

Cannabis and the Workplace

The legalization of recreational cannabis use in Canada will take effect in October 2018. As part of cannabis legalization, provincial governments are responsible for ensuring workplace safety.

At this time, WorkSafeBC has not identified a need to amend occupational health and safety requirements in the province. Cannabis impairment in the workplace is not a new issue, and B.C. has one of the most robust regulatory frameworks for workplace impairment in the country. The Occupational Health and Safety Regulation states:

Impairment by alcohol, drug or other substance

- (1) *A person must not enter or remain at any workplace while the person's ability to work is affected by alcohol, a drug or other substance so as to endanger the person or anyone else.*
- (2) *The employer must not knowingly permit a person to remain at any workplace while the person's ability to work is affected by alcohol, a drug or other substance so as to endanger the person or anyone else.*
- (3) *A person must not remain at a workplace if the person's behaviour is affected by alcohol, a drug or other substance so as to create an undue risk to workers, except where such a workplace has as one of its purposes the treatment or confinement of such persons.*

WorkSafeBC understands the importance of this issue for many employers and has been reaching out to industry in 2018 with educational materials about workplace impairment and existing regulations.

To that end, WorkSafeBC is currently considering what tools its Prevention Officers need to promote compliance with those regulations. WorkSafeBC is also working with the provincial government's Cannabis Legalization and Regulation Secretariat, which is coordinating the provincial response to cannabis legalization from a broad variety of public-sector stakeholders.

WorkSafeBC is also consulting with other jurisdictions and provincial regulators across the country and will review any new national frameworks that may require the *Workers Compensation Act* or Occupational Health and Safety Regulation to be amended.

Key Facts

- Many resources are available for employers, including:
 - [Guide to Managing Workplace Impairment and Developing an Impairment Policy](#), WorkSafeBC, September 2018.
 - [Workplace impairment: A primer on preparing for cannabis legalization](#), WorkSafeBC, May 2018.
 - [Workplace Strategies: Risk of Impairment from Cannabis](#), Canadian Centre for Occupational Health and Safety, June 2017.
 - [Construction Industry of British Columbia Substance Abuse Testing & Treatment Program Policy](#), developed jointly by Construction Labour Relations Association of BC and the Bargaining Council of BC Building Trades Unions.
- WorkSafeBC does not mandate testing for cannabis or other drugs in the workplace. Testing may be a feature of an employer's impairment-management strategy.

For more information

media@worksafebc.com

www.worksafebc.com

September 2018

WorkSafeBC Media Backgrounder to Cannabis and the Workplace dated September 2018 at <https://www.worksafebc.com/en/resources/about-us/news-and-events/backgrounders/cannabis-workplace?lang=en>

There are a number of OHS Regulations that may apply. Here are several key Regulations:

Section 2: General Duty Clause (which should be read in conjunction with Section 3 Rights and Responsibilities)

2.1 Scope of application

This Occupational Health and Safety Regulation applies to all employers, workers and all other persons working in or contributing to the production of any industry within the scope of the OHS provisions of the Workers Compensation Act.

[Amended by B.C. Reg. 279/2019, effective April 6, 2020.]

2.2 General duty

Despite the absence of a specific requirement, all work must be carried out without undue risk of injury or occupational disease to any person.

2.3 Conflict with a code or standard

If there is any conflict between the requirements of this Regulation and any code or standard with which compliance is required by this Regulation, the provisions of this Regulation prevail.

2.4 Prompt compliance

Every person to whom an order or directive is issued by the Board must comply promptly or by the time set out in the order or directive.

2.5 Inspection reports

(1) An inspection report must remain posted for at least 7 days, or until compliance has been achieved, whichever is the longer period.

(2) When a joint committee or a worker health and safety representative is required at a workplace, the employer must produce for the committee or representative the inspection report, or a copy of it, at or before the next meeting of the committee or with the representative.

Note: Subsection (1) provides minimum posting requirements for inspection reports. Part 2, Division 5, section 44 of the Workers Compensation Act requires that if an inspection report contains orders related to joint committees or worker health and safety representatives as covered by the Act, then the orders must remain posted for 12 months.

2.6 Notification of compliance

When an employer is required to provide notification of compliance in response to an inspection report the employer must ensure that a copy of the notification is posted next to the originating inspection report until compliance has been achieved.

2.7 Notice to workers

Every employer must post in a conspicuous place at each workplace any placard issued by the Board titled "Notice to Workers".

2.8 Contravention

(1) A contravention of this Regulation will be deemed to be a contravention by the employer and will make that employer liable for any penalty prescribed by the Workers Compensation Act.

(2) A contravention of this Regulation by a supervisor or a worker will be deemed to be a contravention by the supervisor and will make that supervisor liable for any penalty prescribed by the Workers Compensation Act.

(3) A contravention of this Regulation by a worker will make that worker liable for any penalty prescribed by the Workers Compensation Act.

(4) A contravention of this Regulation by a person working in or contributing to the production of an industry within the scope of the Workers Compensation Act will make that person liable for any penalty prescribed by the Act.

4.19: Physical or mental impairment

(1) A worker with a physical or mental impairment which may affect the worker's ability to safely perform assigned work must inform his or her supervisor or employer of the impairment, and must not knowingly do work where the impairment may create an undue risk to the worker or anyone else.

(2) A worker must not be assigned to activities where a reported or observed impairment may create an undue risk to the worker or anyone else.

4.20: Impairment by alcohol, drug or other substance

(1) A person must not enter or remain at any workplace while the person's ability to work is affected by alcohol, a drug or other substance so as to endanger the person or anyone else.

(2) The employer must not knowingly permit a person to remain at any workplace while the person's ability to work is affected by alcohol, a drug or other substance so as to endanger the person or anyone else.

