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Cannabis ... An Employer's Guide to the New Normal



Cannabis ... An Employer's Guide to the New Normal

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Welcome to Cannabis ... An Employers Guide to the New Normal

The purpose of this guide is to provide employers relevant and timely information on how to address Cannabis in the workplace considering the legalization effects. The resource will provide an introduction to Cannabis, information about impairment and its' effects in the workplace, relevant legislation and steps that you can take to update your workplace impairment policies.



Introduction to Cannabis Legislation

On October 17, 2018, cannabis will become legal for recreational use and sale in Canada. There is growing concern among employers that the increase in recreational cannabis sales and users once the *Cannabis Act* is passed – in addition to the social normalization of cannabis – will lead to higher incidences of impairment in the workplace. (CTV News, 2018) (Weir & Pennell, 2017) (Newswire, 2018) (Cottrill, 2018). A recent survey by the Public Services Health and Safety Association (PSHSA), Human Resources Professionals Association (HRPA), and Business of Cannabis determined that 71% of employers are still not prepared for the fall 2018 legalization of cannabis. (Newswire, 2018) (HRPA, 2018). As well, a recent poll by the Business of Cannabis determined that there is still a divide among Canadians between the usage of cannabis and social normalization of cannabis. (Allan, et al., 2018) (Business of Cannabis, 2018) (Canadian Centre for Occupational Health and Safety (CCOHS), 2018) (HRPA, 2018). With the looming deadline of fall 2018, it is now a good time to review or create your alcohol and drug workplace policies to include cannabis impairment.

According to the Canadian Tobacco, Alcohol and Drug Survey (CTADS) from 2015, over 44% of Canadians have used cannabis in their lifetime, and over 12% have used it in the past year. (Canadian Centre for Occupational Health and Safety (CCOHS), 2018). According to Health Canada data, approximately 167,000 Canadians were registered to purchase medical marijuana in the final quarter of 2016/17, an increase of 32% since when it was first documented in June 2014. (HRPA, 2018). In Canada, the number of medical cannabis users (on average) has approximately tripled every year since 2014. Support of legislation and retail distribution is strongest among younger Canadians (<35 years) with 82.1% being supportive. (Allan, et al., 2018) (Business of Cannabis, 2018) (HRPA, 2018) (Canadian Centre for Occupational Health and Safety (CCOHS), 2018).

Cannabis is currently the most commonly encountered substance in workplace drug tests. Rates of driving under the influence of cannabis have risen in recent years. Cannabis is the 2nd most common psychoactive drug found to impair drivers and workers (after alcohol), and drug-impaired driving rates are rising however the percentage of Canadian drivers killed in vehicle crashes who test positive for drugs (40%) now actually exceeds the numbers who test positive for alcohol (33%). (Asbridge, Hayden, & Cartwright, 2012) (Gov of Canada, 2018).

The most appropriate term to use in this industry is “cannabis,” which refers to all types of products deriving from the cannabis plant. “Marijuana” is a racially-charged slang term that evolved in the Prohibition Era hoping to appeal to the xenophobia of the time. (The Guardian, 2018) (Paradkar, Shree, 2018). It only refers to the dried form of the cannabis bud used for smoking.

Overall, there is a strong desire for public awareness of issues like health and safety related to the cannabis industry, and there appears to be a knowledge gap out there. (Small, 2018) (CBC News, 2018) (Enform, 2018) (Injury Prevention Centre, 2018) (Phillips, et al., 2015). We hope this Guide is able to bring you up to speed and baseline the knowledge about cannabis before and after its legalization.



What is Cannabis?

Cannabis products are derived from the cannabis plant, specifically the buds of the female plants which contain trichomes. (Gov of Canada, 2018). Most cannabis products are generally defined as being either 1 of 2 species by their effect profile:

- Sativa – reported to have a more invigorating, uplifting effect.
- Indica – reported to have a more relaxing, sedating effect. (Gov of Canada, 2018).

The main psychoactive chemical constituent in cannabis is delta-9-tetrahydrocannabinol (THC), which is found in the trichomes. (Gov of Canada, 2018). THC is one chemical in a group of similar compounds called the “cannabinoids.” The psychoactive effect of THC is elicited when heat is applied (for example, smoking, vaporizing, or cooking in oil). THC works by binding to natural cannabinoid receptors in our brain and central nervous system (which normally bind to the neurotransmitter anandamide), producing psychoactive effects and pleasure due to the release of dopamine. This is called the “endocannabinoid system,” and it motivates people to keep using cannabis. (Gov of Canada, 2018). (For your information, anandamide is a natural cannabinoid in our bodies, and it is responsible for mild psychoactive effects such as “runner’s high.”) (Gov of Canada, 2018) (CBC News, 2018)

Another notable chemical constituent of cannabis is cannabidiol (CBD), which is NOT psychoactive, but is known for various therapeutic benefits, such as nausea and pain reduction. It may even help dampen some of the psychoactive effects of THC including disturbances in mood and psychotic symptoms. (Gov of Canada, 2018).

Concerns about Cannabis

Cannabis is much more potent today than it was in the past, but the perception of it has remained the same. Average THC concentrations have significantly increased since the 1980s from 3% to 15%. (Canadian Centre for Occupational Health and Safety (CCOHS), 2018) (McGuire, 2013). There are even higher concentration products, such as “dabs” and “shatter,” that may have THC levels as high as 80% to 90%. (Canadian Centre for Occupational Health and Safety (CCOHS), 2018). A 2015 report by Phillips and the American College of Occupational and Environmental Medicine said “It is conceivable that residual impairment may actually be more prolonged and problematic with today’s higher potency marijuana”. (Phillips, et al., 2015).

There is a false belief that cannabis is a better drug than other drugs because it is “all-natural” or “comes from nature” or that it’s “plant-based,” but that’s simply not true. As stated by Dr. Damon Raskin in the Enform Alcohol and Drug Policy Model: “Just because something is considered ‘natural’ doesn’t mean it’s healthy. For example, poison oak can be harmful. Just because it grows in the ground doesn’t mean it’s good for you or healthy.” (Enform, 2018). Other risks and punishments associated with illegally purchased cannabis include a criminal charge and prosecution, unknown THC potency, unguaranteed quality and purity of product, presence of pesticides, other drugs, heavy metals, moulds, fungi, and other contaminants, and the unpredictability of interacting with criminals or a criminal organization. (Canadian Centre for Occupational Health and Safety (CCOHS), 2018).

An investigation by the Globe and Mail tested current products clearly marked as medicinal and available from multiple Toronto dispensaries. (The Globe and Mail, 2018). Three out of 9 products tested would not have passed health and safety standards outlined by Health Canada for regulated medical cannabis. They found contaminants like bacteria, yeast, mould, and other chemicals including pesticides, lead, ammonia, and formaldehyde. Health Canada rules force licensed producers to comply to very high standards, such as with their fertilizers, pesticides, and mould, resulting in a much safer product than what is found on the “street.” (Canadian Centre for Occupational Health and Safety (CCOHS), 2018)

Routes of Administration

In addition to the chemical properties of cannabis itself, the dose, and how often you are taking it, the route of administration (that is the method in which a substance is taken into the body) has a critical role in influencing the effects of the substance. Specifically, the addictive potential of a substance is largely determined by the speed at which that substance is able to reach the brain, where the faster it can reach the brain, the more likely it is to be addictive. There are several routes of administration for cannabis, which include:

- **Inhalation, Nebulization and Nasal Routes**
 - E.g. smoking, vaporizing, and nasal sprays
- **Oral Route**
 - E.g. Edibles (such as oils or products like cannabis-infused butter), pill form, pills crushed into food, and cannabis-infused tea
- **Topical (meaning the cannabis product is applied directly to the skin)**

- **Transdermal Route**
 - E.g. skin patches
- **Sublingual and Buccal Route**
 - E.g. lozenges and tinctures. (Canadian Centre for Occupational Health and Safety (CCOHS), 2018)
- **Rectal Route**
 - E.g. suppositories

However, it should be noted that smoking cannabis has negative health effects. It's unhealthy as "smoking is still smoking," so you are still inhaling all the toxic and carcinogenic by-products found in smoke, such as carbon monoxide and nitrogen oxides to name two. It produces a bad smell for everyone around you. According to some recent research, a more harmless way to use cannabis is to vaporize it although new research is coming out every day. (Canadian Centre for Occupational Health and Safety (CCOHS), 2018) (Phillips, et al., 2015) (MedicalJane, 2016). The potential advantages of vapourization include the formation of a smaller quantity of toxic by-products such as carbon monoxide, polycyclic aromatic hydrocarbons (PAHs), and tar, as well as a more efficient extraction of Δ^9 -THC from the cannabis material.

Ingesting cannabis delays the onset of action by 30-45 minutes. Lower peak levels of cannabinoids occurs and a longer duration of effects occur as compared to smoking cannabis.

Medical Cannabis

Cannabis as a therapeutic treatment has been legal in Canada since 2001. (Allan, et al., 2018) (Canadian Centre for Occupational Health and Safety (CCOHS), 2018) (Enform, 2018) (PSHSA, 2018). The most common reason for medical cannabis use is to treat the symptoms of chronic pain, comprising 58% to 84% of medical marijuana users. (Allan, et al., 2018). However, it is important to note that cannabis research still remains in its early stages. According to the evidence from a review by the National Academics of Sciences, Engineering and Medicine in 2017, these include:

- Conclusive or substantial evidence for chronic pain in adults, chemotherapy and/or radiotherapy-induced nausea and vomiting, and multiple sclerosis (MS);
- Moderate evidence for short-term sleep outcomes in individuals with sleep disturbances associated with sleep apnea, fibromyalgia, chronic pain, and MS; and
- Limited evidence for increasing appetite and decreasing weight loss, Tourette's syndrome, anxiety disorders, and post-traumatic stress disorder (PTSD). (Allan, et al., 2018).

