

A close-up photograph of vibrant green cannabis leaves with serrated edges, set against a clear, light blue sky. The leaves are in sharp focus, showing their intricate vein structure.

Employer Guide to Cannabis Legalization

Addressing Marijuana in the Workplace

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Introduction

Cannabis, often referred to as weed, pot or marijuana, is one of the most commonly used psychoactive drugs in the world. And while the medicinal use of marijuana has been permissible in Canada for some time, the Cannabis Act legalizes the drug for recreational use nationwide.

Among other things, the federal law, which has a target implementation date of summer 2018, allows provinces to create specific regulations for marijuana use related to impaired driving and workplace safety. While this may sound simple on paper, a 2017 survey of Human Resources Professionals Association members found that 45 per cent of respondents did not believe their current workplace policies effectively address issues that may arise with the legalization of marijuana.

How Will the Act Affect the Workplace?

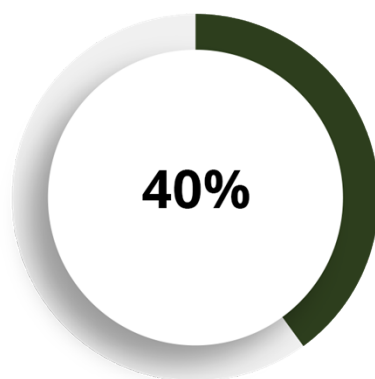
While it is uncertain how much the legalization of recreational marijuana will impact the workplace, employers are concerned it will have a direct effect on:

1. Workplace health and safety
2. The use of motor vehicles for work purposes
3. The scope and type of disciplinary procedures
4. Work performance
5. Work attendance

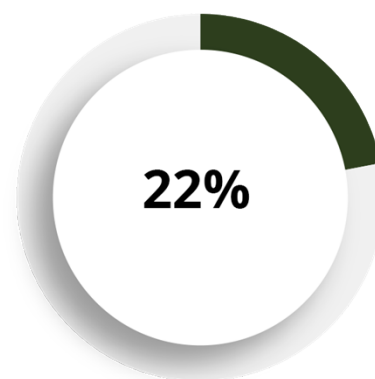
Once recreational marijuana is legalized, usage will no doubt increase across the country.

Estimated Percentage of Adult Recreational Marijuana Users

Once the Cannabis Act is Passed



Prior to the Cannabis Act



The increase in casual marijuana usage paired with the administrative burden and uncertainty of legalization is new ground for Canadian employers. As such, to adequately prepare, it's crucial that businesses adopt clear policies on the use of drugs and alcohol to prevent workplace accidents, increases in sick claims and decreases in employee productivity. Now more than ever before, both employers and employees must know how to discuss and deal with marijuana and impairment.

This guide is designed to provide a general background on marijuana use in the workplace, specifically highlighting its uses and health effects, legislative requirements, and employer and employee obligations. This guide should not be construed as legal advice, and employers will need to consult with their legal team before implementing workplace policies and procedures related to marijuana and drugs.

Legislative Framework

In April 2017, the government tabled two bills that would legalize and regulate cannabis across Canada:

- **Bill C-45, An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts**—This bill, often referred to simply as the Cannabis Act, is designed to establish a regulatory framework, particularly as it relates to the production, distribution, sale, cultivation and possession of cannabis across Canada.
- **Bill C-46, An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts**—This bill is designed to amend the Criminal Code to address changes made to cannabis legalization. Specifically, Bill C-46 addresses offences related to cannabis trafficking and strengthens impaired driving measures.

Each of these bills has specific objectives as outlined by the federal government—objectives employers will need to be aware of to accurately update their impairment policies and procedures.

Bill C-45: The Cannabis Act

Once in force, the Cannabis Act ends Canada’s prohibition on pot and regulates it for recreational use. Specifically, the act looks to accomplish the following eight objectives:

1. Restrict youth access to cannabis and protect Canada’s youth from marijuana-related advertising and promotional materials.
2. Regulate the promotion and advertisement of cannabis.
3. Establish strict product safety and quality requirements.
4. Impose serious penalties for those that break cannabis laws, import or export cannabis, or provide cannabis to youth.
5. Protect public health through product safety and quality requirements.
6. Reduce the strain on the criminal justice system by legalizing cannabis production.
7. Allow adults to possess regulated and quality-controlled cannabis.
8. Enhance public awareness regarding the health risks associated with cannabis.

