



# What's New in HR Law

## Cannabis in the Workplace – October 2018 Update

October 10, 2018

### **BOTTOM LINE**

On September 27, 2018, the Ontario government introduced Bill 36, the *Cannabis Statute Law Amendment Act, 2018*. If Bill 36 is passed by the Ontario legislature, it will make substantial amendments to the *Cannabis Act, 2017*, introduce the new *Cannabis Licence Act, 2018*, and will amend several other provincial statutes in preparation for the impending legalization of recreational cannabis on October 17, 2018.

### ***Cannabis Statute Law Amendment Act, 2018: Amendments to Current Legislation***

Amendments to the *Cannabis Act, 2017* and *Smoke-Free Ontario Act, 2017*:

- The *Cannabis Act, 2017* will be re-named the *Cannabis Control Act, 2017*.
- Currently, the *Smoke-Free Ontario Act, 2017* refers to both medical and recreational cannabis. Bill 36 will remove this distinction. All references in the *Smoke-Free Ontario Act, 2017* will simply be to "cannabis."
- Under the *Cannabis Act, 2017*, consumption of cannabis was generally restricted to private residences. Bill 36, if passed, will allow the consumption of both medical and recreational cannabis in locations where smoking tobacco is permitted under the *Smoke-Free Ontario Act, 2017*. The amendment would allow for the consumption of

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cannabis in certain public outdoor spaces including sidewalks and parks. Of course, Ontarians are still prohibited from consuming cannabis when operating any type of vehicle.

- If Bill 36 passes, smoking or vaping cannabis would be prohibited in enclosed public spaces or enclosed workplaces, the indoor areas of condominiums, apartment buildings, university and college residences, and in non-smoking rooms of hotels, motels or inns.

Assuming Bill 36 passes, the *Cannabis Control Act* would come into force on October 17, 2018, or the day that Bill 36 completes the legislative process and receives Royal Assent, whichever is later.

### **The Cannabis Licence Act, 2018: A Licensing Scheme**

Bill 36 will introduce a new piece of legislation, namely, the *Cannabis Licence Act, 2018*. The new act sets out the government's licensing scheme for private retail cannabis storefronts in Ontario.

Licences will be provided by the Alcohol and Gaming Commission of Ontario (AGCO), who will also be responsible for enforcing licensing requirements, including those related to store format, training obligations and security protocols. Failure to comply with the prescribed requirements may result in the forfeiture of a retail store's licence.

Under the legislation, it appears that the government will not be placing a cap on the number of available licenses.

Under the *Cannabis Licence Act, 2018*, the AGCO will consider a variety of factors when determining an application for a retail operation licence. These include:

- whether there are reasonable grounds to believe that an applicant would not be financially responsible in conducting cannabis retail business;
- whether an applicant has been charged with or convicted of cannabis related offences;
- the public interest, having regards to the needs and wishes of the residents of the municipality; and,
- written submissions made by the municipality involving the application, having regard to the needs and wishes of the community.

Significantly, under the *Cannabis Licence Act, 2018*, municipalities will have until January 22, 2019 to decide whether to ban cannabis retailers within their community altogether.

### **Additional Regulatory Proposals – Commentary due October 7, 2018**

In addition to the *Cannabis Statute Law Amendment Act, 2018*, on September 27, 2018, the Ontario government also tabled two proposed regulations, requesting commentary from the public by October 7, 2018.

### **Smoke-Free Ontario Act, 2017 – Proposed Regulation**

If Bill 36 passes through the Ontario legislature, the government is considering making changes to Ontario Regulation 268/18 under the *Smoke-Free Ontario Act, 2017*. These include:

- changing the term “medical cannabis” to “cannabis”;
- introducing an evidentiary rule that would allow a court to infer that a substance in question is cannabis if there is no evidence to the contrary; and,
- creating an exemption for certain vehicles and boats from the currently proposed prohibition on consuming cannabis. The newly proposed exemption would apply to motor vehicles that are equipped with permanent sleeping and cooking accommodations, are parked and in use as a residence, or boats that have similar equipment and are anchored and in use as a residence.

Employers can view a complete summary of the proposal here:

<https://www.ontariocanada.com/registry/view.do?postingId=27806&language=en>

### **Long-Term Care Homes Act, 2007 (LTCHA) – Proposed Regulation**

If Bill 36 passes through the Ontario legislature, the government is considering making changes to Ontario Regulation 79/10 under the *LTCHA*, including:

- adding definitions for “cannabis”, “recreational cannabis” and “medical cannabis”;
- requiring Long-Term Care Home licensees “to have written policies and procedures to govern the cultivation, acquisition, use, administration, possession, storage and disposal of medical cannabis that comply with all applicable laws, including but not limited to, the *Cannabis Act (Canada)*” as well as policies and procedures with respect to the same but in regards to recreational cannabis; and,
- providing for a 60-day transition period after the amendments come into force to allow for the development of policies and procedures relating to recreational and medical cannabis.

Employers can view a complete summary of the proposal here:

<https://www.ontariocanada.com/registry/view.do?postingId=27807&language=en>

### **Check the Box**

These amendments will alter the landscape for employers in regards to cannabis in the workplace. Employers who want to restrict cannabis use in the workplace beyond what is provided in the *Smoke-Free Ontario Act, 2017*, will have to take steps to do so themselves. For example, an employer will need to create a policy in order to restrict cannabis consumption in non-enclosed workplaces or in outdoor areas near a workplace. These policies will be crucial for employers who wish to clearly outline their expectations regarding the consumption of recreational cannabis at or near the workplace.

Employers should consider what kind of policy is right for their workplace, and should do so quickly; the October 17, 2018 legalization date is just around the corner.

### **Need more information?**

Contact [Derek Klatt](#) at 416-408-5506, or your regular lawyer at the firm.

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