Dried cannabis is not recommended as an appropriate therapy option for anxiety or insomnia. (Allan, et al., 2018). Other suggested benefits are associated with relieving the symptoms related to inflammation, arthritis, migraines, Crohn's disease, Alzheimer's disease, glaucoma, and attention deficit hyperactivity disorder (ADHD). (Allan, et al., 2018) (Canadian Centre for Occupational Health and Safety (CCOHS), 2018) (Enform, 2018) (PSHSA, 2018).

A 2016 report by Health Canada discussed how there is no scientifically defined dose of cannabis for any known medical condition. "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." (Health Canada, 2016). Concerning medical cannabis: "The individual who claims 'well, marijuana helps me' is different than going through the steps of having a physician authorizing the use of marijuana for medicinal purposes." (CBC News, 2018).

A group of 19 medical professionals released a systematic review of clinical uses of cannabis in February 2018. (Allan, et al., 2018). They note that research on medicinal cannabis is lacking and often unscientific. In an interview with CBC, Dr. Mike Allan describes it as "In general we're talking about one study, and often very poorly done." (CBC News, 2018). Family doctors often feel pressured to authorize medical marijuana use, but the review recommends that pharmaceutical cannabinoids should be tried first before the smoked product. (CBC News, 2018). Smoking medical cannabis is not a recommended method of delivery by Health Canada nor by physicians.

The authorization of cannabis for medical purposes does not permit an employee to be impaired at work or allow them to endanger their own safety or the safety of other workers. Being impaired makes you unfit for work. Additionally it should be noted that:

- A prescription for medical marijuana does not entitle an employee to smoke in the workplace. Smoke-free laws apply to smoking marijuana in the same way they do to regular cigarettes.
- A prescription for medical marijuana does not entitle an employee to unexcused absences or late arrivals.
- The employer is required to attempt to find suitable workplace accommodation for disabled employees who have a prescription for medical marijuana use, just as would be required for any other disabled employee with a medical drug prescription.



Cannabis Effects

Impairment Effects

Impairment is not formally defined by the Canadian Human Rights Commission (CHRC), but they do describe it in terms of substance abuse symptoms, such as the presence of the odour of drugs, glassy or red eyes, an unsteady gait, slurring of speech, and poor coordination. (Canadian Human Rights Commission, 2002). These are general side effects of alcohol and drugs. In general, impairment can be defined as the deterioration of a person's judgement and a decrease in their physical and mental abilities. There is no current quantitative legal limit of cannabis impairment. The 2015 report by Phillips says "there is good evidence from a number of studies and a meta-analysis that serum levels of an average of 3.8 [ng/mL] for oral and ... for smoked marijuana cause impairment approximately equivalent to a [blood alcohol content of around 0.05 ... Based on these consistent findings, a plasma level of 5 ng/mL of THC can be used as one indicator [of impairment] with other medical signs of acute impairment from marijuana." (Phillips, et al., 2015).

Impairment periods vary according to the dose, the route of administration, and the individual. The level of impairment falls on a broad spectrum. The effect of inhaling THC can last from 45 minutes to several hours. (Canadian Centre for Occupational Health and Safety (CCOHS), 2018) (Enform, 2018) (Gov of Canada, 2018) (Cottrill, 2018) (Phillips, et al., 2015). On average, the "high" lasts for 2 hours, but psychomotor impairment effects may continue up to 24 hours after the perceived high has stopped. If cannabis is consumed whether through eating or drinking, it takes longer to experience the "high" than if inhaled because the chemicals must first pass through the digestive system. (Institute for Work & Health (IWH), 2017). Consumed cannabis must first pass through the stomach and beginning of the small intestine where it is then absorbed and metabolized by the liver. The effect from edibles usually appears 1 hour after consumption, and lasts up to 12 hours longer. (Canadian Centre for Occupational Health and Safety (CCOHS), 2018) (Enform, 2018) (Gov of Canada, 2018) (Cottrill, 2018) (Phillips, et al., 2015).

THC has a long half-life that can last more than 24 hours after its last use. (Johnston, 2018). In 2016, the National Health Service in the UK suggested that data from urine samples for THC would likely test positive up to 4 days after the last cannabis use for an occasional or first-time user, 10 days after the last use for a frequent user, and 1 to 2 months after the last use for a very heavy user. (Canadian Centre for Occupational Health and Safety (CCOHS), 2018)

(Enform, 2018) (Gov of Canada, 2018) (Institute for Work & Health (IWH), 2017) (Cottrill, 2018) (Phillips, et al., 2015). Long-term users likely experience less acute impairment, probably due to tolerance. **So what employees do in their own time may affect their ability to work safely and unimpaired the next day at work.**

The 2015 report by Phillips stated that “Multiple studies and meta-analyses of experimental studies, including laboratory, driving simulator, and on-road experiments, found that behavioural and cognitive skills related to driving performance were impaired in a dose-dependent fashion with increasing THC blood levels.” (Phillips, et al., 2015). A systematic review and meta-analysis of high quality observational studies investigating acute cannabis consumption and motor vehicle collisions observed a 92% increased risk of motor vehicle collisions compared with unimpaired driving – almost double the risk of a collision! (Asbridge, Hayden, & Cartwright, 2012) (Small, 2018) (Injury Prevention Centre, 2018). The risk was over 2.1-times higher for fatal collisions compared to unimpaired driving controls. (Asbridge, Hayden, & Cartwright, 2012) (Small, 2018) (Injury Prevention Centre, 2018).

There is also a significant synergistic effect when cannabis is consumed with alcohol or other central nervous system depressants (i.e. benzodiazepines, barbiturates, opioids, anti-histamines, and muscle relaxants). (Canadian Centre for Occupational Health and Safety (CCOHS), 2018) (Enform, 2018) (Gov of Canada, 2018). Cannabis primarily impairs the cerebellum and hippocampus areas of the brain. (Cottrill, 2018). The cerebellum controls coordination and balance, therefore an impaired cerebellum leads to dysregulation of balance, posture, and reaction time. The hippocampus is responsible for learning and memory, so cannabis impairs a worker’s ability to form memories, and impairs what’s known as “executive function” or “working memory.” This leads people to shift attention from one item to another, making it difficult to maintain attention on one task, and difficulty manipulating complex 3D forms. (Canadian Centre for Occupational Health and Safety (CCOHS), 2018) (Enform, 2018) (Gov of Canada, 2018) (Cottrill, 2018) (Phillips, et al., 2015).

Signs and Symptoms

Every individual in an organization has the shared responsibility to ensure the health and safety of themselves and the safety of others. If you recognize an individual exhibiting the signs and symptoms of cannabis impairment, it must be reported and addressed in a private and respectful manner. (Cottrill, 2018).

There are a spectrum of signs and symptoms associated with cannabis impairment, ranging from minor effects to severe effects on health. Physical cues include homemade cigarettes, pipes, shredded leafy debris, cigarette rolling papers, very small oil bottles, small metal clips, eyedroppers, and edibles (like brownies or cookies). (Canadian Centre for Occupational Health and Safety (CCOHS), 2018) (HRPA, 2018).

Some minor symptoms include: drowsiness, an unusually relaxed mood, bloodshot eyes with dilated pupils, increased appetite and cravings for snacks, constant mucus-filled cough, increased drinking due to dry mouth, and elation. (Canadian Centre for Occupational Health and Safety (CCOHS), 2018) (HRPA, 2018).

Some major symptoms include dizziness, delayed reaction time and motor skills, poor coordination, paranoia, anxiety, panic attacks, delusions, seizures, loss of consciousness, acute illness requiring medical attention, difficulty breathing, withdrawal syndrome, damaged blood vessels caused by smoke, decreased blood pressure (leading to fainting), increased heartbeat (which may be especially dangerous to those with heart conditions), and increased risk of heart attack. (Canadian Centre for Occupational Health and Safety (CCOHS), 2018) (HRPA, 2018) (Gov of Canada, 2018). It is still debated whether cannabis causes hallucinations.

It is important to identify possible employee impairment and take appropriate steps to reduce the risk of a workplace incident. The following table lists indicators that may be a cause for concern although signs and symptoms can vary from person to person and when used alone or in combination, do not necessarily mean that someone has a substance abuse problem. (Canadian Centre for Occupational Health and Safety (CCOHS), 2018)

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
Psychosocial Impacts	<ul style="list-style-type: none"> ▪ Family disharmony (eg. How colleagues speak of family members) ▪ Mood fluctuations (eg. 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
Workplace performance and professional image	<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 (eg. writing, reports, etc.) ▪ Changes in work quality

(Canadian Centre for Occupational Health and Safety (CCOHS), 2018)

Health Effects

Some of the most major issues to be raised about chronic cannabis use with substantial evidence include:

Psychosis;

- This is especially noteworthy in those individuals predisposed for other mental disorders (such as schizophrenia). Approximately 8-13% of schizophrenia diagnoses are estimated to be attributable to cannabis use during teen years. (Schizophrenia.com, 2018) Substance abuse and mental illness are often concurrent disorders, and substance use can significantly impact the mental health of an individual in addition to the culture of a workplace. (Ghonaim, 2018) (Canadian Centre for Occupational Health and Safety (CCOHS), 2018) (Enform, 2018) (Gov of Canada, 2018) (Injury Prevention Centre, 2018) (Institute for Work & Health (IWH), 2017).

Potential overdose;

- This is most likely from the consumption of cannabis edibles since the “high” doesn’t appear until at least 1 hour after consumption and dosing is difficult to gauge. (Brown, 2018) (Canadian Centre for Occupational Health and Safety (CCOHS), 2018) (Enform, 2018) (Gov of Canada, 2018) (Injury Prevention Centre, 2018) (Institute for Work & Health (IWH), 2017). However, no one has been reported to overdose and die from cannabis use. Another concern is that children may potentially find cannabis edibles lying around since they usually are cooked into sweet things like brownies and cookies. As stated by Dr. Raskin: “Edibles can lead to overdose sometimes because people often ingest a full serving of a cookie instead of a diagnosed smaller amount. I mean, who eats half a cookie? It is easier to swallow a cookie and it’s very attractive to younger people or those who don’t want to inhale it in a smoke form.” (Brown, 2018) (Ghonaim, 2018) (Enform, 2018).