(3) A person must not remain at a workplace if the person's behaviour is affected by alcohol, a drug or other substance so as to create an undue risk to workers, except where such a workplace has as one of its purposes the treatment or confinement of such persons.

Note: In the application of sections 4.19 and 4.20, workers and employers need to consider the effects of prescription and non-prescription drugs, and fatigue, as potential sources of impairment. There is a need for disclosure of potential impairment from any source, and for adequate supervision of work to ensure reported or observed impairment is effectively managed.

5.54: Exposure control plan – Note: this may apply. See Marijuana Occupational Health and Safety Work Group. (2017). “Guide to Worker Safety and Health in the Marijuana Industry.” Retrieved April 27, 2020 from https://deohs.washington.edu/sites/default/files/documents/Guide-to-Worker-Safety-and-Health-in-the-Marijuana-Industry_FULL-REPORT.pdf

(1) An exposure control plan must be implemented when

- (a) exposure monitoring under section 5.53(3) indicates that a worker is or may be exposed to an air contaminant in excess of 50% of its exposure limit,
- (b) measurement is not possible at 50% of the applicable exposure limit, or
- (c) otherwise required by this Regulation.

(2) The exposure control plan must incorporate the following elements:

- (a) a statement of purpose and responsibilities;
- (b) risk identification, assessment and control;
- (c) education and training;
- (d) written work procedures, when required;
- (e) hygiene facilities and decontamination procedures, when required;
- (f) health monitoring, when required;
- (g) documentation, when required.

(3) The plan must be reviewed at least annually and updated as necessary by the employer, in consultation with the joint committee or the worker health and safety representative, as applicable.

Section 5.55: Type of Controls

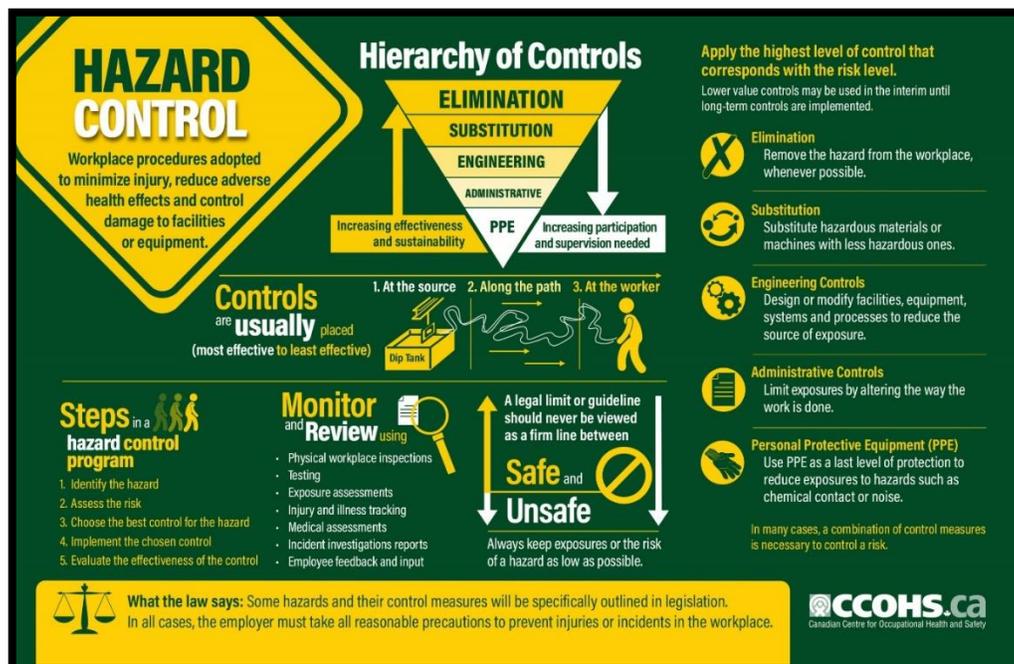
(1) If there is a risk to a worker from exposure to a hazardous substance by any route of exposure, the employer must eliminate the exposure, or otherwise control it below harmful levels and below the applicable exposure limit established under Section 5.48 by

- (a) substitution,
- (b) engineering control,
- (c) administrative control, or
- (d) personal protective equipment.

(2) When selecting a suitable substitute, the employer must ensure that the hazards of the substitute are known, and that the risk to workers is reduced by its use.

(3) The use of personal protective equipment as the primary means to control exposure is permitted only when

- (a) substitution, or engineering or administrative controls are not practicable, or
- (b) additional protection is required because engineering or administrative controls are insufficient to reduce exposure below the applicable exposure limits, or
- (c) the exposure results from temporary or emergency conditions only.



Here is a Table with potentially applicable legislation, OHS Regulations, OHS Guidelines and Policy:

WORKERS COMPENSATION ACT	OHS REGULATIONS	OHS GUIDELINES	RSCM II AND COMPENSATION (CLAIMS)	EXPOSURE REGISTRY
21 General duties of employers	Part 3.12 Refusal of Unsafe Work	All the same Guidelines as listed in the left column for the OHS Regulations	12.00 Personal Injury	Workers exposed to marijuana in various forms may be able to register their exposure at WorkSafeBC using the Form 41M1 Exposure Registry at https://www.worksafebc.com/en/resources/health-care-providers/forms/exposure-registry-program-form-41m1?lang=en
22 General duties of workers	Part 3 Rights and Responsibilities		14.00 Arising Out of and the Course of Employment	
23 General duties of supervisors	Part 4 General Conditions		22.30 Sequela to Trauma or Disease	
	4.19 Physical or mental impairment		25.10 Compensation for Occupational Disease	
	4.20 Impairment by alcohol, drug or other substance		26.10 Suffers from an Occupational Disease	
	Part 4.70 – 4.80 Indoor Air Quality		26.22 Non-Scheduled Recognition and Onus of Proof	