While medicinal marijuana has been in use in Canada since 2001 and will continue to be used going forward, the new legislation will make the possession of small amounts of pot (30 grams) legal throughout the country. In addition, the Cannabis Act will establish broad guidelines that detail who can grow, sell and buy the drug.

The following are some other major items of note as they relate to the Cannabis Act:

- **Usage and growing limits**—Those who are 18 years of age or older will be allowed to buy and grow a limited quantity of marijuana for personal use. Specifically, those of age can possess up to 30 grams of dried cannabis in public, share up to 30 grams of dried marijuana with other adults, and buy cannabis or cannabis oil from a

provincially regulated retailer. Individuals would also be permitted to grow up to four marijuana plants per residence for personal use so long as their height does not exceed one metre.

- **Criminal offences**—The Cannabis Act will ticket individuals who exceed possession limits, enforce up to 14 years in jail for an illegal distribution or sale, and impose tough new penalties of up to 14 years in jail for those that give or sell marijuana to minors.
- **Provincial involvement**—Under the Cannabis Act, the provinces and territories will authorize and oversee the distribution and sale of cannabis, which will be subject to minimum federal requirements. In areas where there is no regulated retail framework, individuals would be able to purchase cannabis online from a federally licensed producer via secure home delivery. In addition, provinces and territories will be allowed to set zoning restrictions and other requirements related to cannabis-related businesses and the general public.

The Cannabis Act also establishes a number of roles and responsibilities for federal, provincial/territorial and municipal governments. The chart below provides a high-level overview of these responsibilities:

FEDERAL	PROVINCIAL/TERRITORIAL	MUNICIPAL
<ul style="list-style-type: none"> • Cannabis production • Cannabis possession limits • Trafficking • Advertising • Minimum age limits (18) • Oversight of medical cannabis regime, including personal cultivation registration 	<ul style="list-style-type: none"> • Wholesale and retail distribution of cannabis • Selection of retail distribution model • Workplace safety • Discretion to set more restrictive limits for the minimum age for consumption and possession amounts 	<ul style="list-style-type: none"> • Zoning (density, location) • Retail locations • Home cultivation • Business Licensing • Building codes • Nuisance • Smoking restrictions • Municipal workplace safety • Enforcement regulations around public consumption • Personal possession • Municipal cost considerations related to local policing

Bill C-46: Impaired Driving Regulations

Both Bill C-45 and Bill C-46 were proposed in tandem, and, while they both relate to the regulation of cannabis, they have very distinct goals. In particular, Bill C-46 is designed to strengthen impaired driving measures, as impaired driving is the leading criminal cause of death and injury in Canada.

The following are some Bill C-46 implications of note:

- **Roadside testing**—Law enforcement officials, under reasonable grounds, will be authorized and equipped to use oral fluid drug screeners during roadside investigations of drug-impaired drivers. Police will be able to administer a test to drivers based on signs such as red eyes or the smell of pot. The proposed legislation would also allow police officers to provide opinion evidence in court, as to whether they believe a driver was impaired by a drug at the time of testing. This is without the need for an expert witness in each trial.
- **New offences for drivers**—Drivers who are found with certain levels of drugs in their blood within two hours of driving could face serious penalties. These penalties depend largely on the type and amount of the drug found in the driver's blood. As it relates to delta-9-tetrahydrocannabinol (THC)—the main psychoactive compound in cannabis—drivers face a criminal offence if they are found to have a blood content of two or more nanograms. A person found driving with higher THC blood content levels, or a combined alcohol and THC blood content level, would be subject to even more severe criminal penalties. It should be noted that, because THC levels may vary in cannabis, it's tough to say how impaired someone could get from one joint.
- **New tools for law enforcement officials**—Under the new regulations, law enforcement officials will be provided with new tools to better detect drug-impaired drivers and improved methods for making impaired driving laws easier to enforce.

