

COMPLIANCE BULLETIN

HIGHLIGHTS

- On Dec. 13, 2016, the Canadian government released a report from the Task Force on Cannabis Legalization and Regulation. The report contains 80 recommendations for a proposed marijuana legalization regime.
- The government is under no obligation to include the report's recommendations in its final legislation.
- Employers should be aware that the legalization of marijuana for recreational purposes is on the horizon. In the meantime, workplace policies related to drug and alcohol use should be reviewed and communicated to employees.

Spring 2017

- The government has promised to table its marijuana legislation in the spring of 2017.

Provided by:
Lloyd Sadd Insurance Brokers
Ltd

Federal Marijuana Task Force Report - What Employers Should Know

OVERVIEW

On Dec. 13, 2016, the Canadian government released a report from the Task Force on Cannabis Legalization and Regulation (task force).

The report was ordered by Justin Trudeau's Liberal government, which has promised to table legislation to legalize marijuana for recreational uses in the spring of 2017.

While the government has the ability to accept or reject the task force's recommendations, the report does provide insight into what a Canadian marijuana legalization framework could look like when the government introduces its legislation.

Highlight of the Report

The task force's report contains 80 recommendations for the legalization framework. While each of these recommendations deserves analysis, highlights of the report are included in this Compliance Bulletin.

General Framework

Under the framework recommended by the task force, Canadian adults over the age of 18 would be able to use and possess up to 30 grams of marijuana for recreational purposes. Individuals would be able to purchase marijuana from regulated storefronts or mail orders and grow up to four plants of the substance in their residence. The report also recommends that restrictions be placed on marijuana

advertising, rules be set for drug potency and a public education campaign about the dangers of drug impairment be implemented.

Workplace Safety

In the process of drafting its report, the task force discovered that employers across Canada are concerned that increased marijuana use could have a negative impact on workplace health and safety. In its report, the task force acknowledged that drug and alcohol use and impairment in the workplace poses a serious danger to everyone in the workplace, including the person who is impaired.

The task force further acknowledged that the potential use of cannabis is particularly concerning in safety-sensitive industries, such as transportation, health care and law enforcement, where symptoms related to impairment can increase the risks of hazards, injuries and death.

The task force further noted that during its consultations employer groups called for more guidance from federal, provincial and territorial governments about appropriate workplace drug use and drug testing policies. To this end, the task force recommended that the federal government takes the following steps:

- Facilitates and monitors ongoing research on cannabis and impairment, considering implications for occupational health and safety policies;
- Works with existing federal, provincial and territorial bodies to better understand potential occupational health and safety issues related to cannabis impairment; and
- Works with provinces, territories, employers and labour representatives to facilitate the development of workplace impairment policies.

Places of Use

Another concern for employers, as well as health officials, in the regulation of cannabis is how and where adult users may use cannabis. The task force heard concerns from many stakeholders about public use of cannabis and the general nuisance of second-hand smoke.

The task force agreed with the widespread view that current restrictions on public smoking be extended to include the public smoking of cannabis. Accordingly, the task force recommended that jurisdictions extend the current restrictions on public smoking of tobacco products to the smoking of cannabis products and to cannabis vaping products.

Next Steps for Employers

While the task force's report provides some insight into what a potential marijuana legalization framework could look like in the near future, the report left many questions unanswered. Until the government officially tables its proposed legislation, many of these questions will remain unanswered. In the meantime, it is important for employers and their employees to remember that marijuana possession for recreational purposes remains illegal throughout Canada.

Employers are advised to review with their legal counsel and communicate their current workplace policies on drug and alcohol use to employees before the spring of 2017. In reviewing their workplace policies, employers should keep in

mind that the federal government and the provinces and territories each have their own occupational health and safety legislation and related regulations that outline the general rights and responsibilities of employers and employees. At present, there is no Canadian law permitting or regulating mandatory drug testing of employees. Court decisions, including those by the Supreme Court of Canada, provide guidance and suggest that random drug and alcohol testing is not permitted except in certain circumstances.

Additionally, federal and provincial human rights commissions have policies explaining how drug and alcohol testing must not discriminate, including against those with disabilities and perceived disabilities. They suggest that drug testing in workplaces can only be used if it is to satisfy bona fide occupational requirements.

Generally, in the context of non-medical use, marijuana (whether legal or not) may continue to be treated in substantially the same way as the use of alcohol under an organization's workplace drug and alcohol policy. Employers have the right to prohibit the use of marijuana during work hours and to further prohibit attendance at work while impaired.

The full text of the task force's report can be read [here](#). For additional compliance updates, contact Lloyd Sadd Insurance Brokers Ltd today.