Maternal cannabis smoking is associated with lower infant birthweight. (Canadian Centre for Occupational Health and Safety (CCOHS), 2018) (Enform, 2018) (Gov of Canada, 2018)

Dr. Richard Stanwick, Victoria Island Health’s chief medical health officer in British Columbia stated in an interview with CBC that both e-cigarettes and cannabis generate “fine-particulate matter which are not good for health.... Each one of them are associated with significant hazards; for example, heavy metals with some vaping products... With the marijuana smoke we do know of at least 33 known carcinogens.” (CBC News, 2018).

Other health effects associated with chronic use include: bronchitis, lung infections, memory loss, anatomical brain changes, burns, acute poisoning, tolerance, lung cancer, suicidal tendencies, depression, and anxiety disorders. (Small, 2018) (Canadian Centre for Occupational Health and Safety (CCOHS), 2018) (Enform, 2018) (Gov of Canada, 2018) (Injury Prevention Centre, 2018) (Institute for Work & Health (IWH), 2017).

Effects on the Workplace

Notable effects of cannabis impairment on the workplace include a broad spectrum of indicators. These include diminished productivity, poor morale, impaired work performance, changes in mood, unusually talkative behaviour, secretiveness, less commitment to the organization, less faith in management, low job satisfaction, delayed decision-making, erratic cognitive function, confusion or lack of focus, short-term forgetfulness, diminished concentration, misjudging the flow of time, impaired memory, absenteeism, presenteeism, tardiness, accidents, workers compensation claims, and higher job turnover than other workers. (Small, 2018) (Enform, 2018) (HRPA, 2018) (Injury Prevention Centre, 2018) (Institute for Work & Health (IWH), 2017).

In one study, marijuana users were found to be more likely to report to work with a hangover, miss work because of a hangover, and be drunk or use drugs at work. (Small, 2018) (Enform, 2018) (HRPA, 2018) (Injury Prevention Centre, 2018). According to the Human Resources Professionals Association (HRPA) June 2017 Member Survey, the top 5 concerns raised that cannabis may have on the workplace were:

- Employees operating motor vehicles
- Disciplinary procedures
- Decreased work performance
- Employees using heavy machinery
- Attendance. (HRPA, 2018)

Recreational use of cannabis will be prohibited from Ontario workplaces (Ontario, 2017) so employers have the right to prohibit the use of cannabis during normal working hours and expect their workers to be unimpaired at work.



Cannabis Exposure at Work

Legislation

Controlled Drugs and Substances Act

Cannabis is currently listed under the *Controlled Drugs and Substances Act* as a Schedule II drug. (Gov of Canada - Justice Laws, 1996). This means that it has a high potential for abuse, but has a valid medical application. It is illegal (and will remain illegal) to transport marijuana on an airplane or across international borders. This may lead to federal drug transportation charges.

Access to Cannabis for Medical Purposes Regulations

The current regulation for medical cannabis is the *Access to Cannabis for Medical Purposes Regulations* (ACMPR), which became effective August 5, 2016. (Gov of Canada - Justice Laws, 2016) (Moore, 2017) Medicinal cannabis is available to all Canadians as long as they have an authorization from their doctor for a valid medical condition. Cannabis is authorized by a physician; it is not a prescription. Health Canada has not designated cannabis as a regulated drug, therefore, it cannot be prescribed. (Canadian Press, 2018). Individuals with proper cannabis authorizations are exempt from no smoking bylaws; however, organizations and establishments do have the right to say you can't smoke on their private property or expose their staff to second-hand smoke.

The *Cannabis Act* and Amendments to the Criminal Code

Regarding recreational cannabis, the two major Acts to be aware of are:

1. The *Cannabis Act* (Bill C-45) – This will legalize the use and sale of recreational cannabis. Health Canada regulated facilities will prepare cannabis products. They are working to make it a standardized product. The *Cannabis Act* will permit Canadians to purchase recreational cannabis in defined quantities from licensed producers and grow up to 4 cannabis plants in their home (as long as the plants remain under 100 cm tall). (Ontario, 2017). In Ontario, you must be at least 19 years old to purchase cannabis when it becomes legal to do so. According to the *Act*, “No person shall consume cannabis in a public place, a workplace within the meaning of the *Occupational Health and Safety Act*, a vehicle or boat. Medicinal

cannabis users are subject to any prohibitions or restrictions set out under the *Smoke-Free Ontario Act, 2017* (Section 11(1-2)) (House of Commons of Canada, 2018) (Gov of Ontario, 2017) (Gov of Ontario, 2018) (Gov of Ontario, 2017) (Gov of Ontario, 2016). The legislation coming this fall will not include edibles because they are difficult to monitor for dosage. (Wright, 2018) (Small, 2018) (Injury Prevention Centre, 2018).

2. *An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts* (Bill C-46) – This will add in new criminal offences regarding cannabis use, including drug-impaired driving charges. (House of Commons of Canada, 2018).

Smoke-Free Ontario Act, 2017

The *Smoke-Free Ontario Act* used to only apply to tobacco-based products, but it is currently being revised to include cannabis and vaporizing products. The old *Act* was repealed and replaced with Bill 174 – *Cannabis, Smoke-Free Ontario and Road Safety Statute Law Amendment Act, 2017*, which was assented December 12, 2017. (Legislative Assembly of Ontario, 2018). It created the updated *Act*, the *Smoke-Free Ontario Act, 2017*. (Gov of Ontario, 2017). However, it is not yet in effect at the time of this writing. This *Act* will forbid smoking cannabis in public spaces, similar to tobacco. However, since it's not in effect yet, it may be adopted by employers as best practice until it is enacted. This *Act* will prevail over other Acts, regulations, or municipal by-laws that deal with cannabis.

Cannabis in the Workplace

According to the *Occupational Health and Safety Act*, section 25(2)(h), employers must take every precaution reasonable in the circumstances for the protection of a worker. (Weir & Pennell, 2017) (Gov of Ontario, 2018) (PSHSA, 2018). This includes your due diligence as an employer to protect your workers and provide a safe working environment from safety risks due to cannabis impairment. Currently, there is no Canadian law permitting or regulating mandatory drug testing of employees.

Driving Under the Influence of Cannabis

Even if you use cannabis medicinally, if a substance has impaired your ability to drive or operate a vehicle, it is illegal for you to be driving. (Gov of Canada, 2018). Cannabis doubles your chances of an accident. (Small, 2018) (Gov of Canada, 2018) (Injury Prevention Centre, 2018) (Cottrill, 2018). In 2015, there were 2786 drug-impaired driving incidents reported in Canada. (Gov of

Canada, 2018). Combining alcohol with cannabis greatly increases your level of impairment and the risk of accidents. Always drive sober.

If the police suspect you to be impaired by cannabis, they may demand a saliva swab or blood sample. (Laroche, 2018). This is true even if the cannabis was prescribed to you or legally acquired. The federal government has proposed impaired driving limits and charges to come into effect with Bill C-46. Impaired driving charges occur when either of the situations occur:

- Blood THC content ≥ 2 to < 5 ng/mL (known as “drugged driving”)
- Blood THC content ≥ 5 ng/mL (known as “impaired driving”)
- Blood alcohol content of 0.05 (≥ 50 mg of alcohol per 100 mL of blood) AND blood THC content ≥ 2.5 ng/mL (“impaired driving”). (Gov of Canada, 2017).

These are charges with federal criminal penalties such as fines and imprisonment. In Ontario, there will be a zero-tolerance approach for young, novice, and commercial drivers. (Gov of Ontario, 2017). These limits may be applied to workplace policies as a starting point as a means of assessing risk or impairment in the workplace. (Small, 2018) (Gov of Canada, 2017) (Injury Prevention Centre, 2018).

How Do I Protect My Workers?

Under the *Occupational Health and Safety Act*, workers have the right to refuse performing unsafe work, which includes working in a workplace where there is the presence of second-hand smoke. (Gov of Ontario, 2018) (PSHSA, 2018). In Ontario, cannabis cannot be consumed in a workplace setting. (Gov of Ontario, 2017). The Ontario Occupational Health and Safety Act RSO 1990 defines “workplace” as any land, premises, location or things at, upon, in or near which a worker works. Building, condominium, and hotel/motel owners are able to ban smoking indoors on their private property, which can protect workers, residents, housekeeping staff, and maintenance staff from involuntary second-hand smoke exposure. (CBC News, 2018).

Employees and employers in health care and community care settings, have to work to develop protocols that balance the employees’ right to a safe workplace with the client or residents’ right to consume cannabis. Joint Health and Safety Committees (JHSC) can provide guidance and recommendations in this regard.

If driving is a part of a worker's job tasks, and they may potentially be exposed to second-hand cannabis smoke, it is possible for them to become impaired. There are no tools at the same standardized level as a breathalyzer for alcohol to determine cannabis impairment. Design a process for workers to arrange for a pick up if they feel they were exposed to too much cannabis smoke and may be impaired, and for alternative care for next visit should they become impaired. In health and community care settings, employers should design scheduling considerations to ensure a worker is not caring for back-to-back patients when they are caring first for someone who smokes marijuana. Additional consideration should be given to employees with underlying medical conditions such as asthma or who are pregnant.

Those with past criminal activity may be prohibited from obtaining, purchasing, or growing cannabis. (Wright, 2018) (Paradkar, Shree, 2018). It is still unclear about those with past criminal records and their ability to get medical marijuana. (Lindsay, 2018). If there are staffing issues at resident homes of federally-sentenced men (i.e. two staff on all shifts that must remain accessible to each other at all times), the safety of the workplace cannot be compromised. Other forms of medicinal cannabis (i.e. non-smoking forms) should be considered in these situations. Establishing different times for smoking tobacco and cannabis is up to the employer running the facility.

Air Quality Testing and Personal Protective Equipment

There is no commercially available air quality testing equipment that workers can take with them to measure if it is safe for them to provide care. Furthermore, there are no occupational hygiene testing services available for workplace air quality testing due to cannabis, such as for community care visits. Cannabis produces different volatile organic compounds (VOCs) than tobacco, so tobacco testing equipment won't work for cannabis either.

