

# Compliance Briefing: The 5 Things OHS Directors Must Know to Stop Workplace Use of Legalized Cannabis



## **BOTTOM LINE ON TOP**

Legalization of cannabis just means you can't get busted for buying and using it at an appropriate time and place. What's NOT legal is for workers to use and be impaired by cannabis when they're working. Workplace cannabis use and impairment is still illegal. Thus, dealing with legal cannabis poses the exact same challenges as dealing with other legal intoxicants like alcohol and prescription drugs. The real problem may be increases in cannabis use across society, including among your own employees. There will also likely be new laws to manage the health and safety consequences of cannabis use.

## **THE BIG PICTURE**

There's no doubt that cannabis legalization makes your job as OHS director more challenging. After all, worker drug use doesn't do much to advance workplace health and safety. But while you do need to be concerned, you also need to take a deep breath and put things into perspective. Here are the 5 things OHS directors need to understand about legalization and its impact on the safety program:

### **1. The Current State of Canadian Cannabis Law**

***“Cannabis used to be illegal in Canada but became legal once legalization took effect on October 17, 2018.”***

Both parts of the above statement are oversimplifications. The best way to explain this is to tell the story of how legalization came to be.

## **A Brief History of Legalization**

Cannabis had been illegal in Canada since 1922 when it was added to the list of substances banned by the *Opium and Narcotic Control Act*. And it's still listed as a banned substance under the modern *Controlled Drugs & Substances Act*.

But over the years, a growing contingent relying largely on anecdotal evidence made the case that cannabis has positive therapeutic effects for patients suffering from certain kinds of chronic conditions. In 2000, after decades of litigation by patients, medical use of cannabis was legalized not by Parliament but the Ontario Court of Appeal.

In 2001, Health Canada issued very strict rules limiting use of cannabis to HIV/AIDS, chronic pain and other specific medical conditions and requiring patients to get a written authorization from their doctor. No provision was made for growth and distribution. Patients who wanted cannabis had to grow their own. In 2013, HC backed off and allowed for production by licensed growers. As a result, authorized users spiked exponentially from the hundreds to 38,000.

Meanwhile, U.S. states like Colorado, Washington and Oregon were creating rich new tax revenues streams from legalizing recreational use cannabis supplied by strictly licensed growers and sold out of dispensaries. So, in 2017, Canada took the plunge by legalizing smoking and vaping of recreational cannabis on October 17, 2018. Exactly one year later, legalization was expanded to include cannabis edibles, extracts and topicals.

## 2. What Legalization Means

Legalization means that mere possession and use of recreational cannabis isn't a crime the way it was before. But it can still get you busted if:

- You're under the minimum age for lawful possession and use;
- You possess more than the legal limit for possession;
- You drive while you're impaired; or
- You use cannabis in a public or other place where use is prohibited, including a workplace where tobacco use is currently banned by indoor smoking and tobacco use laws.

Also recognize that the impacts of legalization go far beyond criminal law. Canada didn't just de-criminalize recreational cannabis. It established a whole new government-controlled system for regulating its growth, production, distribution *and* downstream possession and use.

And that brings us to the mechanics of legalization. Canada is a federal country made up of provinces and territories with their own laws governing commerce, driving and other forms of "primary" activity within their boundaries. Result: While national legalization of recreational cannabis is a federal government mandate, each jurisdiction has adopted its own system and set of rules for regulating it.

## 3. How to Control Workplace Use of Legal Cannabis

Even though the product is legal, using and being impaired by it in the workplace is not. Employers are not only still allowed but *required* to take measures to ensure that cannabis use and impairment in the workplace doesn't endanger the health and safety of employees and others directly affected by the work, e.g., airline passengers or pedestrians adjacent to construction sites. At the same time, your jurisdiction has created a whole new regulatory regime. But the vast majority of the new legalization system probably doesn't affect you.

Again, think alcohol. Each jurisdiction has licensing rules governing distribution, sale and consumption of alcohol; to implement legalization, they had to adapting their current Liquor and Gaming Commission systems for cannabis. Unless your business is directly involved in the commercial activities subject to cannabis licensing, the new regulatory system for cannabis has no direct impact on you or your workplace.

But there are parts of legalization that *do* affect you, namely, the revisions that all jurisdictions had or will have to make to their current safety, health and public welfare laws to deal with the ramifications of legal use of recreational cannabis, e.g., traffic safety laws banning impaired driving. Some jurisdictions may also include new rules specifically addressing cannabis in the workplace as part of the legislation and regulation they adopt to implement legalization.

#### **4. The Indoor Smoking Laws**

Indoor smoking laws play a key role in post-legalization regulation of workplace cannabis use by requiring employers to ban smoking and vaping in the workplace, including inside company vehicles. All jurisdictions have or are in the process of extending current tobacco bans to cannabis products. ([Click here](#) to find out about the workplace smoking and vaping laws in each part of Canada.) Employers not only have to ban indoor smoking but also take active steps to ensure it doesn't occur like posting signs and getting rid of ashtrays. If unauthorized smoking does occur, employers'and maybe their officers and directors'face the risk of substantial fines.

#### **5. The Other Key Laws**

There are other provincial laws that directly or indirectly ban workplace cannabis use and impairment, including:

- OHS laws that require employees to work safely and without endangering co-workers;

- Age limits on who can use and possess cannabis;
- Limits on how much cannabis a person can use or possess;  
and
- Penalties for cannabis-impaired driving under traffic safety laws.