

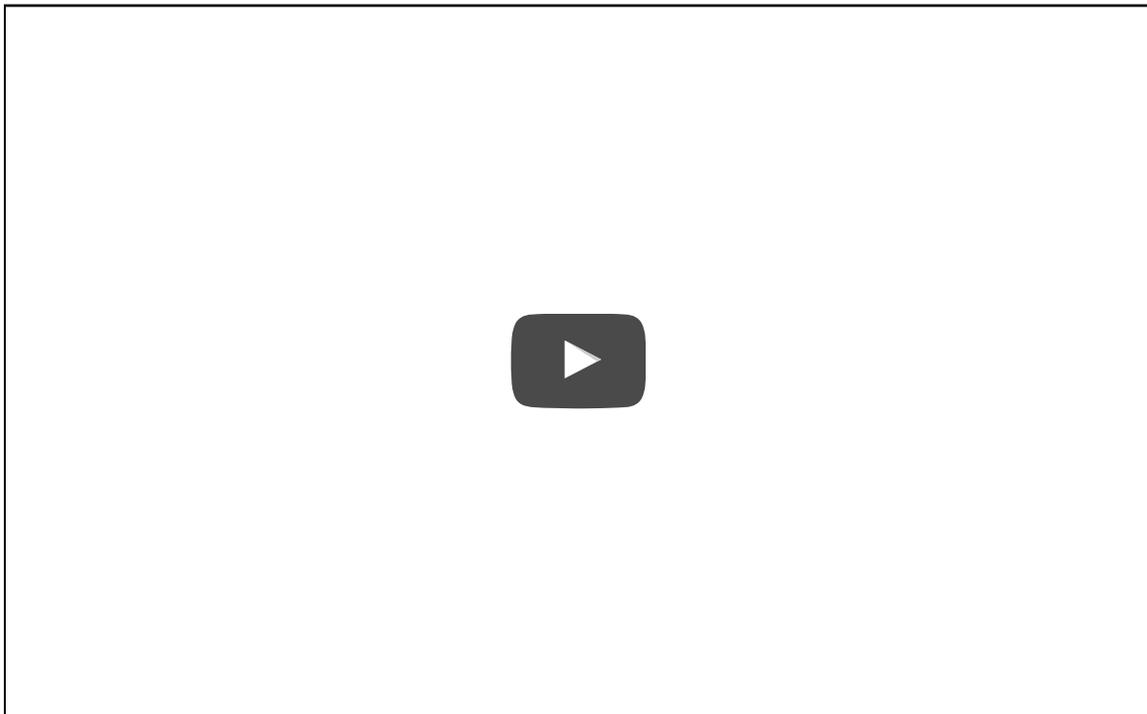


Canada to Legalize Recreational Marijuana

Here's how Canadian HR professionals should prepare for legalization of the drug

By Catherine Skrzypinski

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When Canada legalizes recreational marijuana use next July, Canadian employers say they will treat its use in the workplace the same way they treat alcohol.

Being high on the job won't be tolerated.

HR experts say marijuana legalization, which will take effect on or before July 1, 2018, ([http://healthy Canad ians.gc.ca/task-force-marijuana-groupe-etude/index-eng.php](http://healthy Canadians.gc.ca/task-force-marijuana-groupe-etude/index-eng.php)) will not cause much of an impact on a company's ability to recruit and hire.

"Employers should be aware legalization of recreational marijuana usage won't give employees the right to use cannabis in the workplace whenever they feel like it—much like alcohol usage," said Marina Butler, president

([www.shrm.orghttp://www.employmentprofessionalscanada.com/2012/06/29/shining-a-light-on-marina-butler-president/](http://www.employmentprofessionalscanada.com/2012/06/29/shining-a-light-on-marina-butler-president/)) of Employment Professionals Canada, an employment consultancy in Fort Erie, Ontario. "Employees who [use marijuana] would still be open to disciplinary actions should the use of recreational marijuana have a negative impact on their overall job performance."