Overall, personal protective equipment (PPE) is not recommended for cannabis. The use of PPE may not be practical due to communication restrictions (e.g. use of a self-constrained breathing apparatus (SCBA)), and lack of air purifying disposable respirators designated and tested specifically for cannabis smoke and its toxic byproducts. (PSHSA, 2018). However, if an employee requests PPE before entering a workplace, some suggestions include NIOSH-approved N95 respirators and disposable gloves. (Lieberman, Brown, & Phalen, 2018). Hair covers and clothing protectors may be used and are up to the discretion of workers and their employers. Cost should not be an issue when considering the health and safety of workers. Appropriate training would be needed on these procedures, including education on the dangers of cannabis in the workplace to health and the right of workers to refuse unsafe work.

Suggested controls to remove cannabis smoke from a room include adequate ventilation (i.e. open windows, ceiling fans, portable fans, high-quality air purifiers, etc.) and regular cleaning.



Spotlight Example – Home Care Workers

There are some workplace exemptions from smoke-free legislation, including most private homes and private residences such as long-term care homes, retirement homes, supportive housing, palliative care units in hospitals, licensed homes for special care, psychiatric facilities, and certain facilities for veterans (CBC News, 2018) (CBC News, 2018). Considerations for community care workers are explicitly mentioned in the *Smoke-Free Ontario Act, 2017*.

Employees can refuse to enter a client's room (refusal of unsafe work) under the *Occupational Health and Safety Act* and Section 13(3) of the *Smoke-Free Ontario Act, 2017* if the client smokes cannabis, including medicinal cannabis: “An employee who does not desire to enter the room shall not be required to do so.” (Gov of Ontario, 2017).

According to Section 16 (1-2) of the *Smoke-Free Ontario Act, 2017*:

(1) Every home health-care worker has the right to request a person not to do any of the following in the home health-care worker's presence while they are providing health care services:

1. Smoke or hold lighted tobacco.
2. Smoke or hold lighted medical cannabis.
3. Use an electronic cigarette.
4. Consume a prescribed product or substance, in a prescribed manner.

(2) Where a person refuses as per subsection (1), the home health-care worker has the right to leave without providing any further services, unless to do so would present an immediate serious danger to the health of any person.” (Gov of Ontario, 2017). Workers can suggest other forms of cannabis (i.e. oils, edibles, tinctures) for their clients to use if they have to be in the same room as their residence.

Employers should design a pre-screening questionnaire for clients to determine if the client or anyone in the home uses medical or recreational cannabis so workers can plan to protect themselves. In the screening questionnaire, include asking which form of medical cannabis they use (e.g., oil, smoking, etc.), so workers can know what to expect in their visit.

Employers may put safe work agreements in their initial contract with the client to not smoke cannabis in the presence of a worker, not to smoke cannabis 1 hour before the visit, or encourage the use of non-smoking forms of medicinal cannabis. Employers may make it a requirement that every client sign a contract that includes withdrawing service if a worker encounters a client using it on or during arrival or if they smell it in the air during a visit (as long as the worker doesn't leave the client in a life-threatening situation). Conversely, the contract may require and prearrange with the client to access other forms of cannabis for days when home care is being provided (like using oils instead).

Regarding dispensation of the smoking form of cannabis, suppliers provide oil bottles or packages of dried cannabis. The Government of Canada and cannabis suppliers have guidelines for dosing products (there are no legal limits for dosages) in grams and milliliters. There are no laws regarding what rights or restrictions healthcare workers have for preparing cannabis for clients. However, workers cannot help clients smoke the product – the client must be capable of doing this themselves. [Smoke-Free Ontario Act, 2017]

There is no legislation on designated cannabis smoking rooms. It is up to the employer to decide if there will be a smoking room, which must have adequate ventilation, does not pass secondhand smoke to other residents or staff, etc.

Some recommendations to control and/or eliminate the presence of second-hand smoke in a workplace include:

1. Have the client smoke outside the home if possible.
2. Have the client stop smoking 60 minutes (or as determined in a contract) ahead of the worker's visit to the home.
3. Use fans and open windows to dissipate smoke in the home prior to the worker's arrival.
4. Designate a room in the home for care that is deemed smoke-free.
5. Rotate staff attending to the client.



Workplace Drug Testing and Policy

Workplace drug and alcohol testing is common in the United States and is increasing worldwide. It is also gaining momentum and attention in Canada. The argument “what I do in my own time is my own business” is often used when there are psychoactive drug-free workplace policies, which they believe to be an unwarranted intrusion into an employee’s private off-work life. (Cottrill, 2018). However, workplace drug policies are about maintaining a safe working environment, and the neuropsychological effects of cannabis use may cause increased safety risks in the workplace. We can’t ignore our behaviour while “off the job” as this is an issue of safety.

Ontario workplaces with the greatest concern for cannabis use are: safety-sensitive operations, operations subject to US regulatory requirements (such as the trucking industry), or subject to policies of US affiliates with “zero tolerance” alcohol and drug consumption. (Allan, et al., 2018) (Business of Cannabis, 2018) (Canadian Centre for Occupational Health and Safety (CCOHS), 2018) (HRPA, 2018) (Enform, 2018) (Weir & Pennell, 2017) (Cottrill, 2018) (Phillips, et al., 2015).

Legalization of cannabis does not give employees the right to freely use cannabis in the workplace, or to be impaired at work. (Weir & Pennell, 2017) (Cottrill, 2018). Employees who appear to be impaired should be assessed. If an employee appears to be impaired, the workplace should always assess according to employer policies to assess an overall evaluation of impairment.

So why exactly do we need workplace drug policies? As stated in the Enform Alcohol and Drug Policy Model for the Canadian Upstream Petroleum Industry: “As individuals, we may hold varying opinions about the use and the personal or societal impact of alcohol and drugs and make our own lifestyle choices accordingly. Regardless of a person’s opinion, the fact is that alcohol and drugs can adversely affect an individual’s mental and physical abilities. That fact presents an obvious and real concern for companies that are committed to providing employees with a safe workplace.” (Enform, 2018). This is more about safety than impairment. (CBC News, 2018).

Research suggests that the presence of a workplace drug testing program observed a reduced rate of injuries, especially in construction, manufacturing, and services. (Marques, Jesus, Olea, Vairinhos, & Jacinto, 2014) (Pidd & Roche, 2014) (Waehrer, Miller, Hendrie, & Galvin, 2016) (Wickizer, Kopjar, Franklin, & Joesch, 2004). The presence of Employee Assistance Programs (EAP) were

also shown to be successful at reducing lost-time injuries, especially in the manufacturing, transportation, communication, and public utilities industries. (Allan, et al., 2018) (Canadian Centre for Occupational Health and Safety (CCOHS), 2018) (HRPA, 2018) (Enform, 2018) (French, Roebuck, & Kebreau, 2004) (Marques, Jesus, Olea, Vairinhos, & Jacinto, 2014) (Phillips, et al., 2015) (Pidd & Roche, 2014) (Waehrer, Miller, Hendrie, & Galvin, 2016) (Wickizer, Kopjar, Franklin, & Joesch, 2004).



The 5 Steps to Build a Workplace Cannabis Policy

These 5 steps will assist you in building a meaningful, cohesive, and multifaceted approach for a workplace cannabis policy that drives results and sustainability. Developing a clear and comprehensive workplace policy is a major step towards creating a workplace free of alcohol and drug impairment. Every workplace alcohol and drug policy is different as they must be designed to fit your workplace – there is no “one size fits all” for an alcohol and drug workplace policy. Use this as an initial guide to start a conversation with legal counsel to review and revise your alcohol and drug policy.

1. Securing Senior Management Commitment and Employee Involvement.

The first step in developing your alcohol and drug workplace policy is to secure the commitment of senior management prior to involving workplace parties. Senior management should create and implement a strategic plan to create a workplace free from cannabis impairment.

There are many benefits to an organization by designing an alcohol and drug policy model including:

- Improved workplace health and safety culture
- Reduced legal liability
- Reduced WSIB claims and costs
- Reduced lost-time hours. (Workplace Safety North, 2016)

Securing commitment for a successful program requires leaders to understand their overall responsibility for workplace safety. Set goals for your workplace cannabis policy, and then share this strategic plan with everyone in the organization.

Employers should develop a medical and recreational cannabis policy that is done in consultation with all workplace parties, including management, supervisors, workers, union representatives, and the JHSC or health and safety representative (HSR). Promote a safe and open work culture that allows for ideas to be shared freely and honestly. (Moore, 2017) (Workplace Safety North, 2016).

Here are some starting points to bring up to secure senior management commitment and employee involvement.

Cannabis Addiction

Cannabis is an addictive substance since it activates the reward pathway in the brain. (Gov of Canada, 2018). The Government of Canada estimates that 1 in 11 (or 9%) cannabis users will develop an addiction to cannabis. (Gov of Canada, 2018). This statistic rises to about 1 in 6 (or 17%) for people who started using cannabis as a teenager. (Gov of Canada, 2018). If a person smokes cannabis daily, the risk of addiction is increased to 25% to 50%. (Gov of Canada, 2018). Tolerance to some of the effects of cannabis use can occur after a few doses, and tolerance can lead to dependence and/or addiction. (Gov of Canada, 2018).

Addiction is defined under the Canadian Human Rights Commission as a “previous or existing dependence on alcohol or a drug.” (Canadian Human Rights Commission, 2002). The Supreme Court of Canada accepted the Canadian Society of Addiction Medicine’s definition of addiction: “A primary, chronic disease, characterized by impaired control over the use of a psychoactive substance and/or behaviour. Clinically, the manifestations occur along biological, psychological, sociological and spiritual dimensions. Common features are change in mood, relief from negative emotions, provision of pleasure, pre-occupation with the use of substance(s) or ritualistic behaviour(s); and continued use of the substance(s) and/or engagement in behaviour(s) despite adverse physical, psychological and/or social consequences. Like other chronic diseases, it can be progressive, relapsing and fatal.” (Canadian Human Rights Commission, 2002). Under the Canadian Human Rights Commission, addiction is considered a disability and protected under the Commission. The Commission prohibits discrimination on the basis of disability and perceived disability. (Canadian Human Rights Commission, 2002). Therefore, employers have the duty to inquire, but not to diagnose an addiction.

