Cannabis

On October 17, 2019, three new classes of cannabis become legal (with amendments to the Cannabis Regulations):

1. Edible Cannabis: Products containing cannabis that are intended to be consumed in the same manner as food;
2. Cannabis Extracts: Products that are produced using extraction processing methods or by synthesizing phytocannabinoids; and
3. Cannabis Topicals: Products that include cannabis as an ingredient and that are intended to be used on external body surfaces, including skin, hair, and nails.

What Employers Need to Know About the New Cannabis Products

Cannabis derived products bring new challenges for employers. Employers will likely have a hard time detecting use by employees since the products closely resemble non-cannabis products. Another trouble spot for employers is that the effects of the new products may be delayed and can be more intense than when cannabis is inhaled.

Employers can often detect when an employee has smoked or vaped cannabis during work or prior to arriving. A manager or coworker may witness the employee doing so or they may smell it directly on or around the employee. By contrast, it may be more difficult to spot that an employee is consuming or applying a cannabis derived product due to the non-distinctive appearance and lack of smell.

Further, the effects of ingested cannabis are different from inhaled cannabis. Feeling an effect from edible cannabis tends to take longer and a high may differ and/or last longer. Given the delayed effect, there is a real risk of unintentional overconsumption of edible products.

Employers who haven't done so already need to become educated about the new products, develop appropriate workplace policies and guidelines, and provide training to identify and manage impairment resulting from both smoking and eating cannabis products. Employers who already have workplace policies and guidelines in place for cannabis use, should review and revise these to ensure they adequately address cannabis derived products. This is especially important for employers who employ individuals in safety-sensitive positions.

A cannabis policy is essential. The policy should define what is acceptable use, if any, and delineate disciplinary consequences for use or impairment. Ensuring that employees are aware of the expectations, and repercussions of a failure to meet expectations, will go a long way toward maintaining the environment that you, as the employer, want.

Test Yourself

First Correct answer wins a prize – answer to be published on the web site.

What changes took effect in the Construction Regulation 213 On January 1, 2020?

Send your answer by email to: newsletter@safetyscope.net

This Months Tip:

Shovelling Snow on to the Road

Residents cannot shovel snow or ice onto roadways (Ontario Highway Traffic Act, S 181).

Not only does it put snow back onto the streets once snowplows have passed, but it also poses a safety hazard for pedestrians and drivers. **Think about it.**

Safetyscope Upcoming courses

Working at Heights Feb 7, 21

Working at Heights refresher Feb 14, 28

Confined Space Awareness
Feb 10-11

Confined Space Rescue
May 25-28

First Aid Feb 5-6

Contact Us with your training needs training@safetyscope.net

Asbestos Can Kill

"There's little that we can do to fix or change the exposures that happened years prior, and we expect to continue to see asbestos claims come through the systems as people age and time goes by," WCB CEO Peter Federko said. "The best thing that we can do is create awareness and ensure that we are not continuing to propagate exposures to these asbestos fibres." The # one cause of occupational death is exposure to asbestos.

Owners, employers and constructors must ensure workers are safe on the job and are not exposed to asbestos, this includes following the OHSA and the Regulation respecting Asbestos on Construction Projects and in Buildings and Repair Operations. For further information Working with Asbestos: What you need to know.

A Quick Review of Accommodation Legislation in Ontario

From time to time cases arise involving possible clashes between Health and Safety and Human Rights. Before coming to any conclusions on who is in the right or in the wrong, it is probably best to have a quick review of what the current law says as a background. This only applies to Ontario, within the scope of provincially-regulated workplaces.

The Ontario Human Rights Code (OHRC) (1990) established two criteria to protect the human rights of people under its jurisdiction. One was a list of "public arenas", and the other was a list of "prohibited grounds. The list of prohibited grounds notes that every person has right to equal treatment, without discrimination because of – race, ancestry, place of origin, colour, ethic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability. The list of public arenas includes areas within which anyone providing services in Ontario cannot discriminate on the basis of any of the prohibited grounds, and includes, broadly, accommodation, contracts, employment, vocational associations, and sexual harassment. The bottom line is that it is illegal in Ontario to discriminate in any of the public arenas on the basis of a prohibited ground.

If I operate a hotel, I cannot refuse to rent a room to someone because they are Irish. If I am hiring an employee, I cannot refuse to hire them because they are a woman, or because they come from Ireland. I can, however, refuse to hire you because you are too tall – height is not a prohibited ground, but more on that in a minute. Where a person feels aggrieved, believing that they have been the victim of discrimination in a public arena on the basis of a prohibited ground, they may take their claim to the OHRC for enforceable review.

