

Workplace Strategies: Risk of Impairment from Cannabis



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EXECUTIVE SUMMARY

Impairment in the workplace can have severe consequences. There are many sources of impairment such as fatigue, use of drugs (over the counter, prescription, illicit), consumption of alcohol, etc. This White Paper discusses the implications associated with the use of cannabis for both therapeutic and recreational purposes. The key steps to reducing the impact of impairment on the workplace are to have appropriate mechanisms in place, to provide clear guidance to all workplace parties, and to apply workplace policies and programs using a fair and consistent approach.

This White Paper presents information and recommendations for employers, employees, and others interested in workplace health and safety including how to:

- address the potential for impairment as part of a hazard assessment,
- establish a concise policy and program on the use of any substance that can cause impairment,
- determine the actions the workplace will take regarding impairment,
- implement accommodation practices where necessary (including for therapeutic needs, and substance dependence), and
- create a supportive healthy and safe workplace.

Currently, there are limited means to determine impairment from cannabis through testing. In addition, substance testing is generally considered discriminatory on the basis of disability and perceived disability and it is only recommended in specific situations (e.g., safety sensitive work) by organizations such as the Canadian Human Rights Commission. Employers must provide training to supervisors and employees on the impact of impairment, and how to recognize and respond to possible signs of impairment.

Notes:

1. CCOHS does not endorse the use of, nor make a moral statement, about the use of cannabis.
2. This document does not refer to any jurisdiction specific occupational health and safety legislation or to any human rights legislation. Where recommendations are made, they are intended as good or promising practices. For legal interpretation, contact the relevant jurisdiction or body.
3. This document also does not directly address any methods used for determining impairment (e.g., testing methods).
4. In the case of a unionized environment, always reference collective agreements and seek advice from union representatives.
5. This document also does not address any possible health and safety concerns for those who manufacture or sell cannabis.

Definitions

Disability – While there is not one single definition used across jurisdictions or industries, disability can be defined as: Any previous or existing mental or physical disability and includes disfigurement and previous or existing dependence on alcohol or a drug. (*Canadian Human Rights Act*, 1985)

Discrimination – An action or a decision that treats a person or a group negatively for reasons such as their race, age or disability. (Canadian Human Rights Commission (CHRC), (2013))

Impairment – While not formally defined by the Canadian Human Rights Commission in “Impaired at Work: A Guide to Accommodating Substance Dependence” (CHRC, 2017a), the appearance of impairment at work is described as: “(e.g. odor [sic] of alcohol or drugs, glassy or red eyes, unsteady gait, slurring, poor coordination).”

Safety sensitive positions – While there is not one single definition used across jurisdictions or industries, the Canadian Human Rights Commission (2017a) defines a safety-sensitive position as one which “if not performed in a safe manner, can cause direct and significant damage to property, and/or injury to the employee, others around them, the public and/or the immediate environment”. Positions involving safety sensitive decisions would also be included.

INTRODUCTION

Cannabis, also referred to as marijuana/marihuana, weed, pot, grass, and many other terms, is a tobacco-like greenish or brownish material consisting of the dried flowering, fruiting tops, and leaves of plants from the *Cannabis* family.

The use of cannabis as a therapeutic treatment has been legal in Canada as of 2001. It has also been announced that the sale and use of recreational cannabis will become legal in Canada, with a target date of on or before July 1, 2018.

This White Paper presents information and recommendations on the impact of these changes for employers, employees, and others interested in workplace health and safety. Employers will have the duty to assess each situation and determine the effect on the workplace, and the possibility of fulfilling the duty to accommodate in terms of therapeutic use and substance dependence.

Background

The World Health Organization (2016) states “Cannabis is globally the most commonly used psychoactive substance under international control. In 2013, an estimated 181.8 million people aged 15-64 years used cannabis for nonmedical purposes globally.”

The Government of Canada (2015) states that a UNICEF report published in 2013 ranked Canada highest amongst all nations in terms of rates of cannabis use among youth.

The Centre for Addiction and Mental Health (2014) states: “Canada has one of the highest rates of cannabis use in the world. More than 40% of Canadians have used cannabis in their lifetime and about 10% have used it in the past year. No other illegal drug is used by more than 1% of Canadians every year.” The Canadian Tobacco, Alcohol and Drugs Survey from 2015 (as published in 2017) reports similar statistics that over 44% have used cannabis in their lifetime, and over 12% have used it in the past year.

Regardless of its legalization for recreational uses, cannabis use may impact the workplace.

Experiences of Other Jurisdictions that have Decriminalized or Legalized Cannabis

Within a legal context, “decriminalization” means that it is illegal to use or possess cannabis, for example, but some criminal charges are replaced by fines or other penalties (e.g., a person may be fined for having a small quantity on their person versus being jailed). Legalization of a substance is different. “Legalization” includes allowing certain amounts to be held and grown by a person, and includes the government’s ability to licence, regulate, and tax both the products and sale locations.

While approximately 20 countries have decriminalized cannabis, the jurisdictions that have formally legalized cannabis for recreational purposes are the country of Uruguay, and within the United States of America, the eight jurisdictions of Colorado, Alaska, Oregon, Washington, Maine, Nevada, Massachusetts, and the District of Columbia (as of January 2017).

In Canada, the impact on the workplace when the use of recreational cannabis is legalized is unknown. Legalization will not necessarily change existing workplace policies, but it is generally felt that, at least initially, more people may use cannabis when there is a regulated market for adult use.

HEALTH EFFECTS FROM CANNABIS

Composition of Cannabis

Cannabis contains hundreds of chemical substances, among which over 100 are known cannabinoids. Cannabinoids are a class of chemical compounds that act on receptors in cells in the brain and body. Delta-9-tetrahydrocannabinol (THC) is the most studied component of cannabis and is the chemical responsible for the psychoactive effect or “high”. Another key component, cannabidiol (CBD) may be useful in treating treatment-resistant epilepsy in children and adults. CBD does not produce a high. Some low THC strains have been used in patients with chronic pain who do not want the psychoactive effect. (Goldsmith et al., 2015)

Cannabis is most often inhaled as smoke as a dried herbal product, either alone or as a concentrate mixed with tobacco, but it can also be vaporized. The flower of the cannabis plant can be made into a variety of products, including:

- dried herbal material (i.e., “marijuana”),
- oil (e.g., “hash oil”),
- hash (i.e., compressed resin),
- concentrates (e.g., “shatter”), or
- foods and beverages containing extracts of cannabis. (Government of Canada, 2015)

Cannabis can also be ingested by pill form or in food, or absorbed through the skin via creams, salves, or skin patches.

