.g., narcotic, alcohol, etc.).

4 An employer may be required to accommodate the use of medical cannabis.

If cannabis use is for medical purposes, a worker must be accommodated to the point of undue hardship to the employer. Subject to safety considerations resulting from impairment, this may mean permitting an employee to use marijuana during working hours. But remember: accommodation does not mean allowing an employee to carry out his or her duties while impaired. Under occupational health and safety legislation, an employer has an obligation to take every precaution reasonable in the circumstances to protect the health and safety of workers.

5 An employer can implement drug and alcohol testing for a safety-sensitive position as a component of a broader policy to address drug and alcohol use in the workplace.

Reasonable cause, post-incident and return-to-work testing have all been upheld as permissible when implemented appropriately. This includes testing for cannabis use. ■

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A Helpful Checklist

DRUG AND ALCOHOL POLICY

Prepare a written Drug and Alcohol Policy. The policy should:

- Prohibit a worker from working under the influence of illegal drugs, legal drugs and alcohol.
- Require the disclosure of any drug or medication that may impair a worker's ability to appropriately and safely perform work.
- Confirm accommodation may be provided where a worker has a substance use dependency or is required to use an intoxicant for medical reasons.
- Advise that it may be necessary to obtain additional medical information to facilitate accommodation.
- If testing is contemplated for a safety-sensitive position, set out when and how testing will occur and what measures will be taken to protect privacy.
- Identify consequences in the event of a breach of the policy.

IMPLEMENTATION

- Train supervisors on the Drug and Alcohol Policy, including the obligation to report suspected impairment.
- Consider providing supervisors with additional training on how to recognize signs of impairment.
- Inform workers about the Drug and Alcohol Policy, including the obligation to report.
- Have each worker sign an Acknowledgment and Consent to comply with the Drug and Alcohol Policy (and a Consent to testing, if applicable).

TESTING

If the employer's Drug and Alcohol Policy includes testing, identify a third-party testing provider.

COMPLIANCE

- Ensure each new worker is trained on the Drug and Alcohol Policy and signs the Acknowledgment and Consent.
- If a worker requests accommodation under the Drug and Alcohol Policy, determine whether accommodation is for substance use dependency (which would not require continued use of the drug and/or alcohol) or a disability for which the drug is being used medically. Engage in the appropriate accommodation process.
- Before imposing discipline for a violation of the Drug and Alcohol Policy, ensure any human rights and/or accommodation issue has been considered.
- Revise the Drug and Alcohol Policy as necessary based on legislative changes, case law developments and the needs of the workplace. ■