



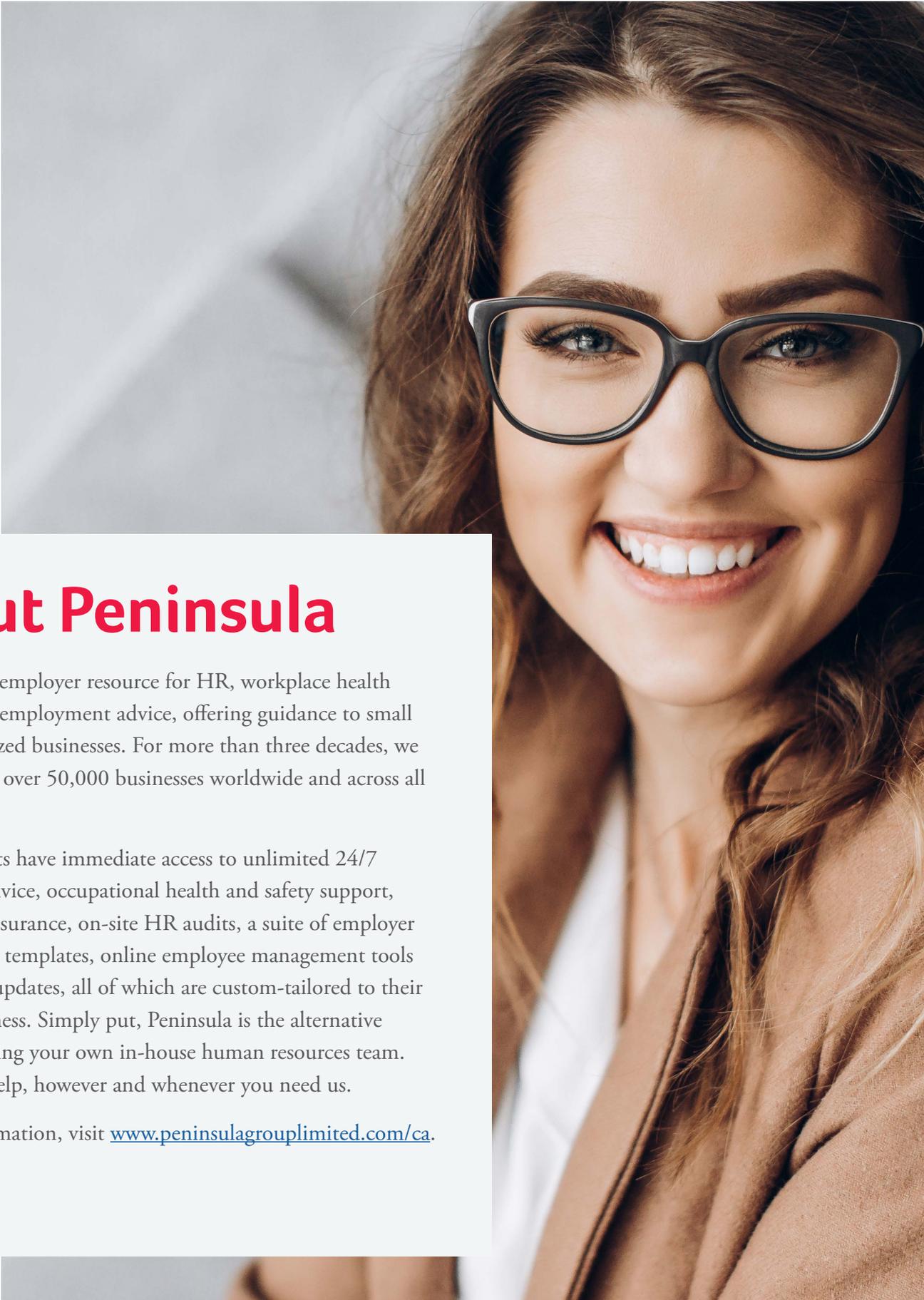
A Guide for Employers

Recreational Cannabis Use in Canada

November 2018



PENINSULA



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Peninsula is an employer resource for HR, workplace health and safety, and employment advice, offering guidance to small and medium-sized businesses. For more than three decades, we have supported over 50,000 businesses worldwide and across all industries.

All of our clients have immediate access to unlimited 24/7 employment advice, occupational health and safety support, legal expense insurance, on-site HR audits, a suite of employer documents and templates, online employee management tools and legislative updates, all of which are custom-tailored to their particular business. Simply put, Peninsula is the alternative solution to having your own in-house human resources team. We're here to help, however and whenever you need us.

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Who is this guide for?