Impairment Effects on the Body

When inhaling cannabis, the chemicals in the smoke pass from the lungs into the blood, which carries the chemicals throughout the body and to the brain. The effects of cannabis are delayed if it is ingested instead of smoked, because the chemicals must first pass through the digestive system.

Users have varying sensitivity to the effects of THC. Regardless of method of consumption, the effects are the same. In general, effects may include: (Health Canada, 2016a)

- dizziness, drowsiness, feeling faint or lightheaded, fatigue, headache
- impaired memory and disturbances in attention, concentration and ability to think and make decisions
- disorientation, confusion, feeling drunk, feeling abnormal or having abnormal thoughts, feeling “too high”, feelings of unreality, feeling an extreme slowing of time
- suspiciousness, nervousness, episodes of anxiety resembling a panic attack, paranoia (loss of contact with reality), hallucinations (seeing or hearing things that do not exist)
- impairment of motor skills, and perception, altered bodily perceptions, loss of full control of bodily movements, falls
- dry mouth, throat irritation, coughing
- worsening of seizures
- hypersensitivity (worsening of dermatitis or hives)

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- higher or lower blood levels of certain medications
 - nausea, vomiting
 - fast heartbeat

As Health Canada (2016a) states “Using cannabis or any cannabis product can impair your concentration, your ability to think and make decisions, and your reaction time and coordination. This can affect your motor skills, including your ability to drive. It can also increase anxiety and cause panic attacks, and in some cases cause paranoia and hallucinations.” These effects have been noted to last as long as 24 hours. The National Academies of Sciences, Engineering and Medicine (2017) reports that there is moderate evidence of a statistical association between cannabis use and the impairment in the cognitive domains of learning, memory and attention (acute cannabis use).

Effects of cannabis for an average user and average dose will vary. Health Canada (2016b) states:

“Patients with no prior experience with cannabis and initiating such therapy for the first time are cautioned to begin at a very low dose (e.g. 1 mg THC) and to immediately stop therapy if unacceptable or undesirable side effects occur.”

and

“With inhalation (smoking, vaporizing), effects may be felt within a few minutes of dosing and will generally peak within 30 mins. Acute effects generally last between 2 and 4 hours but may be longer (e.g. 24 hours). With oral ingestion (e.g. oils, foods, capsules), acute effects may begin to be felt as quickly as 30 mins and as late as 3 or 4 hours after administration. This variability in timing depends on a number of factors (e.g. amount of food in stomach). It is prudent to wait a minimum of 2 hours between administration of single doses of oral products to avoid possible overdosing. Acute effects generally peak between 3 and 4 hours after dosing and can last up to 8 hours or longer (e.g. 12–24 hours). With topical application, it is not known how long it takes for potential therapeutic effects to appear, nor how long they last. There have been reports of hypersensitivity reactions (e.g. rashes, itching) when skin has come into contact with cannabis.”

Similar impairment times are cited by a Joint Guidance Statement of the American Association of Occupational Health Nurses and the American College of Occupational and Environmental Medicine. (Phillips, 2015) The American College of Occupational and Environmental Medicine also caution that there are few reliable studies, and many studies in the past were conducted when cannabis typically had lower THC concentrations. The American College of Occupational and Environmental Medicine states:

“The majority of studies of impairment related to driving and cognition show return to a generally nonimpaired state within 3 to 6 hours after smoking cannabis among occasional recreational users.”,

and

“Impaired behavior from acute use differs between occasional users and long-term users. There is good evidence that chronic frequent cannabis users exhibit less impairment from acute THC than do occasional users, but the degree to which impairment is mitigated in safety-sensitive activities is unclear.”

Also noting that the length of time for impairment is unclear is Goldsmith, et al (2015), who state:

“Although definitive conclusions about the acute and lingering effects of the drug have been elusive, there is now a large body of evidence to support the persistence of neurocognitive impairment lasting from hours to weeks.”

and

“The findings on transportation safety have been generalized through other lines of research. These include tests demonstrating that, at very high dose, the drug causes persistent, negative effects on verbal and visual memory, executive functioning, visuoperception, psychomotor speed, and manual dexterity. This level of use was shown to be associated with decrements in neurocognitive performance even after 28 days of abstinence. This persistence is generally linked to very heavy use of the drug. Although other reports suggest that neurocognitive and withdrawal affects do not extend beyond 25 days, performance and safety could conceivably be compromised even after a several-week period of abstinence.”

There is also a significant combination effect when cannabis is consumed with alcohol, leading to a greater level of intoxication and motor control problems than when either substance is consumed alone. (Harris, 2016) Impairment may also be made worse when cannabis is consumed with other central nervous system (CNS) depressants such as benzodiazepines, barbiturates, opioids, anti-histamines, or muscle relaxants. (Health Canada, 2013)

The National Health Service (NHS) (2016) in the United Kingdom indicates that data from a urine sample for THC reveal the following:

- an occasional or first-time user would probably test positive up to four days after last using
- a frequent user would probably test positive up to ten days after last using
- a very heavy user could test positive up to one to two months after last using

Therapeutic Uses of Cannabis and Cannabinoids

In an evidence review, the National Academies of Sciences, Engineering and Medicine (2017) report the following conclusions about the therapeutic effects of cannabis and cannabinoids:

Conclusive or substantial evidence that cannabis or cannabinoids are effective for:

- the treatment of chronic pain in adults
- as antiemetics (drugs taken to prevent or treat nausea and vomiting) in the treatment of chemotherapy-induced nausea and vomiting (oral cannabinoids)
- for improving patient-reported multiple sclerosis spasticity symptoms (oral cannabinoids)

