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Blazing the Trail.

What the Legalization of Cannabis Means for Canadian Employers



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Blazing the Trail: What the Legalization of Cannabis Means for Canadian Employers

Monica Haberl

Preface

This report summarizes literature on cannabis and its potential impacts on the workplace—outlining top areas employers might address going forward. It also integrates recent Conference Board survey research on organizational concerns surrounding the legalization of recreational cannabis.

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About the Health and Safety Leadership Centre

The Health and Safety Leadership Centre is a leading centre of applied research that supports the continuous improvement of healthy and safe workplaces. It is founded on the principle that effective leadership of health and safety is essential to the operation of a successful business. For more information about HSLC, visit the website at www.conferenceboard.ca/networks/HSLC.

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Executive Summary

After years of prohibition, alcohol became legal in Canada almost a century ago. Many of the issues that have been top of mind since that time—such as driving under the influence of alcohol or establishing an appropriate drinking age—parallel current concerns with the legalization of recreational cannabis.



Canadian society has evolved considerably since that time, and is much more sophisticated than a century ago. However, cannabis comes with its own set of challenges.

Canada is on track to be the first G7 country to federally legalize and regulate recreational cannabis use. Once formally proclaimed, implications of this legislative change will be significant for Canadian society at large, with potential global impact.

Societal Implications of the Legalization of Recreational Cannabis

Anticipated benefits of legalizing cannabis:

- economic growth;
- reduced pressure on the criminal system;
- decreased involvement of organized crime in distribution;
- increased international tourism;
- enhanced regulation of product quality and quantity of tetrahydrocannabinol (THC);¹
- reduced stigma.

Potential negative consequences of legalizing cannabis:

- increased pressure on the health care system;
- uncertainty around what constitutes impairment;
- risks related to workplace safety;
- risks related to impaired driving;
- potential normalization;
- increased use among youth.

¹ THC is the chemical compound responsible for many of cannabis's psychoactive effects, including dopamine release causing euphoria (as well as hallucination and delusions) and psychomotor impairment. Source: National Institute on Drug Abuse, *Drug Facts: What Is Marijuana?*

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Impacts on the Canadian Workplace

The legalization of recreational cannabis will present a number of challenges for Canadian employers. At the same time, employers will have an opportunity to help shape legislation related to impairment, alcohol and drug (A&D) testing, measures of impairment, and benefits coverage for medicinal use.

Canada will be the first G7 country to federally legalize and regulate recreational cannabis use.

Top Concerns for Employers in Regard to Legalization

1. Workplace safety (especially in safety sensitive roles).
2. Impairment or intoxication.
3. Increased use of cannabis—both inside and outside the workplace.

Other top concerns for employers regarding the legalization of recreational cannabis include testing for impairment; managing accommodation needs; costs—both of covering medical cannabis and in terms of other financial impacts on the organization; as well as issues related to productivity and employee performance.²

Compared to alcohol, the effects of THC on the human body are different and less predictable, and impairment due to cannabis use is more difficult to establish.

2 Conference Board of Canada, The, Benefits Benchmarking Survey, Spring 2018 (unpublished data).

The need to implement or amend policies varies by organization and operational environment. For some employers, the prospect of employee impairment may be a major concern with potentially significant consequences due to the safety-sensitive nature of key operations; while for others, the issue of impairment may be more a matter of ethics, optics, or productivity. Some considerations employers may want to take into account are:

- Potential impacts on workplace productivity, motivation, absenteeism, and presenteeism;
- Forbidding versus allowing cannabis use at work-sanctioned social events (e.g., holiday parties);
- Accommodating the needs of employees licensed to use cannabis medicinally (or proving a bona fide occupational requirement prohibiting workplace use);
- Impacts on international business travel to countries where cannabis is not legal;
- Educating employees and managers on how to detect and manage problematic use, dependence, and potential cannabis impairment.

Cannabis is currently the most highly used illegal drug in Canada,³ and the number of Canadian users may increase with legalization.

It will be important for employers to focus on the treatment and recovery of employees struggling with problematic cannabis use or dependence disorders—rather than taking a disciplinary approach.

All workers have the right to a safe workplace.

To meet the accommodation needs of employees struggling with problematic substance use and dependence throughout the recovery process, organizations may want to consider providing additional resources. These resources include employee (family) assistance programs; access to confidential and judgment-free treatment; and peer, manager, and leadership training.

3 Canadian Centre on Substance Use and Addiction, *Marijuana*.

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While it is important to have programming in place to assist employees suffering from problematic cannabis use or dependence, the best way to address these afflictions is through prevention.

Educational Materials to Consider

Educational materials can provide information on:

- **the quantities of THC in products;**
 - **differences in effects based on methods of ingestion;**
 - **knowledge about different strains of the drug;**
 - **impairment (and effects on driving while under the influence of cannabis);**
 - **effects of cannabis on youth.**
-

Introduction

As Canada prepares to become the first G7 country to federally legalize recreational cannabis, polarizing stances have emerged across individuals, organizations, and media outlets on what the consequences will be. The reality is that—regardless of one’s perspective on the issue—the legalization of recreational cannabis is coming, and the country’s organizations, regulators, and citizens will have to adapt.