This is the essential health and safety guide for small business owners.

If you are a small business owner or employer, this guide is for you.

This guide contains essential information regarding an employer's duties under provincial health and safety laws. It also provides answers to frequently asked questions concerning this topic.

You may use this guide as a reference point for:

- Health and safety standards
- Employer need-to-knows
- HR best practices
- Employment-related facts
- Legislative updates

If you have any questions regarding this guide or about how health and safety laws affect your business, please contact Peninsula to speak with our expert health and safety advisors. Our dedicated advice line is a complimentary service that's available 24/7 at **1(833) 247-3652**.

General Disclaimer: Peninsula is an employer resource for HR, employment and health and safety advice. Employers are advised that this guide is for informational purposes only. Peninsula is not licensed to practice law in Ontario. The content in this guide is not intended to replace licensed services and the information is not intended to be legal advice.



Recreational Cannabis in the Workplace

In 2018, Canada became the latest jurisdiction to legalize the recreational use of cannabis.

It's a significant policy shift that will impact social attitudes, community standards and workplace practices.

Canada's new regulatory framework does not remove all controls. On the contrary, it prescribes tight controls for the minimum age for purchase, possession, sharing and use.

One of the biggest questions is "How will recreational cannabis use impact the workplace?" Canada's employers should understand the potential impacts on their organizations and operations.



The Changing Environment

There are two types of cannabis use: medical use and recreational use. Medical cannabis is already legal in Canada. The legalization of recreational use is new. As an employer, it is important that you understand both.

Accessing Cannabis for Medical Purposes

Medical cannabis has been legal in Canada since 1999. The number of registered users has grown consistently since that time. Health Canada statistics show the number of users grew from 20,000 in 2014 to 160,000 by the end of 2016.

The laws for medical use allow Canadians with prescriptions to:

- Access quality-controlled cannabis from Health Canada or another licensed producer; or
- Produce a small amount for themselves; or
- Designate an individual to produce it for them.

Regulations do not allow for purchase of medical cannabis from storefront locations.

As an employer, you have a duty to accommodate employees who use medical cannabis. Your duty to accommodate extends to the point of “undue hardship,” although the definition of undue hardship is determined by courts on a case-by-case basis.

The employer’s duty to accommodate is discussed in Section 3.





Recreational Use of Cannabis in Canada

On October 17, 2018, Canada passed the federal Cannabis Act. The Act amends the Criminal Code, the Controlled Drugs and Substance Act and several other statutes to make the recreational use of cannabis legal across the country.

The new law allows adults who are 18 or 19 years of age (depending on the province or territory) to legally possess, grow and purchase limited amounts of cannabis for personal use. This means, your employees can now legally consume cannabis on their own time, however as an employer you have the right to take action if an employee attends work under the influence.

Provinces and territories can create and enforce their own laws on the purchase age, retail stores, and other rules about consumption. The following subsection explores some Ontario legislation impacting the workplace regulations.

Ontario Workplace Laws on Cannabis

Ontario has imposed strict rules on the places where recreational cannabis is allowed.

Ontario's Bill 174, the Cannabis, Smoke-Free Ontario and Road Safety Statute Law Amendment Act, 2017, became law in 2018. The legislation amended the Highway Traffic Act and created two new statutes: the Smoke-Free Ontario Act, 2017 and the Cannabis Act, 2017.

These laws impose new obligations on employers and employees regarding the use of cannabis in the workplace.

Cannabis in Ontario Workplaces

Consuming recreational cannabis in the workplace remains illegal in Ontario, even after legalization on October 17, 2018.

In Ontario, employers and supervisors must:

- Know the rules for medical cannabis
- Address workplace hazards, under the Occupational Health and Safety Act (OHSA)

Employees who are unable or unfit to work safely could be a hazard to themselves or to others in the workplace. Employees and workers always have a duty to perform work safely and to report any hazards to their supervisor or employer under the OHSA.

It is important to note that the Occupational Health and Safety Act's broad definition of "workplace" includes "any land, premises, location or thing at, upon, in or near which a worker works".

Further, if an employee requires medical cannabis, employers should consider their obligations pursuant to the duty to accommodate under the Human Rights Code.



Smoke-Free Ontario Act, 2017

Smoke-Free Ontario Act, 2017 extends the public and workplace smoking rules by including medical cannabis along with the restrictions placed on smoking tobacco products indoors.

Specifically, the Act prohibits individuals from smoking or holding lighted medical cannabis in a number of places, including in an “enclosed workplace” or “enclosed public place.”