Moderate evidence that cannabis or cannabinoids are effective for:

- improving short-term sleep outcomes in individuals with sleep disturbance associated with obstructive sleep apnea syndrome, fibromyalgia, chronic pain, and multiple sclerosis (cannabinoids, primarily nabiximols)

Limited evidence for:

- increasing appetite and decreasing weight loss associated with HIV/AIDS (cannabis and oral cannabinoids)
- improving clinician-measured multiple sclerosis spasticity symptoms (oral cannabinoids)

-
- improving symptoms of Tourettes syndrome (THC capsules)
 - improving anxiety symptoms, as assessed by a public speaking test, in individuals with social anxiety disorders (cannabinol)
 - improving symptoms of posttraumatic stress disorder (nabilone; a single, small fair quality trial)

The National Academies of Sciences, Engineering and Medicine (2017) also report that there is substantial evidence of a statistical association between cannabis smoking and:

- worsening respiratory symptoms and more frequent chronic bronchitis episodes (associated with long-term cannabis smoking),
- increased risk of motor vehicle crashes,
- maternal cannabis smoking and lower birth weight of offspring, and
- development of schizophrenia and other psychoses, with the highest risk among the most frequent users.

In Canada, commercial production and distribution of cannabis for therapeutic purposes is regulated under the Federal *Access to Cannabis for Medical Purposes Regulations* (SOR/2016-230). However, as Health Canada (2016a) states “There is no scientifically defined dose of cannabis for any specific medical condition.” and “Dosing remains highly individualized and relies greatly on titration (i.e., finding the right dose where potential therapeutic effects are maximized while adverse effects are minimized). The current available information suggests most individuals use less than 3 grams daily of dried marijuana, whether that amount is taken orally, inhaled, or a combination of both.”

LEGISLATIVE REQUIREMENTS

Health and Safety

As per Occupational Health and Safety legislation across Canada, employers have a duty to provide a safe work environment and take all reasonable precautions to protect the health and safety of employees and others in the workplace. This duty is known as due diligence. Due diligence is the level of judgement, care, prudence, determination and activity that a person would reasonably be expected to do under particular circumstances. Reasonably practicable has been described by the Labour Program (Canada) as taking precautions that are not only possible, but that are also suitable or rational, given the particular situation. Determining what should be done is usually done on a case by case basis. This concept is similar in other jurisdictions.

To exercise due diligence, an employer should work with the health and safety committee to create and implement a plan that identifies possible workplace hazards, including the impacts of possible impairment, and carries out the appropriate corrective action to prevent incidents or injuries.

Human Rights

If an employee has a diagnosed medical condition or disability, employers have the duty to accommodate that individual.

First, as with any diagnosed medical condition or treatment plan, if an employee self-discloses or if it is determined that they are taking medications (including cannabis for therapeutic reasons) that may cause impairment or result in diminished functionality, the employer has a duty to accommodate.

Second, under the Canadian Human Rights Act dependence on drugs and or alcohol – referred to as substance dependence – is classified as a disability. For example, the employee with a substance dependence disability should be accommodated, such as being permitted to do their job (or assigned to other work as appropriate) while they are seeking treatment for their dependence.

Accommodation must be attempted. However, if the accommodation would be cost prohibitive or create health or safety risks, then undue hardship to the employer may be considered by courts or tribunals in human rights matters. (CHRC, 2017b) Employers must be able to prove undue hardship and demonstrate quantifiably that they have taken all reasonable measures to provide accommodation. To demonstrate undue hardship, consideration would be given to:

- the cost of the accommodation (e.g., so substantial that the accommodation would alter the essential nature of the enterprise)
- the change to the structure/organization of work (e.g., so significant that the change would substantially affect the organization's viability)
- the resulting risk to health or safety

As there is not a standard definition of undue hardship, each case would be assessed independently.

IMPAIRMENT IN THE WORKPLACE

Legalization of Recreational Cannabis

A task force report “A Framework for the Legalization and Regulation of Cannabis in Canada: The final report of the task force on cannabis legalization and regulation” was released in November 2016 with a series of recommendations. The legalization of cannabis is anticipated to allow for regulation of the product, where/how it is sold, and for certain amounts to be held and grown by a person. Legalization can provide for a mechanism to standardize serving sizes and potency. (Government of Canada, 2015)(Goldsmith, et al. 2015) The Task Force reviewed the implications to workplace safety, and made three main recommendations:

- Facilitate and monitor ongoing research on cannabis and impairment, considering implications for occupational health and safety policies
- Work with existing federal, provincial and territorial bodies to better understand potential occupational health and safety issues related to cannabis impairment
- Work with provinces, territories, employers and labour representatives to facilitate the development of workplace impairment policies. (Government of Canada, 2016)

These recommendations centred around the need for further research on cannabis and impairment, and what that would mean for the workplace. As each jurisdiction in Canada has their own health and safety regulatory agency, there is a need to work with these governing bodies and to facilitate the development of workplace impairment policies. While it was not a formal recommendation, there was also an expressed need for further research related to testing for impairment and how to determine impairment. There was also a comment pertaining to access to services from a personal health resources perspective.

Also of note, research has shown that the current average level of THC in products is between 12-15%, up from an average of 3% in the 1980s. Higher concentration products are available (e.g., “shatter” can have levels as high as 80-90%).