WORKERS COMPENSATION ACT	OHS REGULATIONS	OHS GUIDELINES	RSCM II AND COMPENSATION (CLAIMS)	EXPOSURE REGISTRY
	Part 4.81 – 4.83 Environmental Tobacco Smoke		29.00 Respiratory Diseases	
	Part 05 Chemical Agents and Biological Agents		29.10 Acute Respiratory Reactions to Substances with Irritating or Inflammatory Properties	
	Part 06 Substance Specific Requirements		29.20 Asthma	
	5.54 Exposure Control Plans		29.30 Bronchitis and Emphysema	
	Part 5.55 Type of Controls		29.40 Pneumoconiosis and Other Specified Diseases of the Lungs	
			77.30 Addiction – Drugs, Narcotics	

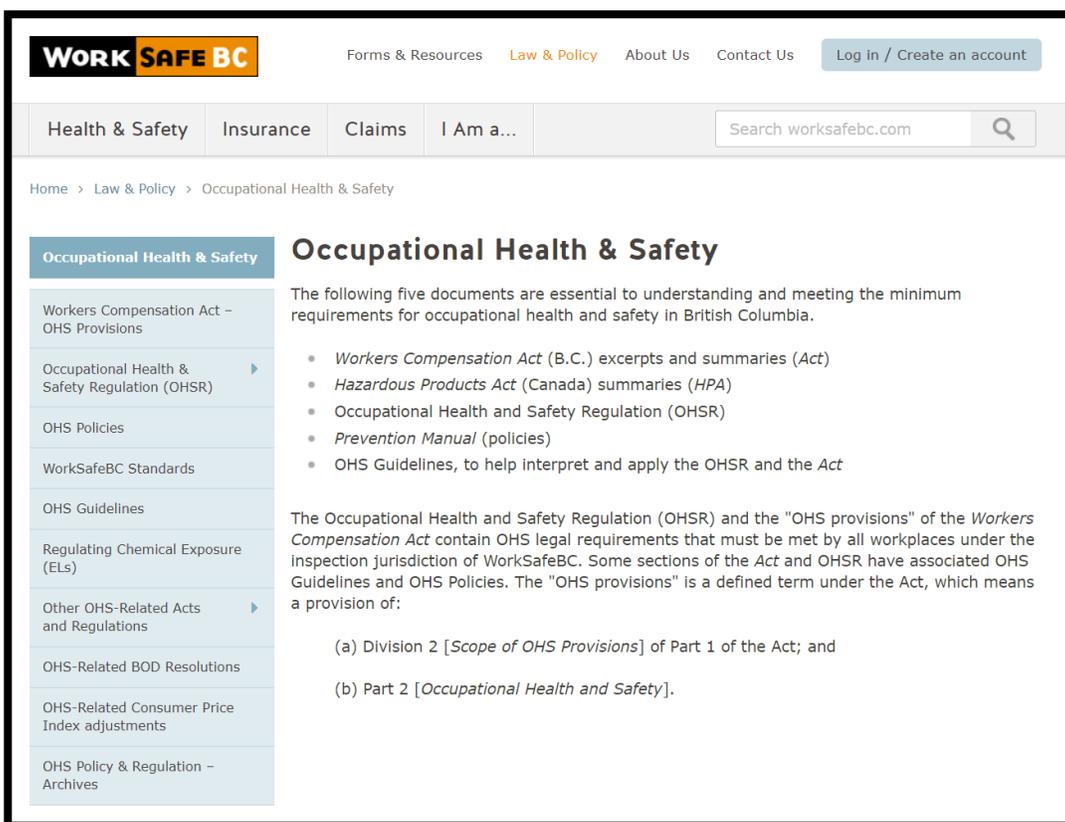
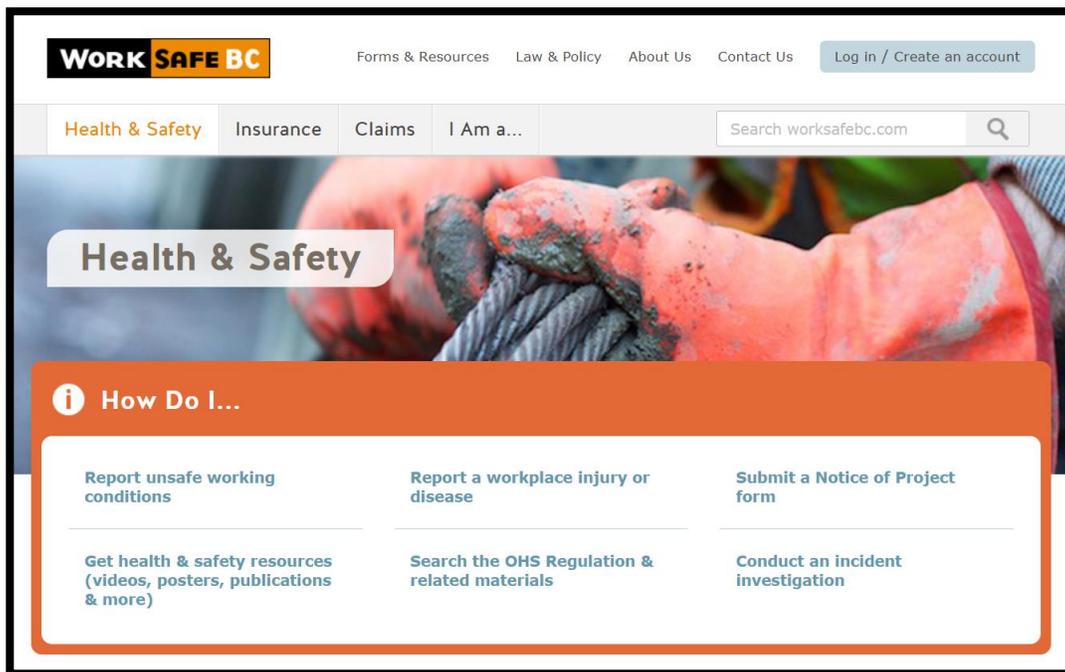
WORKERS COMPENSATION ACT	OHS REGULATIONS	OHS GUIDELINES	RSCM II AND COMPENSATION (CLAIMS)	EXPOSURE REGISTRY
			<p>80.00 Potentially Addictive Drugs</p>	
	<p>Part 08 Personal Protective Clothing and Equipment</p>		<p>Directive Practice Directive C10-1, Claims with Opioids, Sedative/ Hypnotics or Other Prescribed Potentially Addictive Drugs⁵²</p>	

