

CERIDIAN



2019

What Canadian  
employers need to know  
about **cannabis at work**

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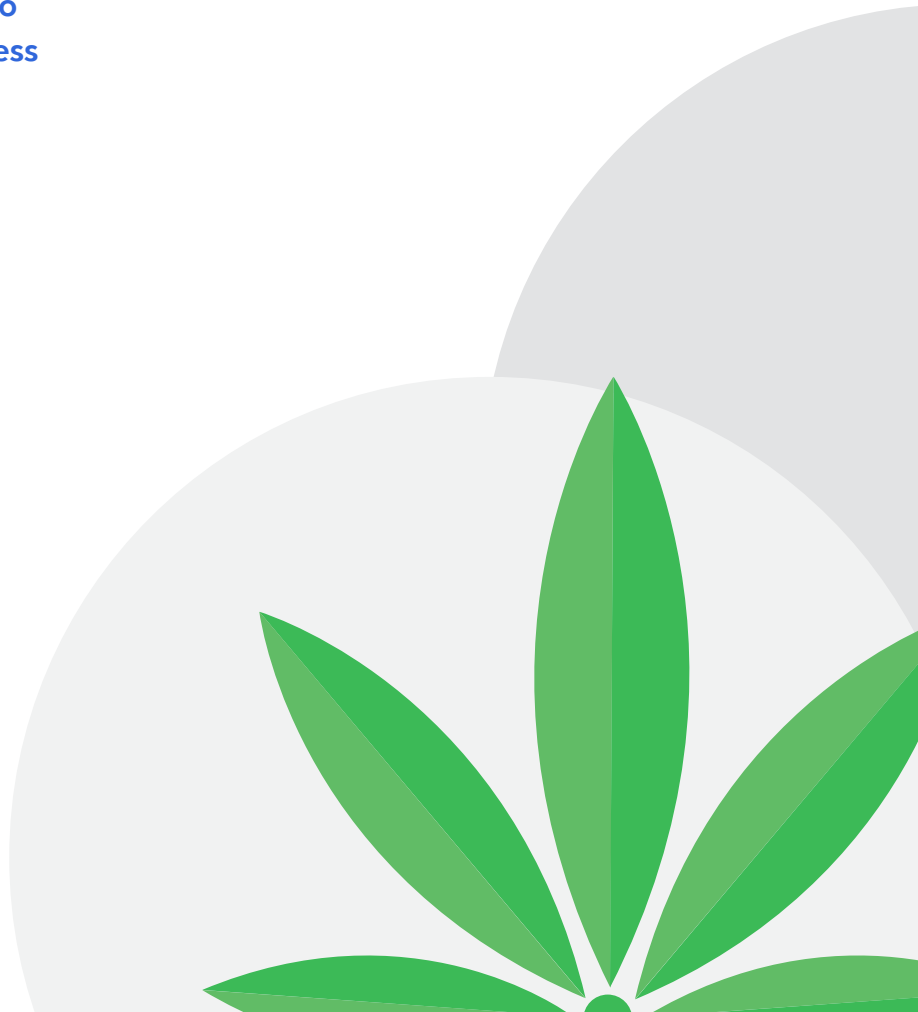
## What Canadian employers need to know about cannabis at work

With the recent legalization of cannabis in Canada, many employers and HR professionals are unsure of the laws and requirements surrounding its use in the workplace. Issues of human rights can be at stake, making it critical that business owners and their HR representatives understand the new regulations and any obligations they have towards those in their employment.

