The 6 Things OHS Directors Need to Know About Cannabis Legalization



BOTTOM LINE ON TOP

While cannabis legalization is a major news story and a matter of great social significance, its direct impact on the workplace will not be as great as many fear. Workplace cannabis use and impairment will be just as illegal on July 1, 2018 as it has always been—just as with alcohol. But based on experiences in other places, including states like Colorado, legalization is likely to result in increased cannabis use, and thus workplace impairment. In addition, legalization will result in the adoption of new laws affecting employment relations and workplace health and safety.

There's no doubt that cannabis legalization will make your job as OHS director more challenging. After all, drugs and workplace safety form a lousy mix. But while you're right to be concerned, you also need to take a deep breath and put things into perspective.

The Big Picture

First, realize that legalization is not the game changer some are making it out to be. While some legal change will result, dealing with legal cannabis will not be all that different from dealing with that other major legal intoxicant: alcohol. The real problem with legalization from the OHS director's perspective isn't new laws but the increase in cannabis use,

and thus workplace impairment, likely to result.

The other thing you need to do is refrain from beating yourself up because you don't know what the rules will be for dealing with legal cannabis. The dirty little secret is that *nobody* does. And there's a good reason for that: The rules haven't yet been written. At this very moment, lawmakers across Canada are currently scrambling to create laws to effect legalization within their boundaries. The original July 1, 2018 deadline for nationwide legalization has been pushed back indefinitely as a result of controversy over the federal rules in the Senate. At this point, 2019 seems more realistic.

But even if and when legalization does go into effect, it will take years to play out. Only after all of the laws and regulations are in place and in operation will we know for sure how it's going to work.

Yet while legalization may be a work in progress, you do have to keep up with it, especially within your own jurisdiction. Over the coming months and years, OHSI will keep you apprised of all the key developments. But at this stage in the process, the most useful thing we can provide you is a big picture overview. Here are the 6 things OHS directors need to understand about legalization:

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

"Cannabis is currently illegal in Canada but will become legal once legalization takes effect."

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 has 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 recreational cannabis, with a targeted effective date of July 1, 2018.

2. **What Legalization Means**

Legalization means that mere possession and use of recreational cannabis won't be a crime the way it is now. 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 under current indoor smoking laws.

Also recognize that the impacts of legalization go far beyond criminal law. Canada isn't just de-criminalizing recreational cannabis. It's establishing 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 is a federal government mandate, it can't happen unless and until each jurisdiction adopts its own system and set of rules for regulating recreational cannabis. While no deadline has been officially announced, anything earlier than January 2019 would be quite surprising.

3. **Where Things Stand Now**

Between now and legalization D-Day, each jurisdiction will have to do 4 things:

- Hold hearings on how recreational cannabis should be regulated;
- Propose legislation*;
- Finalize legislation; and
- Adopt regulations implementing the legislation.

(* Note: The sequence of the first 2 steps varies by jurisdiction. Example: The federal government held hearings after tabling a bill, while BC did the opposite.)

At this point, public review has concluded and legislation has been either approved or is on its way to approval in all 10 provinces and territories:

TABLE 1. CANNABIS LEGALIZATION: PROGRESS BY JURISDICTION

JURISD.	PRIMARY LEGALIZATION LEGISLATION	CONSEQUENTIAL LEGISLATIVE CHANGES
Federal	June 7, 2018, Senate Third Reading: Bill C-45: *Act respecting cannabis and amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts*	
Alberta	Dec. 15, 2017, Royal Assent: Bill 26, *Act to Control & Regulate Cannabis*	Dec. 15, 2017, Royal Assent: Bill 29, *Act to Reduce Cannabis Impaired Driving* June 11, 2018, Royal Assent: Bill 6: *Gaming and Liquor Statutes Amendment Act*
BC	May 31, 2018, Royal Assent: Bill 30: *Cannabis Control & Licensing Act* + Bill 31: *Cannabis Distribution Act*	
Manitoba	June 4, 2018, Royal Assent: Bill 11, *Safe & Responsible Retailing of Cannabis Act*	June 4, 2018, Royal Assent: Bill 25, *Non-Smokers Health Protection and Vapour Products Amendments Act* + Bill 26, *Impaired Driving Offences Act* –