Colorado experienced an issue with doses within non-dried products (e.g., “baked goods”). Overdoses were experienced with food products because the dose per unit was not clearly regulated or indicated. In some cases, 10% (1/10th) of a cookie contained what would be considered a dose of THC. (Ghosh, et al., 2015) Steps were taken to remedy this issue and to regulate the dose per item. (Fraser, 2016) (Government of Canada, 2015)

Legalization would allow for control of production practices, for example by not allowing the use of certain ingredients, resulting in safer products though testing and monitoring of both cannabis and non-cannabis ingredients. In a Globe and Mail report, products currently marked as “medicinal” and available from a various dispensaries in Toronto were tested for contaminants. (Robertson, et al, 2016) Three of the nine products tested would not pass safety standards currently set by Health Canada for regulated therapeutic cannabis. Contaminants included bacteria, yeast, mould, and other chemicals (e.g., pesticides, lead, ammonia and formaldehyde). (Ghosh, et al., 2015)

How to Test for Presence of Cannabis in the Body

Currently, there are limited means to determine impairment from cannabis through testing methods. Most testing methods have been explored in terms of testing for impairment while driving. The Government of Canada (2015) states that “In contrast to alcohol, there is currently no roadside “breathalyzer”-type test to detect impairment with marijuana.” Roadside testing tools to measure THC in a driver’s system are in development. (Department of Justice, 2017)

Biological testing can include the analysis of blood, breath, urine or saliva for THC. Oral fluid screening (saliva) devices are currently the most advanced type of test, and can signal recent use. To screen for the individual’s functional ability, police have also used a “standard field sobriety test” which includes a horizontal gaze test, walk and turn test, and one leg stand test. (Harris, 2016)

Of note, results of current testing methods can currently only determine if THC is present in a person (e.g., that person has used cannabis at some point). Unlike testing for blood alcohol levels, obtaining a positive test result that indicates the presence of cannabis is not necessarily a clear indication of the risk of impairment.

In the United States of America, for example, the State of Colorado has set a blood limit of 5 nanograms (ng) or more of THC as an indicator of impaired driving. They indicate “as a rule of thumb, if you’re smoking, wait at least six hours before driving. If you’re ingesting, wait at least eight.” (State of Colorado, 2017) However, ACOEM reports that fewer than 20 states specifically address cannabis and driving. Of these states, 11 have a zero tolerance for any level of THC. (Phillips, 2015)

How an Employer Can Determine Impairment

The Canadian Human Rights Commission (2017b) indicates that “Workplace drug testing is a complex issue involving many factors, such as: human rights law; safety; privacy; labour standards; the provisions of collective agreements; regulatory requirements; and the level of supervision available in the workplace. Unlike a breathalyser, a positive drug test result does not necessarily prove that someone is impaired in that moment, and should not be taken as concrete evidence of substance dependence.”

In addition, substance testing is generally considered discriminatory on the basis of disability and perceived disability and it is only recommended in specific situations (e.g., safety sensitive work) by organizations such as the Canadian Human Rights Commission. Employers must provide training to supervisors and employees on the impact of impairment, and how to recognize and respond to possible signs of impairment

As the American College of Occupational and Environmental Medicine states, “employees who appear to be impaired in the workplace should always be assessed according to employer policies. Urine levels of THC do not correlate with impairment. Blood levels correlate more directly; however, all assessments should include an overall evaluation of impairment.” (Phillips, 2015)

Therefore, there is a reliance on observation to determine possible impairment (e.g., if there is a change in behaviour or ability) that could lead to the risk of injury, illness, or incident to that person, others or the environment. Employers should consider if there is a risk to the individual's safety or the safety of others. For example, while impaired:

- Does the person have the ability to perform the job or task safely (e.g., driving, operating machinery or equipment, use of sharp objects)?
- Is there an impact on cognitive ability or judgement?
- Are there other side effects of the medical condition or the treatment that need to be considered?

Because users can have varying sensitivity, each individual should be assessed on a case-by-case basis. Confirm with both human rights, and occupational health and safety agencies to determine if other testing methods or protocols are permissible in the jurisdiction (e.g., reasonable cause or post-incident testing versus random testing).

EMPLOYER OBLIGATIONS

Employer Duties

As stated, as per Occupational Health and Safety legislation across Canada, employers have a duty to provide a safe work environment and take all reasonable precautions to protect the health and safety of employees and others in the workplace. Due diligence is demonstrated by the employer's actions before an event occurs, not after.

To establish due diligence, the employer would have in place written occupational health and safety policies and programs. These policies and programs would demonstrate and document that the employer carried out a gap analysis to identify hazardous practices and conditions and made necessary changes to correct these conditions, and provided employees with information to enable them to work safely.

The employer should provide the appropriate education and training to employees so that they understand and carry out their work according to the established policies, practices, and procedures.

Workplace Policies

In the case of cannabis use and the workplace, the employer should consider workplace policies and programs as they may relate to impairment from any source such as alcohol, medications (used legally or illegally), cannabis (recreational or therapeutic), or any other substance.

A substance use policy that addresses the risk of workplace impairment should be jointly developed by labour and management, including the health and safety committee. The policy should use general concepts such as "impairment" or "under the influence" as this approach will be relevant to all sources of impairment, not just cannabis.

The policy should clearly indicate the organization's position regarding whether employees are not to use, possess, or be under the influence of substances while at work. Prevention initiatives should also be included.

It is important to tailor the policy to meet the specific needs of the workplace. Elements of the policy could include:

- statement of the purpose and objectives of the program
- definition of substance use, and substance dependence
- definition of what the employer considers to be impairment
- statement of who is covered by the policy and/or program
- statement of the employee's rights to confidentiality
- a mechanism for employees' to confidentially report when they have been prescribed a medication that may cause impairment
- statement regarding if either medical/therapeutic or non-medical substances are allowed on the premises, or under what situations they would be allowed
- that arrangements have been made for employee education (e.g., a general awareness regarding substance-dependence)

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- that arrangements have been made for educating and training employees, supervisors, and others in identifying impaired behaviour and what steps will be taken
 - provisions for assisting those with a substance dependence
 - processes for accommodation, and return to work/remain at work planning
 - if applicable, statement of under what circumstances substance testing will be conducted, as well as the criteria for testing and interpretation of test results
 - provision for a hierarchy of disciplinary actions

A sample policy is provided in Appendix A.

Presence of Cannabis at the Workplace

Employers can set organizational policies about the physical presence of cannabis products in the workplace. For example, while it may be legal to carry small amounts of recreational cannabis “in public”; the employer can determine if its presence is permitted at the workplace (similar to allowing alcohol on the premises) regardless of intent of consumption.

Where it has been recommended that an individual use cannabis for therapeutic purposes, considerations may be needed regarding how the product is consumed (e.g., x amount to be taken at specific intervals), and for secure storage at the workplace, if necessary.

