

Index

Note: References are to page numbers.

- Competing rights and interests**, 93, 150
- Disability**, *see* **Duty to accommodate; human rights**
- Discipline in workplace, cannabis related**; *see also* **Non-union employees; Union employees**
- non-unionized workplace, 42-47
 - unionized workplace, 21-28, 31-34
- Drug and alcohol testing**, *see also*
- Privacy in private sector**
- alternatives to, 110-113
 - balancing between competing interests, 93, 106
 - case law, 94-113
 - *ATU, Local 113 v. Toronto Transit Commission*, Ontario Superior Court of Justice, 109
 - *Entrop*, Ontario Court of Appeal, 95-97
 - *Elk Valley Coal*, Supreme Court of Canada, 110-113
 - *Irving*, Supreme Court of Canada, 98-104
 - pre-*Entrop*, 94, 95
 - *Suncor*, Injunction Decision, Alberta Court of Appeal, 107-108, 110
 - *Suncor*, Judicial Review decision, endorsed by Alberta Court of Appeal, 104-107, 110
 - current state of law, 73, 74, 102, 103, 106, 107
 - follow-up testing, 102, 103
 - post-incident testing, 102, 103
 - pre-employment testing, 103
 - random testing, 73, 74, 102, 103, 106, 107
 - reasonable suspicion testing, 102
 - injunctions to prevent testing, 107-110
 - mandatory disclosure of addiction, inclusion in policy, 112, 113
 - Model Policy, Canadian Human Rights Commission, 97, 98
 - non-unionized workplace, 42-44

- purpose of, 110
- roadside testing for cannabis, 8, 9
- science of cannabis impairment testing, 115-131
 - blood, 124-129
 - Canadian Model — Alcohol and Drug Guidelines, 131
 - chronic impairment, 118
 - College of Physicians and Surgeons and Health Canada guidance, 116-117
 - current testing technologies, 115-117
 - immediate detection, 116
 - methods of testing, 119
 - oral fluid, 122-124, 131
 - physical indicia of impairment, 129-131
 - THC and metabolites, overview, 117-119
 - urine, 120-122, 131
 - 12-step procedure, catching impaired drivers, 130
- unionized workplace, 28-31, 37, 38

Duty to accommodate

- disability, 49, 50, 55, 61
 - addiction as disability, 50, 61
 - characteristic worthy of protection, 49
 - consumption for medical reasons, 50
 - definition of, 50, 55
 - employee denial of, 61
- general, 49, 50

- medical cannabis, lawful use of, 50, 51
- overview of, 52
- procedural component of, 54-58
 - disability, classification of, 55
 - disability treatment, details of, 56
 - exchange of medical facts, 54-58
 - independent medical examination, 57
 - medical history, disclosure of, 58
 - proof of authorization to legally possess medical cannabis, 55, 56
 - specific diagnosis, disclosure of, 58
- reasonable form of accommodation, 58
- substantive component of, 58
- triggering of, 49, 50, 53, 54, 61, 74
 - cannabis dependency, 50, 61
 - consumption for medical reasons, 49, 50, 61
 - consumption for recreational reasons, 49
 - employee onus to disclose accommodation needs and dependency, 53, 54, 74
 - employer duty to inquire, 53, 54
- undue hardship, 58-61

Future outlook

- duty to accommodate, 49, 61
- human rights, 49

- labour relations, 47
- medical cannabis, inclusion in employer-sponsored health benefit plans, 138
- occupational health and safety, 91
- privacy in private sector, 64, 73, 74
- review of workplace policies, 152, 153

Health benefit plans, employer-sponsored

- Canada Revenue Agency, tax credit or deduction, 138
- case law, 135-137
 - against medical cannabis inclusion in benefit plans, 137
 - in favour of medical cannabis inclusion in benefit plans, 135-136
- corporations and unions, 134, 135
- medical cannabis as covered prescription drug, general, 133, 134
- private insurance plans, 137, 138

Human rights, *see also* Duty to accommodate,

- disability, 49, 50, 55, 61
- legislation, 49, 52, 55, 59
- termination of employment due to addiction, 74, 111-113
- violation of drug and alcohol policies, 43, 44, 111, 112

Licensed producers, 9-11, 18-21

Legislation, *see also* Medical cannabis; Non-medical cannabis; Oc-

cupational health and safety;

Privacy in private sector,

- *Charter*, 1-2
- human rights, 49, 52, 55, 59
- legalization of recreational use, 1
- medical cannabis, 1-2, 9-11
- non-medical cannabis, 2-7
 - Alberta, 3-5
 - British Columbia, 6, 7
 - federal, 2,3
 - Ontario, 5, 6
- occupational health and safety, 84-88
- privacy in private sector, 63-73
- roadside testing, 8-9
- union employees, 18-22, 25
 - certification, 18-21
 - possession and consumption, 21, 22, 25

Medical cannabis, *see also* Duty to accommodate; Policies regarding cannabis in workplace