Over the years since 1990 the Commission has had a significant proportion of its workload arise from the intersection of the public arena of employment, and the prohibited ground of disability. Section 11 of the OHRC allows potential employers to identify a requirement or qualification that, while a prohibited ground, can be used to discriminate when hiring. This is known as a bona fide occupational requirement (BFOR).

In broad terms, it works like this: If I am an employer hiring drivers, I can list, as a BFOR, the criteria that potential candidates must not be blind. This, on the surface is discrimination on the basis of a disability, which is a prohibited ground. However, section 11 would allow this because being able to see would be a reasonable and bona fide requirement in the circumstances, and this discrimination is not infringement of the right to employment. The BFOR will be reviewed to ensure that it is reasonable in the circumstances, and that, it, in itself, is not discriminatory. If the BFOR is valid, it may be used as a basis to reject the application from a disabled applicant.

A Quick Review of Accommodation Legislation in Ontario cont..

But, not so fast. There is more. Section 17 of the OHRC says, first, that the rights of a person are not infringed in this case, but adds that the person shall not be found incapable of doing the job unless the court is satisfied that the person cannot be accommodated without causing undue hardship to the potential employer. In the mythical case above, where the candidate is not hired to drive because they are blind, this is rather straightforward. Accommodation is difficult to imagine. But, in the real world, there are a lot of grey areas.

The requirement, in all probability, would not read "Cannot be blind", but would require some standard of acceptable vision. That opens the door to accommodation – can poor vision be improved with glasses, is the standard reasonable, is there a clear link between the requirement and the job, etc.? The requirement, in all probability, would not read "Cannot be blind", but would require some standard of acceptable vision. That opens the door to accommodation – can poor vision be improved with glasses, is the standard reasonable, is there a clear link between the requirement and the job, etc.?

All of this suggests that there are number of steps to be followed in the employment process. First, the job requirements must be documented clearly, and if there are any requirements that suggest a person with a disability cannot do the job, this must be documented in a bona fide occupational requirement. In the event that a person applies for the job, but cannot satisfy the BFOR, the potential employer must look at the disability and determine if the employer can accommodate that disability. How far must the employer go?

Section 17 says that the employer who does not wish to hire the disabled applicant must show that the needs of the person cannot be accommodated without causing "undue hardship" to the potential employer. Exactly how far is that? There are three criteria: cost, outside sources of funding, and health and safety requirements.

Cost is significant – the employer must show that the cost of accommodating the disabled applicant is so expensive that it changes the fundamental nature of the business, or affects the survival of the business as a whole. If this is the case, the next criteria, outside sources of funding becomes a consideration. The potential employer must show that they can not afford the accommodation, and that they have attempted to access any provincial or federal funding that is available to offset the costs of the accommodation, and this includes phasing in the accommodation over time.

The third criteria involves health and safety. Is it safe, for the applicant or for other people in the workplace, for the person with the disability to work there? Can the safety requirement be modified or waived in this s pecific case, or are there alternative ways of protecting workers. Over the years, the Commission has ruled a number of times that if no one else is endangered, it is acceptable for persons with disabilities to assume some level of risk, if informed of it. So, all of this requires a plan which must be followed in a sequential manner.

Write good job descriptions. Include BFOR's if they are genuinely required in order to do the job. If you advertise the job, and you have an applicant that is disabled, you may be justified in not hiring him or her on the basis of the BFOR, and it would not be a violation. However, before making that decision you must determine if you can accommodate that specific applicant with their specific disability. You are required to accommodate to the point of undue hardship, and this is determined on the basis of cost, outside sources of funding, and health and safety considerations. Even if the applicant cannot satisfy the strict H&S requirements, if no one else is endangered, they may be permitted by the courts to assume some risk, if they are made aware of it.

In all cases, get qualified legal help should you find yourself navigating these kinds of dangerous waters. The above was a quick summary – **the devil is in the details.**

Bona fide Occupational Requirement (Justification) BFR

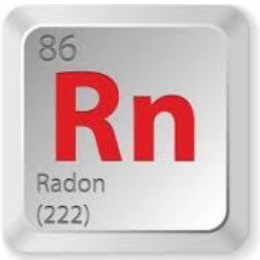
Both the Canada Human Rights Act (federally regulated workplaces) and the Ontario Human Rights Code create a list of prohibited arenas within which people are not allowed to discriminate on the basis of a list of prohibited grounds. The lists of both public arenas and prohibited grounds are not identical but are very similar. Examples of public arenas are employment, accommodation, membership in work associations, etc., and the lists of prohibited grounds include origin, colour, sexual orientation, disability, etc. The bottom line is that if you participate in any of the public arenas (you hire people, you rent rooms, you operate a trade union) you are not allowed to discriminate on the basis of a prohibited ground. You can't refuse to rent a room on the basis of race, and you can't refuse to hire a person on the basis of a disability.

