

Save the Date - Recreational Cannabis Becomes Legal on October 17, 2018

On June 19, 2018, Bill C-45, the *Cannabis Act* (“Federal Act”) was passed, legalizing the consumption of recreational cannabis across Canada effective October 17, 2018. The Federal Act creates a legal framework for the sale and possession of cannabis in Canada. The Federal Act will allow adults to possess up to 30 grams of cannabis.

The provinces have enacted their own plans respecting the licensing and distribution of cannabis, as well as where it is appropriate to use cannabis. In Ontario, on September 26, 2018, the Progressive Conservative government announced that Ontario residents will be able to smoke recreational cannabis wherever the smoking of tobacco is permitted. Under the Liberal government’s previous consumption rules, those over 19 would have only been able to smoke cannabis in a private Ontario residence.

Employers should also keep in mind that, while recreational use of cannabis will soon be legally permitted in Canada, the law does not authorize employees to be impaired at work nor give them the right to smoke cannabis in the workplace. All provinces have passed legislation that would prohibit employees from smoking/consuming recreational cannabis in or near the workplace.

Dazed and Confused Employees

Situations where an employer suspects an employee is impaired are always tricky, and are best dealt with on a case by case basis. Generally speaking, after an employer has conducted the appropriate fact gathering to support a conclusion that the employee is impaired, an employer ought to consider the safety of the employee, of his or her co-workers, of the public, and of company property. Particularly in instances where an employee works in a safety sensitive position, it may be appropriate to send the employee home or to come to a safe location in the workplace. The departing employee should be referred to available resources, such as an employee assistance plan, and provided safe transport to get home.

An incident of impairment may very well warrant a disciplinary response. However, remember that if the incident is a result of an alcohol and drug

dependency or represents a reaction to a validly prescribed medication, this may trigger an employer's duty to accommodate.

Are You Ready (or Not)!?

Employers are encouraged to have a drug and alcohol policy in place to address recreational cannabis use, possession and distribution in the workplace in accordance with the federal and applicable provincial legislation. Employers will continue to have the right to prohibit the use of recreational cannabis in the workplace and to prohibit attendance at work if impaired.

As a friendly reminder, employers continue to have a duty to accommodate employees using medical cannabis or employees with an addiction to cannabis. Employers ideally should already have a policy in place for addressing an employee's accommodation request to use medical cannabis in the workplace where supported by appropriate medical evidence. This request should be treated in the same manner as any other request for a medical accommodation. The policy should make it mandatory for employees in safety sensitive positions or who operate machinery to report the use of any prescription drug (including medical cannabis) that could impact their ability to safely carry out their job functions prior to any accident or near miss.

If you have any questions regarding the legalization of recreational cannabis and how it relates to your business, please do not hesitate to reach out to us to schedule a call with an Advisor.