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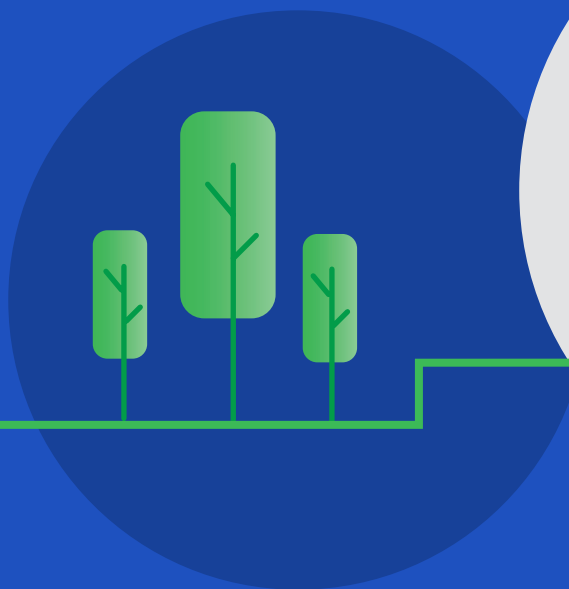
**This information guide**, prepared with assistance from our HR legal professionals at e2r®, **will help you to stay informed and be ready to address the issue with your employees.**

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Every province  
prohibits recreational  
cannabis smoking  
in any enclosed  
workplace.

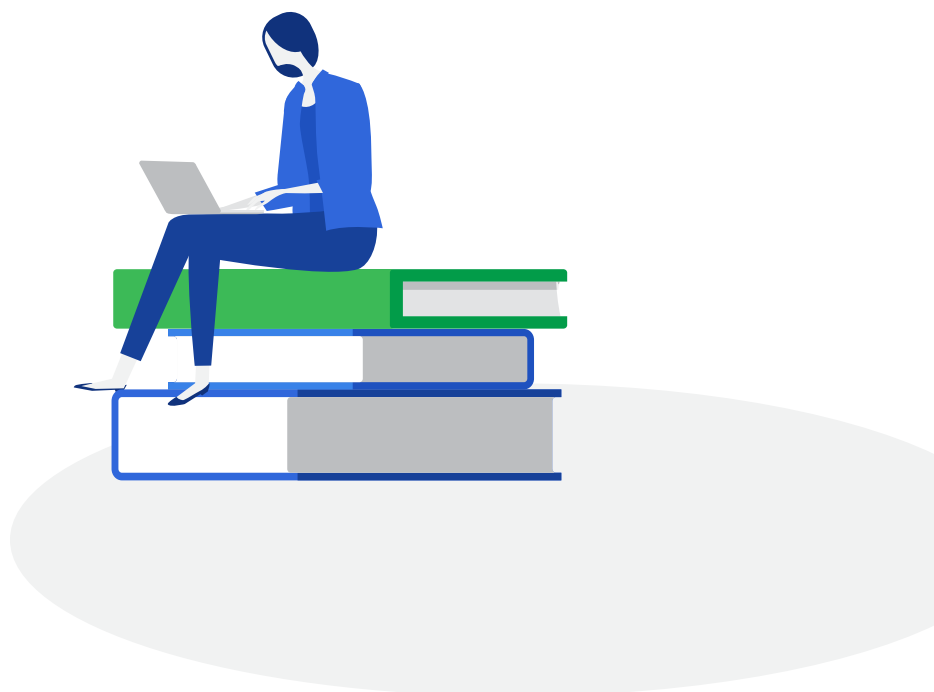


## Cannabis - general laws and regulations

Start by knowing the general laws and regulations, particularly if you employ anyone who is under the age of majority. The legal age for possessing and using cannabis generally models itself off of provincial age requirements for drinking alcohol and smoking tobacco. Smoking cannabis outside of one's home has some restrictions, especially in areas frequented by children such as playgrounds. In Ontario, the Smoke-Free Ontario Act requires recreational cannabis users to follow the same rules as tobacco users. While consumption laws vary from province to province, every province prohibits recreational cannabis smoking in any enclosed workplace, enclosed public place or anywhere designated as smoke-free.

