



## FTR Views

# Cannabis Coverage Under Health and Benefits Plans [Video]

**Date:** November 5, 2018

With the legalization of recreational cannabis on October 17, 2018, employers across Canada have a lot to think about regarding the impact of cannabis on the workplace. In this video, [Sukhvinder Dulay](#) takes us through the issues employers need to consider regarding cannabis coverage under health and benefits plans and provides tips on responding to questions regarding whether existing plans cover the cost of cannabis products used for medicinal purposes.

For more information on Cannabis in the workplace, please visit our dedicated [Cannabis Topic Page](#).

??

## Transcript

Hi, my name is Sukhvinder Dulay and today I will be talking about the issues that employers need to consider regarding cannabis coverage under health and benefits plans.

With the legalization of recreational cannabis on October 17, 2018, employers across Canada have had a lot to think about regarding the impact of cannabis on the workplace.

And while access to cannabis for medicinal purposes is not new, with all that attention that cannabis is currently getting, employers need to start getting ready to respond to more questions regarding whether existing health and benefits plans cover the cost of cannabis products used for therapeutic purposes.

But employers also need to keep in mind that medical cannabis is subject to different rules than

recreational cannabis.

The production and sale of medical cannabis is regulated extensively by the federal government, and this includes forms of cannabis that are not yet legally available for recreational purposes.

The Supreme Court of Canada confirmed a number of years ago that cannabis and its derivatives can be used for medicinal purposes. In addition to fresh marijuana and oils, this includes edible products, including baked goods, which are not expected to become available for recreational purposes until next year.

## **What Does This Mean For Benefits Plans Today?**

As a general principle, employers are not obligated by statute or common law to provide health and benefits coverage to their employees. Nor does the law require benefits plans to cover all treatments.

But, when employers do provide benefits as part of the employment contract, they must ensure that they do so in a non-discriminatory manner and that they administer their plans in accordance with the way they are written and communicated to employees.

When employers encounter new questions about new coverage that require them to examine what their current health and benefits plans cover, it is important to note that, in addition to the benefits plan language itself, these coverage obligations can arise out of an employment agreement or collective agreement and employee communications.

## **Is Cannabis Covered? What to Look For in Existing Benefits Plans**

There are a number of things to look for in existing benefit plans when determining if cannabis is covered already or could be covered. I will describe some of the items to look out for.

The first thing to note is that cannabis does not have a drug identification number or “DIN” issued by Health Canada. Many health and benefits plans, including both those that are insured and those that are self-funded by employers, will not provide any reimbursement for treatments that do not possess a DIN. However, this requirement is not always as explicit in the plan language as employers or insurers might think.

Second, the relevant definitions of “medicine”, “drug” and “medically necessary”, if they exist under the plan, should be examined. As we just discussed, some plans tie the definition of a covered drug to a substance that possesses a DIN but some plans may define medicines more broadly such that they could already cover cannabis products.

In addition, some plans may have listed exclusions that specifically name treatments that are

excluded from coverage.

Medicinal cannabis may be on that list already or might be considered for addition to that list.

However, it is important to consider whether the employer has the right, under existing employment or collective agreements, to amend the listed exclusions on its own.

Third, employers need to consider whether their benefits coverage ties reimbursements to treatments that are defined as medically necessary.

While the legalization of recreational marijuana provides opportunities for greater study into the effectiveness of therapeutic cannabis use, the existing evidence is limited and could leave the question of whether the use of medical marijuana as a treatment is medically necessary open for interpretation.

Lastly, while medicinal cannabis does not require a prescription in the traditional sense, it is not unreasonable to think about the legalization of recreational cannabis as similar to other treatments becoming available as over the counter products.

As a result, employers should examine whether over-the-counter treatments are already covered under the existing plan and whether cannabis could fall under that coverage.

## How to Treat Cannabis Coverage in the Future

In addition for looking for these issues in existing plans, employers also need to start exploring how they want to treat cannabis coverage in the future.

Benefits coverage for medicinal cannabis use is increasingly available in the insurance marketplace and can be incorporated into existing insured plans.

This coverage is usually limited by relatively conservative annual caps on reimbursement or may be limited to the treatment of a few specified conditions.

Employers who fund their own health and benefits plans under administrative services only or “ASO” arrangements or that offer employees the use of healthcare spending accounts have more flexibility if they wish to add cannabis coverage to their plans.

In fact, the Canada Revenue Agency has already recognized medical cannabis as an eligible medical expense under the *Income Tax Act*, which means that reimbursements for medicinal cannabis can be made from these plans without risking their tax-effectiveness.

## Key Takeaways

As a concluding thought, we encourage employers to carefully review existing coverage and be prepared to respond to questions about cannabis coverage.

This will include making a plan for both answering current employee questions and evaluating the design of the program going forward.

Of course, this should not be done in isolation from other policy reviews that are affected by the legalization of recreational cannabis such as those related to accommodation and workplace impairment.

Thanks for watching and if you have any questions about cannabis coverage under health and benefits plans or in the workplace, we encourage you to contact us.

---

The content in this video provides general information and should not be relied on as legal advice or opinion. This footage is copyrighted by Hicks Morley Hamilton Stewart Storie LLP and may not be reproduced in any form, in whole or in part, without the express permission of Hicks Morley Hamilton Stewart Storie LLP. ©