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Cannabis at work: Top 5 HR challenges and how to overcome them

How will Bill C-45 affect the workplace?

By [Brienne James](#)

July 5, 2018

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As stated in the Canadian Human Rights Act, employers have a duty to accommodate their employees on a number of grounds, including any physical or mental disability.

Due to the rise of cannabis consumers predicted to follow legalization, managers are worried about how Bill C-45 will affect the workplace. According to a survey conducted by the Human Resource Professionals Association, Business of Cannabis and the Public Services Health and Safety Association earlier this year, 71% of employers are not prepared for the legalization of cannabis in Canada.

Here are the top five HR challenges surrounding legalization that companies are most likely to face and that many companies across Canada are scrambling to tackle in their employee handbooks.

Duty to accommodate

As stated in the Canadian Human Rights Act, employers have a duty to accommodate their employees on a number of grounds, including any physical or mental disability. Medical marijuana prescriptions fall under an employer's duty to accommodate. However, as the number of cannabis users in Canada increases, employers fear that their duty to accommodate may be abused. "[A] majority of our members say that they believe legalization of recreational marijuana will increase the number of duty to accommodate requests. Policy development may be needed to guide HR professionals on this," explained J. Scott Allinson, vice president of public affairs, Human Resource Professionals Association.

When creating a marijuana policy, HR departments must outline strict guidelines as to who is eligible to request an accommodation. While it is within an employer's legal requirements to accommodate medical marijuana treatments, it is never acceptable for an employee to request accommodation for recreational marijuana use. Correspondingly, the duty to accommodate is not without its limits—employers have the right to enact disciplinary procedures for any employee who is found impaired on the job.

Maintaining a safe place to work

According to the Canada Labour Code, it is an employer's duty to ensure that the health and safety of every employee is protected while on the job, creating a potential collision with the employer's duty to accommodate. "One of our member's biggest concerns is workplace safety...[companies] in safety-sensitive industries are the most vulnerable to a potential issue," Allinson stated.

Cannabis use has the potential to cause impairment, which in industries such as public transit and construction, could result in unsafe conditions for employees and those around them. In this case, employers are no longer required to accommodate employees.

"A policy prohibiting the use of marijuana by a bus driver is a *bona fide occupational requirement*. Therefore, no employer in these circumstances would need to accommodate the bus driver," said Jeff Dutton, managing lawyer for Dutton Employment Law.

HR departments working in safety-sensitive industries may deem it suitable to invoke a zero-tolerance recreational and medicinal marijuana policy for all employees, which may raise discrimination claims. When considering a zero-tolerance marijuana policy, employers must have reasonable evidence to support that it is a bona fide occupational requirement.

Defining impairment

Registered access to medical marijuana does not justify an employee being impaired on the job. While some suggest that corporations treat recreational marijuana with the same rules applied to alcohol and other controlled substances, there is a knowledge gap on how to correctly define impairment in relation to marijuana in the workplace. Once an impairment is defined, employers and employees will have a clear picture on what is acceptable and what counts as grounds for termination.

"Guidelines for employers on how to identify impairment and sample policies and procedures [are] the top two areas [employers] would need support on. Clarity on these points should be a priority...[it's] crucial that governments at all levels provide employers and employees with specific guidance on how to operate in this new environment," said Allinson.

Medical cannabis coverage

Though there are some cases where employers are accountable for reimbursing an injured employee's medicinal cannabis prescription, companies are not legally required to provide coverage for medical marijuana. However, given the growing user demand and the potential for accusations of discrimination, Allinson and Dutton agree that employers should be prepared to answer questions related to cannabis coverage.

"No employer is obliged to provide benefits. However, if the employer does provide benefits, it must do so in a manner that is not discriminatory," said Dutton. "For instance, an employer who doesn't believe in birth control for whatever reason could not refuse to insure the birth control pill. The same analogy applies to marijuana."

Drug testing

Due to an employer's duty to ensure a safe place to work, HR departments may feel the need to assess levels of impairment in the workplace. Invoking drug testing policies is a difficult and controversial measure. Some see workplace drug tests as an invasion of privacy that is above an employer's rights.

"Nonetheless, in certain circumstances, I think most would agree that drug and alcohol testing has a place, and the Supreme of Canada agrees... especially where the workplace is dangerous and there is a general problem of substance abuse in the workplace," said Dutton.

Though there are a few challenges HR departments will face when creating a marijuana policy, overall, many professionals are confident that Bill C-45 will not affect the workplace. When updating company guidelines, HR departments are expected to treat cannabis in the same regard as alcohol and other controlled substances.

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