



PERLEY-ROBERTSON,
HILL & MCDUGALL LLP/s.r.l.

CANNABIS LAW FAQ: EMPLOYMENT & LABOUR LAW

The effects of Cannabis on Employment & Labour Law | What you need to know:

The legislative landscape surrounding cannabis law in Canada is changing, and with it, a new realm of challenges and opportunities are emerging. Our team of experts at Perley-Robertson, Hill & McDougall LLP/s.r.l. have been advising clients in the cannabis industry since the development of the *Marijuana for Medical Purposes Regulations* in 2013, and is uniquely positioned to provide you with practical and professional advice in the face of an ever-evolving regulatory regime.

Whether you are already in the industry, seeking to become a licensed cannabis producer, seeking to expand your existing business, or seeking advice on the implications of medical cannabis or the coming legalization of cannabis for your workplace, Perley-Robertson, Hill & McDougall will be there to support you with our experienced team of cannabis law experts.

Our Cannabis Law Team is committed to assisting you with all matters relating to cannabis law. Please contact one of our dedicated team members to get started.

1. CAN EMPLOYERS CREATE RULES AROUND CANNABIS IN THE WORKPLACE?

Yes, employers will be entitled to create rules around cannabis in the workplace. Many employers already have workplace policies regarding drug use in place. However, it should be noted that existing policies were drafted prior to the proposed legalization of recreational cannabis, and were drafted with an eye on the use of *illegal* drugs in the workplace. As a result, such policies may not effectively address the current issues facing employers and employees in respect of *legal* cannabis. Once recreational cannabis is legal, employers will have to draft and implement policies that reflect legalization, largely treating recreational cannabis use in a manner more akin to alcohol than to illegal drugs. Employers will need to review existing policies to address the fact that cannabis possession and use for recreational purposes will no longer be illegal. In a unionized workplace, collective agreements and other agreements will also need to be considered.

Perley-Robertson, Hill &
McDougall LLP/s.r.l.

1400-340 Rue Albert Street
Ottawa, ON
K1R 0A5

T: 613.238.2022
F: 613.238.8775

www.perlaw.ca



PERLEY-ROBERTSON,
HILL & MCDUGALL LLP/s.r.l.

Perley-Robertson, Hill &
McDougall LLP/s.r.l

1400-340 Rue Albert Street
Ottawa, ON
K1R 0A5

T: 613.238.2022
F: 613.238.8775

www.perlaw.ca

In addition to reviewing workplace policies to reflect the legalization of recreational cannabis, employers must be cognizant of accommodation issues that may arise from the use of medical cannabis. Changes may be required to workplace policies around medicinal use to reflect the current status of the law. Medical cannabis has been legal in Canada for a number of years and workplace policies should already treat medical cannabis use in the same manner as other prescription drugs. Once recreational cannabis use becomes legal, other issues may arise and employers should be prepared to train managers, supervisors, and human resources professionals on how recreational cannabis use must be treated differently from the use of medical cannabis.

2. WHAT IF AN EMPLOYEE HAS A MEDICAL NOTE FOR CANNABIS?

If an employee has a medical note for the use of cannabis, then that employee will need to be accommodated. Employers should have accommodation policies in place that treat medical cannabis use in the same manner as other prescription drugs. Medical cannabis use in the workplace and during work hours will need to be accommodated up to the point of undue hardship. If you have questions regarding the point at which you may reach undue hardship in your attempt to accommodate the use of medical cannabis, you should speak to a member of our Cannabis Law Team who can assist you with this determination.

3. WHAT CAN AN EMPLOYER DO IF AN EMPLOYEE IS USING RECREATIONAL CANNABIS DURING WORK HOURS?

Under the proposed legislation in Ontario, employees will only be able to use recreational cannabis in private residences. The use of recreational cannabis will not be permitted in any public place, in workplaces, or in motorized vehicles and in other places that will be prescribed. This will not be the case, however, for the use of medical cannabis. If an employer wishes to restrict the use of recreational cannabis during work hours (for example, during a lunch break, recognizing that recreational cannabis can only be used in private residences), it should have a written policy in place that sets out rules for employees around recreational cannabis use and what the consequences will be if the policy is breached. Where employers have a policy in place, the policy should be followed and any breaches of the policy should be documented. Policies regarding the use of recreational cannabis should be clear that there are exceptions for medical cannabis and should point employees to the appropriate policy regarding accommodation.



PERLEY-ROBERTSON,
HILL & MCDUGALL LLP/s.r.l.

4. CAN AN EMPLOYER PROHIBIT EMPLOYEES FROM POSSESSING CANNABIS IN THE WORKPLACE (EVEN IF THEY ARE NOT USING IT IN THE WORKPLACE)?

The possession of recreational cannabis in the workplace should be treated similarly to the possession of alcohol in the workplace. To the extent that employees are prohibited or allowed to possess alcohol in the workplace, non-medical cannabis should be treated similarly. In respect of medicinal cannabis, employers must be cautious to ensure that they have policies in place that accommodate the use and possession of medical cannabis in the workplace.

5. CAN AN EMPLOYER REQUIRE EMPLOYEES TO TAKE A DRUG TEST TO DETECT CANNABIS USE?

Employers must be extremely cautious in respect of implementing drug testing in the workplace as this is an extremely complex area of the law. Although there are situations where drug testing may be appropriate, any policy must properly balance an employee's privacy and human rights with an employer's ability to collect and require personal information of this nature in order to achieve workplace safety.

In general, Canadian Courts and arbitrators have largely rejected employer-imposed drug testing policies, especially those that involve random testing. However, there are some situations where drug tests may be appropriate, particularly in safety-sensitive workplaces or where the workplace has a history of problems with substance abuse.

If you are considering implementing a workplace policy that includes drug testing employees, you should consult with a member of our Cannabis Law Team to ensure that you are not at risk of violating the rights of your employees.

Perley-Robertson, Hill &
McDougall LLP/s.r.l

1400-340 Rue Albert Street
Ottawa, ON
K1R 0A5

T: 613.238.2022
F: 613.238.8775

www.perlaw.ca



PERLEY-ROBERTSON,
HILL & MCDUGALL LLP/s.r.l.

Perley-Robertson, Hill &
McDougall LLP/s.r.l

1400-340 Rue Albert Street
Ottawa, ON
K1R 0A5

T: 613.238.2022
F: 613.238.8775

www.perlaw.ca

Who to contact:

Our Cannabis Law Team is available to answer any questions you may have.

- **Joël M. Dubois, Partner**
Tel: 613.566.2815
Email: jdubois@perlaw.ca
- **Karin Pagé, Partner**
Tel: 613.566.2860
Email: kpage@perlaw.ca
- **Falon Milligan, Lawyer**
Tel: 613.566.2224
Email: fmilligan@perlaw.ca

Disclaimer:

The content is provided for general information purposes only and does not constitute legal or other professional advice. Readers are advised to seek specific legal advice by contacting members of Perley-Robertson, Hill & McDougall LLP/s.r.l (or their own legal counsel) regarding any specific legal issues.

This document is available for download at:

www.perlaw.ca/en/expertise/cannabis-law