Always refer to the WorkSafeBC online materials:
<https://www.worksafebc.com/en/law-policy>

<p>Occupational Health & Safety (OHS)</p> <ul style="list-style-type: none"> Workers Compensation Act – OHS Provisions Occupational Health & Safety Regulation (OHSR) OHS Policies WorkSafeBC Standards <p style="text-align: right;">More ▶</p>	<p>Claims & Rehabilitation</p> <ul style="list-style-type: none"> Workers Compensation Act – Compensation Provisions for Claims Compensation Policies Table of Effective Dates & Application of Published Compensation Policy Practice Directives <p style="text-align: right;">More ▶</p>	
<p>Insurance Premiums</p> <ul style="list-style-type: none"> Workers Compensation Act – Compensation Provisions for Assessments Assessment Policies Classification and Rates Practice Directives 	<p>Workers Compensation Law</p> <ul style="list-style-type: none"> Workers Compensation Act Schedule 1 of the Workers Compensation Act Amendments and revisions to the Act Workers Compensation Act Regulations 	<p>Policy & Regulation Decisions</p> <ul style="list-style-type: none"> Board of Directors' (BOD) Decisions by Year Panel of Administrators' (POA) Decisions by Year Retired Workers Compensation Reporter Decisions No. 1-423 in Volumes 1 – 6

⁵² There may be circumstances where a worker is prescribed or takes marijuana for a physical or mental disorder and subsequently develops a diagnosis related to this e.g.. addiction. This raises the question as to whether these sequelae would be compensable. See Review Division decision R0196595 dated July 14, 2015.

Pages 63 and 64 of this Guide show where to access information related to the OHS Regulations:



Page 64 of this Guide explains the purpose of the OHS Regulations:

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Home > Law & Policy > Occupational Health & Safety > Occupational Health & Safety Regulation (OHSR)

Occupational Health & Safety Regulation (OHSR)

The OHSR contains legal requirements that must be met by all workplaces under the inspectional jurisdiction of WorkSafeBC. Many sections of the OHSR have associated guidelines and policies.

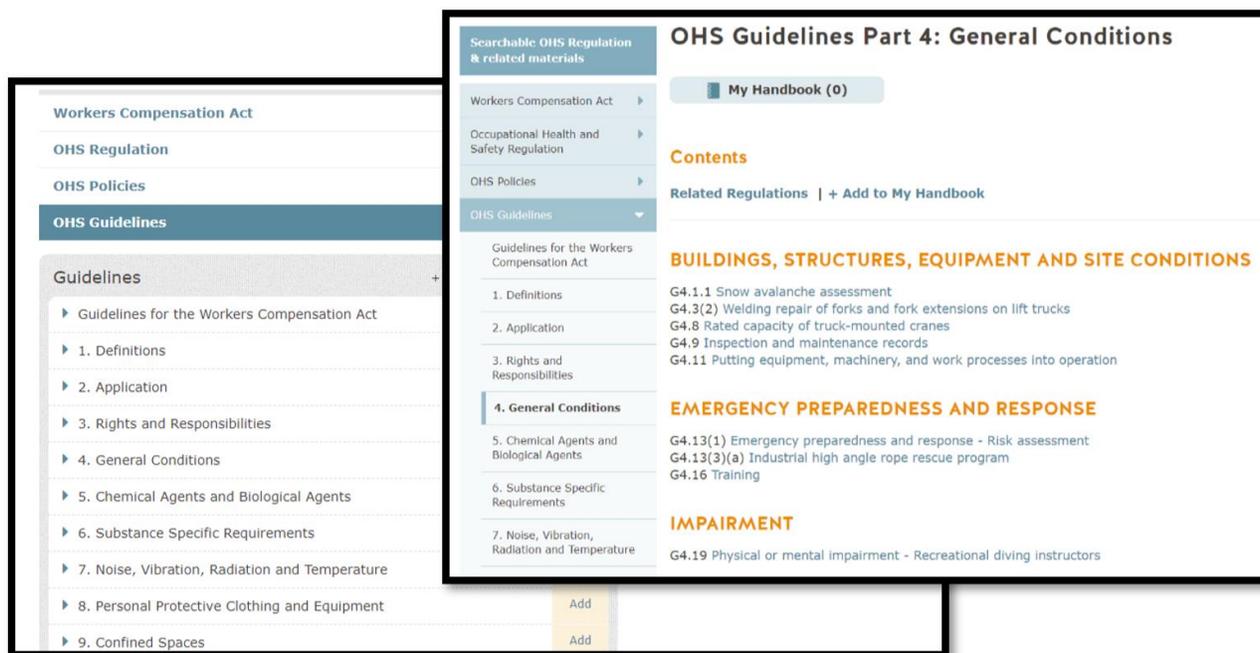
This includes most workplaces in British Columbia, except mines and federally chartered workplaces such as banks, interprovincial and international transportation, telephone systems, and radio, television, and cable services.

The purpose of the OHSR is to promote occupational health and safety and to protect workers and other persons present at workplaces from work-related risks to their health, safety, and well-being. Compliance with the requirements provides the basis on which workers and employers, in cooperation, can solve workplace health and safety problems. The requirements are not an end in themselves, but are a foundation upon which to build an effective health and safety program.