Employers should establish a way for employees to disclose this therapeutic need without fear of reprisal or judgement. Also, if the therapeutic cannabis is smoked, employers should consider control measures to reduce the risk of second hand or passive smoke. Options could include:

- Creating a specific and designated area, away from entrances, and away from ventilation intake vents
- Establishing a separate area from cigarette smoking, if required
- For home health care workers who may be visiting clients who smoke cannabis for therapeutic purposes:
 - request the client stop smoking 60 minutes or more before a visit
 - use fans and open windows to clear the smoke before the home care worker arrives
 - request a designated smoke-free room in the home (PSHSA, 2016)
- Hotel or hospitality workers may need to use fans or open windows to clear the smoke before cleaning a room or working in the area
- Working with the employee and their physician to determine if the use of alternate forms of cannabis other than smoking would be appropriate (e.g., pills)
- Consulting the jurisdiction or local municipal by-laws (e.g., smoking by-laws) to determine if there are any changes due to legalization of cannabis and take steps accordingly.

Note that the use of personal protective equipment may not be practical as there are no air purifying or disposable respirators designed and tested specifically for cannabis smoke and its by-products. If required, a self-contained breathing apparatus is an option. (PSHSA, 2016)

Policies Regarding Substance Testing

Legal counsel is highly recommended to any employer who is considering implementing substance testing. Canadian Human Rights Commission (2017a) states: “In deciding whether and how to conduct drug or alcohol testing in the workplace, an employer must consider a variety of factors including human rights law, safety, privacy, labour standards, the provisions of any applicable collective agreements, regulatory requirements, the level of supervision available in the workplace, among other considerations.” Confirm with both human rights, and occupational health and safety agencies to determine if other testing methods or protocols are permissible in the jurisdiction (e.g., reasonable cause or post-incident testing versus random testing).

Also, recall that, in general, testing only identifies the presence of the substance (or metabolites), and does not confirm impairment. Therefore, a test is currently not a reliable means of determining whether a person is capable of performing the essential requirements or duties of their position. (CHRC, 2017b)

The organization should have a clearly defined policy that outlines the criteria for impairment and, if any, testing procedures. If testing is to be part of the program, it should be completed in a manner that protects the privacy, dignity, and confidentiality of the employee being tested, and results are only shared with necessary persons (e.g., the employee, the supervisor, or human resources). Employees using therapeutic cannabis would have the duty to disclose their prescription beforehand to avoid complications with any necessary substance testing requirements.

Addressing Safety Sensitive Positions

Using job safety analysis is one method to identify the risk associated with each job position and how that job may be affected by a risk of impairment. When determining whether a position is safety sensitive, one should consider the context of the industry, the particular workplace, and the employee’s direct involvement in a high-risk operation or in high-risk decision making.

The four basic steps to completing a job safety assessment are:

- select the job to be analyzed
- break the job down into a sequence of steps
- identify potential hazards
- determine preventive measures to overcome these hazards

Recognizing Impairment

We often think of substance use in terms of addiction or dependence, but the use of substances can fall anywhere on a spectrum and, at any point, may impact workplace performance and safety. (Mental Health Commission of Canada, et al., no date)

The employer should develop a clear statement of what is considered to be impairment within their workplace. For consideration, the Canadian Human Rights Commission (2017a) uses the following characteristics as they relate to changes in an employee’s attendance, performance or behaviour:

- personality changes or erratic behaviour (e.g. increased interpersonal conflicts; overreaction to criticism)

- appearance of impairment at work (e.g., odour of alcohol or drugs, glassy or red eyes, unsteady gait, slurring, poor coordination)
- working in an unsafe manner or involvement in an accident
- failing a drug or alcohol test
- consistent lateness, absenteeism, or reduced productivity or quality of work

Supervisors and employers must enforce policies and programs in a fair and equal manner. Supervisors should be educated and trained regarding how to recognize impairment. In most cases, when assessing an individual for impairment, it is suggested that a second trained person be present to facilitate an unbiased assessment.

Note it is not the role of the supervisor or employer to diagnose a possible substance use or dependency problem. Their role is to identify if an employee is impaired, and to take the appropriate steps as per their policy.

Table 1: Signs and Symptoms of Problematic Substance Use (not specific to any causal agent)

The following table is from “A Toolkit to Address Problematic Substance Use that Impacts the Workplace” as published by the Atlantic Canada Council on Addiction (ACCA) (no date). ACCA notes the following about using signs and symptoms:

- They may be different from person to person.
- When used alone or in combination, they do not necessarily mean that somebody has a substance use problem. However, they may be indicators that your employee is in trouble or in need of some help (regardless of if the issue stems from problematic substance use or another cause).

	Indicator
Physical	<ul style="list-style-type: none"> • deterioration in appearance and/or personal hygiene • unexplained bruises • sweating • complaints of headaches • tremors • diarrhea and vomiting • abdominal/muscle cramps • restlessness • frequent use of breath mints/gum or mouthwash • odour of alcohol on breath • slurred speech • unsteady gait

Continued

Psychosocial Impacts	Indicator
Workplace performance and professional image	<ul style="list-style-type: none"> • family disharmony (e.g., how the colleagues speak of family members) • mood fluctuations (e.g., swinging from being extremely fatigued to 'perkiness' in a short period of time) • inappropriate verbal or emotional response • irritability • confusing or memory lapses • inappropriate responses/behaviours • isolation from colleagues • lack of focus/concentration and forgetfulness • lying and/or providing implausible excuses for behaviour <ul style="list-style-type: none"> • calling in sick frequently (may work overtime) • moving to a position where there is less visibility or supervision • arriving late for work, leaving early • extended breaks; sometimes without telling colleagues they are leaving • forgetfulness • errors in judgement • deterioration in performance • excessive number of incidents/mistakes • non-compliance with policies • doing enough work to just 'get by' • sloppy, illegible or incorrect work (e.g., writing, reports, etc.) • changes in work quality

Responding to Suspected Impairment

Employers and supervisors should be able to identify signs of impairment, and know how to respond to situations involving the use of a substance whether it from recreational use, dependence, or therapeutic use. They should be familiar with available resources and supports (e.g., Employee Assistance Programs, or agencies within the local community), and help employees seek treatment as necessary.

