

Impairment in the Workplace

Background

Overview

The legalization of recreational cannabis for adults in Canada is expected to affect workplaces in a number of ways. Specifically, employers and workers have identified that cannabis use can have risks that must be controlled to protect occupational health and safety.

Substance use can affect the workplace in a variety of ways, including:

- Direct effects of substances that affect the worker's ability to work safely,
- After-effects of substance use (e.g., hangover, withdrawal) affecting job performance,
- Absenteeism, illness and reduced productivity,
- Preoccupation with obtaining and using substances while at work, interfering with attention and concentration, and
- Psychological or stress-related effects due to substance use by a family member, friend or co-worker.

Impairment

Impairment can result from any condition or substance that impacts the human body's ability to respond appropriately or function properly.

Impairment can affect a worker's ability to respond appropriately when performing safety-sensitive tasks such as operating equipment, driving, making critical decisions, or communicating at work, and can lead to unsafe practices. This is a safety risk not only to the worker, but also to fellow workers and potentially to the general public.

Impairment may be temporary, and limited to a

short duration of time, with the individual expected to recover fully afterwards, or the impairment may be expected to be present for an extended or permanent time.

It should be noted that cannabis use is not the only cause of impairment. Medical conditions, drugs, alcohol, fatigue, psychological conditions and workplace stress may additionally cause worker impairment.

Cannabis and the Existing OHS Framework

Under Occupational Health and Safety (OHS) legislation, the employer has an obligation to protect the health and safety of all workers on their work site. In turn, workers must safeguard their health and safety, and the health and safety of others around them. Substance use, whether recreational or medically prescribed/authorized, may cause a worker to be impaired on the job, and therefore not able to safely perform his/her job duties.

According to OHS legislation employers must assess and control all workplace hazards, develop safe work procedures and provide training to workers. If worker impairment (regardless of the cause) could create a work site health and safety hazard, the employer must address it. OHS legislation does not specify what the hazard controls must be. Employers must assess the impairment hazards and put appropriate controls in place for their worksite. Workers must take reasonable care not to put themselves or others in harm's way, and cooperate with the employer to

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protect health and safety. Many employers have created workplace policies that outline workplace expectations.

While Alberta does not have specific legislation around impairment at work, a number of other jurisdictions do (Appendix A). British Columbia provides a definition of impairment as well as responsibilities for employers and workers.

In addition to concerns around impairment, there are also safety concerns related to smoking around flammable substances and in work sites with chemicals.

There are potentially many occupational health and safety topics that may be relevant for employers and workers seeking to understand the impacts of cannabis in the work place. The Government of Alberta provides resources on many of these topics for information and guidance; however, employers are responsible for creating and implementing all relevant workplace policies and procedures.

Alberta's Work on Cannabis to Date

The Alberta Cannabis Secretariat developed a Cannabis Framework (the Framework) that outlines Alberta's response to federal cannabis legalization for recreational use.

During consultation on the Framework, Albertans were invited to comment on workplace health and safety in the online survey in summer 2017, and a stakeholder session specific to workplaces was held on July 5, 2017.

Seven sectors were included in the session (oil and gas, mining, construction, transportation, forestry, healthcare and public sector). Stakeholder feedback indicated a need for clarity

on impairment and how to address it in workplaces.

Alberta Labour made a commitment to further explore how to address impairment in the workplace prior to July 1, 2018.

Testing for Cannabis-Related Impairment in the Workplace

Testing for cannabis-related impairment in the workplace is not a simple task. Unlike alcohol, the ability to determine impairment from cannabis through technology or specialized training is not as advanced. The way alcohol is metabolized allows blood testing to give an accurate snapshot of blood alcohol content at a given time, and breathalyzers, while not perfect, provide a quick estimation of blood alcohol content.

The same cannot necessarily be said for cannabis-related impairment. Cannabis can be detected in the urine of chronic users nearly one month after the last use. Therefore, it is difficult for drug-testing programs based on urinary testing to distinguish recent cannabis use from clearance of previously consumed cannabis. Put more plainly, **a positive test for cannabis from a urine sample in no way indicates impairment at a specified time.** Detection from saliva testing can indicate more recent use, but further research is needed to better understand the sensitivity, specificity and performance characteristics of salivary drug testing.