However, both pieces of legislation allow the employer, for example, to create a bona fide occupational requirement (BFOR) (also called a bona fide justification) whereby you can say that a person with, for example visual impairment, cannot do the job. If you refuse to hire an applicant on the basis of a visual impairment on the basis of the BFOR this will not be a violation of the legislation. There are rules about the BFOR - it must be imposed honestly and in good faith (not for the purpose of undermining the human rights legislation) and it must be reasonably necessary for the safe and efficient performance of the work.

However, if the employer concludes that a particular applicant cannot satisfy the requirements of the BFOR, they must consider whether they can accommodate the individual with the disability. Can the work or the workplace be changed so that the person with the disability can complete the essential duties of the job. The requirement to accommodate is to the point of putting undue hardship on the employer. There are three criteria that are considered in determining undue hardship. These are:

- Cost (to the point of causing a change in the nature of the business or affecting the survival of the business as a whole)
- Outside sources of funding (the employer must consider and attempt to access funding from, for example the provincial or federal government or WSIB to fund the accommodation), and
- Health and safety (the employer must consider whether any of the existing health and safety requirements can be waived or modified, and this includes allowing the disabled applicant to assume some degree of risk, providing they are informed of the risk).

Take Action on Radon



Take Action on Radon is working with 15 communities across Canada providing 100 free radon test kits and helping them with increasing radon awareness. We are also working on lining up communities for the fall of 2020. If interested in joining
To join this project click here.

The Radon Test Kit Challenge targets municipalities across Canada where radon testing has thus far been limited, but where there is a potential for homes to have elevated radon levels. The program will provide 100 test kits to each participating municipality, to be distributed to citizens for free or for a nominal fee. Each community needs to have a Community Liaisons to take on this project in their community and provide local support. They must distribute and collect the kits.

For more information on this hazard click here for a video

In the Courts

Dec 20, 2019 AMHIL Enterprises Ltd fined $70 Worker struck by Forklift

A worker suffered critical injuries when an operator of the forklift was reversing when it struck the worker who was partially run over.

There were no barriers, warning signs or other safeguards for the protection of all workers in the area which had both vehicle and pedestrian traffic.

AMHIL Enterprises failed as an employer to ensure that the measures and procedures prescribed by section 20 of the regulation were carried out at the workplace. This is an offence pursuant to section 66(1) of the act.

Dec 23, 2019 Ruggieri Brothers Automotive Ltd Fined $85,000 Worker Fatality

A worker was assigned to do a safety inspection on a dump truck. One of the deficiencies was that the rear driver side air bag shock absorber (or air spring) was leaking air.

The worker connected the spring's plastic base to the bottom mounting plate, then attached a coupler to the air hole in the bag and connected the shop air compressor to the coupler.

While inflating the bag with compressed air, the plastic base exploded, sending shards of shrapnel flying in all directions. The worker was struck by many of the projectiles, suffering extensive injuries. The worker was transported to hospital and pronounced dead.

The company pleaded guilty to failing as an employer to provide information, instruction and supervision to a worker to protect the safety of the worker, contrary to section 25(2)(a) of the Occupational Health and Safety Act. Specifically, the accused failed to provide sufficient information and/or instruction and/or supervision to the worker regarding a safe method of installing a shock-absorbing air bag on a dump truck.

Dec 23, 2019 Aluminum Window Designs Ltd. Fined $90,000 Worker Critically Injured

A worker was using a punch press to cut pieces of aluminum window frame. A piece of aluminum became stuck in the machine.

The worker attempted to remove this jammed piece. While pulling at the part, the top die section of the machine moved downwards.

The worker walked past the carriage, arm and finger mechanism of the machine, and leaned against the machine's limit switch. This caused the machine carriage to move and it struck the worker.

The punch press was a machine with an exposed moving part that endangered the safety of a worker and was not guarded by a guard or other device that prevented access to the moving part. Specifically, the die section of the punch press was not guarded to prevent worker access.

Accordingly, AWD failed as an employer to ensure that the measures and procedures required by section 24 of Regulation 851 (the Industrial Establishments Regulation) were carried out in a workplace, contrary to section 25(1)(c) of the Occupational Health and Safety Act.

In 2014, the company had been convicted of an offence under the same subsection of the Regulation and was fined $75,000 for that conviction.

Click for more Information

In the Courts

Jan 8 2020 Rayonier A.M. Canada Industries Inc. fined $250,000 Fatality

A worker was tasked with removing bundles of wood from the lumber mill's kiln and placing them in the yard.

It is believed that a load of wood had been placed in the yard and that the worker had reversed the loader, then gotten out of the machine to place three "crossers" (small pieces of wood) on the pile, so as to create a space between the original bundle and the next bundle to be placed on top of it.