Cannabis sativa, often called cannabis or marijuana (common slang names also include “pot” and “weed”¹) is a flowering plant indigenous to Eastern Asia, but is now cultivated and distributed across the globe due to widespread use.² Consumption of cannabis leaves and flowers causes psychoactive effects, including euphoria, relaxation, and heightened sensory experiences. Potential negative effects include confusion, anxiety, or impaired ability to concentrate.³

According to Health Canada’s 2015 Canadian Tobacco, Alcohol and Drugs Survey (CTADS), 12 per cent of Canadians over 15 years of age had used cannabis in the past year.⁴ Furthermore, market data from Health Canada estimate that 269,502 Canadians currently have an authorization for the medical use of cannabis.⁵

While cannabis has been illegal to grow, use, and possess from a recreational standpoint in Canada since 1923,⁶ its medical use became legal via a Supreme Court of Canada case in 2001.⁷ (See “Medical Uses for Cannabis.”) With the introduction of Bill C-45,⁸ the proposed *Cannabis Act* (in November 2017) and Bill C-46,⁹ which suggests changes to the Criminal Code to address legalization and recreational use of cannabis in Canada, are poised to change. “The proposed *Cannabis Act* would create a strict legal framework for controlling the production, distribution, sale and possession of cannabis across Canada.”¹⁰

1 Hajizadeh, “Legalizing and Regulating Marijuana in Canada,” 453.

2 Florian, Kronkright, and Norton, *The Conservation of Artifacts*, 49.

3 Government of Canada, *About Cannabis*.

4 Government of Canada, *Canadian Tobacco, Alcohol and Drugs (CTADS)*.

5 Government of Canada, *Market Data*, as of March 22, 2018.

6 Hajizadeh, “Legalizing and Regulating Marijuana in Canada,” 453.

7 Ibid.

8 Parliament of Canada, *C-45, An Act Respecting Cannabis*.

9 Parliament of Canada, *C-46, An Act to Amend the Criminal Code*.

10 Government of Canada, *Legalizing and Strictly Regulating Cannabis*.

Medical Uses for Cannabis

Experts suggest cannabis may be considered as a treatment for some medical conditions, which are listed below. (Note that this list is not exhaustive.)¹¹

- neuropathic pain;
- palliative and end-of-life pain;
- chemotherapy-induced nausea;
- spasticity (due to multiple sclerosis or spinal cord injury).

It is notable that in no case is medicinal cannabis recommended as the first-choice treatment for these conditions, but it may be considered if other therapies are ineffective.

Research examining the therapeutic effectiveness of cannabis for a number of other conditions is under way. With legalization, the volume and breadth of research on the topic is sure to grow, and new evidence will likely emerge in the coming years.

Source: Allan and others, "Simplified Guideline for Prescribing Medical Cannabinoids."

Canada will not be the first country to legalize recreational cannabis use. The Netherlands tolerates recreational cannabis use under certain circumstances,¹² and a number of U.S. states (e.g., California, Colorado, and Washington¹³) have legalized its use at the state level. Uruguay legalized all drugs in 2013.¹⁴

Canada will, however, become the first G7 country to federally legalize recreational cannabis use. Canada will, thereby, be blazing the trail when it comes to regulating the use of recreational cannabis. Much of the regulation (e.g., parameters for distribution and measures of impairment) will set the stage for other nations looking to make changes to their cannabis laws in the future. Canada will also regulate age limits, taxation, marketing, and a multitude of other factors.

11 Allan and others, "Simplified Guideline for Prescribing Medical Cannabinoids."

12 Government of the Netherlands, *Toleration Policy Regarding Soft Drugs and Coffee Shops*.

13 Robinson, "Here's Where You Can Legally Smoke Weed."

14 TNI Drugs and Democracy Programme, *Uruguay: Overview of Drug Policy*.

Since the introduction of bills C-45 and C-46, there has been a great deal of discussion among government officials, health care professionals, policy analysts, academics, lawyers, journalists, employers, unions, and the Canadian population in general regarding the impacts and implications of the legalization of recreational cannabis. Discussions focus on legalization's impact on the economy, public health and safety, the drug industry, and implications for policies at various levels—across public and private sectors.

Some of the anticipated benefits of legalizing recreational cannabis include the following (note that this list is not exhaustive):

- economic growth and increased international tourism potential;
- reduced stigma for those already using cannabis for either recreational or medicinal purposes;
- potential reductions in costs and pressures on the criminal system;
- a potential decrease in the involvement of organized crime and gangs, as they relate to distribution;
- enhanced regulation of product quality and quantity of tetrahydrocannabinol (THC).

Potential negative consequences of the legalization of cannabis for recreational use include the following (note that this list is not exhaustive):

- increased pressure on the health care system;
- uncertainty around what constitutes impairment related to cannabis use;
- risks related to impaired driving;
- potential normalization and increased use among youth.

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In particular, it is notable that the legalization of cannabis in a number of U.S. states has reduced adolescents' perception of stigma and harm related to the drug's use,¹⁵ despite the well-documented understanding that cannabis can be particularly harmful to the developing brain.

