

Recently the six upstream trade associations (CAGC, CAPP, CEPA, CAODC, EPAC and PSAC) submitted the following written submission to the Alberta Cannabis Secretariat:

The Government of Canada is committed to legalizing the recreational use of cannabis, by amending the Criminal Code which is within the exclusive jurisdiction of the Federal Government under the Constitution. However, this change will also necessitate changes to legislation that is within the exclusive jurisdiction of the Provinces and Territories under the Constitution.

The undersigned associations make the following submissions in respect to the Government of Alberta's call for input in respect of developing Alberta's approach to cannabis legalization and the drafting of the Alberta Cannabis Framework.

As employers of thousands of workers in multiple Canadian jurisdictions, we feel it imperative that several issues and concerns are addressed by the Government of Alberta prior to or at the same time as the federal legislation to legalize cannabis comes into effect. This is necessary to:

1. Protect the safety of our workplaces which is the employer's legal obligation.
2. Protect the safety of the public with whom many employers share their workplace or with whom we come into contact; and
3. Ensure our workplaces are not subject to costly and time consuming human rights and other legal challenges arising from the legalization of cannabis.

We are concerned with the potential impact that the legalization of cannabis will have on safety in the workplace.

The legalization of cannabis for recreational purposes may result in an increase in the percentage of the population using the drug, which may also result in a corresponding increase in the number of employees using cannabis in the workplace. It naturally follows that there will be an increase in the number of cases where the employers interests come into conflict with the interests of employees who test positive for cannabis or other drugs. In respect of our members, the use of cannabis in the workplace is not conducive to safe workplace behaviour.

As the responsibility for workplace safety rests with employers under the Occupational Health and Safety Act, it is imperative that employers be allowed to apply workplace measures that will enable mitigation of risk to employees and the public caused by employees working when they are impaired by alcohol or drugs.

The increased risks to workplace safety associated with employees being under the influence of cannabis in the workplace require that the following should be in place prior to or at the same time as legislation to legalize the recreational use of cannabis comes into effect. We are asking that the Alberta government give consideration to these while developing the Alberta Cannabis Framework:

1. We recommend that provincial legislators engage in the scientific investigation necessary to determine impairment, as has been done with respect to alcohol.

The absence of a scientifically determined level of drugs in a person's system above which impairment is presumed, together with an instrument that would accurately determine the drug level, leaves both employers and employees in a position of uncertainty.

2. We recommend the implementation of random drug testing regulations to permit employers to test candidates/employees prior to employment/transfer in to safety sensitive work and thereafter they will be subject to random testing for alcohol and specified drugs, with the objective to deter the presence and use of alcohol, drugs and other substances while on company work or premises. The importance of maintaining a safety sensitive workplace, where employees operate in a drug and alcohol free environment outweighs the consideration of a safety sensitive employee/person's right to privacy.

3. We recommend the implementation of drug testing regulations to permit employers to test employees on pre-employment, post-incident, reasonable cause, as well as testing as part of a monitoring program for employees returning to work after treatment or in a post-violation situation.

4. Clear and balanced rules setting out an employer's duty to accommodate employees who are under the influence of cannabis while at work and who suffer from substance abuse must be established. We anticipate an increase in the number of cases where those who test positive will claim to have a dependency on cannabis. This will result in an extra financial burden on employers resulting from the employer's duty to accommodate that disability.

We suggest that the legislation place more emphasis on the purpose of employers' drug and alcohol policies as suggested by certain members of the Supreme Court of Canada in the recent case of *Stewart v Elk Valley Coal Corp.*, 2017 SCC 30.

5. We recommend that the provinces begin a consultative process that results in the harmonization of legislation and regulations across provincial and territorial boundaries. This will provide a consistent framework applicable to employers, who carry on operations in multiple jurisdictions and equality between their employees.

We are prepared to meet with the Secretariat at any time, to further discuss these recommendations and to have input into any committees which are created to make further recommendations for legislative changes.

From the Thursday Files:

Act as if what you do makes a difference. It does.

William James