- client registration and ordering, 10, 11
- controversial treatment, 2
- criminal prohibition exemption, 1, 2
- definition of, 2
- delivery of, 11
- growing own cannabis, 2
- health benefit plans, inclusion in, 133-138
- lawful use of, 1, 2, 50, 51
- legislation, 1-2, 9-11
- licensed producers, 9-11
- non-dried forms of (including brownies, teas, oils), 2
- *R. v. Parker*, 1
- Regulations, 9-11,50, 51

- requirements for legal possession, 133

Non-medical cannabis; see also Discipline in workplace, cannabis related; Duty to accommodate; Policies regarding cannabis in workplace,

- ban on use by organizations, 153
- general, 1
- legalization of, 1
- legislation, 2-7
- policies concerning, 140, 147-150, 153

Non-union employees

- common law rights, 42
- drug testing, 42-44
- duty to accommodate, 42-44
- general, 42
 - obligation to disclose addiction, 44
 - off-duty conduct, 47
- possession or purchase of cannabis, 44-47
- termination for cause, 44-47
- zero-tolerance policies, 42-44

Occupational health and safety

- alcohol and drugs, comparison to cannabis, 83
- due diligence, 89-91
- generally, 83
- impairment as hazard, 88-89
 - employer duty to consider, 88, 89
 - hazard, definition of, 89
- legislation, 84-88
 - Alberta, 86-87
 - British Columbia, 84-86
 - federal, 84
 - general, 84

- Manitoba, 87
- Ontario, 87, 88
- policies, 91

Policies regarding cannabis in workplace

- attendance, lateness and absenteeism, 144-146
- employer review with view to cannabis risk factors, 140, 152, 153
- environmental sensitivity, 150-152
- home work and flexible work arrangements, 146-147
- host liability, 147-150
- mandatory disclosure of addiction, inclusion in policy, 112, 113
- Model Policy for alcohol and drug testing, Canadian Human Rights Commission, 97, 98
- occupational health and safety, 91
- privacy in private sector, 73-81
- recreational cannabis, 140, 147-150, 153
 - alcohol policy, amendment with view to potential recreational cannabis use, 147-150
 - banned use of, 153
 - general, 140
- scent, 150-152
- smoking, 141-142
- social events, 147-150
- substance use, 142-144
- union employees, drug and alcohol policies, 31-34

- zero-tolerance policy, 139, 42-44, 59-60

Privacy in private sector

- cannabis in workplace, 73-74
- consent, 66, 68-73
- compliance, 65, 68, 72
- federal legislation, 63-65, 67, 68, 72
- general, 63-65, 67, 68
- information protected by privacy laws, 64
- jurisdictional overlap, 64, 65
- key privacy principles, 66-68
- organization, definition of, 65
- personal information, definition of, 64
- policies, 73-81
 - alcohol and drug, 73, 74
 - generally, 74-75
 - sample privacy policies, 75-81
- private information, definition of, 64
- provincial legislation, 63-65, 72-73
- reasonable purpose, 66-68, 72
- testing, 73, 74

Recreational use of cannabis, *see*

Non-medical cannabis

Regulations

- medical cannabis, 9-11, 50, 51, 55, 133
- non-medical cannabis, Alberta, 4
- occupational health and safety, 85, 87, 139
- roadside testing, 8

- unionized employees, discipline, 25

Union employees

- accommodation of medically authorized cannabis use, 34-36
- Agricultural Employees Protection Act, 18-21
- British Columbia, 21
- cannabis as agricultural product, 18, 20
- causal effects of cannabis use and workplace accidents, 34
- certification of cannabis industry employees, 17-21
- circumstantial proof of cannabis consumption, 23, 24
- collective agreement, 16
- discipline, 21-28
 - evidence, 22, 23
 - legislation, 21, 22
 - mitigating factors, 25-28
 - providing cannabis to co-workers, 25
 - termination of employment, 23-25
 - use and possession of cannabis, 23-25
- drug testing, 28-31, 37, 38, 73
 - bodily components, collection of, 29, 31
 - random drug testing, 28-31, 73
 - refusal to test, 37, 38
- effect of legalization on workplace, 34
- federal, 21
- grievance process, 16, 17
- health benefit plans, inclusion of medical cannabis in, 134, 135

- impairment, 22, 34-38
 - • cognitive effects of cannabis, 34-36
 - • establishment of, 22, 36, 37
 - • mere observation insufficient to establish impairment, 37
 - • right to refuse impairment test, 37, 38
- jurisdiction over, 14, 15, 17-21
 - • federal jurisdiction, 14, 15
 - • provincial jurisdiction, 14, 15, 17-21
- legislation, 21, 22
- MedReleaf, 18-21
- off-duty conduct, 39-41
- Ontario, 21
- pivotal role of union in development of jurisprudence, 13, 14
- policies, drug and alcohol, 31-34
- possession and consumption, legislation regarding, 21, 22
- refusal to hire due to medically authorized use of cannabis, 35, 36
- safety, 38-39
- vicarious liability, 21