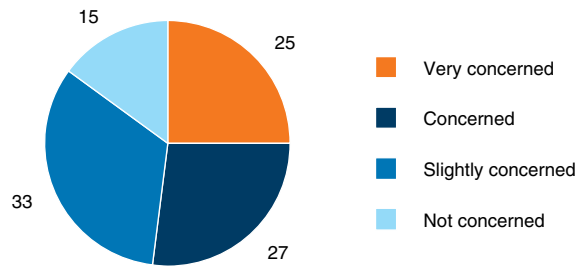
While each of these consequences—whether positive or negative—could be discussed at length, the purpose of this report is to examine the ramifications of the legalization of recreational cannabis use on the Canadian workplace. The Conference Board of Canada conducted a survey of employers in the spring of 2018 and found that more than half of responding organizations (52 per cent) are either concerned or very concerned about the legalization of cannabis as it pertains to the workplace. (See Chart 1.)

This report explores the landscape of legalization, and is intended to set the stage for further research into the workplace implications of cannabis use in Canada.

Chart 1

Employers' Level of Concern About the Workplace Implications of the Legalization of Cannabis

(percentage of organizations; n = 198)



Source: The Conference Board of Canada.

15 Cerda and others, "Association of State Recreational Marijuana Laws," 148.

In particular, this report will discuss the establishment of criteria for cannabis impairment, concerns around workplace alcohol and drug (A&D) policies, problematic cannabis use and dependence, and steps for prevention in the workplace and education related to use.

Legalization of recreational cannabis has significant implications for two other related topics: medicinal cannabis use, and A&D testing practices. Indeed, market data from Health Canada demonstrate that cannabis use for medicinal purposes continues to increase in Canada,¹⁶ and this may accelerate further with the reduced stigma associated with recreational legalization. Regarding A&D testing in Canada, many employers and lobbyists are calling for legislation related to testing practices.¹⁷

While both of these topics are intertwined with the workplace implications of the legalization of recreational cannabis in Canada, the primary focus of this report is legalization. Medicinal cannabis use in the workplace and A&D testing will be addressed in companion research, to be released in the coming months.

¹⁶ Government of Canada, *Market Data*.

¹⁷ Canadian Press, The, "Marijuana Testing Committee Split Over Proposal."

Impairment

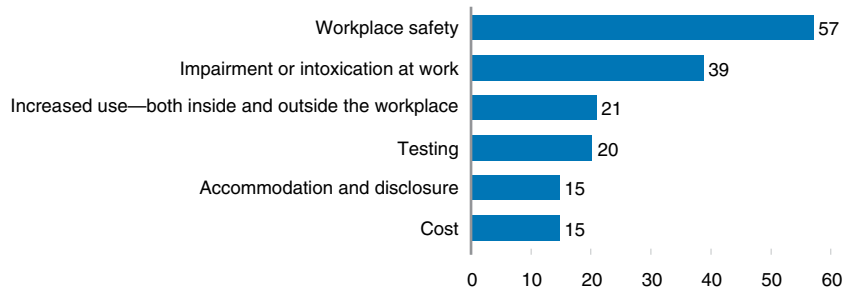
Impairment related to cannabis use is one of the most significant concerns for Canadian employers as legalization approaches. Findings from a recent Conference Board survey examining organizational benefits programs and practices indicate that impairment is second only to workplace safety when it comes to top employer concerns surrounding cannabis legalization. (See Chart 2.) This concern is justified given the uncertainties and lack of evidence when it comes to evaluating impairment from cannabis use.



When it comes to gauging impairment in motorists, there are a number of approaches for assessing cannabis-impaired driving. The first is an “effect-based” approach, which places the onus on the prosecutor to “prove that the drug impaired the driver’s ability to operate a motor vehicle.”¹ This approach might involve a behavioural sobriety test (e.g., walking in a straight line or standing on one foot) and tends to be very difficult to enforce.

Chart 2
Top Five Organizational Concerns About the Legalization of Cannabis

(percentage of organizations; n = 163)



Source: The Conference Board of Canada.

The second approach involves the determination of “per se” limits,² which include the identification of a specific maximum limit of THC that can be present in the bloodstream. And, if that limit is exceeded by a person operating a motor vehicle, he or she would be deemed impaired. These limits are the kind being proposed by the Canadian federal government in Bill C-46. The Criminal Code will be amended to make specific levels of THC in a driver’s system punishable by law, with penalties similar to those for impairment due to alcohol use. (See “Proposed Changes to the Criminal Code.”) While it has not yet been explicitly confirmed, it is likely that these tests will be undertaken using an oral swab. (See Table 1.)

1 Wong, Brady, and Li, “Establishing Legal Limits for Driving,” 2.

2 Ibid.

Table 1
THC Testing Methods

Testing Method	Benefits	Disadvantages	Source
Standardized Field Sobriety Test (SFST)	<ul style="list-style-type: none"> conducted on location fast non-invasive 	<ul style="list-style-type: none"> subjective unlikely to hold up in court 	Government of Canada, <i>Addressing Drug-Impaired Driving</i> .
Blood test	<ul style="list-style-type: none"> detects level of THC 	<ul style="list-style-type: none"> physically invasive time-consuming must be conducted by a medical professional level of THC in system does not necessarily indicate impairment 	Compton, <i>Marijuana-Impaired Driving: A Report to Congress</i> , 10; Government of Canada, <i>Addressing Drug-Impaired Driving</i> .
Urine test	<ul style="list-style-type: none"> detects level of THC 	<ul style="list-style-type: none"> physically invasive level of THC in system does not necessarily indicate impairment 	Compton, <i>Marijuana-Impaired Driving: A Report to Congress</i> , 10.
Hair test	<ul style="list-style-type: none"> fast non-invasive detects presence of cannabis 	<ul style="list-style-type: none"> unable to detect level of THC in system susceptible to environmental factors such as second-hand cannabis smoke 	Compton, <i>Marijuana-Impaired Driving: A Report to Congress</i> , 10.
Oral fluid (roadside)	<ul style="list-style-type: none"> fast non-invasive detects presence of cannabis 	<ul style="list-style-type: none"> level of THC in system does not necessarily indicate impairment risk of false positives/negatives (depending on type of test) 	Compton, <i>Marijuana-Impaired Driving: A Report to Congress</i> , 10.
Oral fluid (lab-based)	<ul style="list-style-type: none"> non-invasive tightens the window of detection and indicates likely impairment 	<ul style="list-style-type: none"> considerable variation in impairment even with comparable THC levels 	Compton, <i>Marijuana-Impaired Driving: A Report to Congress</i> , 10; Thatcher, "Finding a Roadside Drug Test." "... half of TTC employees who failed the new random drug test were positive for pot."