Health Effects and Uses of Marijuana

In general, marijuana is used either for medicinal or recreational purposes. Most often, marijuana is inhaled as smoke as a dried herbal product. However, the flower of the cannabis plant can be made into a variety of products, including:

- Oil
- Hash (compressed resin)
- Concentrates
- Foods and beverages

Regardless of the way it is used or ingested, marijuana has a number of positive and negative effects on the body—effects employers must be aware of if they are to manage workplace impairment.

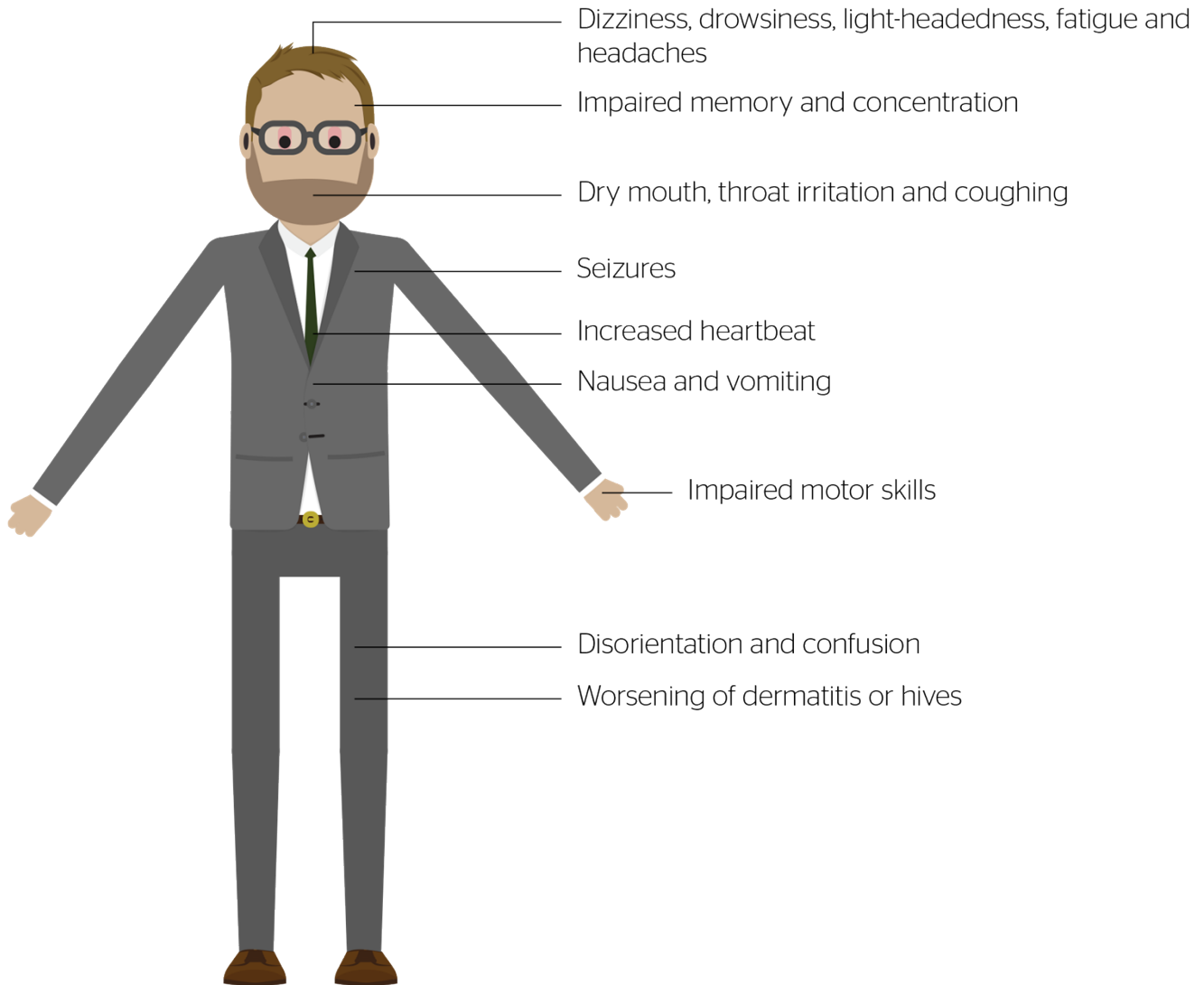
Impacts of Marijuana Use

Proponents of marijuana often cite its use in health care, particularly how some studies indicate it can treat chronic pain and improve symptoms of certain conditions. And while marijuana can have a number of health benefits in certain circumstances, it can also impair users. As marijuana becomes legal, employers need to be aware of how its use can negatively impact their employees as well as workplace safety.