WorkSafeBC is committed to the regular review of the requirements of the OHSR based on regulatory experience and changes in knowledge, technology, and work practices. All interested parties are invited to forward suggestions for improvement to WorkSafeBC.

Note: The requirements of the Occupational Health and Safety Regulation are adopted under the authority of the *Workers Compensation Act* as amended from time to time.

Many parts of the OHSR have associated guidelines, which are used to help interpret and apply the OHSR. Other policies and practices of WorkSafeBC are set out in the Prevention Manual.



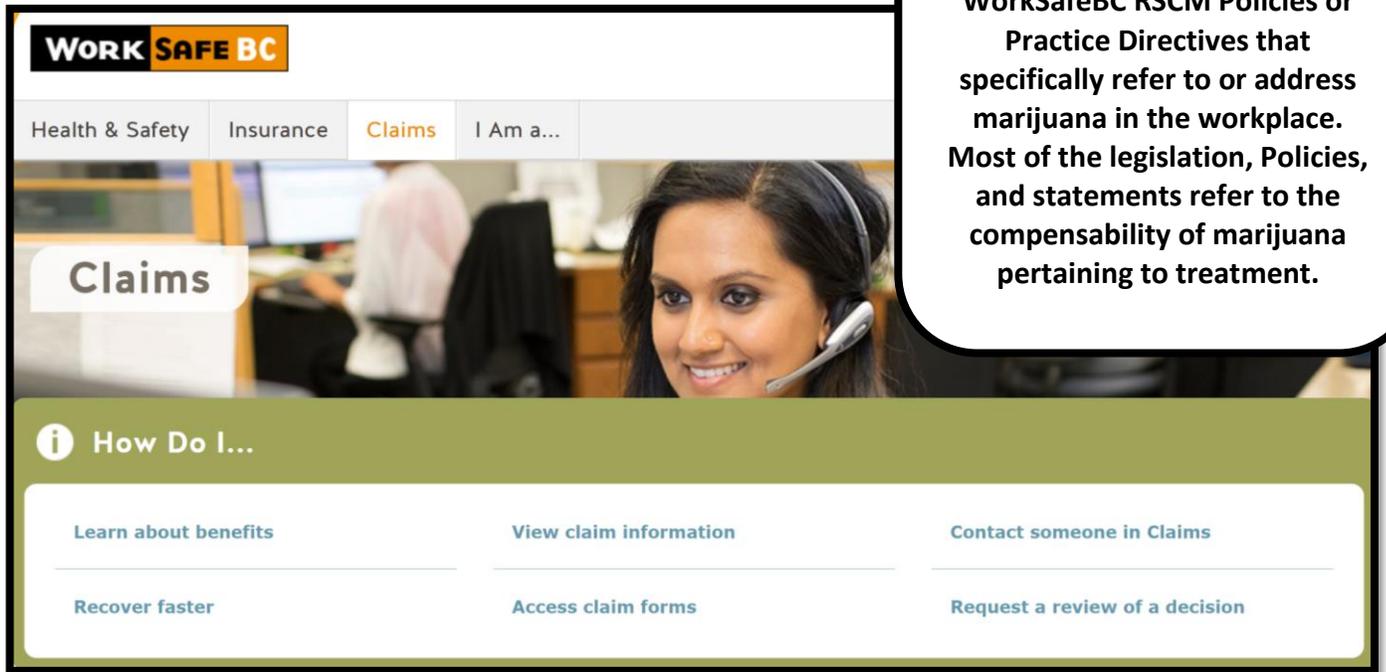
VIII.IV. OHS GUIDELINES (Screenshot of site above)

There are several Guidelines that may apply. These include (in addition to Due Diligence requirements):

- 3 (Rights and Responsibilities)
- 4 General (Provisions)
- 5 (Chemical Agents and Biological Agents)
- Any Guidelines that interpret and apply to the OHS Regulations in the Guide sections above

The Guidelines are not mandatory. The OHS Regulations and the BC *Workers Compensation Act* are mandatory.

“WorkSafeBC issues OHS Guidelines to help with the application and interpretation of sections of the Occupational Health and Safety Regulation and the OHS provisions of the *Workers Compensation Act*. OHS Guidelines are not intended to provide exclusive interpretations, but to assist with compliance. Many sections of the Act and the Regulation have associated guidelines.”



VIII.V. WORKERS COMPENSATION CLAIMS POLICY (Screenshot of site above)

In terms of workers compensation claims and use of medical marijuana, as an example, Ontario’s Workplace Safety and Insurance Board adopted a comprehensive Policy titled Policy 17-01-10 “Cannabis for Medical Purposes” dated December 16, 2019. See <https://www.wsib.ca/en/operational-policy-manual/cannabis-medical-purposes> The purpose of this policy is to establish guidelines that govern entitlement to, review of, and payment for medical marijuana. While WorkSafeBC developed several Policies, these usually pertained to occupational health and safety e.g. “Media backgrounder: Cannabis and the Workplace” dated September 2018. See <https://www.worksafebc.com/en/resources/about-us/news-and-events/backgrounders/cannabis-workplace?lang=en>

Some applicable sections of the Rehabilitation and Services Claims Manual (“RSCM”) Version II, include⁵³:

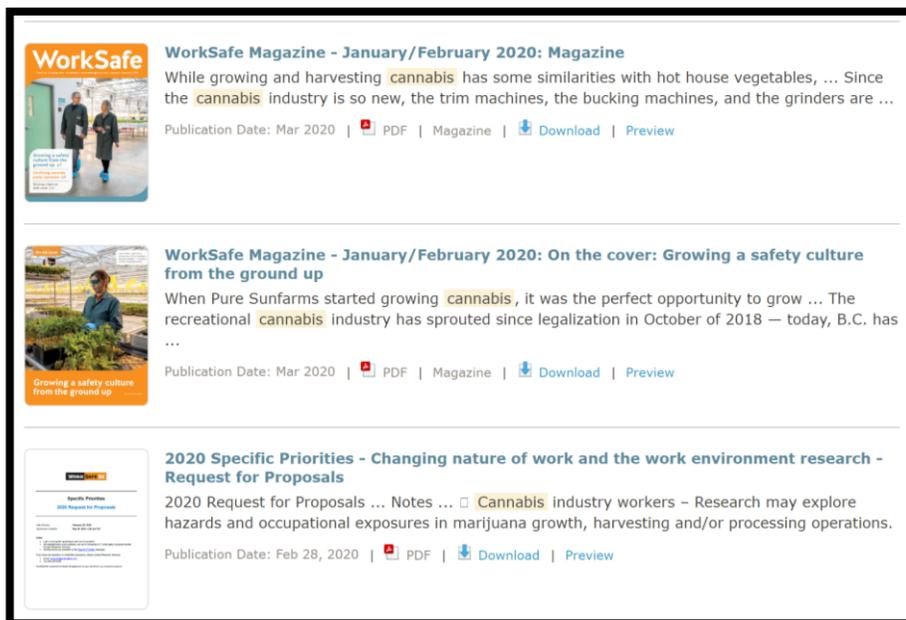
- 12.00 Personal Injury
- 14.00 Arising Out of and the Course of Employment
- 22.30 Sequela to Trauma or Disease
- 25.10 Compensation for Occupational Disease
- 26.10 Suffers from an Occupational Disease

The RSCM Policies, Practice Directives and Forms change very frequently. Always refer to online sources at WorkSafeBC.

⁵³ This is not an exhaustive list. The RSCM II changes frequently. See WorkSafeBC Law and Policy at <https://www.worksafebc.com/en/law-policy/law-and-policy-archives>

- 26.22 Non-Scheduled Recognition and Onus of Proof
- 29.00 Respiratory Diseases
- 29.10 Acute Respiratory Reactions to Substances with Irritating or Inflammatory Properties
- 29.20 Asthma
- 29.30 Bronchitis and Emphysema
- 29.40 Pneumoconiosis and Other Specified Diseases of the Lungs
- 77.30 Addiction – Drugs, Narcotics
- 80.00 Potentially Addictive Drugs

The majority of WorkSafeBC claims and appeals pertaining to marijuana relate to the compensability of marijuana for treatment and for addressing conditions such as Chronic Pain.⁵⁴ Almost all media announcements, WorkSafeBC Research Proposals, WorkSafe Magazine articles etc have been regarding the BC cannabis industry (such as workers involved in growing marijuana) as per the following Figure.⁵⁵



WorkSafeBC. Cannabis. Search results at [https://www.worksafebc.com/en/search#q=cannabis&sort=%40computeditemdatefield343%20descending&f:language-facet=\[English\]](https://www.worksafebc.com/en/search#q=cannabis&sort=%40computeditemdatefield343%20descending&f:language-facet=[English])

⁵⁴ WorkSafeBC Annual Reports. Retrieved April 23, 2020 from <https://www.worksafebc.com/en/about-us/what-we-do/our-annual-report>

⁵⁵ WorkSafeBC. Cannabis. Retrieved April 22, 2020 from [https://www.worksafebc.com/en/search#q=cannabis&sort=%40computeditemdatefield343%20descending&f:language-facet=\[English\]](https://www.worksafebc.com/en/search#q=cannabis&sort=%40computeditemdatefield343%20descending&f:language-facet=[English])

The Review Division and the Workers' Compensation Appeal Tribunal (WCAT) decisions were reviewed for the last 10 years. There were no appeals that directly dealt with marijuana in terms of compensation claims e.g. marijuana causing an injury or occupational exposure, other than seeking to have marijuana included and paid for by WorkSafeBC as a health benefit. The majority of marijuana related issues arise from WorkSafeBC claims as per the following Figures.

Results 1-10 of 232 1 2 3 4 5 6 7 8 Next > Last >>

Review Reference #0255668
... treatment, as there were no clinical records available with respect to prescribing cannabis derivatives. ... , which stated that coverage for medical cannabis as a health care benefit "may be ...
Publication Date: Apr 20, 2020 | PDF | Review Decision | Download | Preview

Review Reference #0255824, #0256913
F at a cannabis clinic on July 22, 2019 to discuss cannabis as a treatment option for his anxiety, ... , the MA discussed the scientific evidence with respect to cannabis and cannabis oil.
Publication Date: Apr 20, 2020 | PDF | Review Decision | Download | Preview

Review Reference #0255854
... notes that medical literature suggests smokers have delayed soft tissue and bone healing, and the worker smokes ¼ package of cigarettes per day combined with regular cannabis use daily.
Publication Date: Mar 5, 2020 | PDF | Review Decision | Download | Preview

Review Reference #0255012
forklift. ... L documented a pre-admission diagnosis of cannabis use; the worker had used cannabis two weeks prior to his October ... C that the worker relied on cannabis for pain control.
Publication Date: Feb 19, 2020 | PDF | Review Decision | Download | Preview

WorkSafeBC Review Division appeal decisions at [https://www.worksafebc.com/en/decisions-search#sort=%40computeditemdatefield343%20descending&f:content-type-facet=\[Review%20decisions\]&f:language-facet=\[English\]](https://www.worksafebc.com/en/decisions-search#sort=%40computeditemdatefield343%20descending&f:content-type-facet=[Review%20decisions]&f:language-facet=[English])

Displaying Results: 1 - 10 (Use the arrows to view more search results)