There are many factors in a person’s life (such as personal, social, and work-related factors) that may lead to substance abuse, including abuse of cannabis. These include (but are not limited to):

- High stress
- Low control
- Low job satisfaction
- Easy access to substances
- Fatigue
- Long working hours
- Irregular shifts

- Repetitive periods of inactivity
- Boredom
- Working in isolation or remote areas
- Remote or little supervision.

(Canadian Centre for Occupational Health and Safety (CCOHS), 2018)
 (Canadian Nuclear Safety Commission, 2018) (Canadian Human Rights Commission, 2002) (Enform, 2018) (Gov of Canada, 2018).

There are other factors present in a person's life that may look like substance impairment, but are not, such as mental stress, fatigue, shock from a traumatic event, illness, and/or injury. Employers should recognize the signs and symptoms of these other conditions and be able to differentiate them from cannabis impairment. Furthermore, employers should prepare a plan to address these issues in their organizations. (Canadian Centre for Occupational Health and Safety (CCOHS), 2018) (Canadian Nuclear Safety Commission, 2018) (Canadian Human Rights Commission, 2002) (Enform, 2018).

What is “Fitness for Duty”?

The Canadian Nuclear Safety Commission defines fitness for duty as “A condition in which workers are physically, physiologically, and psychologically capable and competently and safely performing their tasks... [It] provides reasonable assurance that workers have the capacity, and are free of any impairment that could hinder their ability, to competently and safely perform the duties of their position, and as such do not pose a safety or security risk.” (Canadian Nuclear Safety Commission, 2018). Fitness for duty policies stipulate that all employees assume responsibility to report to work in a fit condition and perform their jobs without increasing risk to themselves or others. **Coming to work impaired makes you unfit for duty.**

2. Assessing your Policy Needs.

There are 3 main approaches to building a cannabis workplace policy. They are:

- Zero tolerance policy,
- *Per se* policy, and
- Two-tier policy.

Each policy approach has different requirements and conditions to consider before deciding on the policy type you want to create. For example, having safety-sensitive positions (defined in detail on the following pages) in your workplace may be the deciding factor in choosing which policy you want to design.

What is a “Safety-Sensitive Position”?

Canada does not have an official legal definition of a safety-sensitive position. (Canadian Underwriter, 2018) (Cottrill, 2018). One definition of a safety-sensitive position is by the Canadian Human Rights Commission as “one in which incapacity due to drug or alcohol impairment could result in direct and significant risk of injury to the employee, others or the environment. Whether a job can be categorized as safety-sensitive must be considered within the context of the industry, the particular workplace, and an employee’s direct involvement in a high-risk operation. Any definition must take into account the role of properly trained supervisors and the checks and balances present in the workplace.” (Canadian Human Rights Commission, 2002)

Safety-sensitive positions include job tasks with inherent risk in which impairment would increase the safety risk to workers, the workplace, the public, the environment, or equipment. (Cottrill, 2018). Employees that hold safety-sensitive positions should work without impairment. This is part of the employer’s legal obligation to provide a safe workplace. The 2018 HSPA member survey noted that 70% of employers have workers believed to be in safety-sensitive jobs. (HSPA, 2018). Workers in safety-sensitive positions may be subjected to alcohol and drug testing under reasonable grounds. However, historically, Canadian employers have had difficulty defending drug testing of safety-sensitive positions in court, so the threshold of what is considered “safety-sensitive” is very high. (Canadian Underwriter, 2018)

Examples of safety-sensitive industries include transportation, construction, healthcare, military, operating heavy equipment, law enforcement, and any task requiring a high level of cognitive function because impairment may increase the risks of hazards, injuries, and fatalities. (Brewster, 2018) (Canadian Centre for Occupational Health and Safety (CCOHS), 2018) (Canadian Human Rights Commission, 2002) (Enform, 2018) (Weir & Pennell, 2017) (Health Canada, 2016) (Cottrill, 2018) (Phillips, et al., 2015).

There are also “decision-critical workers” whose impairment may impact workplace performance, attendance, relationships, reliability, and quality. (Fan, Els, Corbet, & Straube, 2016). Examples include corporate executives, school teachers, lawyers, information technology workers, and some health professionals. (Fan, Els, Corbet, & Straube, 2016). These workers have lower grade risks than safety-sensitive workers, but include property damage, propriety breaches, digital information loss, legal liability, delayed completion of time-sensitive job tasks, or economic loss. (Fan, Els, Corbet, & Straube, 2016).

Identifying Safety-Sensitive Positions

Employers of safety-sensitive workplaces need to identify safety-sensitive positions in their organization in a rational, well-documented process if they want to focus their efforts to reduce cannabis impairment at work. (Newswire, 2018).

Employers are responsible for identifying and defining the safety-sensitive positions within their organization. Safety-sensitive positions can be determined using a job hazards analysis (JHA) that consider cognitive demands or another tool focused on the particular workplace. However, job hazards analyses are not suitable for jobs defined too broadly, so it is important to clearly define work positions. (Canadian Centre for Occupational Health and Safety (CCOHS), 2018). This is an important consideration when designing your workplace drug policy and impairment limits. For example, drug testing is only recommended for workers in safety-sensitive positions since the focus of testing is to prevent drug use where there is significant safety risk to the workplace. (Wolfson, 2015). Employers must identify safety-sensitive positions through a documented, risk-informed analysis, which should consider:

- Worker tasks during normal and emergency operations and conditions;
- The nature of equipment used or materials handled, or potentially used or handled; and
- Actions assigned to the workgroup that could directly cause or contribute to a significant incident, or could result in an inadequate response to a significant incident. (Canadian Centre for Occupational Health and Safety (CCOHS), 2018) (Canadian Nuclear Safety Commission, 2018).

Once safety-sensitive positions have been identified, appropriate controls and measures must be identified, including the need for concise workplace policies. (Workplace Safety North, 2016).

Recommendations to Employers before Beginning Their Policy



Seek Legal Counsel when Developing Policies

Employers should seek legal counsel when developing policies regarding employee use of medical and recreational cannabis. (Weir & Pennell, 2017). [This is definitely the most important thing for employers to note in this section.](#)

Furthermore, the policy should be developed and implemented by the human resource department in consultation with the legal, health and safety, and occupational health departments. Regularly review ongoing legislation and legal developments to update your alcohol and drug policy. (Weir & Pennell, 2017).

Some workplace cannabis policy suggestions for employers include:

- Seek out information from local Public Health Units on health promotion related to cannabis use.
- Describe the purpose of the policy, who is covered, and when the policy applies.
- Have the policy in writing, especially the roles and responsibilities of all workplace parties with an emphasis on employee commitment to work in a healthy and safe manner.
- Have the policy signed by all workplace parties confirming their understanding.
- Define the protocol that will be followed when cannabis use is suspected including identification, reporting and support.
- Describe when accommodation will be considered.
- Have Employee Assistance Programs (EAPs) available to all workers.
- Provide drug education and health promotion programs that are available for ALL workers that emphasize awareness, education, and training with respect to the use of alcohol or drugs. The Phillips 2015 report recommends that “Education is needed at hire and again at regular intervals... At a minimum, employees should learn how chemical substances affect their health, safety, personal behavior, and job performance. Supervisors and employees should also be educated about how to recognize behaviors indicative of impairment, whether the source is medical marijuana, prescription medications, illegal drugs, alcohol, over-the-counter medications, fatigue, or any combination thereof.” (Phillips, et al., 2015). Especially notable within that piece is how to recognize the signs and symptoms of cannabis impairment.
- Have off-site counselling and referral services available to all workers. Referrals may be to a substance abuse expert (SAE).
- Have peer or supervisor monitoring based on recognizing the signs and symptoms of cannabis impairment. (Small, 2018) (Canadian Centre for Occupational Health and Safety (CCOHS), 2018) (Canadian Human Rights Commission, 2002) (DOT, 2018) (Enform, 2018) (HRPA, 2018) (Injury Prevention Centre, 2018) (Cottrill, 2018) (Phillips, et al., 2015) (Workplace Safety North, 2016).

Furthermore, employers need to protect employees from passive exposure to second-hand cannabis smoke. This can include designating smoking areas

outside away from entrances and air intake vents. Review scent-free workplace policies to include cannabis smells (i.e. hospitals).

3. Developing the Policy Components.

Now, we'll go over the 3 main policy approaches for workplace cannabis impairment – zero tolerance, *per se*, and two-tiered. Each policy approach has different requirements that must be present and addressed to have a successful and reasonable workplace policy.

Cannabis Policy Approaches

1. Zero Tolerance Policy

In a zero tolerance policy, no amount of THC is acceptable. Employers need to identify and define safety-sensitive positions, and determine that sobriety is a *bona fide* occupational requirement. This means that it meets the 3 points of the Meiorin Test established by the Supreme Court of Canada. (Canadian Human Rights Commission, 2002).

For example, employees covered by US federal drug testing regulations (for example, truck drivers under the US Department of Transportation that cross the border), cannabis use, both on or off the job, is strictly prohibited. (DOT , 2018). In these industries, they use urine drug testing. Urine drug testing detects past use (usually up to at least 3 days before the test), which does not necessarily mean acute impairment.

The 2018 *Clearing the Haze* report by the Human Resources Professionals Association (HRPA) says there is no current consensus for what is a safe limit for cannabis exposure, and zero tolerance policies may be difficult to enforce because of the employer's duty to accommodate. (Canadian Human Rights Commission, 2002) (Phillips, et al., 2015).

Bona fide Occupational Requirement (BFOR)

In order to enact a zero tolerance policy (such as if you have safety-sensitive positions in your workplace), employers would need to establish that sobriety is a *bona fide* occupational requirement (BFOR). Establishing sobriety as a BFOR requires an employer to create a policy of occupational requirements that pass the **Meiorin Test** established by the Supreme Court of Canada. (Cottrill, 2018).