If an employee has issues with work, HR should look for red flags and note whether an employee shows up to work consistently late, has attendance problems or has suspicious break patterns, added Julie Menten, an associate at Roper Greyell a law firm in Vancouver. Employers should also look for an increase in accidents or near misses in safety-sensitive workplaces.

"People may push the limits, especially right after legalization," she said.

Employers do not test for drug use in Canada—unless candidates apply for safety-sensitive jobs—because it is illegal to ask job candidates whether they partake in recreational drug use during an interview, experts noted.

These types of tests are not acceptable in the Canadian workplace, according to the Canadian Human Rights Commission Policy on Alcohol and Drug Testing (<http://www.addictionconsulting.com/media/drugpolicy.pdf>):

- Pre-employment drug and alcohol testing.
- Random drug and alcohol testing of employees in nonsafety-sensitive positions.

"Random drug testing is a breach of human rights, as it impacts an employee's right to privacy," said Cissy Pau, CHRP, principal consultant at Clear HR Consulting in Vancouver.

Safety First

The Canadian government released a task force report (<http://healthy Canadians.gc.ca/task-force-marijuana-groupe-etude/index-eng.php>) in December 2016 on workplace safety and the legalization of marijuana, with particular focus on the fields of construction; health care; law enforcement; resource extraction like forestry, oil and gas, and mining; and transportation.

The Supreme Court of Canada has ruled that employers can permit random, unannounced drug testing in a potentially dangerous workplace in the following situations:

- When an employee appears to be impaired while on duty.
- When an employee was involved in a workplace accident or incident.
- When an employee returns to work after treatment for substance abuse.

When companies have a reasonable belief that an employee in a safety-sensitive position is impaired, even after legalization they should still test for the presence of marijuana, as well as other impairing substances, Menten said.

"Employers are concerned about marijuana use because it impairs [users'] judgment and their reaction time—they can endanger their co-workers or the public."

[*SHRM members-only toolkit: Managing Difficult Employees and Disruptive Behaviors* (/ResourcesAndTools/tools-and-samples/toolkits/Pages/managingdifficultheemployees.aspx)]

Policies that allow for the random testing of employees are difficult to implement in safety-sensitive workplaces unless there is reasonable cause. They are even harder to implement in a nonsafety-sensitive environment, Menten added.

Unlike alcohol, marijuana can be detected in a person's bloodstream days or even weeks after ingestion, experts say. Currently, no medical tests exist to determine impairment due to marijuana use, Pau said. Different strains of marijuana have different effects; some ingredients dull pain, while others cause a high sensation.

If marijuana is more accessible, then there are more risks of impairment, Pau explained. "There are more risks to an employer, like increased accident claims, more injuries and additional sick days."

Menten said there is no legal duty to accommodate a recreational marijuana user in the Canadian workplace.

Canadian companies currently are required to accommodate employees who have been prescribed medical marijuana (<https://medicalmarijuana.ca/>) as part of their treatment. Their work hours and breaks are adjusted and these employees are given less intense safety-sensitive positions.

Update Drug and Alcohol Policies

Employers should review their current workplace policies and procedures, Butler explained. Many policies may be amended to reflect the company's stance on cannabis usage once legislation is implemented.

HR experts say an updated drug and alcohol workplace policy should contain:

- A section that includes verbiage for a medical marijuana permit. After July 2018, recreational usage must also be addressed.
- A zero-tolerance policy, if appropriate. If an employee commits a violation in a safety-sensitive workplace, then he or she could be terminated.
- Educational information about healthy drug and alcohol use from a health and wellness perspective.

"Employers should empower the employee to disclose impairment of a fellow co-worker, as safety is paramount," Butler advised.

"HR should set policies and clear expectations to ensure people are fit to work," Pau concluded. "Address [marijuana use] head on, and react early. Safety in the workplace needs to be a part of the company culture."

Catherine Skrzypinski is a freelance writer in Vancouver.

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