The Act also requires employers to:

- Ensure compliance with the obligations on smoking or holding lighted medical cannabis in enclosed spaces
- Provide notice to employees regarding the restrictions
- Post signs throughout the workplace
- Ensure that there are no ashtrays or similar equipment in the enclosed workplace or area (other than a vehicle in which the manufacturer has installed the ashtray); and
- Ensure that employees or persons who do not comply with the above requirements are removed from the space

Emerging Concerns

As Canada enters into its new environment of legalized cannabis, certain concerns come to the forefront. For example, Canada’s police services are working diligently to understand the potential impact on traffic safety. The other main concern is the potential impact on the workplace.





The Impact on Employers

Employers across Canada are already facing the challenges of managing the impact on their organizations.

Top Concerns of Workforce Impact

- Workplace safety, including using equipment and vehicles
- Work performance, including attendance, fitness for duty and impairment
- Disciplinary matters, including performance issues and termination
- Accommodation for employees using medically-prescribed cannabis

These concerns are legitimate. A 2017 survey of over 650 HRPAs members found 45% do not believe their current workplace policies address potential new issues arising from legalization of cannabis.¹

However, with the proper planning, focus and communication, Canadian employers can create a workplace environment that remains productive, safe and fulfilling.

Certain Key Practices Should Not Change

Despite the legalization of recreational cannabis, certain workplace rules should not change. The following two workplace rules will not change.

Employers must ensure safety – Employers are responsible for the safety of all employees. Recreational cannabis should be treated like any other controlled substance, such as alcohol.

Reporting to work without impairment – Employers will continue to have the right to require employees to report to work sober and without any form of impairment.

Tackling these two employer responsibilities raise some key questions.

What if your employee is impaired?

One of the biggest challenges is assessing whether someone is impaired at work. Testing for drug and alcohol remains one of the most contentious issues of Canadian workplace law. It is recommended that you consult your legal counsel for circumstances if someone is impaired at work.

¹Clearing the Haze. *The Impacts of Cannabis in the Workplace*. Human Resources Professionals Association. www.hrpa.ca



Employers have a duty to accommodate. What does that mean?

Human Rights legislation requires employers to attempt to find suitable workplace accommodation for disabled employees who have prescriptions for medical cannabis use. The accommodation responsibility extends to the point of “undue hardship.”

The employer’s duty to accommodate is the same as any other disabled employee who has been prescribed medication. Accommodation is also required for disability due to an addiction.

Employers facing an accommodation request may wish to consider providing similar accommodation as it does for other disabled employees.

- Moving the employee out of a safety-sensitive position
- Providing more frequent breaks
- Altering the employee’s duties

However, the duty to accommodate has limits. A prescription for medical cannabis does not entitle an employee to:

- Be impaired at work;
- Compromise their own safety or others’ safety; or
- Arrive late or take unexcused absences.

As with other accommodated employees, an employer may request medical information from the employee’s doctor, or consult with an independent medical examiner, about the employee’s fitness for duty and/or what will be appropriate accommodation.

Can an employer enforce a zero-tolerance policy?

No. Employers cannot enforce a zero-tolerance policy prohibiting use among their employees. However, employers have responsibility for workplace safety, and they should enforce a zero-tolerance policy against impairment or intoxication at work.

Where a disabled employee has been prescribed medicinal cannabis, the employer must accommodate to the point of “undue hardship.” Even a medical prescription does not permit impairment while working.



Your Employee Policies.

It's important to communicate your expectations clearly and get all your employees on the same page.

Employers must revisit their drug and alcohol workplace policies to ensure the use of recreational and prescription cannabis is incorporated and openly addressed.

1. Review your existing policies
2. Revise to add cannabis to the relevant areas
3. Communicate with your employees

The good news is employers do not need to drastically change their policies.

Step 1 – Review your existing policies

Employers may need to revisit workplace policies with a focus on two key responsibilities, the duty to:

1. Accommodate disabled employees, including where medical cannabis is used to treat that disability; and
2. Ensure safety of the workplace and their right to prohibit impairment on the job.

Employers must strive to find a balance between these two competing obligations.

Step 2 – Revise your policies

The good news is, if you already have the foundation, your current policies set the framework. Employers maintain the right to set rules for non-medical use of cannabis in the workplace just as they can for alcohol.

Start by Mirroring Your Current Policies

For medical cannabis, an employer can start by mirroring the policies it uses for accommodating an employee who has been prescribed drugs that may impair their work.

For non-medical cannabis, employers can begin by looking at the policies it currently maintains for practices related to alcohol, prescription drugs or cigarettes.

Employers cannot enforce a zero-tolerance policy on employee's personal use.

