

Legalized Marijuana: Now What?

written by Rory Lodge | April 27, 2020



Legalized Marijuana: New regulations for cannabis edibles and topicals come into effect on Oct. 17, with products expected to reach store shelves in December, which can and will impact the Canadian workplace.

Beginning today, licensed producers can begin submitting their edible and topical products to Health Canada. Those products will then be subjected to a 60-to-90-day approval and procurement process. In other words, Oct. 17 is simply one of the first hurdles for edibles to reach the legal Canadian market.

“Since the first wave of legalization, 11% of Canadians say they already consume edibles with 13% expected to buy legal edibles.

Demand for edibles is expected to be high, and their sale may lead to more recreational users.” (Source CBC)

How Does This Impact You?

“The risk of cannabis-related medical emergencies may also increase, due to a lack of knowledge about edibles. The human body processes cannabis more slowly when it is eaten than when it is smoked, so it takes longer for the high to kick in – sometimes 60 minutes or more. Inexperienced users may become impatient and eat more, putting themselves at risk for a medical episode. The time a person spends impaired is also usually longer after consuming edibles than after smoking or vaping cannabis.”

(Source: Conference Board of Canada)

Even though the new round of legalization is a stepping stone, there is one tweak you may need to make to your anti-drug and testing policies to deal with it.

Specifically, make sure your bans on employee use of cannabis aren’t based on “smoking or vaping” but on consumption in all forms.

- Bad: Employer has a zero-tolerance policy with regard to the workplace “smoking or vaping of or impairment by cannabis. . .”
- Good: Employer has a zero-tolerance policy with regard to the workplace “smoking, vaping, eating, inhaling, topical application or any other method of consuming or impairment by cannabis. . .”
- Better: Employer has a zero-tolerance policy with regard to the workplace “use of or impairment by cannabis regardless of method of consumption”
- Best: Employer has a zero-tolerance with regard to the workplace “use or impairment by drugs, alcohol or other intoxicating substances, whether legal or

illegal.”

Changing Law

“The law continues to evolve when it comes to issues of accommodation and impairment. Recently, in the case of IBEW, Local 1620 v. Lower Churchill Transmission Construction Employers’ Association Inc., the Supreme Court of Newfoundland recently dealt with an appeal from an arbitrator’s decision that upheld the employer’s ability to deny employment on a construction project due to the employee’s use of medically prescribed cannabis that was used to treat pain caused by two separate medical conditions.

The employer took the position that the employee’s use created a risk of impairment on the job site, even though there was no accepted measure of impairment based on current technology. The employer asserted that their inability to measure and manage the risk of harm constituted an undue hardship. The employee’s union felt the decision stigmatized and stereotyped cannabis users.

The court determined that the arbitrator’s decision was reasonable and, more importantly, it set out a framework to assess impairment and accommodation where cannabis is involved. This case found that cannabis use can impair a worker’s ability to function safely for up to 24 hours after use, that its effects might not be apparent to the user, and that there is currently no accurate test for cannabis impairment.

“The court’s willingness to find that undue hardship can exist even in the absence of accepted testing methods for impairment is particularly encouraging for employers struggling to ensure the safety of both employees and customers in the aftermath of cannabis legalization.” (Source: Conference Board of Canada)

Update Your Policies

Long and short of it, there are two policies that you should update in your workplace to deal with the changing laws, interpretation of the OHS impact of legalization, and increased risk of impairment in your workforce through access to edibles:

[Fitness for Duty](#)

[Alcohol & Drug Testing Policy](#)