



CANNABIS IN THE WORKPLACE

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Welcome



Jay Rosenthal

Co-Founder & President
Business of Cannabis



Shana French

Lawyer
Sherrard Kuzz



Salina Ghadban

Manager, HR Consulting
MNP





The Canadian Cannabis Landscape

Jay Rosenthal, Business of Cannabis





27 days
3 products
1 Ontario “store”



392 days
Many products
Many stores



MEDICAL

research +
doctors +
patients +
products/dose-able +
Insurance +

NON-MEDICAL

+ social acceptance
+ discrete form factors
+ purchasing options
+ social consumption sites
+ CBD-only products



The Legal Framework of Cannabis in the Workplace

Shana French, Sherrard Kuzz





Agenda

- Background
- Legal Regimes:
 - Health and Safety
 - Human Rights
 - New Regulations
- Recent Cases
- Tips



Background

- History of Legal Use:
 - Permitted for medicinal use since 1999
 - Big changes in the medicinal regime in 2014
 - October 17, 2018 = legalization for recreational use
 - High level of illegal use



Background

- Raises questions:
 - Can employees smoke at work?
 - Can I ask an employee about their cannabis use?
 - Can I insist on a drug-free workplace?
 - Can I implement drug testing?
 - How will this affect work safety, performance, and attendance?



Health and Safety

- *Occupational Health and Safety Act* imposes duty on employer to create and maintain a safe workplace
- We know cannabis can affect safety, but missing details about extent of impact
- All practices and policies should connect to safety



Human Rights

- Does the situation engage human rights protections?
 - Addiction
 - Treatment for disability
- Even if a human rights issue:
 - Employer can still have policies controlling use
 - Employer can still require employee to come to work unimpaired where safety-sensitive role



New Regulations

- *Cannabis Act, 2017*
 - Prohibits consumption in a public place, a workplace within the meaning of the *Occupational Health and Safety Act*, a vehicle or boat, or any prescribed place
- *Smoke Free Ontario Act, 2017*
 - Restrictions from smoking or holding lighted medical cannabis, or using an electronic cigarette in designated spaces
 - Includes an “enclosed workplace”
 - Exemptions for workplaces that are also private dwellings: long-term care home, retirement home, supportive housing residence, psychiatric facility, or facility for veterans



Recent Cases

Calgary (City) v CUPE, Local 37

- Employee worked with Roads Department – Equipment Operator 7
- Chronic pain, used cannabis (no prescription but did have Health Canada permit to possess)
- Removed from safety-sensitive position pending investigation
- Arbitrator criticized investigation and ordered reinstatement, but put in place protections to deal with any ongoing safety concerns



Recent Cases

French v Selkin Logging

- Employee is heavy-equipment operator in the logging industry
- Cancer survivor – used cannabis for pain (including at work)
- Application of zero tolerance policy was found to be a *bona fide* occupational requirement in the circumstances



Recent Cases

Aitchison v L&L Painting and Decorating Ltd

- Painter terminated after caught smoking medical cannabis at work (37 flights up on a swing-stage)
- Claimed termination failed to consider duty to accommodate
- HRTO concluded no obligation to accommodate because there had been no earlier request for accommodation made
- HRTO further concluded no discrimination given the genuine health and safety risk posed given the safety sensitive nature of the applicant's position
- Termination upheld



Tips

SAME

- Legal but controlled
- Causes impairment
- *May* engage human rights protections

DIFFERENT

- Less information on the effects of short- and long-term use
- Harder to detect use and testing issues
- Employers have less experience



Tips

- Don't panic – already have to deal with similar substances (including current illegal users of cannabis) and all of the same principles apply
- Have a drug policy
- Train supervisors and employees on the policy



Cannabis Readiness Framework

Salina Ghadban, MNP





How to Prepare Your Workplaces

The legalization of recreational cannabis requires effort on the part of employers:

Set the Rules



Next 30 Days

- Redefine Impairment
- Update Workplace Policies and Procedures
- Clarify Medical vs. Recreational Cannabis

Communicate



Next 60 Days

- Define Impairment and Updated Policies
- General Information
- Address Concerns and Questions

Embrace it



Next 90 + Days

- Address Impairment Quickly
- Apply Policies Consistently
- Build a Culture of Acceptance



Set the Rules and Guidelines

Set the Rules



Next 30 Days

- Redefine Impairment
- Update Workplace Policies and Procedures
- Clarify Medical vs. Recreational Cannabis

- Develop / redefine a clear statement of what constitutes impairment within your workplace
- All workplaces should have clear policies and procedures regarding:
 - Health and Safety (employer/employee responsibilities / safety-sensitive roles)
 - Cannabis Use (medical vs. recreational / no right to be impaired)
 - Accommodation (required disclosure)
 - Drug Testing (role / industry is applicable)
 - Smoke and Scent
- Consider benefit coverage of medical cannabis



Communicate and Educate Employees

Communicate



Next 60 Days

- Define Impairment and Updated Policies
- General Information
- Address Concerns and Questions

- Clearly define impairment and expectations for fitness for duty (train all managers on how to monitor and manage fitness for duty)
- Clearly define your company's position on consumption of cannabis in the workplace (events / clients site)
- Clearly communicate employees' role in enforcing and supporting safety in the workplace (especially in safety-sensitive workplaces)
- Provide employees general information on cannabis and legal framework
- Educate employees on all new / updated policies



Embrace the Change

Embrace it



Next 90 + Days

- Address Impairment Quickly
- Apply Policies Consistently
- Build a Culture of Acceptance

- Continue to reinforce your company's position on consumption of cannabis in the workplace (especially as more changes occur)
- Know your policies and procedures and apply them consistently (balance safety, human rights and privacy)
- Help employees deal with any bias to reduce risk of peer conflict
- Build a culture of acceptance and facilitate open dialogue
- Continue to connect with your employees and provide consistent messaging



What should we do if?...

Jay Rosenthal, Business of Cannabis

Shana French, Sherrard Kuzz

Salina Ghadban, MNP





We work in a safety-sensitive workplace. We have our suspicions that an employee is using cannabis by way of symptoms: seems nervous, red eyes, a little clumsy, but nothing definitive. There is no smell, but it could be that they're using edibles. What should we do?



An employee attends a social event with a number of clients. The clients begin smoking cannabis and encourage the employee to partake. How should the employer respond? What sorts of policies should be in place to deal with these circumstances?



A Personal Support Worker (PSW) works in a retirement home where several of the residents use medicinal cannabis. The PSW has a scent sensitivity. They complain bitterly about any use, even where the employer has done as much as possible to limit their exposure. What should they do?



In a non-safety sensitive role, an employee has come forward and informed the employer that they use medicinal cannabis outside of the workplace. We have concerns that this might be affecting productivity and work quality. What should we do?



A potential employee applies for a position, but their most recent role was at a business in the cannabis industry. Despite it being legal, the owner is strongly opposed to cannabis use. Can they not hire the person on this basis?



Questions?





Thank you!