The 3 points of the Meiorin Test include:

- The employer must show that they adopted the policy or standard for a purpose **rationally connected** to the performance of the job.
- The employer must establish that they **adopted** the particular policy or standard **in an honest and good-faith** belief that it was necessary to the fulfillment of that legitimate work-related purpose.
- The employer must demonstrate that the policy or standard is **reasonably necessary** to the accomplishment of that legitimate work-related purpose. To fulfill this point, the employer must demonstrate that it is impossible to accommodate the individual employee without imposing undue hardship. (Canadian Human Rights Commission, 2002).

An important note about this is that random drug testing is contrary to the CHRC because it fails the reasonable necessity test even if the employee holds a safety-sensitive position. However, in April 2017, a judge upheld the decision of the Toronto Transit Commission (TTC) to randomly test employees. (CBC News, 2017) (Weir & Pennell, 2017).



The 3 Take-Aways for Zero Tolerance Policy Development

So the 3 take-away points for your zero tolerance policy are that testing must be **rationally connected to the job, adopted in good and honest faith, and reasonably necessary to the job.**

Duty to Accommodate

As stated in the Canadian Human Rights Commission *Impaired at Work Accommodation Guide*: "Employers have an obligation to take steps to adjust

rules, policies or practices that have a negative impact on individuals – or groups of individuals – based on prohibited grounds of discrimination in the *Canadian Human Rights Act*. This is called the **duty to accommodate**. The duty to accommodate means that sometimes it is necessary to treat someone differently in order to prevent discrimination. Employers have a duty to accommodate an employee's needs when they are based on any grounds listed in the *Canadian Human Rights Act*. If an employer believes that an employee may be substance-dependent, everyone involved – the employee, the employer, and the union and/or employee representative – has a responsibility to approach the issue in a respectful, collaborative and timely manner.” (Canadian Human Rights Commission, 2002) (Canadian Human Rights Commission, 2017) (Weir & Pennell, 2017).



Accommodation is required when:

- a) The employee is not in a safety-sensitive position, AND
- b) The employer cannot establish that the prohibition of medical cannabis in the workplace is a BFOR.

If any employee has a known disability (including addiction), they must let their employer know so an accommodation plan can be made. (Huffington Post, 2017) (Cottrill, 2018). If addiction is unknown but suspected, the employer has the “duty to inquire” in a respectful manner, maintaining confidentiality.

Positive drug tests should not lead to automatic consequences. This shows that no means of accommodation were made, and fails the reasonable necessity test of the Supreme Court of Canada's Meiorin Test. (Canadian Human Rights Commission, 2002). Accommodation should be individualized and independent to the point of undue hardship, include necessary medical support, such as treatment or a rehabilitation program, and include a return-to-work agreement. (Weir & Pennell, 2017) (Cottrill, 2018). For unionized workplaces, accommodation methods should be discussed between the employer, the employee, and the union representative. For non-unionized workplace, accommodation methods should be discussed between the employer and the employee. Employers should have a referral process set up to refer employees in need of assistance, such as to a substance abuse expert. They should ensure that workers have access to an Employee Assistance Program, which may also be used by workers for early intervention and providing confidential assistance. (Canadian Nuclear Safety Commission, 2018) (Enform, 2018) (HRPA, 2018).

The Canadian Human Rights Commission's 5 Steps to Accommodation

The Canadian Human Rights Commission outlines a 5-step approach to accommodate substance dependence:

1) Recognize the signs.

- The Canadian Nuclear Safety Commission recommends that supervisory training should include (at minimum):
 - Knowledge of responsibilities and accountabilities of supervisors,
 - Fitness-for-duty policies, procedures, and supporting programs,
 - The ability to effectively respond to behaviours that may impact safety and security,
 - The ability to recognize the signs and symptoms of impairment, and
 - The ability to differentiate signs or symptoms of cannabis impairment from signs and symptoms of fatigue or any mental health condition. (Canadian Nuclear Safety Commission, 2018) (Cottrill, 2018).

2) Talk about it.

- The employer's duty to inquire requires them to initiate a discussion with the employee about a need for accommodation of disability. This legal obligation is triggered when they observe changes in an employee's attendance, performance, or behaviours that may indicate possible substance dependence. The duty to inquire is also triggered when they receive a positive drug test result from an employee.

3) Gather and consider the relevant medical information.

- The employer should request medical documentation while respecting confidentiality. There is a need to balance the employee's right to privacy with the employer's right to manage the workplace. It is important to note that it is not the employer's or supervisor's duty to diagnose an employee, or to know if they have a disability. This is the role of a medical professional (like a physician) or the on-site Medical Review Officer. (Huffington Post, 2017)

4) Accommodate.

- Accommodation must be individualized and evaluated on a case-by-case basis. (Cottrill, 2018). The employer should share all relevant information about the employee to a medical professional (i.e. a description of their job, related duties and responsibilities, work schedule, if the position is listed as safety-sensitive, etc.) so the medical professional can make a more accurate diagnosis and treatment plan. The physician should provide information on:
 - Specific accommodation requirements
 - Any restrictions or limitations for the employee
 - A potential treatment plan (including relevant details of the plan)
 - Any implications regarding attendance, behaviour, or performance
 - A return-to-work plan (and a return-to-work date) if the employee is to take a leave of absence for treatment
 - Information on whether the employee is still able to perform the essential duties of their safety-sensitive position
 - A report on whether the employee is fit, unfit, or fit to work with modifications. (Weir & Pennell, 2017) (Workplace Safety North, 2016).
- Workers that are determined to have a substance abuse or dependency issue shall not return to safety-sensitive duties until they have met the conditions for reinstatement recommended by the physician. (Workplace Safety North, 2016).
- An employer can only remove an employee from their job if they are no longer capable of performing the essential duties of their position.

5) Follow-up and adjust.

- As with any addiction, there is the potential for relapse. Employers should adapt relapse agreements with workers determined to have substance dependence issues. Follow-up meetings at set intervals are useful to track the progress and success of the accommodation method used, and determine if any adjustments to the accommodation method can be done. (Canadian Centre for Occupational Health and Safety (CCOHS), 2018) (Canadian Human Rights Commission, 2002) (Canadian Human Rights Commission, 2017) (Canadian Nuclear Safety Commission, 2018).

Undue Hardship

What constitutes “undue hardship”? There is no one standard definition of undue hardship, so each case needs to be assessed individually and independently.

There are 3 general conditions of undue hardship:

1. Cost.

- According to the Ontario Human Rights Commission and the Canadian Human Rights Commission, “The cost of the accommodation is so high that it would alter the nature or affect the viability of the enterprise.” (Canadian Human Rights Commission, 2002) (Ontario Human Rights Commission (OHRC), 2017). However, this point is usually not good enough to stand on its own.

2. Outside sources of funding (if any).

- According to the Ontario and Canadian Human Rights Commissions, “This analysis must take into account outside sources of funding and other attempts to offset costs”. (Canadian Human Rights Commission, 2002) (Ontario Human Rights Commission (OHRC), 2017) .

3. Health and safety requirements.

- This is the most important point. According to the Ontario and Canadian Human Rights Commissions, “The health and safety risks to workers, members of the public or the environment are so serious that they outweigh the benefits of the requested accommodation. This analysis must take place after accommodations and precautions to reduce any risks have been made.” (Canadian Human Rights Commission, 2002) (Ontario Human Rights Commission (OHRC), 2017). For example, we don’t allow visually impaired people to drive – it just isn’t safe. So we can’t allow impaired employees under the influence of drugs to work and endanger the safety of themselves and safety of others.



The amount of undue hardship caused by safety risk is assessed by considering:

- The severity of consequences if risk materializes,
- The probability of the risk materializing, and
- The people exposed to the risk.

The Canadian Human Rights Commission’s guide to accommodation states that “If an employee is not willing to participate in the process or take responsibility for their own workplace behaviour, or rejects a reasonable accommodation solution, accommodation may not be possible.” (Canadian Human Rights Commission, 2017). Undue hardship may then be claimed. (Canadian Centre for Occupational Health and Safety (CCOHS), 2018)

(Canadian Human Rights Commission, 2002) (Canadian Human Rights Commission, 2017) (Ontario Human Rights Commission (OHRC), 2017).

On April 20, 2018, the grievance in *Lower Churchill Transmission Construction Employers' Association and IBEW, Local 1620*, in which a worker in a safety-sensitive position who was authorized to use medical marijuana every night, was dismissed. (Johnston, 2018). The employer argued that they were unable to readily measure impairment from cannabis as there is no standardized device available to measure acute impairment. The employer believed that constituted undue hardship as they are unable to measure and manage the risk of harm to the workplace from cannabis impairment. THC has a long half-life that can last more than 24 hours. In the end, the Arbitrator determined that:

“The regular use of medically-authorized cannabis products can cause impairment of a worker in a workplace environment. The length of cognitive impairment can exceed simply the passage of 4 hours after ingestion. Impairment can sometimes exist for up to 24 hours after use. ... A general practicing physician is not in a position to adequately determine, simply grounded on visual inspection of the patient in a clinic and a basic understanding of patient’s work, the daily safety issues in a hazardous workplace. Specialized training in understanding workplace hazards is necessary to fully understand the interaction between cannabis impairment and appropriate work restrictions in a given fact situation.” (Johnston, 2018).

Drug Testing Alternatives

Drug testing alternatives should be considered first, such as less intrusive methods. Testing should only be used in the workplace if the employer believes it to be **absolutely necessary** to preserve the health and safety of the workplace. (Canadian Centre for Occupational Health and Safety (CCOHS), 2018) (Canadian Human Rights Commission, 2002) (Canadian Nuclear Safety Commission, 2018) (Ontario Human Rights Commission (OHRC), 2017). The Canadian Human Rights Commission generally considers substance testing as discriminatory on the basis of disability and perceived disability and it is only recommended in specific situations. (Canadian Human Rights Commission, 2002). Drug testing alternatives should always be present in any alcohol and drug policy.

If drug testing does not seem absolutely necessary after considering the nature of the workplace, employers should set up other drug testing policies and programs including safety checks, health promotion, and substance awareness to accommodate addictions. (Canadian Centre for Occupational Health and Safety (CCOHS), 2018) (Canadian Human Rights Commission, 2002) (Canadian Nuclear Safety Commission, 2018) (Ontario Human Rights

Commission (OHRC), 2017). The Canadian and Ontario Human Rights Commissions prefer employers to use less intrusive methods to measure impairment and fitness for work. (Canadian Human Rights Commission, 2002) (Ontario Human Rights Commission (OHRC), 2017).