Employers still have responsibility for workplace safety, so employers can enforce a zero-tolerance policy for cannabis use, intoxication or impairment at work.



Step 3 – Communicate with your staff

Like all workplace initiatives, communication is key. Make sure your staff understand their rights and responsibilities under the law, as well as your expectations as an employer.

It is important for your staff and management to be on the same page. Be transparent about what you're doing. Take the time to:

- Create resource materials
- Clearly state your expectations
- Remind employees of their rights and responsibilities, as well as the employer's responsibility to ensure workplace safety

Your communication can be both formal and informal. You may want to reiterate your expectations at a staff meeting, or it can be as routine as a water cooler discussion. The key point is to ensure your message is consistent and you fully understand the rights and responsibilities of both employers and employees.

Potential Policies to Review and Revise

Every industry and organization has different standards and practices, which means there are no 'standard' set of policies to review and revisit.

Among the policies you should review are:

- Employment Handbooks
- Orientation Guides
- Performance Evaluation Processes
- Recruiting and Onboarding Materials
- Workplace Safety Materials
- Equipment Instructions

Please consult your managers about other areas where your organization should take precautionary action on the issue of cannabis.



Summary

The legalization of recreational cannabis may feel like a radical change, and it raises questions about workplace rules.

However, the truth is the majority of Canadian employers already have effective workplace policies for smoking, using substances such as alcohol, maintaining safety at all times, job performance issues and the importance of coming to work unimpaired.

The only difference is that Canadian adults, including your employees, are now legally able to purchase and use recreational cannabis.

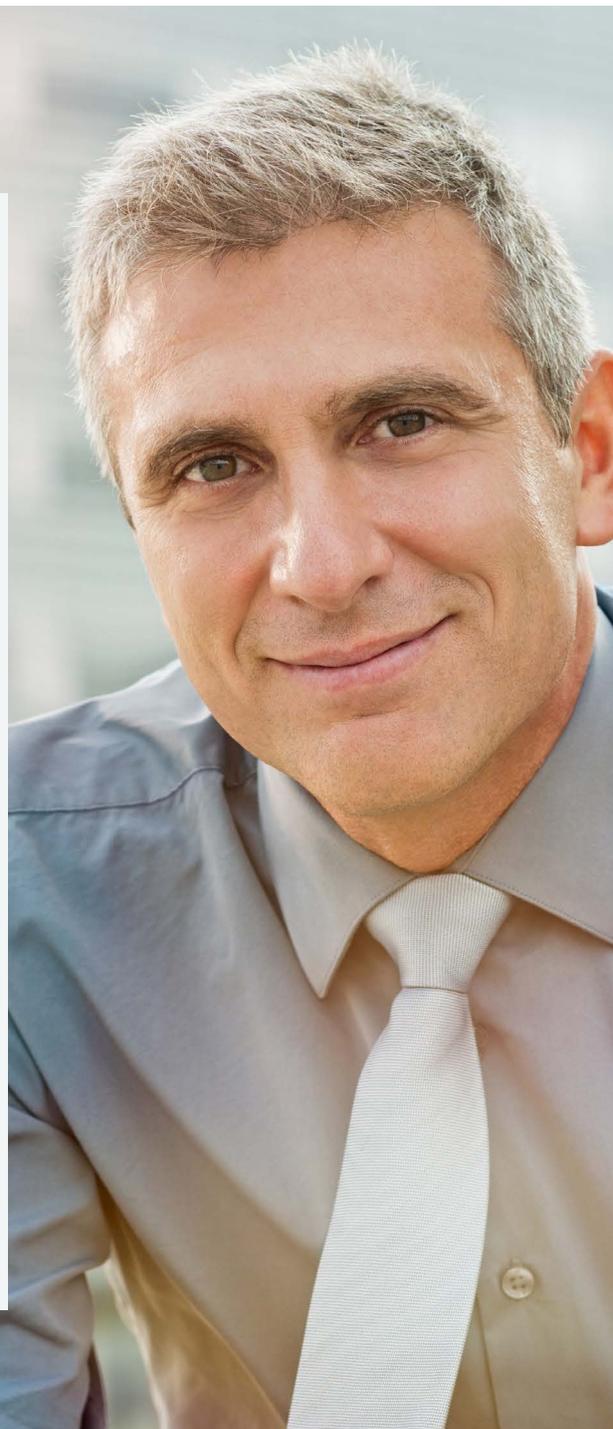
Canada's employers must ensure those existing policies are revised to include recreational cannabis among the substances that are controlled and regulated in the workplace.

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