If a supervisor or co-worker becomes aware of an employee who is showing signs of impairment (regardless of cause), it is imperative that action is taken. All actions should be handled with empathy and without judgement. Examples of corrective action include but are not limited to:

- Speak to the employee in a private area to discuss their behaviour.
- If the person is in crisis and needs immediate assistance, go to the emergency department of the nearest hospital or dial 9-1-1.
- Ask another supervisor or designated person to be present as a witness.
- Remove any stigma regarding substance use. State the concern is about safety for others and themselves.
- State your concerns to the employee and request that they explain what is going on.
- Based on employee response, discuss options, where applicable and available.
- Follow the steps outlined in your organization's program. In some cases, it may be necessary to assign non-safety sensitive work or to ask the employee to stop their work.
- If applicable, notify senior management and/or union representative.
- Provide information on your Employee Assistance Program, if one is available. Encourage access and use, and reassure the employee that the services are voluntary and confidential.
- If necessary, have employee escorted home; do not allow them to drive if you suspect impairment.
- If disciplinary action is required, follow your organization's policies on progressive discipline

Every discussion should be accompanied by an incident report. (See Appendix B for a sample incident report.) The report should include the events preceding the incident, identification of the employee's unsafe work practices, the matters discussed with the employee, that management and union representatives were notified, a list of all actions taken, and any recommendations made to the employee. (Workplace Safety North, 2017)

Recall it is not the employer or supervisor's duty to diagnose an employee, or to know if they have a disability. (CHRC, 2017b) Employers can observe changes in an employee's attendance, performance, or behaviour. They can initiate a discussion about the issue(s) as related to work, and discuss possible solutions. If an employee does not disclose a disability, the employer can outline the consequences of the observed change in behaviour, or address attendance or performance issues according to the steps outlined in the workplace's policy. The discussion between the employer and employee may need to occur more than once. Document all discussions. Provide support and practice empathy, not sympathy. Focus on solutions, but if disciplinary action is necessary, it is important to follow through.

Supportive Medical Information for Accommodation

In order to properly accommodate an employee, the employer should have sufficient information from the physician or medical professional.

This information balances the employer's need to maintain a safe workplace while respecting the employee's right to privacy. Information requests should be limited to essential duties and accommodation needs. The diagnosis or details of the treatment plan do not necessarily need to be disclosed. If a request for an independent medical evaluation is necessary, the Canadian Human Rights Commission (2017a) recommends that the employer seek legal advice as this request may infringe on an employee's privacy rights.

The employer and employee should share with the physician a complete description of the job and related duties/responsibilities, the work schedule, if the position is classified as safety sensitive, and any other pertinent information. The physician should provide details on:

- specific accommodation needs
- any restrictions or limitations
- if there is a treatment plan, and any relevant details of that plan
- any implications regarding behaviour, attendance or performance
- the plan for return to work if the employee is to be off work
- if the employee can safely perform the job, especially if the employee is in a safety sensitive position
- anticipated return to work date if on leave

One option is to use a "fit to work" assessment.

"Fit to work" or "fitness to work" is a medical assessment done when an employer wishes to be sure an employee can safely do a specific job or task. The purpose is to determine if medically the employee can perform the job or task under the working conditions. Typically, the employee will visit a medical professional who will determine if the person is able to do the particular job. The medical professional may consider physical or mental abilities, sensory acuity, level of skill, functional limitations, etc. The medical professional will typically only report one of three conclusions back to the employer:

- fit,
- unfit, or
- fit subject to work modifications.

Once it has been determined there are any concerns or limitations, a return to work/remain at work plan can be developed and accommodations can be implemented.

Steps for Accommodation

Recall that substance use can fall anywhere on a spectrum and does not necessarily mean dependency. The need for accommodation may be required when there is a therapeutic/medical requirement, cognitive issue, or a diagnosed substance dependence that may impact workplace performances and safety.

When the employer is aware that accommodation may be necessary, accommodation would include the organization following established policy(ies) that cover cannabis use related to therapeutic needs, and substance dependence. From these policies, a plan can be developed for each employee on a case by case basis. Both parties should work together and agree to the accommodations.

Careful examination of the employee's job responsibilities and duties should be performed. While human rights laws require accommodation of employees with medical needs or substance dependence, there is also the general duty requirement for employers to ensure a safe workplace. In this context, employers should ensure that if an employee is impaired due to prescribed medication or substance dependence, that employee not be permitted to engage in work that would endanger themselves or others.

The Canadian Human Rights Commission (2017a) recommends the following components be part of an accommodation plan:

- put in writing the roles, responsibilities and expectations
- the resulting agreement must be signed by all parties
- identify accommodation components based on the employee's medical information
- designate a 'go-to' person that an employee can go to with concerns or questions about accommodation plans
- determine what changes in the employee's behaviour or performance that will be deemed significant and when there would be a need for updated medical information

Note that while the employer has the obligation to accommodate, it may not be possible to adapt all jobs or positions to the employee's ideal or preferred outcome. The Canadian Human Rights Commission (2017a) recommends "Being creative, flexible and open to trying different strategies will be a key to success. The goal should be to keep the employee at work where it is appropriate or support the employee in returning to work as soon possible." Having follow-up meetings at set intervals can help track the success of the accommodation and any adjustments can be made promptly.

There is not a comprehensive list of accommodation solutions. It is a collaborative process that requires the both employee and employer, with input from the medical professional to find suitable solutions. Examples of accommodation include:

- modification to the employee's schedule to accommodate treatment, appointments, etc.
- modification and adjustment to hours or performance requirements as per medical assessments/fit for work assessments/functional abilities forms
- modification of the work environment (e.g., assistive devices, etc.)
- outline of expectations regarding conduct and behaviour

-
- possible re-assignment of duties if the employee is in a safety sensitive position
 - short- or long-term leave

Be sure to include steps that address return-to-work success including a contact schedule/frequency, and how the employee will reintegrate with their team. These steps are important as they help to re-establish trust, create healthy boundaries, and reduce stigma.