As an employer, it's your utmost responsibility to maintain a safe workplace. Though marijuana affects people differently, it almost always impairs users in some way, which can easily interfere with one's work responsibilities.

Marijuana contains hundreds of chemicals, many of which act directly on the body and brain. Of all the components of marijuana, THC is the most studied and the one responsible for generating the high associated with weed.

Individual sensitivity to THC can vary, but the general effects include the following:



In addition to the above, The National Academies of Sciences, Engineering and Medicine has found links between cannabis use and the following:

- Adverse respiratory symptoms and frequent chronic bronchitis episodes
- Motor vehicle crashes
- The development of schizophrenia and other psychoses

All of these health effects could severely limit an individual's ability to perform assigned work. In fact, Health Canada has said that marijuana impairs an individual's concentration, reaction time and co-ordination. These ill effects are worsened whenever marijuana is mixed with alcohol or another altering substance.

One important thing employers should keep in mind is that recreational marijuana use can impact an employee's work even if they use the drug outside of work hours. This is because THC can stay in a marijuana user's blood for prolonged periods of time. In fact, studies have found that heavy users could test positive for THC up to one to two months after smoking.

This makes managing marijuana use and impairment in the workplace even more challenging. Therefore, it's important that organizations have the appropriate policies and procedures in place.

Employer Duties

Marijuana use, whether legal or not, has the potential to cause a number of administrative and safety concerns for organizations—especially if they are unsure of their obligations. Workplace impairment is a serious concern for employers, and it's important that businesses understand what may be expected of them and a number of other critical workplace considerations.

Occupational Health and Safety Duties

Because impairment of any kind can have a direct impact on workplace health and wellness, employers are expected to respond. Even with the legalization of recreational marijuana, employers must continue to put the safety of their workforce first.

Occupational health and safety laws across Canada require employers to maintain a safe work environment and do everything in their power to protect the health and safety of everyone in the workplace. This duty is known as due diligence and refers to the level of judgment, care, prudence, determination and activity employers are expected to exercise when safeguarding their workers.

The legalization of non-medical marijuana does not change an employer's duty to ensure a safe workplace.

Going forward, employers will still be required to take proactive steps to ensure the safety of their workers and the general public. Whether an employee consumes a substance that may cause impairment for medical or non-medical purposes, the basic principles around impairment in the workplace continue to apply. Thus, employees do not have a right to be impaired in the workplace where their impairment may endanger their own safety or the safety of co-workers.

Human Rights Duties

While employers are expected to take reasonable steps to ensure the safety of their workers, they must also take into account the human rights of their employees. This is an especially important consideration if you have employees who use marijuana for medicinal purposes. Specifically, if an employee has a diagnosed medical condition or disability, employers need to take the appropriate steps to accommodate them.

It should be noted that some human rights laws, like the Canadian Human Rights Act, consider substance dependency a disability. In these instances, employers cannot discriminate and must allow employees to do their job while they are seeking treatment for their dependence. Employers should also provide reasonable accommodations for these individuals.

In some cases, employers do not have to provide reasonable accommodations if doing so would be too expensive or create health or safety risks. Employers would have to prove undue hardship to Canada's courts or tribunals to avoid having to provide accommodations. While human rights laws do not provide a standard definition of undue hardship, courts and tribunals typically examine the following:

- The cost of the accommodation
- How the accommodation could change the structure of the organization's work
- Any health and safety risks that come about from the accommodation

A Balancing Act

As an employer, creating a safe workplace while simultaneously protecting your employee's human rights is a balancing act. While these duties can be a challenge to manage, it's critical that employers continually keep workplace safety and employee rights in mind when creating policies around workplace impairment.

Creating and Amending Workplace Policies

When it comes to managing marijuana use in your organization, establishing a clear workplace impairment policy is crucial. To do this effectively, you must remember that every workplace is different, and you will need to account for your unique industry, job categories and workplace procedures when crafting a policy.