There are some testing methods for impairment (regardless of cause) that have shown promise in research settings, such as observing eye movement, but further research is needed to validate these methods for use in the workplace. Additionally, workplace observations (such as unusual words or behaviours coupled with the

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smell of cannabis on a worker) may cause employers to suspect that a worker may be impaired from cannabis. However, at the present time these methods cannot conclusively prove a worker is impaired by cannabis. Additionally, there are privacy and human rights considerations with drug testing.

Medical Cannabis

Workers may also take cannabis for medical reasons, if authorized by a health care professional. Since cannabis is used for a variety of therapeutic uses, employers will have a duty to accommodate individuals who are using it medicinally. However, as with any pharmaceutical, this does not mean that employees are permitted to be impaired at work or contravene existing smoking rules. Furthermore, similar to alcohol, even though cannabis will be legal, that does not mean that it is permitted by default on worksites.

Employers will need to balance their duty to accommodate workers who use medical cannabis with the responsibility of providing a safe and healthy workplace. Workers seeking accommodation will continue to be responsible for performing their job duties safely, as well as adhering to company safety policies and procedures.

Additional Resources

<https://www.ccohs.ca/products/publications/cannabis/> Government of Canada: Canadian Centre for Occupational Health and Safety: Workplace Strategies: Risk of Impairment from Cannabis (2017)

Substance Use In the Workplace: developing a plan of action (2017)

<http://www.ccdus.ca/Eng/topics/Substance-Use-Affecting-the-Workplace/Pages/default.aspx>

Conference Board of Canada, Canadian Centre on Substance Abuse and Mental Health Commission of Canada: Start the Conversation: Problematic Substance Use and the Workplace.

<http://www.ceapaonline.com/PSUW%20Brochure.pdf>

Closing

Thank you for participating in Alberta Labour's consultation on the response to cannabis use in the workplace. All discussion, questions and feedback on these topics is welcomed and encouraged. All organizations are encouraged to submit written responses.

Appendix A – Comparison of Canadian Provinces and Territories that Have Legislation Related to Impairment

Jurisdiction	Legislation related to impairment
British Columbia	<p>OHS Regulation 4.19 Physical or mental impairment</p> <p>(1) A worker with a physical or mental impairment which may affect the worker's ability to safely perform assigned work must inform his or her supervisor or employer of the impairment, and must not knowingly do work where the impairment may create an undue risk to the worker or anyone else.</p> <p>(2) A worker must not be assigned to activities where a reported or observed impairment may create an undue risk to the worker or anyone else.</p> <p>4.20 Impairment by alcohol, drug or other substance</p> <p>(1) A person must not enter or remain at any workplace while the person's ability to work is affected by alcohol, a drug or other substance so as to endanger the person or anyone else.</p> <p>(2) The employer must not knowingly permit a person to remain at any workplace while the person's ability to work is affected by alcohol, a drug or other substance so as to endanger the person or anyone else.</p> <p>(3) A person must not remain at a workplace if the person's behaviour is affected by alcohol, a drug or other substance so as to create an undue risk to workers, except where such a workplace has as one of its purposes the treatment or confinement of such persons.</p> <p>Note: In the application of sections 4.19 and 4.20, workers and employers need to consider the effects of prescription and non-prescription drugs, and fatigue, as potential sources of impairment. There is a need for disclosure of potential impairment from any source, and for adequate supervision of work to ensure reported or observed impairment is effectively managed.</p>
Yukon	<p>OHS Regulations 1.05 Impairment or personal limitation</p> <p>(1) All workers shall inform the employer of known physical or mental impairments or limitations where their physical or mental impairment or limitation may endanger themselves or others in the workplace.</p> <p>(2) Workers with a physical or mental impairment or limitation shall not be assigned to a workplace, or engage in work where their physical or mental impairment or limitation may endanger themselves or others.</p>

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	(3) Workers shall not enter, remain or be permitted to remain in a workplace while their ability to work may be affected by alcohol, drugs or other substances so as to endanger their health or safety or that of any other person.
Newfoundland	Occupational Health and Safety Regulations <i>Personal Conduct</i> 26 (2) An employer, supervisor or worker shall not enter or remain on the premises of a workplace or at a job site while his or her ability to perform work responsibilities is impaired by intoxicating substances or another cause that endangers his or her health or safety or that of other workers.