Sources: Government of Canada; Compton.

Proposed Changes to the Criminal Code

The federal government has outlined *per se* criteria for cannabis impairment in its proposed Bill C-46:³

- 2 to 5 nG/mL (nanogram per millilitre) of THC in the blood while driving will result in a summary offence and a fine of up to \$1,000.
- Drivers with greater than 5 nG/mL of THC in their blood (or a combination of at least 2.5 nG/mL of THC in their blood and 50 mg of alcohol per 100 mL of blood) would receive the same penalty as for alcohol-impaired driving: a mandatory fine of \$1,000 or more, and jail time for repeat offenders.








Source: Parliament of Canada.

3 Parliament of Canada, *Legislative Summary of Bill C-46*.

These proposed changes to the Criminal Code and ensuing levels of impairment are comparable to those put in place by other countries and states that have legalized cannabis for recreational use. (See Table 2.)

It can be tempting to compare cannabis with alcohol when considering the challenges regarding impairment. However, the effects of cannabis can be much more individualized—and therefore complex—as compared to alcohol, and much less research has been conducted on the drug.

Table 2
Global Thresholds for Cannabis Impairment While Operating a Vehicle, Where Legal

	Country or State	Threshold for Impairment (THC content in nG/mL of blood)	Source
	Government of Canada (Proposed, Bill C-46)	2 nG/mL—summary and fine 5 nG/mL—larger fine and jail time 2.5 nG/mL and 50 mg/100 mL of alcohol—larger fine and jail time for repeat offenders*	Parliament of Canada, <i>Legislative Summary of Bill C-46</i> .
	California, U.S.	No threshold exists, but sobriety test is used to assess impairment	California Office of Traffic, <i>Drugged Driving</i> .
	Colorado, U.S.	5 nG/mL	Canadian Centre for Occupational Health and Safety, <i>Workplace Strategies: Risk of Impairment From Cannabis</i> , 10; Colorado Department of Transportation, <i>FAQs: Cannabis and Driving</i> .
	Netherlands*	No threshold, but testing may be done if impairment is suspected (e.g., in the case of an accident), and operating a motor vehicle while impaired by any drug that affects driving ability is prohibited	Government of the Netherlands, <i>Difference Between Hard and Soft Drugs</i> ; International Traffic Safety Data and Analysis Group, <i>Road Safety Annual Report 2013</i> , 318.
	Portugal	Zero tolerance—no THC in system allowed	European Monitoring Centre for Drugs and Drug Addiction, <i>Legal Approaches to Drugs and Driving</i> ; Canadian Centre on Substance Use and Addiction, <i>Drug Per Se Laws</i> , 4.
	Uruguay	Zero tolerance—no THC in system allowed (Zero tolerance policy is consistent across South American countries)	Walsh and Ramsey, <i>Uruguay's Drug Policy</i> , 10.
	Washington, U.S.	5 nG/mL within 2 hours after driving (Analyses of blood samples obtained more than two hours after driving may be used as evidence in that within two hours of alleged driving, a person has a THC concentration of 5 nG/mL or more)	Washington Traffic Safety Commission, <i>DUI: Washington Traffic</i> .

*while cannabis is not legal in the Netherlands, it is listed as a "soft drug" under the Dutch Opium Law. As such, its use is tolerated and penalties are not typically enforced
Sources: Multiple, listed above.

Did You Know?

THC affects the human body differently than alcohol, and in a less predictable way. For example, a frequent cannabis user might have recently ingested the drug, and have more than 5 nG/mL of THC in his or her bloodstream, but not be impaired.⁴ In other cases, rare users of cannabis may have enough THC in their bloodstream to be beyond these limits after up to seven days of non-use (and well after acute effects of the drug have dissipated).⁵ In both of these examples, the parties involved would not qualify as impaired if tested, but would have more than the per se legal limit of THC in their bloodstream.

Regarding cannabis impairment, the risk of false positives is a valid concern when considering the implications for the criminal system and for the potential consequences for innocent Canadians. The unique and individualized way that THC is processed should remind legislators that the parameters for the assessment of THC impairment are not yet clearly delineated, and require further research.

Sources: Phillips and others; Hartman and Huestis; The Conference Board of Canada.

The inconsistency in the way the human body processes THC creates numerous complexities when it comes to the legalization of recreational cannabis use, and has implications for the workplace. Because true impairment can be difficult to measure, this begs the question of how employers should navigate the recreational use of cannabis by their employees—especially for employers operating in safety-sensitive environments.