New Brunswick	March 16, 2018, Royal Assent: Bill 16, *Cannabis Control Act* + Bill 17, *Cannabis Mgmt. Corp. Act* + Bill 18, *Cannabis Educ. & Awareness Fund Act* + Bill 20, *Act to Amend New Bruns. Liquor Corp. Act*	Dec. 20, 2017, Royal Assent: Bill 19, *Act to Amend Motor Vehicle Act*
Newfoundland & Labrador	May 31, 2018, Royal Assent: Bill 20, *Cannabis Control Act* + Bill 21, *Liquor Corporation Act* amendments	May 31, 2018, Royal Assent: Bill 22, *Smoke-Free Environment Act, 2005* Amendments + Bill 23, *Highway Traffic Act* Amendments
Nova Scotia	April 18, 2018, Proclaimed Effective: Bill 108, *Cannabis Control Act*	–
Ontario	Dec. 12, 2017, Royal Assent: Bill 174, *Cannabis, Smoke-Free Ontario and Road Safety Statute Law Amendment Act, 2017*	–
Prince Edward Island	May 15, 2018, Second Reading Bill 29, *An Act to Respond to the Legalization of Cannabis*	–

Québec	June 12, 2018, Second Passage Sitting: Bill 157, *Act to establish the Quebec Cannabis Society & Amend Various Highway Traffic Safety Provisions*	–
Sask.	May 30, 2018, Royal Assent: Bill 121, *The Cannabis Control Act*	May 30, 2018, Royal Assent: Bill 122, *An Act to make consequential amendments resulting from the enactment of The Cannabis Control Act* + Bill 112, *An Act making amendments to certain Acts that deal with Vehicles and Driving*
Northwest Territories	June 1, 2018, Royal Assent: Bill 6, *Cannabis Legalization and Regulation Implementation Act*	–
Nunavut	June 4, 2018, Second Reading: Bill 7, *The Cannabis Act*	March 20, 2018, Second Reading: Bill 3, *Cannabis Statutes Amendments Act*
Yukon	Royal Assent, April 24, 2018: Bill 15, *Cannabis Control and Regulation Act*	–

But while progress is being made, not a single jurisdiction

has completed the regulations providing the critical operational details to implement legalization within their boundaries

4. **How You'll Be Able to Control Workplace Cannabis Use After Legalization**

So how will employers' lives change once legalization takes full effect'

First and foremost, you need to recognize that legalization is NOT a licence for use and impairment in the workplace. Employers will still be able—and required—to take measures to ban cannabis use to ensure a safe workplace under OHS and other laws, just as they are with alcohol today. But legalization will involve the creation of a whole new regulatory regime in your jurisdiction. The key for employers is recognizing which of these changes will affect you.

The good news is that the vast majority of the new legalization system probably won't affect you. Again, think alcohol. Today, each jurisdiction has licensing rules governing distribution, sale and consumption of alcohol; the biggest challenge they now face in implementing legalization is adapting their current Liquor and Gaming Commission systems for cannabis. So, unless your business is directly involved in the commercial activities subject to cannabis licensing, the formation of a new regulatory system for cannabis will have no direct impact on you or your workplace.

But there are parts of legalization that *will* affect you, namely, the revisions that all jurisdictions 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.

5. **The Key Laws**

Based on early developments, it’s becoming increasingly clear that indoor smoking laws will play a key role in this process by giving employers to ban cannabis smoking and vaping in the workplace. Ontario has taken things a step farther by not simply banning workplace cannabis use but requiring employers to take active steps to enforce the ban the way they’re required to do so with tobacco under the *Smoke-Free Ontario Act*. Other elements of proposed cannabis legislation that may have ripple effects on the workplace include:

- The minimum age for legally using and possessing recreational cannabis;
- The new traffic safety penalties for cannabis-impaired driving; and
- Limitation of lawful recreational cannabis use to private residences.

6. **What Your Jurisdiction Will Require**

Table 2 summarizes what, if anything, each jurisdiction has said about each of these issues so far.

TABLE 2. CANNABIS LEGALIZATION: RULES AFFECTING THE WORKPLACE

JURISD.	LEGAL AGE	POSSESSION LIMITS	INDOOR CANNABIS SMOKING	TRAFFIC SAFETY	OTHER

Federal Bill C-45:	19	30 grams dried	Smoking and vaping banned in any workplaces where tobacco smoking is banned by *Non-smokers' Health Act*	To be addressed in separate legislation and/or implementing regulations	*Govt. power to create regulations on workplace use *Higher penalties for criminal drug offences
Alberta Bill 26, Bill 29, Bill 6	19	Not specified	Smoking and vaping banned in any places where smoking is banned by *Tobacco & Smoking Reduction Act*	New *Traffic Safety Act* penalties for cannabis-impaired driving	Workplace issues to be addressed in implementing regulations
BC Bill 30	19	30 grams dried + 4 plants per household	Smoking/vaping banned in any places where tobacco is banned by indoor smoking laws, vehicles and places where children are present	•New 90-day administrative driving prohibition for drug-affected driving; • Current zero-tolerance restrictions for presence of alcohol for drivers in Graduated Licensing Program expanded to THC	Employers and site owners liable for indoor smoking/vaping violations at workplace