Accommodation should be collaborative and the goal is to keep the employee functional at work. All accommodation requests should be taken in good faith. It's important to maintain confidentiality of the employee, and additional documentation should be only requested if necessary.

EMPLOYEE OBLIGATIONS

Employee Duties

Employees have a duty to perform their job safely. This duty includes the need to understand their job and the impact that using substances (medical/therapeutic or non-medical) could have on their safety and the safety of others. Employees have a duty to work safely, and to follow prescribed health and safety legislation and the employer's policies and programs.

If an employee requires a medication that is known to cause impairment, it is beneficial that they notify their employer. The medication includes any over-the-counter medications or prescription drugs including cannabis used for therapeutic purposes. The employee's diagnosis does not need to be stated. If there is an effect that may prevent the employee from performing their work safely, appropriate accommodations should be made. The employee should:

- provide relevant documentation to the employer,
- follow any medical directions that relates to taking the medication, and
- follow all precautions regarding impairment.

It is the responsibility of the employee to work with their medical professional to a complete any form or assessments necessary to support fitness to work or accommodation plans, and to participate in return to work/remain at work planning. If there are changes to the employee's abilities, these changes should be promptly discussed with the employer by the employee.

Education and Training

Employees should be:

- aware and trained on their role and responsibilities regarding their organization's policy(ies)
- aware of what current resources and supports are available for an individual and their family
- aware of any implications of discipline if there are contraventions of the organization's policy(ies)
- educated and trained on substance use, including information about substance dependence and the impact on safety, health, personal life, and work performance
- if trained to do so, be able to recognize the signs and symptoms of impairment in others, and report concerns to their supervisor or employer

PREVENTION – CREATING A HEALTHY WORKPLACE

Workplace Factors

There are workplace factors that may contribute to substance use, for example:

- jobs that offer little control or low job satisfaction
- repetitive, monotonous jobs with periods of inactivity
- working in isolation or remote areas with little supervision

There are many personal and social factors that can influence an individual and could lead to a substance dependence issue. There are also some work-related factors that can negatively impact an individual and potentially lead to substance use:

- high stress, low control
- low job satisfaction
- long hours or irregular shifts
- fatigue
- repetitious duties
- periods of inactivity or boredom
- isolation
- remote or irregular supervision
- easy access to substances

Also, individuals with substance dependence may feel fear of discrimination and stigma, which can prevent them from seeking help and addressing the issue.

For these reasons, it's important to create supportive workplaces in which there is a culture of respect and inclusion to help those facing challenges, and keep employees safe and healthy.

Create and Foster Supportive Workplaces

Often substance use and mental illness are concurrent disorders, and substance use can have a significant impact on the mental health of an individual as well as the culture of the organization.

A comprehensive workplace health and safety program (CWHSP) is a recommended approach that will not just benefit individuals who are facing challenges, but all employees. In a supportive workplace, employees will feel safe to share their concerns and seek assistance. A CWHSP is a series of strategies and related activities, initiatives and policies developed by the employer, in consultation with employees, to continually improve or maintain the quality of working life, health, and the well-being of the workforce. This program addresses (Burton, 2010):

- occupational health and safety
- psychosocial work environment
- workplace health promotion (wellness/well-being, personal health resources)
- organizational community involvement

These activities are developed as part of a continual improvement process to improve the work environment (physical, psychosocial, organizational, economic), and to increase personal empowerment and personal growth. Note that these are not four distinct or separate areas. They overlap and should be integrated within the program, and not addressed in isolation.

Comprehensive Workplace Health Policy and Program

The program should start with a needs assessment to help identify the scope of the issue, and any concerns that should be addressed, determine what is already in place, and what resources are available for individuals with substance dependence problems. Once the needs assessment has been completed, the policy can be drafted and implemented. The policy should include the following sections:

- Scope
- Objectives
- Roles and responsibilities
- Rules
- Policy violations and consequences
- Procedure
- Prevention
- Assessment and rehabilitation
- Confidentiality and privacy
- Policy and program evaluation

Once the policy and program is complete, then there is a need for education and training for both employees and supervisors. Finally, appropriate supports should be identified.

Conclusion

Addressing potential impairment from cannabis is part of a workplace's hazard assessment process. Safety sensitive positions must be identified. Appropriate controls and measures must be identified, including the need for a concise workplace policy(ies). As part of the policy and procedures, identify what action will be taken if there is suspected or identified impairment or substance use, and the need for accommodation practices where necessary (including for medical/therapeutic needs, and substance dependence).

Testing employees for substances typically reveals only the presence of the substance, not the level of impairment. Testing is also not generally supported by human rights legislation. As such, supervisors should be trained on how to identify signs of impairment, and how to respond and implement the next steps as identified in the workplace policy. Employees should be educated and trained on available policies, programs, recognizing impairment in others, and any assistance measures available to them.

Accommodation is necessary in cases of medical/therapeutic need, or disability (including disability from substance dependence). Accommodation plans should be based on medical assessment, and developed collaboratively between both employer and employee.

Creating a supportive workplace will help reduce the stigma associated with substance use or dependence, and ideally, reducing the need for substances in general.

The key steps to reducing the impact of impairment on the workplace is to have these mechanisms in place, to provide clear guidance to all workplace parties, and to apply workplace policies and programs using a fair and consistent approach.

APPENDICES

Appendix A: Sample Workplace Policy Regarding Substance Dependence/Impairment

Title: Substance Dependence / Impairment

Relevant Legislation: Occupational Health and Safety Act; Human Rights Act

Purpose:

ABC Organization is accountable to create a safe environment for patients, families, staff, volunteers and members of the public. This duty includes ensuring there is no use of illegal substances in the workplace or misuse of substances before or during work hours that may impair an employee's ability to perform their work functions responsibly.

Policy:

All individuals working at ABC Organization (including volunteers and contractors) are expected to report fit for duty for scheduled work and be able to perform assigned duties safely and acceptably without any limitations due to use or after effects of alcohol, illicit drugs, non-prescription drugs, prescribed medications, or any other substance that may impair judgment or performance.