4 Phillips and others, "Marijuana in the Workplace," 461.

5 Hartman and Huestis, "Cannabis Effects on Driving Skills," 2.

Considerations for Employers

- ✓ Consider the operational needs of your workforce based on industry and position type. Determine how stringent your organization should be regarding A&D testing and potential discipline for impairment on the job.
 - ✓ If implementing a new A&D program or adapting a previous program to meet needs for cannabis legalization, consult with legal partners to ensure you are respecting the privacy and human rights of employees. Meanwhile, ensure your workers and customers remain safe.
 - ✓ Ensure employees understand that, even though cannabis will no longer be illegal, they should not come to work under the influence of the drug and are expected to work unimpaired.
 - ✓ Consider providing training to managers to recognize impairment and, if necessary, how to broach the subject.
-

Workplace Alcohol and Drug Policies

The formal implementation of A&D policies varies by type of employer and operational environment. For example, for some employers, the prospect of employee impairment may be a major concern with potentially significant consequences due to the safety-sensitive nature of key operations. For others, the issue of impairment may be more a matter of ethics, optics, or productivity.



Accordingly, amending existing policies might be a reasonable option for some employers. However, for others, developing or implementing new policies specifically addressing recreational cannabis use may be necessary.

As discussed, cannabis impairment is more complex than impairment from alcohol, and is considerably more difficult to detect or measure consistently. Research indicates that cannabis impairment varies based on a number of factors related to the individual who consumes it.¹ As well, there is no publicly agreed-upon quantity of cannabis that is recommended as the maximum amount to consume to avoid impairment.

An additional unique difficulty associated with cannabis use in the workplace is related to the physical size of cannabis when stored at work. For example, cannabis products and apparatus (e.g., joints, edibles, and pipes) tend to be much less conspicuous than a bottle of alcohol. Still, cannabis may be no more difficult to detect—based on impairment and physical size—than many prescription drugs that are prone to problematic use.

Adapting A&D Policies to Address and Prevent Impairment

For many employers—particularly those that mainly employ office workers or workers who are not responsible for operating machinery—when it comes to the legalization of recreational cannabis, the initial step involves either making changes to an existent A&D policy or creating one that takes cannabis use into account.

Just as is the case with alcohol, the legalization of cannabis does not remove the “right [of the employer] to regulate the consumption, possession, and trafficking of cannabis at work.”² In cases where an organization has prohibited alcohol use while on the job, it can be very simple to tweak this policy to include cannabis, once it becomes legal.

1 Sewell, Poling, and Sofuoglu, “The Effect of Cannabis Compared With Alcohol on Driving,” 8.

2 Dentons, *The Effects of Cannabis Legalization on the Workplace*.

A number of provinces have introduced legislation forbidding cannabis use in the workplace (e.g., Ontario³). But, considering that a number of employers allow employees to have a drink at lunch with a colleague or client, some organizations will want to address the potential for employees to do the same with a small amount of cannabis.

As is the case with alcohol use, employers will have to decide whether to allow limited consumption of cannabis during a work-related social or networking event. If this indication is appropriate, employers will also have to consider potential concerns surrounding the operation of a vehicle while impaired—especially considering the less-consistent impairing effects that cannabis produces as compared with alcohol.⁴

Furthermore, an important additional consideration for employers relates to the use of cannabis for medicinal needs. Once legislation passes, cannabis will be the only drug in Canada that is approved for use for both medicinal and recreational purposes. As a result, employers who will otherwise be prohibiting its use for recreational purposes will have to accommodate the medicinal use of cannabis—in some cases, while on the job.

Alternately, employers must be certain that they can prove a bona fide occupational requirement (BFOR) for prohibiting cannabis during and just before work hours. In this case, policy and practice should also relate to other prescription medications that may cause impairment for employees in safety-sensitive positions (e.g., muscle relaxants).

Any workplace will also have to consider potential challenges around workplace productivity, motivation, absenteeism and presenteeism, and the right of all workers to a safe workplace. Because of the drug's differing effects and less-consistent timelines for impairment, a one-size-fits-all approach emulating policy related to alcohol consumption may not be appropriate. As new research emerges and the impacts of cannabis use—both for acute and long-term use—become increasingly clear, organizations may look to adapt these policies.

³ Legislative Assembly of Ontario, *Bill 174, Cannabis, Smoke-Free Ontario*.

⁴ Sewell, Poling, and Sofuoglu, "The Effect of Cannabis Compared With Alcohol on Driving," 8.

A&D Policies in Safety-Sensitive Workplaces

Other employers will have additional levels of complexity to take into account when it comes to recreational cannabis use. For example, any organization with operations in safety-sensitive industries will have to consider the potential high-risk repercussions of an employee coming to work impaired by cannabis.

Zero-tolerance A&D policies involve the complete prohibition of cannabis—both during work hours and on employees' own time. Such policies do not allow for the presence of any trace amounts of THC in a person's bloodstream. This kind of legislation is currently in place for combatting impaired driving due to cannabis use in Portugal,⁵ as well as in Uruguay.⁶

However, policies prohibiting the use of cannabis outside of work hours are likely to be difficult, if not impossible, to enforce. While this kind of policy may act as a deterrent for employees, a court may not uphold a dismissal for this reason. Therefore, Canadian employers should exercise caution in applying these types of policies.

