



March 8, 2018

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RE: Cannabis and Impairment in the Workplace

The Alberta Construction Association thanks the Government of Alberta for the opportunity to participate in the March 5<sup>th</sup> stakeholder consultation and the opportunity to provide this written submission on this topic. ACA represents 3200 member companies serving non-residential construction markets in Alberta and beyond. Construction employs one in nine working Albertans.

ACA understands that the consultation broadly addresses impairment, regardless of the cause. Our association wishes to advise that nearly 50 percent of Alberta's construction workers work in small firms employing less than 20 employees. These small employers are currently more than fully engaged in responding to changes arising from Bill 17 and Bill 30. Impairment itself is unchanged, what is new is the impending legalization of cannabis consumption. ACA therefore urges that Alberta Labour focus at this time in addressing issues specifically arising from that reality.

Impairment is any decrement in task performance which contributes to the inadequate performance of that task and which could lead, directly or indirectly, to an incident or accident (Dr. Brendan Adams). Further, on a construction jobsite, all positions are safety sensitive, given that the actions or inactions of an impaired person create a risk for all workers and potentially the public as well. While the degree of impairment may vary with the task, the individual, and the method of ingestion, no level of impairment is acceptable on a construction jobsite.

What is of great concern is the difficulty in readily identifying impairment arising from the consumption of cannabis, even for person with significant experience and training . Given the present state of research, ACA urges that Alberta OHS legislation address indicators of the risk of impairment, by prohibiting concentrations of substances beyond which there is unacceptable risks for specified tasks and work environments. Without clear legislation, employers will continue to face the prospect of litigation. Legislation currently requires testing to identify and assess risk for other risks such as hearing and vision. Similar approaches to address risk from drug-related impairment should be legislated.

The legislation should specify clear duties to identify, respond, and report risks, for prime contractors, employers, supervisors, and workers.

Employers are required in law to address risks related to impairment. Supervisors should be protected on the basis of erring on the side of caution to protect other workers and the public. In particular, employers are concerned about the potential of Human Rights and Privacy complaints in managing an employee who presents a risk of impairment. Legislation should clearly state that testing is permissible for workers in particular tasks and environments, the reasons tests can be administered , the substances to be tested, and the cutoff levels (with the U.S. Department of Transport guidelines as a starting point). Given the inexact nature of individual impairment,



the legislation should accept the liability arising from the consequences of impairment of persons below the cutoffs. Cutoff levels should be revised as the science evolves.

Just as in current legislation, worker obligations should mirror those of the employer. Workers who report to work while at the risk of impairment would be in breach of those duties. Legislation should prohibit workers from reporting to work or being at work with concentrations of substances beyond set cutoffs. Workers should be required to submit to testing when prescribed reasons for testing have been met. Workers should be required to disclose to employers the use of any drugs which present a safety risk, and reporting their own impairment should be required. The legislation should also place a duty on workers to identify and report risks presented by other workers. OHS legislation should not interfere with employer policy regarding worker assessment and discipline up to and including termination for recreational use and accommodation where a disability arises from addiction. Impaired workers should not have legislated protections beyond those of non-impaired workers.

Sincerely,

A handwritten signature in blue ink that reads "Paul Heyens".

Paul Heyens, Chairman

cc. Canadian Construction Association