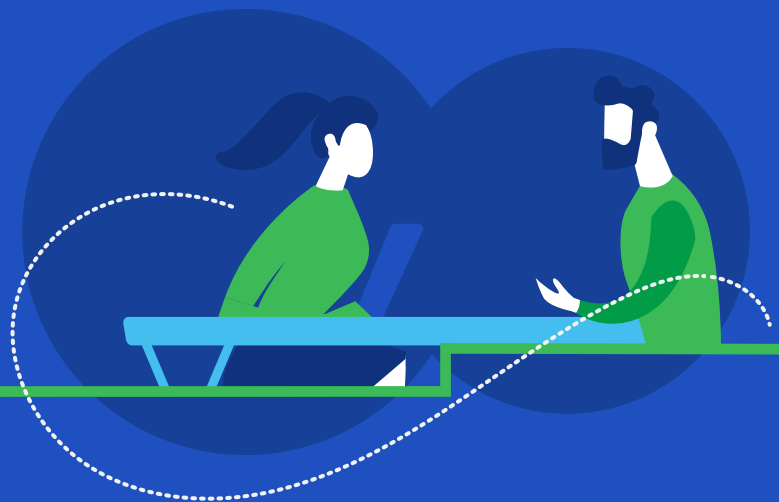
## Regulations about impairment at work

As it is with alcohol, employees do not have the right to be impaired at work from using cannabis. Even having authorization to use medical marijuana does not give an employee the right to be impaired at work. As a business owner, it is your duty to ensure the safety of your workplace, as well as provide accommodation to those authorized to use medical marijuana, such as you would with other disabled employees. A zero-tolerance policy might seem like a good idea, but it could conflict with an employer's duty to accommodate.



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## Impairment at work: what can employers do?

If an employee is showing signs of being impaired at work, the best course of action is for the manager to ask them to stop working and to sit down for a discussion. During the discussion, employers should ask specific questions geared to determine if the usage is for medical or recreational purposes, as well as to assess if there are any additional issues. Recreational use alone is not an accommodation or human rights issue, but employers are obligated to accommodate to the point of undue hardship if an addiction or medical authorization is present. Knowing where your employee falls in these categories is essential.

## Misconduct and discipline

It is a best practice to incorporate the results of the above-mentioned discussion into what kind of disciplinary action an employer takes. Similar to considerations involving mental illness, employers should focus on whether the dependency has influenced the employee's inappropriate behaviour and whether the employee can be accommodated, as required by law. If the employee's cannabis use is not the result of an addiction and is not for medical purposes, then they could be subject to some form of discipline, up to and including termination depending upon the particulars of the situation. Prior to initiating any discipline, be sure you have a clear understanding on the employer's duty to accommodate and that you adhere to the laws regarding it.



# Medical marijuana, performance & human rights

Previous legal cases have shown that employees have certain human rights if they are prescribed medical marijuana. Even if an employer can demonstrate the employee had negative performance issues or even incompetence, if there is no build-up of communications with the employee about how their disability may be impacting performance then termination can be found to be discriminatory. Employers should engage in discussions of performance regularly with any employee prescribed to use medical marijuana. Additionally, the employer should seek medical information from the employee’s doctor regarding the potential impact of prescriptions on their ability to perform their duties and what reasonable standards of performance would be for their specific issue.

## Disability and the duty to accommodate

Employees should inform the employer of their need for accommodation and provide the requested medical information to substantiate their request, along with any restrictions on their ability to perform work functions. Accommodation is a multi-party inquiry – there is a duty placed on the employers, the employee and the union, if applicable, to participate and act reasonably. Accommodation can include many different forms of assistance such as time away from work to attend at a treatment or rehabilitation program, modified work hours or modified work duties. Refusing accommodation on the basis of undue hardship is not easy to do. To claim undue hardship, it is the employer’s responsibility to prove it exists. It is not up to the person with a disability to prove that an accommodation can be accomplished without undue hardship.