Some organizations with safety-sensitive positions are implementing safeguards to ensure policies are being adhered to. The Toronto Transit Commission (TTC) recently implemented random drug testing for its employees. The organization uses oral fluid testing to screen its employees for several drugs, and the limit for impairment for cannabis is a measure of 10 nG/mL of THC in the oral fluid.⁷ However, the TTC continues to be challenged by its union partners, and other organizations continue to debate potential random drug testing initiatives in the courts, with limited success (e.g., Suncor⁸).

5 Canadian Centre on Substance Use and Addiction, *Drug Per Se Laws*, 4.

6 Walsh and Ramsey, *Uruguay's Drug Policy*, 10.

7 Cannabis at Work, *Toronto Transit Commission Implements Random Drug Testing*.

8 Purdy, "Court Upholds Injunction Against Suncor's Drug Testing."

Did You Know?

In *Stewart v. Elk Valley*,⁹ the employer, Elk Valley Coal Corporation, instated a “no free accident” rule whereby employees were required to “disclose dependence or addiction issues before an incident occurred, and if they did, were offered treatment.”¹⁰ In this case, the employee, Stewart, was involved in a workplace incident and tested positive for cocaine in a post-incident drug test.

The court ruled that if the employee fails to comply with a drug-free policy of which they were made aware, and if there is no *prima facie* case of discrimination, then there is no obligation on the part of the employer to accommodate the employee upon failing a drug test.

In this case, the employer had held a session to inform employees of drug and alcohol policy changes, which included the requirement to disclose any addiction issues to the employer (without fear of repercussion). And, all employees who attended had signed a written agreement stating they understood the policy.¹¹

Sources: Lexum; Noonan and Benoit.

While many employers and lobbyist organizations have pushed the government for legislation related to A&D testing practices, it appears that legislation will not be ready in time for legalization in 2018.¹²

As explored above, the most significant challenges related to A&D policies will be faced by employers with safety-sensitive operations. But other employers may also be concerned about the difficulty of detecting cannabis impairment at work, as well as issues related to productivity.

9 Lexum, *Supreme Court Judgements: Stewart v. Elk Valley Coal Corp.*

10 Noonan and Benoit, *No Free Accidents for Drug Users*.

11 Ibid.

12 Canadian Press, The, “Marijuana Testing Committee Split Over Proposal.”

Considerations for Employers

- ✓ Employers will want to ensure they have appropriate A&D testing practices in place. This will ensure that the policy can be enforced consistently, and will deter unwanted use while still accommodating employees' privacy needs.
 - ✓ Employers with safety-sensitive operations may want to consider a "no free accident" rule in their A&D policies. They will also need to consider whether a bona fide occupational requirement (BFOR) can be demonstrated to prohibit medical use in the workplace.
 - ✓ Employers should consider those who may be suffering from problematic cannabis use and addiction, and provide resources and supports for employees to address these issues.
 - ✓ Employers will want to communicate any changes to A&D policies to their employees and ensure resources are available and accessible in a confidential manner.
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Managing Problematic Cannabis Use and Dependence in the Workplace

Cannabis is currently the most highly used illegal drug in Canada,¹ and the number of Canadian users may increase with legalization. Due to its psychoactive effects, cannabis is also highly susceptible to problematic use and dependence.² A recent Government of Canada survey of cannabis users suggests that a majority of users also acknowledge that the drug has potential for dependence.³



1 Canadian Centre on Substance Use and Addiction, *Marijuana*.

2 Curran and others, "Keep Off the Grass."

3 Government of Canada, Canadian Cannabis Survey.

Additional concerns arise around a lack of knowledge about the drug, which may lead to unintended outcomes for new users. For example, Canadians who are not aware of the intricacies related to differences in THC content, strains, and methods of ingestion may risk becoming more “high” than intended. Or, some individuals may not know how soon it is safe to drive or operate machinery after use.

It is important for employers to focus on the treatment and recovery of employees struggling with problematic cannabis use or dependence disorders, rather than taking a disciplinary approach. Organizations will want to ensure that they have confidential and consequence-free processes for employees to report any struggles with problematic cannabis use or dependence. In addition, employers should also ensure that all people-managers are trained to identify signs of such disorders. Managers should also be aware of appropriate, non-disciplinary protocols to follow should they suspect an employee is struggling with cannabis dependence, or if an employee self-identifies as such.

Employee (Family) Assistance Programs (E(F)APs) offer some support for employees struggling with problematic substance use and dependence. However, organizations may want to consider providing additional resources; access to treatment; and peer, manager, and leadership training to ensure affected employees’ accommodation needs are met throughout the recovery process.

It is important for organizations to review their policies and practices related to treatment for cannabis and other problematic drug use and dependence, and to ensure that relevant employee groups are appropriately educated to assist. This is of specific relevance now with the anticipated legalization of recreational cannabis, as it is possible that use will increase with legalization. Also, some Canadians who have not used cannabis may try it once it is legalized. This makes problematic cannabis use and dependence a particular risk in the coming years, and employers should be prepared to assist any employees in need.

Long-Term Cannabis Use and Motivation

Generally speaking, organizations strive to have motivated, engaged, and productive employees. And—with the upcoming legalization of cannabis—employers may now have a vested interest in understanding the research behind cannabis use and motivation.

