

UNDERSTANDING CANNABIS RULES FOR EMPLOYEES WHO TRAVEL TO CANADA OR THE UNITED STATES FOR BUSINESS

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Employers who require employees to travel to Canada or the United States for business can contribute to smooth border crossings by ensuring their employees understand and comply with their obligations at Canadian and American border crossings.

Don't bring it in!

Don't bring it out!

Despite cannabis legalization in Canada, it is and will continue to be illegal for travellers to bring cannabis or any product containing cannabis into Canada. Likewise, although the possession of cannabis is legal in some American states, it is and will continue to be illegal under US federal law. Officers at American border crossings are federal employees, making it illegal to bring cannabis or products containing cannabis into the United States.

This prohibition applies regardless of the amount of cannabis a traveller has with them, whether the traveller holds a medical document authorizing the use of cannabis for medical purposes, and whether the traveller is travelling from or to an area with legalized or decriminalized cannabis.

Travellers who bring cannabis with them into Canada or the United States also have an obligation to declare it to immigration authorities at the port of entry. The failure to declare cannabis is a further offense. Violation of these import and export laws can result in serious criminal penalties, including fines, arrest, prosecution, imprisonment, and future inadmissibility. In short, don't bring it in and don't bring it out!

Be aware of the risks of personal use!

Both Canadian and American immigration authorities at the ports of entry are required to make assessments about a traveller's admissibility for entry, which includes assessing whether a traveller is criminally inadmissible. Immigration authorities on both sides of the border have broad discretion to question travellers to assess their admissibility. Typically, a traveller who is inadmissible will not be permitted to enter unless they undertake measures to overcome their inadmissibility (which may not be an easy task).

Generally, a traveller is considered to be criminally inadmissible to Canada if the person was convicted of an offence in Canada, or was convicted of an offense outside of Canada that is considered a crime in Canada, or committed an act outside of Canada that is considered a crime in the country where it occurred and would be punishable under Canadian law.

A traveller is considered to be criminally inadmissible to the United States if the person violated any law or regulation of any state, the federal government, or a foreign country relating to a controlled substance, which includes cannabis and cannabis related products. As in Canada, an actual conviction for a crime is not required for a traveller to be found inadmissible. Admitting to the essential elements of an American crime will render a person criminally inadmissible to the United States even if that conduct is legal in Canada.

Some persons who were previously criminally inadmissible to Canada for reasons related to past or present personal cannabis use may be admissible post legalization. However, Canada will continue to enforce many laws related to cannabis use, possession, production, and sale post legalization. Accordingly, business travellers would be prudent to consult with Canadian immigration lawyers prior to entering Canada about their past or present cannabis-related practices to ensure they are admissible to Canada post legalization and adequately prepared for related port of entry questioning.

At this time, it is uncertain what effect the legalization of cannabis in Canada will have on the approach to admissibility for personal use applied by American immigration authorities. Unless there is directive from the federal government, travellers' experiences may vary significantly depending on the particular officer responsible for reviewing their status at the port of entry. Business travellers could be asked whether they have used cannabis either prior to or following its legalization in Canada. If travellers admit to either, the admission could be used as the basis for a determination that they are inadmissible for entry. While such a determination can be appealed, it will stand for any future crossings unless and until the finding is waived in the appeal process.

Be aware of the risks of employment in the cannabis industry!

Until there is a directive to the contrary from the federal government of the United States, business travellers who do not personally use cannabis or related products may be found criminally inadmissible by American immigration authorities if they work in Canada's legal cannabis industry or do business with companies engaged in Canada's legal cannabis industry.

At the port of entry, immigration authorities can question business travellers about the purpose of their proposed entry, the business conducted by their employers, and whether the travellers have aided anyone in the production or sale of cannabis as part of their employment. If asked these questions, the answers given could be viewed by some officers as providing a basis for a finding of inadmissibility.

If business travellers are asked questions by immigration authorities on either side of the border about themselves or their employers that they are not prepared to answer, they can advise the authorities that they are not prepared to answer the questions asked and politely not pursue entry at that time. In those circumstances, no finding of inadmissibility can be made. However the officer may make a note of the event. If a note is made, it is possible that the note will be observed by another officer when the traveler attempts to cross the border in the future. The note may impact that subsequent officer's line of questioning, and ultimate assessment of the travellers admissibility for entry.

Best practices for cross-border business travellers

Employers whose businesses rely on cross border travel are well advised to consider undertaking the following measures:

- Draft clear employment policies that addresses requirements around personal cannabis use, possession, and cultivation for employees who must travel internationally on company business;
- Be proactive in ensuring employees are adequately prepared for port of entry questioning, which may include conducting training on port of entry best practices and ensuring employees obtain legal advice in appropriate circumstances;
- Include contractual provisions in employment agreements concerning termination where international travel is a requirement for the position and the employee is found inadmissible to the United States (or another country);
- Conduct training for all employees required to travel for business on the potential consequences of personal cannabis use, possession, cultivation, and conducting cannabis-related business; and
- Stay appraised of the developments in laws related to cannabis and cross border travel and ensure that employees who are required to travel for business are up to date on such developments.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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