

POLICY STATEMENT

Cannabis and the Human Rights Code



Ontario
Human Rights Commission
Commission ontarienne des
droits de la personne

Ontario's Human Rights Code

- Protects people from discrimination and harassment
- On 17 grounds including disability
- In the areas of employment, vocational associations, services, housing, contracts
- Duty to accommodate Code-related needs...
- Short of undue hardship based on significant health and safety risks or excessive costs

Cannabis and the Code

- Code applies similarly to cannabis as it does to other drugs
- Code protects people who:
 - Use cannabis for a medical purpose
 - Are affected by cannabis because of a disability
 - Are addicted to cannabis

Cannabis use at work

- Ontario prohibits smoking or vaping cannabis for a recreational or medical purpose in an enclosed workplace
- Code might permit edible cannabis for a medical purpose related to disability if no significant interference with health and safety or essential duties
- Code does not apply to recreational cannabis

Office clerk example

- Employee smokes cannabis to treat symptoms of multiple sclerosis
- Employer accommodates by allowing the employee to take periodic outdoor breaks
- His doctor confirms him fit for work because the amount consumed will not interfere with essential job duties

Cannabis impairment and safety sensitive jobs

- Employers can generally expect that employees not be drug impaired at work
- Duty to accommodate disability-related cannabis use for medical purpose or addiction
- But likely undue hardship to allow any employee to be impaired while doing safety-sensitive jobs, like operating heavy machinery

Aitchison v L & L Painting and Decorating Ltd. HRTO 2018

- Painter worked on 37th floor outside building
- Smoked cannabis for a medical purpose at breaks
- HRTO found no discrimination...
- His job was a safety sensitive position
- His actions amounted to a genuine risk

Aitchison cont'd

- He medicated at work without authorization from physician or employer
- No evidence he asked for accommodation
- Employer's policy prohibiting cannabis smoking on-the-job was bona fide & reasonable because...
- It did not impose automatic termination
- Nor did it close the door to accommodation in a non-safety sensitive position

Employer responsibilities

- Routinely inform workers in safety sensitive jobs about need to disclose drug use that could lead to on-the-job impairment
- Encourage workers to ask for disability-related accommodation before harmful incidents happen
- Offer assistance and accommodation before imposing consequences
- Maximize workers' right to privacy

Employer responsibilities... cont'd

- Workplace policies and practices that automatically discipline workers for not disclosing disability-related cannabis use or addiction might be discriminatory
- Duty to accommodate might end if worker does not ultimately participate in accommodation process or meet essential job duties

Worker responsibilities

- Discuss with physician any concerns about fitness for work – negative impacts on health and safety, or other essential job duties
- Generally, expected to make accommodation needs known
- Provide medical or other information to support needs if necessary
- Verify fitness for work if necessary

Disclosing information

- Employer does not generally have a right to know nature of disability or treatment
- Physician's note verifying cannabis use related to disability not interfering with fitness for work might be necessary in some situations, particularly in safety-sensitive environments

Duty to inquire

- Some workers might be reluctant or unable to recognize or disclose they have disability-related accommodation needs
- Employers have a duty to inquire where worker is clearly unwell, or is known to have, or perceived to have, disability needs related to cannabis use for a medical purpose, or cannabis addiction

Forms of accommodation

- Employer must first try to reduce any risks
- May need to change some job duties or offer alternative work
- Refer worker with cannabis addiction to any employee assistance program
- Allow time off for medical appointments or rehabilitation program
- Or provide other job-related supports

Housing

- Ontario prohibits smoking or vaping cannabis in common areas of apartments and condos
- Can smoke or vape cannabis in your own unit and outdoor space...
- Except where laws or rules prohibit smoking or vaping cannabis and tobacco for public health reasons
- OHRC policy: can consume edibles anywhere on premises for medical purpose related to disability

Housing cont'd

- Cannabis use might negatively affect other residents, including people with chemical sensitivity disabilities
- Duty to accommodate
 - Cannabis use for disability-related medical purpose
 - Disabilities affected by cannabis use
 - Short of undue hardship
- Residents may need to provide information supporting disability-related needs

Borutski and others v Crescent Housing Society and another (No. 3), 2014 BCHRT 124

- Some residents alleged second hand tobacco and cannabis smoke exacerbated their disabilities
- Tribunal found the Housing Society took reasonable steps to accommodate and limit exposure...
- Offering relocation to different units
- New policy moving towards smoke-free environment
- New tenant lease agreements prohibiting smoking
- Maintaining and inspecting ventilation system
- Moving “smoking pit” farther away from building
- Offering tenant-to-tenant dispute resolution

Borutski cont'd

- Tribunal also found...
- Complainants did not fully participate in the accommodation process
- They sought a perfect and preferred accommodation, rather than a reasonable accommodation
- Implementing complaints' requested measures would have constituted undue hardship

www.OHRC.on.ca

- Policy statement on cannabis and the Code 2018
- Questions and answers on cannabis and Ontario's Human Rights Code 2018
- Policy on drug and alcohol testing 2016
- Also see: About Ontario's cannabis legislation: www.ontario.ca/cannabis