The loader rolled forward and pinned the worker between the loader and the wood bundle.

The employer pleaded guilty to failing as an employer to ensure that the measures and procedures prescribed in section 57 of Ontario's Regulation 851 (the Industrial Establishments Regulation) were carried out in the workplace, contrary to section 25(1)(c) of the Occupational Health and Safety Act -that is, that a vehicle left unattended shall be immobilized and secured against accidental movement.

Jan 13 2020 Noront Steel (1981) Limited Fined $70,000 Critical Injury

A worker was cutting drainage holes into a drum with a torch when the barrel exploded into flames.

Investigation by the Centre for Forensic Sciences determined that the barrel contained flammable substances, included acetone, methyl ethyl ketone and toluene.

Section 78(1)(b) of the Industrial Establishments Regulation (Regulation 851) requires that "...where alternations are to be made on a drum, tank... or other container... [it] shall be drained and cleaned or otherwise rendered free from any explosive, flammable or harmful substance."

The barrel that exploded had not been rendered free from explosive and flammable substances before being provided to the worker for cutting. The contents of the barrel were not communicated to the worker and the label on the barrel indicated its contents were a substance that was not combustible.

Jan 13 2020 Satin Finish Hardwood Flooring, Limited (Prodtor Inc.) Fined $225,000 Fatality

A worker suffered fatal thermal injuries after becoming trapped in an operating wood-drying kiln at the workplace.

The defendant did not have a preventative maintenance schedule at the workplace for the door assembly, and the door lock assembly was not maintained as recommended by the manufacturer.

In addition, the weather stripping and metal around the push bar had deteriorated and corroded, creating openings that allowed moist air to enter and corrode the door lock assembly. Both the corrosion and malfunctioning of the push bar could be detected during the normal use of the door.

The ministry's engineering consultant concluded that maintenance would have prevented malfunctioning of the door lock assembly.

The defendant failed as an employer to ensure that a man door to kiln #3 could be opened by a worker from inside the kiln once the door latched closed, and failed to ensure that the man door to kiln #3 and its "anti-panic system" or door lock assembly were maintained in accordance with the manufacturer's instructions.

These were an offence under section 25(2)(h) of the Occupational Health and Safety Act, which states that the employer "shall take every precaution reasonable in the circumstances for the protection of a worker."

Click for more Information

In the Courts

Jan 17 2020 ArcelorMittal Dofasco MP Inc. Fine of $290,000 for Two Workplace Incidents

While sweeping this area, the blast furnace valves malfunctioned, causing the gases and dust contained in the furnace to erupt and to engulf the workers.

The workers were wearing carbon monoxide detectors which began sounding alarms to a point beyond the detectors' ability of 1,000 ppm (parts of gas per million parts of air). They were not wearing their self-contained breathing apparatuses but put them on later.

The workers attended the employer's medical facility, where they were placed on oxygen therapy for carbon monoxide exposure; they were subsequently treated at hospital.

The employer failed to comply with S 4 of Reg 833 which states that "every employer shall take the measures required by that section to limit the exposure of workers to a hazardous biological or chemical agent."

In the second incident, on December 6, 2018, a worker was working on the coil prep line. The worker was attempting to feed flat stock material into a pair of rollers.

The worker used a control switch with one hand while trying to guide the steel between the two rollers with the other hand. The worker accidentally moved the switch in reverse instead of forward, which resulted in the worker coming into contact with the pinch point of the two rollers. The worker suffered critical injuries.

The employer failed to ensure that "an in-running nip hazard or any part of a machine, device or thing that may endanger the safety of any worker shall be equipped with and guarded by a guard or other device that prevents access to the pinch point."

Click for more Information

Safetyscope Continuing to Maintaining Registration as an OWWCO Training Provider

These courses meet the criteria in subsection 29(4) of O.Reg. 128, Certification of Drinking Water System Operators and Water Quality Analysts. On Completion of training all participants will receive a certificate of completion with corresponding CEU Value.

1.	Working at Heights	.7 CEU
2.	WHMIS 2015	.4 CEU
3.	TDG	.4 CEU
4.	Working in Confined Spaces Rescue Level	2.8 CEU
5.	Confined Spaces Attendant Non Entry	1.3 CEU
6.	Confined Spaces Advanced Awareness	.7 CEU
7.	Confined Spaces Attendant Refresher	.7 CEU
8.	Confined Spaces Rescue Refresher	.7 CEU
9.	Standard First Aid	1.4 CEU
10.	Self Contained Breathing Apparatus	.4 CEU
11.	Spill Response	.7 CEU
12.	Trenching Hazards	.4 CEU

Safetyscope is a TSSA Approved Training Provider

Safetyscope is an approved provider for Corrections Canada