The following are some general best practices to help you create a clear and effective policy:

1. **Conduct consultations before drafting your policy.** In order to ensure your policies address real-world concerns, conduct consultations so you can identify potential sources of conflict. It's a good idea to meet with HR representatives from your organization, legal counsel and employee representatives. Specifically, these consultations can help organizations assess their strengths as well as the general impact of cannabis in the workplace.
2. **Outline your organization's position on workplace impairment clearly.** To promote employee buy-in, clearly communicate your organization's stance on workplace impairment. Employers should clearly state the reasoning behind their position and what compliance steps will be taken to uphold workplace policies. If you decide to tolerate consumption, you should clearly define the maximum acceptable limit (before the substance is considered to affect the faculties) and adopt a preventive, non-repressive approach. Above all, provide concrete examples of what is or isn't tolerated in the workplace and account for all forms of cannabis.
3. **Involve the right people.** Creating effective policies begins with the right people. When creating or amending a policy regarding workplace impairment, it's important to set up a committee. The committee will ensure consistent rules across the entire organization and should be comprised of representatives from HR, legal and communications departments, unions and select employees. This committee will also be tasked with reviewing policies on impairment on a regular basis.
4. **Avoid employee conflicts.** When crafting a comprehensive policy, keep potential employee conflicts in mind. Depending on their age, beliefs or a variety of other factors, some employees may be more against marijuana than others. Be aware of this and provide consistent, transparent information regarding your policy and marijuana in general. Being open and honest with your position on workplace impairment can help limit any potential blowback.
5. **Keep your policies up to date.** In addition to affecting employers of all kinds, the legalization of cannabis will have a sprawling impact on case law. As such, it's important to remain up to date on decisions and rulings, as they could affect how you manage workplace impairment. What's more, a regular review of the policy could provide the opportunity to remind everyone of its goals, limitations and constraints.
6. **Implement and communicate your policy.** Prior to implementing your policy, take the time to train your managers. These individuals need to understand the purpose and enforcement measures of your policies. As a supplement to this, your organization needs to be thorough in communicating the use and goals of your policies to promote companywide buy-in. Policies, regardless of who is communicating them, need to be introduced clearly and objectively. You can communicate your policy through employee training, email and a variety of other channels. Just make sure that you create an open dialogue between the organization enforcing the policy and the employee abiding by it.

Policy Essentials

When managing cannabis in the workplace, employers should consider creating or amending policies that relate to impairment from a variety of substances, including alcohol, medications (legal or otherwise), and marijuana (recreational or therapeutic). These policies are often created with the help of a health and safety committee and define substance use broadly to account for impairment of any kind.

Impairment policies should define an organization's position on substance use clearly, directly stating that employees are not allowed to use, possess or be under the influence of substances while at work. In addition, these policies often include the following:

- Objectives of the policy
- Definitions of substance use and dependence
- Definitions of impairment
- A statement that details who the policy applies to
- A statement of the employee's rights to confidentiality
- A list of clearly defined ways employees can confidentially report when they have been prescribed a medication that may cause impairment
- Details regarding continued employee, supervisor and manager education
- Provisions that address how the employer will assist those with a substance dependence problem
- Processes for accommodation and return to work planning
- Details around substance testing, including how it will be conducted and how the results will be interpreted
- A hierarchy of disciplinary actions for those who do not follow the policy guidelines

At a minimum, policies should address employee conduct standards, guidelines for the use of substances that may cause impairment, standards and procedures for supervisors and managers to address impairment, and consequences of violations. The following are some considerations to keep in mind for these basic policy inclusions:

1. **Employee conduct standards**—In your policy, clearly state that you expect employees to show up fit to work. In terms of recreational marijuana use, it's a good idea to mirror your approach to alcohol and cigarette smoking. In fact, existing policies that prohibit alcohol consumption in the workplace during scheduled hours can easily be updated to include recreational marijuana.