The link between cannabis use and low motivation is extensively debated.¹ In Canada, this topic will likely become even more contested with the upcoming legalization of cannabis.

Several decades ago, researchers coined the term “amotivational” to describe lethargic cannabis users.² This is comparable to the typical stereotype that is often conjured up when describing cannabis users. Amotivational Syndrome is considered a complication of chronic cannabis use.³ This syndrome is characterized by “apathy and diminished ability to concentrate, follow routines, or successfully master new material.”⁴

There is mixed evidence regarding whether heavy cannabis users suffer from lack of motivation. One study found that dopamine levels in a certain part of the brain were lower in people who used more cannabis and for those who began using cannabis at a younger age.⁵ The decreased level of dopamine may explain amotivation and reduced reward sensitivity in chronic cannabis users.⁶ Another possible explanation for amotivation in heavy users is that cannabis itself has become a major motivator, demoting other activities that would normally motivate people.⁷

However, other research finds no demonstrable relationship between cannabis use and motivation.⁸ In addition, many studies are not able to differentiate as to whether heavy cannabis use is a cause or consequence of lack of motivation.⁹

While chronic cannabis use may be problematic in terms of motivation, studies suggest that people who use moderate amounts of cannabis show no motivation issues. Like alcohol and other legalized substances, moderation may be key for users.

1 Smucker Barnwell, Earleywine, and Wilcox, “Cannabis, Motivation, and Life Satisfaction.”

2 Ibid.

3 Rovai and others, “Negative Dimension in Psychiatry,” 2.

4 Volkow and others, “Effects of Cannabis Use on Human Behaviour,” 293.

5 Bloomfield and others, “Dopaminergic Function in Cannabis Users.”

6 Ibid.

7 Volkow and others, “Effects of Cannabis Use on Human Behaviour.”

8 Smucker Barnwell, Earleywine, and Wilcox, “Cannabis, Motivation, and Life Satisfaction,” 7.

9 Volkow and others, “Effects of Cannabis Use on Human Behavior,” 294.

In addition to having policies in place, organizations will also want to make sure that:

- these practices are communicated to all employees;
- employees are aware of the resources available to them;
- employees know that they can divulge challenges related to problematic cannabis use or dependence without fear of repercussions.

Considerations for Employers

- ✓ Review and potentially increase resources and treatment options available to employees with cannabis dependence.
 - ✓ Ensure employees are aware of these resources, and examine whether the organizational culture is one that provides a safe environment for employees to self-report problems to their managers.
 - ✓ Provide tools and training to managers so they are equipped to have productive discussions with employees who may come to them to self-report problematic use or dependence.
 - ✓ Ensure processes are in place to help employees suffering from cannabis dependence to access treatment and reintegrate into the workforce as soon as they are able, and with appropriate accommodations.
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Education and Prevention

While it is important for employers to have programming in place to assist employees suffering from problematic cannabis use or dependence, the best way to address these issues is by preventing them altogether. Education may be one of the most crucial attributes to a smooth legalization process. It is also one of the most cost-effective and beneficial ways for an organization to stay ahead of the curve in engaging its employees on the topic.



That said, education must occur in such a way that it doesn't risk alienating parts of the employee population. Rather than promoting materials that use scare tactics to attempt to deter employees from using cannabis altogether, employers may want to provide employees with easy access to information regarding specific and relevant facts that will lead to safer use.

Suggested educational materials include information on differing quantities of THC in products; different strains of the drug; impairment (and driving while under the influence of cannabis); and the variable effects of different methods of cannabis ingestion. For example, Canadians trying cannabis for the first time following legalization may opt to try edibles as an alternative to smoking. While this may protect the lungs, first-time users should be made aware of the delayed onset of effects when consuming edibles. Otherwise, the user risks consuming too much and becoming "too high"—which could lead to dangerous behaviour or hospitalization.¹

In addition, organizations may want to consider providing resources that employees can share with their families. In particular, with their children who may have easier access to the drug and be more inclined to try it following legalization—despite the fact that it will remain illegal for minors.

Education should not be relegated to the individual employee level only. In fact, education related to cannabis use and dependence may be most crucial at the managerial level. People managers must be aware of organizational policies and procedures related to impairment and potential discipline. But, managers must also be capable of being open and understanding with employees so that individuals feel comfortable approaching them with concerns related to problematic use or dependence.

1 National Institute on Drug Abuse, *Drug Facts: What Is Marijuana?*

Did You Know?

Perspectives around recreational cannabis use are changing—especially for young Canadians. It is common for today’s youth to see cannabis as less harmful than alcohol. In a recent report by the Canadian Centre on Substance Abuse, focus groups with youth were held across the country to discuss a variety of impacts of cannabis. Participants considered alcohol to be more impairing than cannabis and were more concerned about the potential for overdose with alcohol than with cannabis.²

With the upcoming legalization of recreational cannabis, it is likely that this trend toward normalization of the drug will continue, especially for Canada’s younger generations who have matured during an age of legal medical (and later recreational) cannabis.

As more millennials and Generation Zs join the workforce, employers may want to review the potential implications of large employee groups with competing perspectives on the drug. Employers may consider monitoring any issues that emerge, proactively managing stigma, and evaluating and setting clear expectations regarding the acceptability of cannabis versus alcohol use at employer-sanctioned social events.

