

## Navigating Canada's New Cannabis Law—Don't Let an Employee's Immigration Status Go Up in Smoke

Article By:

Christopher L. Thomas

Austin E. Smith

Melissa Manna

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On October 17, 2018, Canada's federal [Cannabis Act went into effect](#), legalizing the use and possession of a limited amount of marijuana for adults over the age of 18. The new law makes good on a campaign promise by Prime Minister Justin Trudeau and makes Canada the second country to legalize marijuana use on a national basis. It is intended to make Canada's marijuana industry safer by keeping the drug out of the hands of kids and steering profits away from criminals. This newfound freedom (and tax revenue), however, may come at a cost to those trying to cross the border into the United States, where marijuana is still illegal under federal law.

In anticipation of the new law, U.S. Customs and Border Protection (CBP), which manages U.S. borders and has wide latitude in determining the admissibility of travelers into the United States, [issued a statement](#) reminding the public that the "sale, possession, production and distribution of marijuana or the facilitation of the aforementioned" is still illegal in the United States. In fact, marijuana is a Schedule I controlled substance under the [Controlled Substances Act](#). As a result, a CBP officer may deny entry to anyone who is "determined to be a drug abuser or addict, or who is convicted of, admits having committed, or admits committing, acts which constitute the essential elements of a violation of (or an attempt or conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance."

While CBP has said that it does not plan to ask all travelers from Canada about their marijuana use as a rule, it will probe further where individual circumstances warrant. Employers may want to educate their employees about the new Cannabis Act to make sure they are aware of the potential risks when crossing the border from Canada into the United States. Here are a few key points employees should know.

### ***Who is affected by CBP's border policies?***

Technically, everyone who seeks to enter the United States is subject to some form of inspection by CBP. Only noncitizens, however, are subject to determinations of admissibility under the Immigration

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and Nationality Act of 1965 (INA). Pursuant to the INA, CBP may question noncitizens under oath about their identity and activities. They may also search, without a warrant, the individual, as well as his or her luggage, electronic device(s), or car if the officer has reason to believe that such a search would result in the disclosure of a grounds of inadmissibility.

### ***What is CBP looking for?***

CBP is charged with determining who is eligible for admission into the United States in accordance with the INA. Under the INA, a person may be found inadmissible on health-related grounds if they are determined to be a drug addict or abuser. Additionally, an individual may be deemed inadmissible on criminal grounds for controlled substance violations or for trafficking in controlled substances, among other things. Individuals need not have been convicted of these crimes to be deemed inadmissible. An individual who simply admits to committing the essential elements of a controlled substance violation may be barred from entering the United States. CBP officers may also block those individuals it knows or has reason to believe have been trafficking in controlled substances.

### ***What kinds of questions might CBP ask?***

The CBP officer will most likely start by asking an individual about his or her citizenship and immigration status in the United States. The officer is also likely to ask the reason for his or her trip to the United States and, depending on where the conversation leads, may also ask about his or her occupation.

CBP has said that individuals found to be “working in or facilitating” Canada’s marijuana industry and who plan to enter the United States for business-related reasons will likely be deemed inadmissible. Business-related activities, even if performed where legal, may lead to determinations that the traveler has been trafficking in controlled substances. This may be the case even if the business activities are only tangentially related to the marijuana industry (anecdotal examples include designers of lighting systems or harvesting equipment used to harvest or grow marijuana crops) who are viewed as aiding, abetting, and/or assisting in the growth of the cannabis industry, which is illegal in the United States. The same is likely true for investors in Canada’s marijuana industry.

### ***What if CBP asks an employee about his or her marijuana use or his or her links to the marijuana industry?***

If an individual chooses to answer these questions, it is important that he or she give honest responses and answer only the questions asked of him or her. CBP has the authority to conduct social media searches of anyone crossing the border so not only can officers look at photos that are posted online, they can also look at an individual’s LinkedIn profile to confirm that the posted employment information matches what the individual has told them. If CBP discovers that an employee lied, the employee could be subject to permanent (or long-term) debarment from the United States.

### ***Does an individual have to answer CBP’s questions about his or her marijuana use?***

No. An individual may choose not to answer CBP’s questions and/or request to withdraw his or her application for admission. If an employee withdraws his or her application for admission, the withdrawal will become part of his or her permanent immigration file but it will not create a bar to a

future entry. If an individual's application was visa based, however, the underlying visa application may be cancelled or denied. If an employee refuses to answer the officer's questions, he or she can expect to be denied entry into the United States. If the individual refuses to answer, there is also a risk that he or she could be detained for a search and/or additional questioning.

***Will an individual be automatically denied admission into the United States if he or she admits to using marijuana?***

CBP will likely conclude that an individual is inadmissible if he or she has engaged in marijuana use. Although CBP has said that it will consider the totality of the circumstances when determining whether an admission to legal marijuana use renders an individual inadmissible, the current political climate would likely compel officers to refuse entry to those who make such admissions.

***If an employee lives in Canada but works in the United States in a state where marijuana has been legalized, can he or she have marijuana in his or her car while traveling back and forth?***

Travelers found to be in possession of marijuana at the border, even if obtained legally, may be subject to prosecution. This is true for both Canada and the United States. It is illegal in both countries to transport marijuana, products that contain marijuana, and paraphernalia across the border. This includes medical marijuana.

***What if an employee is found to be inadmissible? When can he or she apply for admission again?***

If an individual is refused admission, he or she will likely need to go through the process of applying for a waiver of inadmissibility. CBP has sole discretion in determining who is granted a waiver and the process could take up to six months to resolve.

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