Decision #	Date	Excerpt	Category
A1902585	2020-03-04	Should the worker's medical cannabis be covered as a health care benefit for the compensable conditions accepted under his claim? Size: 21.13k A1902585	compensation
A1902508	2020-03-31	Is the employer entitled to any cost relief under this claim, and, if so, to what extent? Size: 18.46k A1902508	relief-of-costs
A1901786	2020-03-16	Did the worker develop an actual or potential permanent PTSD condition, entitling him to a referral to the Board's Disability Awards Department? Size: 15.98k A1901786	compensation
A1901492	2020-01-02	Are marijuana products a reasonably necessary health care expense to cure, relieve or alleviate the effects of the worker's PTSD? Size: 21.68k A1901492	compensation
A1901473	2020-02-19	The issues I must determine are: (1) whether the worker's medical marijuana should be covered as a health care expense for his claim injuries; and (2) whether the worker's magnesium treatment should be covered as a health care expense for his claim injuries. Size: 44.69k A1901473	compensation

BC Workers' Compensation Appeal Tribunal appeal decisions at https://www.wcat.bc.ca/search/decision_search.aspx#results

Workers compensation Policies vary widely from province to province as illustrated by the following two Figures from WSIB Ontario:

The screenshot shows the WSIB Ontario website. At the top, there is a navigation bar with links for 'About us', 'Policy', 'Contact us', 'Français', and a search icon. A blue button labeled 'Online services' is also present. Below the navigation bar, there are three dropdown menus: 'Businesses', 'Injured or ill people', and 'Health care providers'. The main heading is 'Medical cannabis'. The text below explains that WSIB is there to help workers recover and get back to work, including providing health-care benefits and medical cannabis. It lists the criteria for including medical cannabis in benefit coverage: whether the worker has a designated medical condition, whether they've received a clinical assessment and treatment, and whether they've tried conventional treatments. A link to 'Policy Updates' is provided for more information.

FAQ

Why has the WSIB introduced a policy on medical cannabis? ^

The WSIB has introduced the policy to:

- support timely and consistent decisions regarding medical cannabis,
- provide transparency about the circumstances in which entitlement to medical cannabis will be considered for a work-related injury or illness, and
- allow entitlement to medical cannabis where it is safe and proven to have a therapeutic benefit.

Who would be entitled to medical cannabis coverage under the policy? ^

A person with a workplace injury or illness may be entitled to medical cannabis coverage provided the following criteria are met:

- the person has one of the work-related conditions listed in the policy,
- the person has previously tried conventional treatments for their condition,
- the person has received a clinical assessment for medical cannabis treatment,
- the benefits of the medical cannabis treatment for the person outweigh the risks, and
- the person's treating healthcare professional has authorized medical cannabis for them.

In addition, the dose and route of administration that the healthcare professional prescribes aligns to the criteria in the policy.

To learn more about who would be covered under the policy, reference the Cannabis for Medical Purposes (Policy 17-01-10).

WSIB Ontario. Medical cannabis at <https://www.wsib.ca/en/medical-cannabis>

There may be circumstances where a worker is prescribed or takes marijuana for a physical or mental disorder and subsequently develops a diagnosis related to this e.g. addiction. This raises the question as to whether sequelae would be compensable. This area of law has yet to be established.



Slade, K. (2017). Clearing the Haze: The Impacts of Marijuana in the Workplace. Ontario Public Services Health & Safety Association <https://terraform-2018042317445374680000001.s3.amazonaws.com/attachments/cjiisgnw1006pfxj7uc5c6d6m-hrpa-cannabis-workplace-focus-presentation-2018-01-29v2.pdf>

Policies should comply with all relevant legislation and regulations (including human rights legislation) and the Collective Agreement, for example. Policies should be updated annually. JHSCs should be very cautious of agreeing to or have input into Policies in order to avoid any estoppel, arbitrability, jurisdiction and res judicata issues. All Policies should be reviewed by the CUPE National Representative.

Workplace Strategies: Risk of Impairment from Cannabis

3rd Edition



X. POLICIES AND TRAINING

IX.I. DRUG AND ALCOHOL USE POLICIES

Employers have often stated that drug and alcohol testing of a worker in a safety-sensitive position is permissible in certain circumstances. As per HRReporter:⁵⁶

- “Random drug and alcohol testing is only permissible as a component of a broader policy to address drug and alcohol use in a dangerous workplace shown to have a general drug and alcohol problem.
- Post-incident or near miss testing may be permissible if a worker has been involved in a workplace accident or significant incident or near miss and there is reason to believe alcohol or drugs may have been a contributing factor.

⁵⁶ Gokhale, S. & Gorsky, S. (2019). Cannabis at work: 1 year after legalization. HRReporter. Retrieved April 20, 2020 from <https://www.hrreporter.com/employment-law/news/cannabis-at-work-1-year-after-legalization/323820>

- Return-to-work testing may be permissible if the worker is returning to work after treatment for substance abuse and testing is a condition of the return-to-work arrangement.
- Reasonable cause testing may be permissible if the employer has reasonable cause to believe the worker is not fit for duty (such as slurred speech, difficulty concentrating or the smell of alcohol or drugs).
- Pre-employment testing is generally not permissible in a unionized workplace. In a non-unionized workplace, testing may be permitted in limited circumstances provided a worker who fails a test due to a substance use disorder has the opportunity for further medical assessment and accommodation.”