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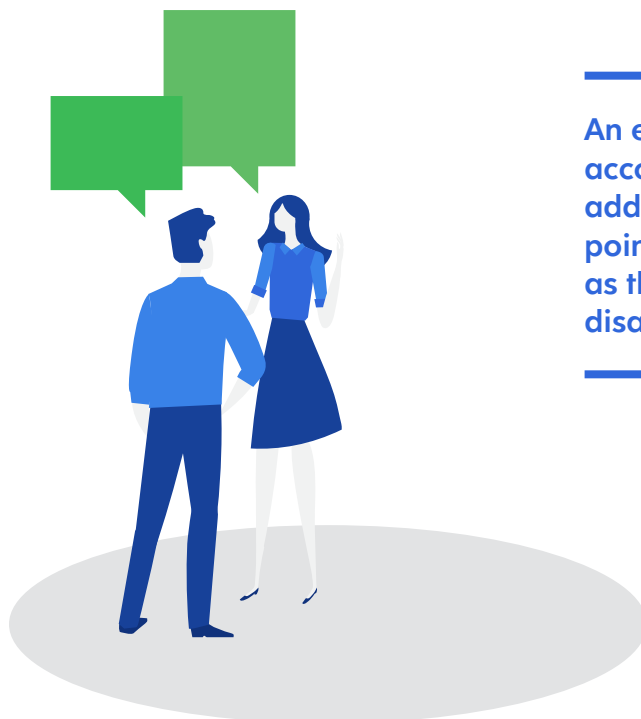


## Accommodating addiction

Canadian human rights legislation specifically describes any addiction to alcohol, cannabis, or another drug as a form of mental disability. Disability is a prohibited ground of discrimination and employees are protected against discrimination in the workplace. An employer has a duty to accommodate any employee with an addiction or dependency issue to the point of undue hardship, the same as they are required to do for any disability.

## Accommodating medical marijuana

Accommodation is also required if medical marijuana is prescribed as part of a treatment for a medical disability. Employers should treat an authorization for medical marijuana use the same as any other prescription medication. Don't assume the use of medical marijuana will impair the employee's ability to perform the essential duties of their job. An employee's level of impairment can fall across a broad spectrum based on a variety of factors. Employers can and should request a copy of the employee's authorization to use medical marijuana and have the right to obtain information from an employee's treating physician regarding an employee's ability to safely and effectively carry out their job functions while consuming marijuana for medical purposes.



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## Drug and alcohol testing

If you are an employer considering testing your employees for drugs or alcohol, be aware that testing related to employment is very restricted in Canada. While testing can show current impairment with alcohol, the same does not exist for drug use. Many substances may stay in one's system from past usage, and there is no way to measure the current level and its impact. As a result, there is a very limited scope as to when it may be appropriate to test. Generally speaking, drug testing may be appropriate in a few instances such as post-incident or for positions that require a high level of safety; however, you should consult with an HR lawyer before proceeding to be sure you proceed lawfully.

## The power of a good policy

Creating a good policy for drug and alcohol use in your place of business, as well as communicating the policy to your employees as soon as it is finalized can help prevent misunderstandings. A good policy should:

1. Clearly state the employee needs to attend work fit and able to do so
2. Prohibit the use of drugs and alcohol before or during work; be specific about illegal drugs
3. Require the disclosure of possession or use of medical marijuana and other narcotics
4. Create a duty to report addictions and/or dependency before an incident
5. Reaffirm the accommodations and resources available for those with a dependency issue
6. Emphasize confidentiality of disclosure
7. Be clear on the consequences for non-compliance with the policy

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Find out how Ceridian can help. Ceridian **HR Advisory** service can help you make people decisions with confidence. We would love to learn more about your business and share how Ceridian can help you manage compliance with ever-changing legislation. Contact us today for a complimentary consultation with one of our representatives.

To take advantage of this offer or for more information, connect with us at **1-800-729-7655** or visit: [www.ceridian.com](http://www.ceridian.com)