ABC Organization has taken the position that the presence of illicit drugs and alcohol on the worksite is not permitted.

Any individual failing to adhere to this policy will be subject to discipline up to and including dismissal.

Procedures:

Managers and supervisors are to identify and handle all situations promptly where there are concerns about an individual's ability to perform his or her job safely.

Employees who are assessed and suspected to be impaired while at work will be sent home immediately. Transportation will be arranged. The supervisor is responsible for documenting any incidence of suspected impairment.

Employees are encouraged to inform their supervisor or another named person(s) about their use of medication or prescription drugs that may compromise their safety or the safety of others, or impair their performance.

ABC Organization will provide support for employees by providing access to confidential assessment, counselling, treatment, and after-care services. Employees who have substance dependence are strongly encouraged to seek assistance through the Employee Assistance Program. All voluntary referrals to the Employee Assistance Program are kept confidential.

Employees shall advise their supervisor whenever they have any concerns about their colleagues' fitness or duties.

The Human Resource contact will work with the immediate supervisor to determine appropriate disciplinary action if necessary.

The Manager will ensure adherence to reporting requirements with the appropriate licensing bodies.

Signed: _____

Effective Date: _____

Adapted from ACCA (no date)

Appendix B: Sample Tool- Incident Report

Employee Name:			
Date of Incident:			
Description of Incident:			
Behaviour	<input type="checkbox"/> Nervous?	<input type="checkbox"/> Insulting?	<input type="checkbox"/> Sleepy?
	<input type="checkbox"/> Exaggerated politeness?	<input type="checkbox"/> Confused?	<input type="checkbox"/> Combative?
	<input type="checkbox"/> Excited?	<input type="checkbox"/> Quarrelsome?	<input type="checkbox"/> Fatigued?
	<input type="checkbox"/> Uncooperative?	<input type="checkbox"/> Poor memory?	<input type="checkbox"/> Overly talkative?
	Other (please describe)?		
Unusual Actions	<input type="checkbox"/> Sweating?	<input type="checkbox"/> Slow reactions?	<input type="checkbox"/> Crying?
	<input type="checkbox"/> Quick moving?	<input type="checkbox"/> Tremors?	<input type="checkbox"/> Fighting?
	Other (please describe)?		
Speech	<input type="checkbox"/> Slurred?	<input type="checkbox"/> Slow?	<input type="checkbox"/> Confused?
	<input type="checkbox"/> Thick?	<input type="checkbox"/> Rambling?	<input type="checkbox"/> Pressured?
	Other (please describe)?		
Balance	<input type="checkbox"/> Falling?	<input type="checkbox"/> Staggering or unsteady gait?	<input type="checkbox"/> Unsure?
	<input type="checkbox"/> Needs support?	<input type="checkbox"/> Stumbling?	<input type="checkbox"/> Normal?
	Other (please describe)?		
Witness / Other Employees Involved:			
Supervisor Actions:			
Consequence:			
Planned Follow-up:			
Signature:			
Date:			

Adapted from ACCA (no date)

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RESOURCES

Legislation

Access to Cannabis for Medical Purposes Regulations (SOR/2016-230)

<http://laws.justice.gc.ca/eng/regulations/SOR-2016-230/>

Canadian Human Rights Act Revised Statutes of Canada (1985, c. H-6)

<http://laws-lois.justice.gc.ca/eng/acts/h-6/FullText.html>

Cannabis Exemption (Food and Drugs Act) Regulations (SOR/2016-231)

<http://laws.justice.gc.ca/eng/regulations/SOR-2016-231/>

Controlled Drugs and Substances Act (S.C. 1996, c. 19)

<http://laws-lois.justice.gc.ca/eng/acts/C-38.8/>

Any jurisdictional legislation that may apply including occupational health and safety, and human rights. Contact information is below:

Occupational Health and Safety Jurisdictions across Canada

<https://www.ccohs.ca/oshanswers/information/govt.html>

Human Rights Offices across Canada

https://www.ccohs.ca/oshanswers/information/human_rights.html

Samples of Case Law in Canada

Burton vs Tugboat Annie's Pub, 2016 BCHRT78

<https://www.canlii.org/en/bc/bchrt/doc/2016/2016bchrt78/2016bchrt78.html?autocompleteStr=2016%20BCHRT78&autocompletePos=1>

City of Calgary vs CUPE 37, 2015 CanLii 61756

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French vs Selkin Logging, 2015 BCHRT

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Stewart vs Elk Valley Coal Corp, 2015 ABCA225

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USW 7656 vs Mosaic Potash Colonsay 2016

<https://www.canlii.org/en/sk/skla/doc/2016/2016canlii18320/2016canlii18320.pdf>

Web sites

We have mentioned these organizations as a means of providing a potentially useful referral. You should contact the organization(s) directly for more information about their services. Please note that mention of these organizations does not represent a recommendation or endorsement by CCOHS of these organizations over others of which you may be aware.

Canadian Centre on Substance Use and Addiction

<http://www.cclt.ca/Eng/Pages/default.aspx>

Government of Canada – Substance Abuse

<https://www.canada.ca/en/health-canada/services/substance-abuse.html>

Workplace Strategies for Mental Health

<https://www.workplacestrategiesformentalhealth.com/>

Canadian Centre for Occupational Health and Safety – OSH Answers Fact Sheets

<http://www.ccohs.ca/oshanswers/>

Medical Marijuana

http://www.ccohs.ca/oshanswers/psychosocial/medical_marijuana.html

Due Diligence

<http://www.ccohs.ca/oshanswers/legisl/diligence.html>

Substance Abuse in the Workplace

<http://www.ccohs.ca/oshanswers/psychosocial/substance.html>

Job Safety Analysis

<http://www.ccohs.ca/oshanswers/hsprograms/job-haz.html>

Workplace Health and Well-being - Comprehensive Workplace Health and Safety Program

http://www.ccohs.ca/oshanswers/psychosocial/mentalhealth_work.html