Sources: Canadian Centre on Substance Abuse; The Conference Board of Canada.

In addition, managers will have to be aware of some of the telltale signs of cannabis impairment. They will also need to be trained in approaches to broach the subject with the perspective of aiming to help employees, rather than discipline them.

Finally, it is important to remember that employers alone are not responsible for educating Canadians regarding the effects of cannabis. Education and marketing campaigns are expected to be rolled out by all levels of government, and a number of not-for-profit organizations and public interest groups are sure to produce additional materials. Ensuring that Canadians understand the effects of cannabis—both good and bad—is in the best interest of the government, organizations, and individuals.

2 Canadian Centre on Substance Abuse, *Canadian Youth Perceptions on Cannabis*.

Education and Stigma Reduction

It is important to acknowledge that most recreational cannabis users will use the drug responsibly: they will consume the drug on their own time, outside of work—just as many Canadians currently do with alcohol.³

Access to educational tools related to cannabis may also help reduce the stigma associated with the drug's use. Because recreational cannabis is currently illegal in Canada, there is stigma around its use and the methods of acquiring it. While it is understood that legalization will inherently reduce the stigma around cannabis to some extent, it is unlikely that all stigma will dissipate immediately following legalization.

Once recreational cannabis is legalized, employers may want to consider playing a role in stigma reduction efforts to avoid any risk of discrimination against employees who are open about their recreational cannabis use. In addition, stigma reduction is certain to have the additional benefit of aiding to normalize the use of medicinal cannabis, which has been legal for a number of years in Canada.

Considerations for Employers

- ✓ **As one of the most cost-effective approaches to managing cannabis in the workplace, organizations may want to consider working with E(F)AP or other providers to offer materials that will inform individual workers and their families about the effects of cannabis.**
 - ✓ **It is important to avoid scare tactics and to supply materials that are fact-based, and provide information about a variety of topics related to cannabis use.**
 - ✓ **Employers may want to identify whether and how their organization will address any stigma that may crop up in the workplace related to responsible use of recreational cannabis.**
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3 Centre for Addiction and Mental Health, *Alcohol*.

Conclusions

As one of the first countries to fully legalize recreational cannabis, Canada will set the stage for other countries that may follow. Because Canada will be exploring relatively uncharted territory, it is likely that the development of guidelines and regulations will be a fairly iterative process, and these regulations may be adapted over time as outcomes unfold.



There are certain risks and responsibilities associated with being one of the first nations to go through the legalization process. As a result, regulations related to measures of impairment, production, sales, marketing, and education may be relatively conservative. As outcomes from legal, health care, and economic standpoints begin to unfold, some regulations will have to be tightened, while others may become more lenient.

While organizations will have to be attentive to the implications and potential risks associated with the legalization of recreational cannabis use, it is also important to acknowledge that cannabis is already widely used across Canada.⁴ While it remains illegal (at the time of this publication), Canada has one of the heaviest usage rates of cannabis worldwide,⁵ and many organizations are already grappling with the above-mentioned challenges in some capacity.

Many employers are currently managing situations related to cannabis impairment at work, problematic use or dependence, the operation of company vehicles and machinery with THC in the bloodstream, among other, unique issues. The legalization of cannabis will bring the topic to the forefront, but these challenges are not brand new in the workplace.

While legalization may reduce deterrents for curious, current non-users, the prevalence and frequency of use are not likely to sky-rocket with legalization. Additionally, legalization will introduce regulations for cannabis use that were not previously in place, which may help employers looking for some consistency in addressing the drug's use.

As organizations, employers have the opportunity to help shape legislation related to A&D testing, measures of impairment, and benefits coverage for medicinal use.

Legalization may also lead to additional opportunities for scientific research: for example, by normalizing ongoing research on the medical uses of cannabis. In addition, legalization may stimulate research on topics that are highly relevant to workplace outcomes—such as the effects of the drug on productivity that, as of yet, are relatively unstudied.

4 United Nations Office on Drugs and Crime, *World Drug Report*.

5 *Ibid.*

The Conference Board of Canada

Future research by the Conference Board will dive deeper into some of the issues not discussed in detail here, and may cover topics such as medicinal cannabis in the workplace, A&D testing, or workplace outcomes after legalization of recreational cannabis has come into effect.

Blazing the Trail

It was nearly a century ago that alcohol became legal in Canada after what was, for some provinces, decades of prohibition. Government struggled with setting the drinking age, understanding the signs of impairment, and other challenges that parallel the concerns of many Canadians as they relate to cannabis legalization. Laws and regulations for alcohol have evolved considerably over the years and, for the most part, there have been opportunities to iron out any wrinkles in legislation.

While cannabis comes with its own unique set of challenges, Canada is a more sophisticated society than 100 years ago. As one of the first countries to federally legalize cannabis, Canada now has an opportunity—from a broader, public policy standpoint—to blaze the trail for other countries that are likely to follow. While there are significant risks associated with being one of the first nations to legalize recreational cannabis, there are potential benefits. These benefits include growth in tourism, increased opportunity for scientific research, and economic stimulation.

Stakeholders from all perspectives—including policy-makers, employers, and consumers—will have to be adaptable as unforeseen challenges are addressed and resolved. Employers will have to keep abreast of changes as they occur, and must remain agile to ensure the comfort and safety of their employees as cannabis legislation evolves.

APPENDIX A

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