2. **Guidelines for employee use of substances**—Policies should be flexible and identify situations where employees must report the use of medicinal substances that may cause impairment. Encourage employees to tell their supervisor or not attend work if they believe they are impaired from a substance, legal or otherwise.
3. **Addressing substance-related impairment**—Policies need to set guidelines for evaluating whether an employee is impaired in the workplace. These guidelines can be established through things like documentation, reporting procedures and checklists. It's important to remember that, if you have reasonable grounds to believe an employee is impaired on the job, you need to act with caution. The level of information employers can request depends largely on the circumstances and should be assessed on a case-by-case basis.

Zero-tolerance Policies

While some employers tolerate marijuana use in the workplace up to a certain limit, many consider adopting a zero-tolerance policy (similar to the way alcohol use is treated in the workplace). However, unlike alcohol, cannabis is commonly used as a prescribed substance. As such, employers risk discriminating against medicinal marijuana users by banning the drug in the workplace outright.

While employers can regulate the non-medical use of marijuana similarly to how they regulate alcohol use, special consideration must be made for medicinal marijuana. Above all, adopting a zero-tolerance policy is problematic in how it directly interferes with an employer's [duty to accommodate](#).

It should be noted that, while zero-tolerance policies aren't usable in every workplace, they are commonly implemented in safety-sensitive industries. To enact a zero-tolerance policy confidently and avoid human rights-related claims, employers have to prove that sobriety is a bona fide occupational requirement (BFOR).

In general, a BFOR is a specific workplace requirement essential to the safe and proper performance of a job. Specifically, a BFOR is only valid where the employer demonstrates that the requirement meets the following three conditions:

1. The workplace requirement was established for a purpose connected to the performance of a job.
2. The workplace requirement was adopted under the belief that it would fulfil a legitimate work-related purpose.
3. The workplace requirement is necessary to accomplish a legitimate work-related purpose, and the employer cannot accommodate the affected employee without incurring undue hardship.

Whether a policy meets the standard of a BFOR will be given very close consideration by courts, human rights tribunals and labour arbitrators. In any case, zero-tolerance policies are tricky and should only be used in special circumstances.

Testing

When building a policy around workplace substance testing, it is recommended that employers seek legal counsel. If handled improperly, substance testing can infringe on employee rights and lead to serious issues and even legal recourse.

Privacy and safety are two fundamental rights protected by the Canadian Charter of Rights and Freedoms. Because substance testing often involves an invasion of privacy and may result in public embarrassment, policies can easily infringe on individual rights. As such, it's critical that testing policies strike a balance between an employee's rights with the employer's duty to uphold worksite safety.

When establishing testing policies, employers must account for the following:

- Human rights laws
- Workplace safety
- Employee privacy
- Labour standards
- Collective agreement provisions
- Applicable regulatory requirements
- The level of supervision available in the workplace

Alongside legal supervision, employers must confirm that their testing methods are permissible in their jurisdiction with applicable human rights and occupational health and safety agencies. Above all, any testing that is conducted must be done in such a way that protects the privacy, dignity and confidentiality of the employee being tested. It should be noted that Canada's courts, arbitrators and tribunals often reject employer-imposed substance testing policies, especially if they are mandatory and random.

Remember, substance testing doesn't necessarily confirm impairment. Drug testing indicates the presence of a substance, not how the body interacts with it. This means that, as it stands, workplace testing should not be exclusively relied on when determining if a person is capable of performing the essential requirements or duties of their position. Therefore, employers must again remember to clearly define impairment in the policies as well as outline how testing procedures will be conducted.

When Testing Procedures Might be Permitted

As outlined above, the subject of workplace substance testing can be difficult to navigate. Not only do employers have to keep employee rights in mind, substance testing itself may not be enough to confirm workplace impairment. The question then remains: when is substance testing permissible?

In general, the courts have upheld substance testing policies in instances where legitimate safety concerns exist. Specifically, the following conditions may warrant the existence of a substance testing policy:

- **Your workplace or industry is safety-sensitive.**
- **You have known about recurring problems with workplace impairment.**
- **You have reasonable grounds to believe an employee was impaired on the job and is in direct violation of your substance use policies.**
- **Your substance testing procedures and methods are minimally invasive.**
- **Your affected employees are given advance notice of the substance testing policy.**
- **The testing is part of a post-incident response. This can apply to “near-miss” situations where an employee’s actions created or may have created a dangerous situation. Be sure to communicate your post-incident testing policies in advance and outline when testing could occur.**

Again, it’s critical that employers seek legal advice before creating and implementing any policies, especially ones related to drug testing. Failing to do so can result in non-compliance with employment laws and even legal action.