The Canadian Human Rights Commission states: “**Awareness, education, rehabilitation, and effective interventions such as enhanced supervision and peer monitoring** are the most effective ways of ensuring that performance issues associated with alcohol and drug use are detected and resolved.” (Canadian Human Rights Commission, 2002). These are also all key features to a successful drug policy. (Small, 2018) (Injury Prevention Centre, 2018).

Examples of drug testing alternatives include:

- Performance tests for cognitive or psychomotor impairment related to the integral parts of the job (i.e. a fitness-for-duty assessment or screening tools for impairment)
- Training supervisors to identify behaviours and physical indicators of employees that can affect workplace safety (Cottrill, 2018).
- Random checks
- Planned observations and audits
- Peer monitoring
- Self-reporting
- A health professional's report
- After receiving credible information, use the duty to inquire and confidentially and respectfully talk to the employee. (Canadian Centre for Occupational Health and Safety (CCOHS), 2018) (Canadian Human Rights Commission, 2002) (Canadian Nuclear Safety Commission, 2018) (Ontario Human Rights Commission (OHRC), 2017).

Furthermore, do not conflate and confuse substance use with substance addiction. This would be considered *prima facie* discriminatory based on “perceived disability”. (Canadian Human Rights Commission, 2002) (Ontario Human Rights Commission (OHRC), 2017). There are 3 situations where the use or perceived use of cannabis may fall within the Ontario Human Rights Code’s protection:

1. The use of the drug has reached the stage that it is considered an addiction.
2. The worker is perceived to have a drug addiction. Note that people who use cannabis recreationally are NOT protected by the Code unless they are perceived to have a disability.
3. The worker had a drug addiction in the past, but no longer has an ongoing disability. (Canadian Centre for Occupational Health and Safety (CCOHS), 2018) (Canadian Human Rights Commission, 2002) (Canadian Nuclear Safety Commission, 2018) (Ontario Human Rights Commission (OHRC), 2017).

Types of Drug Tests

There are 3 main testing methods to determine the presence of cannabis.

1. Blood serum testing
2. Saliva testing
3. Urine testing.

Suggestive drug test cutoff concentrations for urine and saliva from the Canadian Government and Enform Alcohol and Drug Policy Model are:

- **Blood serum testing** – This tests for the metabolite THC. The Canadian government has established the following impaired driving limits to be enacted with Bill C-46:
- Blood THC content ≥ 2 to < 5 ng/mL (“drugged driving”);
- Blood THC content ≥ 5 ng/mL (“impaired driving”);
- Blood alcohol content of 0.05 (≥ 50 mg of alcohol per 100 mL of blood) AND blood THC content ≥ 2.5 ng/mL (“impaired driving”). (Gov of Canada, 2017)

These are charges with federal criminal penalties such as fines and imprisonment. These limits may be considered for workplace policies as a starting point as a means of assessing risk or impairment in the workplace.

- **Oral fluid (saliva) testing** – This tests for the metabolite THC. An initial screening cutoff concentration could be equal to or in excess of 50 ng/mL, and a confirmatory test cutoff concentration of 2 ng/mL. (Enform, 2018).
 - A CBC article in March 2018 noted that Manitoba police will be using oral fluid testing for cannabis as a screening method to determine impaired driving. A THC content greater than 25 ng will be considered “driving under the influence of drugs”. This test can analyze a sample in 5 minutes. Drivers may then be ordered to take a blood test at the police station or roadside sobriety test to confirm results. This test can also test for other drugs, such as cocaine, methamphetamine, and opioids. (CBC News, 2018).
- **Urine testing** – This tests for the metabolite tetrahydrocannabinolic acid (THCA). An initial screening cutoff concentration could be 50 ng/mL, and a confirmatory test cutoff concentration of 15 ng/mL. (Enform, 2018).
 - The Phillips 2015 report states “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, et al., 2015).

All of these methods look promising, but require more testing and research. There are reliable tests to confirm recent cannabis use, but there are no tests that can determine an individual’s current level of impairment. Remember that the primary purpose of drug testing should be to measure impairment rather than deterring drug use or monitoring the moral values among employees. Drug testing should be limited to determining actual impairment of an employee’s ability to safely perform the essential duties of their job, not to simply find the presence of drugs in their body. Drug testing is generally considered discriminatory under the Canadian and Ontario Human Rights Commissions, and should be evaluated on a case-by-case basis. (Canadian Centre for Occupational Health and Safety (CCOHS), 2018) (Canadian Human Rights Commission, 2002) (Ontario Human Rights Commission (OHRC), 2017).

Workplace drug testing should be part of a larger assessment of drug and alcohol addiction (for example, EAPs, education and training, awareness programs, broader medical assessments, drug testing alternatives, etc.). (Canadian Centre for Occupational Health and Safety (CCOHS), 2018) (Canadian Human Rights Commission, 2002) (Canadian Nuclear Safety Commission, 2018) (Ontario Human Rights Commission (OHRC), 2017). Employers should use testing methods that are highly accurate, able to measure acute impairment, minimally intrusive, provide rapid results, and use

reputable procedures for analysis. Ensure confidentiality of medical information and results, and ensure the dignity of the employee throughout the process. If you want to conduct workplace drug testing, it is recommended to use a reputable third party company for administration, collection, verification, and assurance of specimen integrity, chain of custody, and shipment of specimens to an accredited lab. (Canadian Centre for Occupational Health and Safety (CCOHS), 2018) (Canadian Human Rights Commission, 2002) (Canadian Nuclear Safety Commission, 2018) (Ontario Human Rights Commission (OHRC), 2017).

Concerns about Drug Testing Effectiveness

Drug testing methods are not as reliable and reproducible as alcohol testing. (Canadian Human Rights Commission, 2002) (Canadian Nuclear Safety Commission, 2018) (French, Roebuck, & Kebreau, 2004) (Ontario Human Rights Commission (OHRC), 2017) (Cottrill, 2018) (Phillips, et al., 2015). For example, alcohol has a known impairment limit (0.08) and a standardized tool, the breathalyzer. Cannabis testing does not have either of these. Furthermore, drug testing programs can be very costly for a workplace, and their effectiveness in mitigating employee drug use is often uncertain. (French, Roebuck, & Kebreau, 2004) (Cottrill, 2018). The main differences between alcohol testing and drug testing are that:

- **Drug testing is unreliable.** There is no one standardized method or test. Drug testing must be standardized and unbiased.
- **Drug testing only measures past use.** According to the Canadian Human Rights Commission, "... drug tests, such as urinalysis, cannot measure whether a person is under the effect of a drug at the time the test is administered. A drug test can only detect past drug use. An employer who administered a drug test cannot tell whether that person is impaired at the moment, nor whether they are likely to be impaired while on the job." (Canadian Human Rights Commission, 2002). The 2015 report by Phillips said that "Detection of inactive THC metabolites ... in the urine of recreational users after legal use of marijuana would be analogous to detecting ethylglucuronide (ie, the '80-hour' ethanol metabolite) in the urine of a social drinker. Neither of these results would indicate acute impairment or violation of a law in states where marijuana is legal." (Phillips, et al., 2015).
- **Drug testing does not provide a quantitative level of impairment similar to a breathalyzer.** Drug testing will only be successful if there is a drug testing technology that can demonstrate a current state of impairment as a breathalyzer can demonstrate alcohol impairment.
- **There is no legal limit for comparison for drug testing.** There are the federal impaired driving limits, but the question is if we can apply these limits to a workplace. (Canadian Human Rights Commission, 2002) (Canadian Nuclear Safety Commission, 2018) (Ontario Human Rights Commission (OHRC), 2017) (Cottrill, 2018) (Phillips, et al., 2015).

When handling drug testing results, provide the worker the opportunity to explain any alternative reasons for the positive test result, such as other medical reasons that may have interfered and caused a positive test result. Also, remember to maintain confidentiality throughout the process. The results of a drug test cannot be used for any purpose not otherwise listed in the workplace alcohol and drug policy. (Canadian Human Rights Commission, 2002) (Canadian Nuclear Safety Commission, 2018) (Ontario Human Rights Commission (OHRC), 2017) (Cottrill, 2018) (Phillips, et al., 2015).

2. Per Se Policy

In a *per se* policy, a tolerable upper limit of impairment is determined. This policy approach may be used when there are non-safety sensitive positions in the workplace. If the proposed federal driving limits are accepted, these will be legal cannabis THC limits. They may be used to describe “impairment”. Employers have a responsibility to assess employees who appear impaired. Remember, also, that there are alternatives to drug testing which should be considered first.

What is “Reasonable Cause”?

The Enform Alcohol and Drug Policy Model defines reasonable cause as “information established by the direct observation of the employee’s conduct or other indicators, such as the physical appearance of the employee, the smell associated with the use of alcohol or drugs on his or her person or in the vicinity of his or her person, his or her attendance record or unexplained absences during regular work hours, circumstances surrounding an incident or near miss and the presence of alcohol, drugs or drug paraphernalia in the vicinity of the employee or the area where the employee worked.” (Enform, 2018).

If an employee reports to work in an unfit condition and you have reasonable cause to believe they are impaired, as the employer, you have a duty to inquire into this employee’s condition and request a test to be done or some alternative to testing. Remember that drug testing in a workplace should only be used in limited circumstances, such as when you have reasonable cause. If an employee is seen using drugs at work, the act itself is seen as a breach of policy, and a drug test would not be required. (Enform, 2018) (Ontario Human Rights Commission (OHRC), 2017).

Drug Testing Situations

There are 4 main situations where workplace drug testing may occur; however, employers do not have to (and are encouraged not to) test in all these situations. (Cottrill, 2018).

The **first situation** is drug testing before the job. However, the Ontario Human Rights Commission is **STRICTLY AGAINST** the use of a drug test as part of the initial screening of potential applicants. It is prohibited under subsection 23(2) of the *Code*. (Ontario Human Rights Commission (OHRC), 2017).