Manitoba Bill 25, Bill 26 & Bill 11	19	Not specified	Extends *Non-Smokers Health Protection Act* tobacco ban to smoking/vaping in enclosed public places, including workplaces and vehicles	*Restrictions on transporting cannabis in motor vehicles; *Bans consumption in motor vehicles on a highway; * 24-hour roadside suspension if officer has reasonable grounds to believe person can't safely operate vehicle due to being under influence of a drug	Workplace issues to be addressed in implementing regulations
New Brunswick Bill 16, Bill 17; Bill 18, Bill 19, Bill 20	19	Not specified	Bans cannabis use in any workplace where tobacco currently banned under *Smoke-Free Places Act,* including enclosed workplaces and vehicles	Stricter penalties for cannabis-impaired driving	Workplace issues to be addressed in implementing regulations
Newfoundland & Labrador Bill 20, Bill 21, Bill 22, Bill 23	19	Not specified	Extends *Smoke-Free Environment Act, 2005* restrictions on indoor smoking to e-cigarettes and smoking/vaping of cannabis, including employer's right to establish designated smoking rooms for such uses	Amends *Highway Traffic Act* to create new penalty of licence suspensions for driving over legal limit for drugs/alcohol and gives govt. authority to make regulations providing for impounding vehicles of drivers over legal limits	Limits consumption to private residences

Nova Scotia Bill 108	19	30 grams dried	Authorizes regulations to extend current second hand smoke protections under *Smoke-free Places Act*, including indoor workplaces and vehicles, to cannabis smoking/vaping	Authorizes regulations to create new penalties for cannabis-impaired driving	Limits consumption to private residences
Ontario Bill 174	19	30 grams dried	Bans smoking and vaping in public places, workplaces and motor vehicles	Tough new penalties for cannabis-impaired driving	Requires employers to take active measures to enforce smoking/vaping ban as currently required for tobacco under *Smoke-Free Ontario Act*
Prince Edward Island Bill 29	19	30 grams	Extends *Smoke-free Places Act* tobacco restrictions, including for workplaces and vehicles, to cannabis smoking/vaping	* Stronger roadside suspension *New summary offence for impaired driving with a minor *Potential for future increased penalties	* Limits consumption to private residences *Bans transport unless cannabis is in unopened packaging
Québec Bill 157	18	150 grams dried	Extends current indoor smoking bans affecting workplaces to smoking/vaping cannabis	Tough new penalties for cannabis-impaired driving	–

Sask. Bill 121, Bill 122, Bill 112	19	Not specified	Bans smoking/vaping in public, private and "other prescribed places," including workplaces where tobacco smoking is currently banned	Creates new administrative penalties for cannabis-impaired driving, including immediate driver's licence suspension and vehicle seizure upon being charged	Workplace issues to be addressed in implementing regulations
Northwest Territories Bill 6	19	30 grams dried	Bans public smoking to protect third parties and cannabis smoking/vaping in any place where tobacco smoking is banned	New penalties for cannabis-impaired driving	WSCC will review OHS laws and hold consultations with employers and labour groups on need for cannabis-related changes
Nunavut Bill 7, Bill 3	19	30 grams dried	*Bans public smoking to protect third parties from second hand smoke *Extends *Tobacco Control Act* (now called the *Tobacco Control and Smoke-Free Places Act*) tobacco use restrictions to e-cigarettes and cannabis *Bans cannabis use in vehicles	New penalties for cannabis-impaired driving, including driver's licence suspensions	WSCC will review OHS laws and hold consultations with employers and labour groups on need for cannabis-related changes

Yukon Bill 15	19	30 grams dried	*Bans consumption in common areas of hotels, motels and apartment buildings and within individual units of certain condos *Indoor smoking restrictions to be addressed in separate legislation and/or implementing regulations	Cannabis-impaired driving to be addressed in separate legislation and/or implementing regulations	*Consumption limited to privately-owned dwelling houses or adjoining property * Bans possession in vehicles unless kept in a closed container that’s inaccessible to all people in vehicle *Bans public intoxication