Duty to Accommodate and Employee Assistance

In the event that an employee asks for workplace accommodations for their medicinal marijuana use, or if substance dependency assistance is requested or necessary, employers should work alongside a qualified medical professional. The need to accommodate typically arises in the following scenarios:

1. The employee is addicted to cannabis, which is considered a disability under the Canadian Human Rights Act.
2. The employee is not addicted to cannabis, but uses cannabis to treat a disability.
3. The employee has been legally prescribed cannabis by a medical practitioner to treat a disability.
Accommodations for the use of medical cannabis should be treated in the same way you treat employees who take prescription medications.

Before carrying out any accommodations, employers should first seek legal advice to ensure they are not infringing on an employee's rights.

From there, employers should consider providing a complete description of the job, a list of responsibilities, details regarding the work schedule and any other pertinent information to the medical professional. This information will help the physician create an accommodation plan and provide the following back to the employer:

- Specific accommodation needs
- Any restrictions or limitations
- Relevant details of the treatment plan, if needed
- Any relevant implications of how substance use and accommodations could impact the employee's behaviour, attendance or performance
- A return to work plan, if necessary
- Specifics on whether or not the employee can safely perform the job, especially if the employee works in a safety-sensitive position
- An anticipated return to work date, if applicable

Throughout the accommodation process, employers need to keep their employee's privacy and well-being in mind. Employers don't necessarily need to know the specifics of the medical professional's diagnosis or treatment plan, and information requests should be limited to essential duties and accommodation needs.

Steps for Accommodation

When putting accommodations in place, it's important for employers to think of substance use or dependency as a spectrum. Substance use in general doesn't necessarily equate to dependency, and employers may need to make accommodations for things like therapeutic or medical requirements, cognitive issues or a diagnosed substance dependency that may affect workplace safety.

In the event that accommodations are necessary, employers should follow established policies related to therapeutic needs and substance dependence. Employers should develop individualized plans alongside their employees.

It should be noted that human rights laws require accommodation of employees with medical needs or substance dependence. Under these laws, there is also a general requirement for employers to ensure a safe workplace. As such, employees impaired by a prescribed substance or negatively impacted by dependency should not be allowed to perform work that would endanger themselves or others.

When creating an accommodation plan, the Canadian Human Rights Commission recommends the following:

- **Put accommodation roles, responsibilities and expectations in writing. Accommodation agreements should be signed by all relevant parties.**
- **Identify accommodation components based on the employee's medical assessment and information.**
- **Designate an individual that the employee can go to with concerns or questions about accommodation plans.**
- **Outline what changes in the employee's behaviour or performance will be deemed significant and when there would be a need for updated medical information.**

Employers should take reasonable steps to accommodate employees. While it may not be possible to adapt all jobs to an employee's satisfaction, employers should make every attempt to be flexible and try a variety of accommodation strategies. Your goal as an employer should be to support your employee whenever possible and track the success of your accommodations through follow-up meetings.

Accommodation practices to consider include, but are not limited to, the following:

- Modify the employee's schedule to accommodate treatments and appointments.
- Modify the employee's work hours or job requirements using medical assessments and fit for work assessments as a guide.
- Modify the work environment, if possible.
- Outline expectations regarding conduct and behaviour.
- Reassign the employee to a different job, particularly if they are in a safety-sensitive position.
- Suggest short- or long-term leave.

Above all, your role is to maintain a safe workplace and help employees in need return to work in a timely and structured manner. Remember, accommodation practices should be collaborative, and you should take all request and complaints seriously. If, at any time, you need assistance with your accommodation procedures, consider seeking legal advice.

Recognizing Impairment

Impairment and dependence of any kind in the workplace have the potential to impact performance and safety. As such, it's important for employers to know how to recognize impairment and respond accordingly.