The **second situation** is random drug testing. Random testing, as defined by the Canadian Nuclear Safety Commission, is “A statistically random and unannounced basis for selecting which workers designated in **safety-sensitive positions** will be subjected to alcohol and drug testing, so that each worker has an equal opportunity of being selected and tested.” (Canadian Nuclear Safety Commission, 2018).

This type of testing is encouraged only for safety-sensitive positions, but may be extended to include specified management positions (such as supervisors of workers in safety-sensitive positions) and designated executive positions. In order to have random drug testing in your workplace, the following should be addressed first:

- All workers in the population subject to testing have an equal probability of being selected and tested.
- All workers selected for testing must report for testing at the earliest reasonable opportunity.
- A worker completing a test is immediately eligible for another unannounced test.
- Employers should collect specimens on an unpredictable schedule, including night shifts, weekends, holidays, and at various times during a shift. (CBC News, 2017) (Canadian Human Rights Commission, 2002) (Canadian Nuclear Safety Commission, 2018) (Enform, 2018) (McGuire, 2013) (Ontario Human Rights Commission (OHRC), 2017) (Cottrill, 2018).

The Ontario and Canadian Human Rights Commissions discourage employers from conducting random drug testing because it may fail the reasonable necessity test of the Supreme Court of Canada’s Meiorin Test, even if the employee holds a safety-sensitive position. (Canadian Human Rights Commission, 2002) (Ontario Human Rights Commission (OHRC), 2017). They also doubt its ability to test current impairment (as opposed to just the presence of drugs). However, in April 2017, a judge upheld the decision by the TTC to randomly test their employees. (CBC News, 2017).

Employers may also consider random testing of contracted workers for site access.

The **third situation** is reasonable cause and post-incident testing. Reasonable grounds must be based on objective evidence of impairment. This leads to reasonable grounds drug testing. There are two general situations in which an employee may breach the workplace drug policy:

- A situation where a supervisor or manager observes, overhears, or otherwise discovers something that would cause any reasonable person in that situation to believe the employee is in breach of the policy. For example, the supervisor overhears a conversation where a worker admits to have just used drugs. But remember, always allow the employee to explain themselves first. Then the employer may determine if a drug test is necessary.
- A situation when a supervisor has a reasonable suspicion that an employee may be in breach of the policy based on observations or discoveries, which are less conclusive and which seem more consistent with a breach of the policy than with any other reasonable explanation. For example, evidence may include if empty drug bottles or cannabis materials are found in a vehicle used by the employee or by their desk. A worker's unusual appearance and behaviour is also strongly suggestive of cannabis use. (Canadian Human Rights Commission, 2002) (Canadian Nuclear Safety Commission, 2018) (Enform, 2018) (McGuire, 2013) (Ontario Human Rights Commission (OHRC), 2017) (Cottrill, 2018).

Post-incident drug testing occurs following an accident, near miss, or report of dangerous behaviour. (Canadian Human Rights Commission, 2002) (Canadian Nuclear Safety Commission, 2018) (Enform, 2018) (McGuire, 2013) (Ontario Human Rights Commission (OHRC), 2017) (Cottrill, 2018). After one of these situations, drug testing may then be done to determine if the employee tests positive. If the employee tests positive, the employer must be reasonable in their actions.

The **fourth situation** is testing as part of a rehabilitation plan. This occurs when a worker is returned to a safety-sensitive position after the treatment of an alcohol or drug addiction. (Workplace Safety North, 2016). This is an example of follow-up testing to verify a worker's continued abstinence from substance abuse. This type of testing may be written into a back-to-work agreement where breach of the agreement may result in employment termination. However, since addiction is considered a chronic disability, relapse may occur. The employer must accommodate the employee if they relapse, and this may occur multiple times. (Canadian Human Rights Commission, 2002) (Canadian Nuclear Safety Commission, 2018) (Enform, 2018) (McGuire,

2013) (Ontario Human Rights Commission (OHRC), 2017) (Cottrill, 2018). For example, the employer's new accommodation plan may be to allow the employee to take more time off work for further rehabilitation treatment while initiating another return-to-work plan. This may be done up to the point of undue hardship. The duty of the employer to accommodate is NOT limitless. The situations when an employer can claim undue hardship include:

- When accommodation would fundamentally alter the nature of the employment,
- When the employee is unable to fulfill the essential duties of their job,
- When accommodation has been tried and exhausted with no other accommodation methods left, or
- When the employee is continually unwilling to change or take part in accommodation processes with the employer. (Canadian Human Rights Commission, 2002) (Canadian Nuclear Safety Commission, 2018) (Enform, 2018) (McGuire, 2013) (Ontario Human Rights Commission (OHRC), 2017) (Cottrill, 2018).

3. Two-Tier Policy

A two-tiered policy is a combination of the zero tolerance and *per se* policies. It is used when there are both safety-sensitive and non-safety-sensitive positions in the workplace.

4. Implementing the Policy.

Implementing your workplace cannabis policy depends on 3 key things: **communication, marketing, and education.**

Communicate the policy and expectations to all employees; don't just file it away once it's completed. (COAA, 2018) (Workplace Safety North, 2016). As stated in an article by the CBC: "a solid workplace drug policy is one that stresses communication between workers and their employers". (CBC News, 2018). Go over the written policy with your employees and ask for feedback and understanding. (COAA, 2018). Make sure people are informed. Create an open and honest work culture to let information and knowledge pass naturally. (Moore, 2017). Ensure that all levels of the organization (workers, supervisors, owners, JHSC/HSC, union representatives, etc.) understand the policy, comply with the policy, and take responsibility for their own safety and the safety of others in the workplace. (COAA, 2018).

Supervisors and employers are the instrumental leaders to the successful implementation of all workplace health and safety policies, including the alcohol and drug policy. (Workplace Safety North, 2016). The policy must be applied fairly and consistently. (Cottrill, 2018). Here are some tips to help implement the policy successfully: (Workplace Safety North, 2016).

- Demonstrate leadership and knowledge about all aspects of the policy when communicating with your employees.
- Monitor the fitness and behaviours of your employees.
- Recognize the signs and symptoms of cannabis impairment.
- Be able to differentiate cannabis impairment from other sources of impairment (i.e. fatigue, mental stress, etc.).
- Follow-up on suspicions of cannabis impairment on performance issues in a private and respectful manner. It is important to balance privacy and safety interests. (Cottrill, 2018) Recommend Employee Assistance Programs (EAPs).
- Refer the employee to a substance abuse expert, if needed.

Education of workers and supervisors is critical to a successful alcohol and drug policy. Employees, especially supervisors, should be able to recognize the signs and symptoms of impairment and act on a reported concern. (Canadian Centre for Occupational Health and Safety (CCOHS), 2018).



So what should an employer do if they suspect a worker of being impaired by cannabis at work?

- Schedule a private meeting.
- Determine whether the cannabis use is medical and authorized or not.
- Approach the concern as a performance issue.
- Raise the possibility of providing accommodation, if needed.
- Request medical documentation, when appropriate.
- Explore accommodation options – e.g. referral to an EAP, leave of absence, assign other types of work, such as non-safety sensitive job tasks.
- Fully document the meeting and investigation of options.
- Set a time to meet again to review the employee's performance and accommodation measures. (Cottrill, 2018).

5. Evaluating the Policy.

An organization cannot evaluate effectiveness without measuring indicators. Measuring and evaluating your policy is vital in guiding program improvement. Evaluation is a critical component of a policy to determine its effectiveness and highlight opportunities to enhance the policy. The set of indicators should be comprehensive. Include both leading and lagging indicators from qualitative and quantitative sources, and enable performance measurement and reporting at the provincial and the local level.

Goals of program evaluation:

- Create and maintain a safe working environment without cannabis impairment.
- Review, revise, enhance, and improve policy components.
- Identify and implement corrective measures that may prevent subsequent impairment situations.
- Modify the policy when insufficiencies are identified in components, procedures, and employee training/education.
- Use quantitative sources of information (i.e. impairment data, environmental assessment data, and workplace inspection reports) and qualitative sources (i.e. data from training evaluations, staff surveys, and compliance audits) to improve your policy.

Summary

The major take-away points of this Guide are:

- Cannabis is the most commonly encountered substance in workplace drug tests.
- THC levels have increased 5-fold since the 1980s from 3% to 15%, on average.
- The level of cannabis impairment depends on the individual, the THC dose, and the route of administration.
- Symptoms of cannabis use include (but are not limited to) delayed reaction time and motor skills, poor coordination, and drowsiness.
- Cannabis will be legal to purchase recreationally in fall 2018, and impaired driving limits for cannabis will be enacted.
- There is currently no legal limit for cannabis impairment, but research suggests 5 ng/mL serum THC.
- Identify safety-sensitive positions in your workplace.
- Always consider drug testing alternatives first, such as awareness, education, and training.
- Choose the policy approach that best fits your workplace – Zero Tolerance, Per Se, or Two Tier.
- Seek legal counsel when developing workplace drug policy.

PSHSA Resources

- Fast Facts: Medical Cannabis in the Workplace:
<https://www.pshsa.ca/wp-content/uploads/2016/01/PSHSA-Medical-Marijuana-Sheet-OMDFCAEN1115.pdf>
- HRP A 2018 Annual Conference and Trade Show presentation: “Clearing the Haze: The Impacts of Marijuana in the Workplace Panel: Workplace Focus”: <https://www.pshsa.ca/wp-content/uploads/2018/02/HRPA-Cannabis-Workplace-Focus-Presentation-2018.01.29v2.pdf>
- Webinar: Medical Marijuana Part 1: Dispelling the Myths:
<https://www.pshsa.ca/products/medical-marijuana-dispelling-myths/>
- Webinar: Medical Marijuana Part 2: Accommodating Medical Marijuana in the Workplace: <https://www.pshsa.ca/products/medical-marijuana-part-2-accommodating-medical-marijuana-in-the-workplace/>

Webpage on Cannabis in the Workplace: <https://www.pshsa.ca/cannabis-in-the-workplace/>

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