In general, your policies and procedures should define impairment broadly, citing the following types of changes in an employee's attendance, performance or behaviour:

- Personality changes or erratic behaviour
- Appearance of impairment at work
- Working in an unsafe manner
- Failing a drug or alcohol test
- Consistent lateness, absenteeism or reduced productivity

When it comes to recognizing impairment, supervisors and managers should be trained on what to look out for. However, it's important to remember that, to confirm impairment, employers must observe an employee's conduct. Only when it's suspected that an employee's ability to perform their work-related duties are compromised can employers take action. Employers should avoid making decisions based on assumptions and must always act with tact and caution to avoid breaching an employee's rights.

Signs of Impairment

While signs of impairment may differ from person to person, the following chart outlines potential indicators to look out for:

	PHYSICAL	PSYCHOSOCIAL	PERFORMANCE AND IMAGE
INDICATORS	A noticeable decline in appearance or personal hygiene	Family disharmony	Calling in sick frequently
	Unexplained bruises	Drastic changes in mood fluctuations	Wanting to move to a position with less supervision
	Sweating	Irritability	Arriving late for work and leaving early
	Complaints of headaches	Noticeable confusion or lapses in memory	Taking extended breaks
	Tremors	Forgetfulness	Making errors in judgment
	Restlessness	Inappropriate responses or behaviours	Poor performance or changes in work quality
	Frequent use of breath mints, gum or mouthwash	Isolation	Non-compliance with policies
	Odour of alcohol on breath	Poor focus and concentration	Sloppy, illegible or incorrect work
	Slurred speech		
	Poor balance and unsteady walking		

Accurately assessing whether a person is impaired as a result of consuming cannabis is difficult. In fact, there are very few ways to determine impairment from cannabis through testing. As it stands, there is no universally agreed-upon standard when it comes to determining whether or not a person is impaired from marijuana.

Responding to Suspected Impairment

Identifying and responding to suspected impairment is crucial for both employers and supervisors alike. In the event that an employer or supervisor becomes aware of impairment issues, regardless of whether the substance is legal or not, they should consider doing the following:

- **Ask to meet with the employee to discuss their behaviour. This conversation should be conducted in a private area. Ask another supervisor or designated person to be present as a witness.**
- **Broach the conversation carefully, and focus on your concern for the employee's safety. Try your best to remove any stigma regarding substance use.**
- **Follow the steps outlined in your organization's impairment policies and programs when meeting with an impaired employee.**
- **State your concerns to the employee and request that they explain what is going on. Based on the employee's response, discuss options moving forward.**
- **If applicable, notify senior management or a union representative.**
- **Provide information regarding any employee assistance programs if they are available. Reassure the employee that these services are voluntary and confidential.**
- **If necessary, have the employee escorted home and never allow them to drive if you suspect impairment.**
- **If disciplinary action is required, follow your organization's policies and procedures.**
- **Take the employee to the nearest hospital or dial 911 if the impaired individual is in need of immediate assistance.**

Following any incident, employers and supervisors should file an incident report. In general, these reports outline the incident, identify the employee's actions, detail what was discussed, list who was notified of the incident, note what actions were taken and recommend follow-up steps.

Keep in mind that employers need reasonable grounds to claim an employee is impaired. As such, employers should rely on facts, documentation and recurring incidents to clearly establish a narrative of workplace impairment.

When it comes to responding to impairment incidents, it's critical to remember the scope of an employer's obligations. It's not an employer's job to diagnose an employee's dependency problem. However, they can observe changes in attendance, performance and behaviour, and respond accordingly. Employers need to act in non-judgmental ways, provide support and practise empathy. Be sure to focus on solutions and, if disciplinary action is necessary, follow through.

Conclusion

Addressing substance use and impairment in the workplace is a complex process. Employers are expected to establish policies and procedures for managing impairment and to do so in a confidential and empathic manner. In addition, if accommodations are necessary, employers must work alongside employees and medical professionals to ensure a collaborative, safe and healthy workplace.

This is a lot of responsibility, and it can be difficult to know where to turn to for supplemental information and assistance. In addition to seeking the advice of qualified legal professionals, your insurance broker can be an invaluable resource. Contact Henderson Insurance Inc. today to learn more about applicable employment laws, potential policy options to reduce your risks and general safety concerns related to the workplace.