An employer may be able to require a worker in a safety-sensitive position to proactively self-disclose the use of medically authorized or recreational drugs (even in the case of substance use disorder. As per *Stewart v. Elk Valley Coal Corp., 2017 SCC 30*, which was affirmed by the Supreme Court of Canada, the termination of a worker in a safety-sensitive position was upheld not because the worker was found to have been unfit for duty (the worker had a substance use disorder disclosed only after a workplace accident) but because he breached the workplace policy that required proactive self-disclosure.⁵⁷ While the term “safety-sensitive” is not defined in Canada’s federal health and safety laws, a safety-sensitive position has been described by the Canadian Human Rights Commission as one that “if not performed in a safe manner, can cause direct and significant damage to property and/or injury to the worker, others around them, the public and/or the immediate environment.” This includes:

- jobs that require workers to be alert, physically coordinated and exercise good judgment
- jobs that impairment could affect the health, safety or security of the worker, other persons, property or the environment

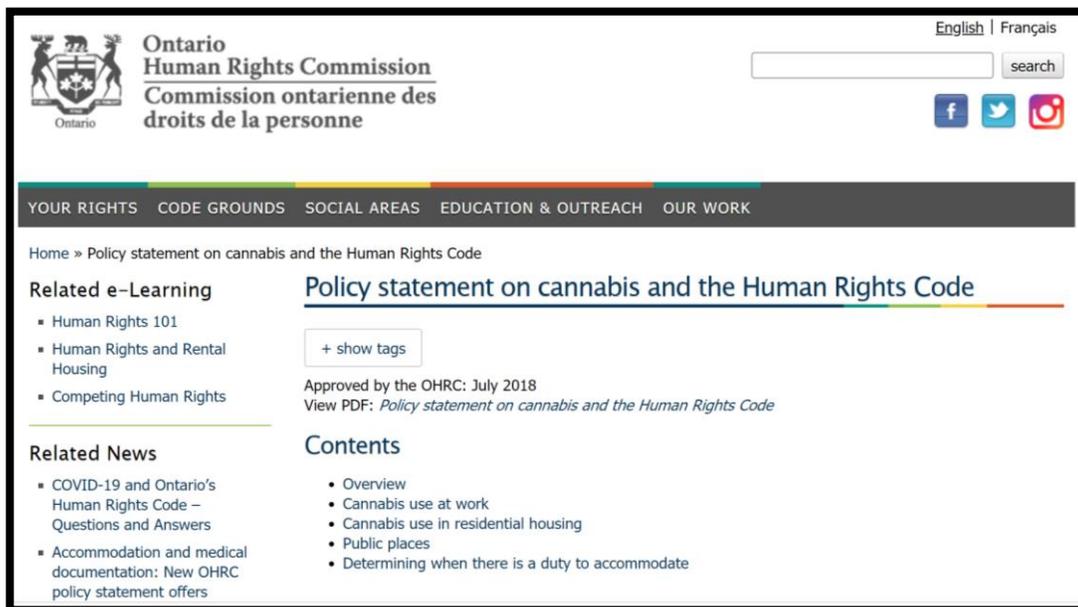
There have been a number of cases regarding safety sensitive positions and marijuana use. In *International Brotherhood of Electrical Workers, Local 1620 v. Lower Churchill Transmission Construction Employers’ Association Inc.* a worker who was authorized to take medical marijuana for osteoarthritis and Crohn’s disease was denied employment on a project in a safety sensitive position as the marijuana created the risk of impairment. The case went to the Supreme Court of Newfoundland and Labrador (February 22, 2019) which agreed with the arbitrator’s decision to deny the grievance. Subsequent to that decision, employers have insisted that workers disclose any type of marijuana use for employment in safety sensitive positions. Some employers have banned use of both medical and recreational marijuana use for 24 hours up to 28 days prior to arriving at work.⁵⁸ This echoed the Supreme Court of Canada decision in *Stewart v. Elk Valley Coal Corp., 2017, SCC 30*. In that decision a worker was terminated from a safety sensitive position due to being deemed unfit for duty due to a substance use disorder and for failing to proactively disclose that a drug dependency.

⁵⁷ Gokhale, S. & Gorsky, S. (2019). Cannabis at work: 1 year after legalization. HRReporter. Retrieved April 20, 2020 from <https://www.hrreporter.com/employment-law/news/cannabis-at-work-1-year-after-legalization/323820>

⁵⁸ Silliker, A. (2020). Health and Safety Legal Update. Canadian Occupational Health and Safety. Issue 58.01.

Employers may not have to accommodate the use of medical marijuana as per *Aitchison v. L & L Painting and Decorating Ltd.*, 2018, HRTO 238. The Ontario Human Rights Commission held that there is no absolute right to marijuana use at work, even if it has been medically authorized.⁵⁹ The principles of the Ontario Human Rights Commission Policy statement on Cannabis and the Human Rights Code⁶⁰ are summarized as:

- Impairment at work due to marijuana may be prohibited if interferes with the health and safety of the essential duties of the worker’s job; and
- Employers can prohibit impairment from medical and recreational marijuana at work in safety sensitive jobs; and
- Employers have a duty to accommodate workers with disabilities who use medical marijuana or marijuana with a medical purpose, up to the point of undue hardship; and
- Workers may need to provide medical evidence and other evidence to support the presence of a disability that requires accommodation; and
- Workers may need to provide medical evidence and other evidence verifying their fitness to for work.



Ontario Human Rights Commission Policy statement on cannabis and the Human Rights Code at <http://ohrc.on.ca/en/policy-statement-cannabis-and-human-rights-code>

⁵⁹ Gokhale, S. & Gorsky, S. (2019). Cannabis at work: 1 year after legalization. HRReporter. Retrieved April 20, 2020 from <https://www.hrreporter.com/employment-law/news/cannabis-at-work-1-year-after-legalization/323820>

⁶⁰ Ontario Human Rights Commission Policy statement on Cannabis and the Human Rights Code. (2018). Retrieved April 18, 2020 from <http://ohrc.on.ca/en/policy-statement-cannabis-and-human-rights-code>

Also see:

- *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper Ltd.*, 2013 SCC
- *Canadian National Railway*, 2013 238 L.A.C.(4th)52
- *Resource Development Trades Council of Newfoundland and Labrador, Local 447 v. Weyerhaeuser Co.*, 2006 A.G.A.A., No. 48
- *Rio Tinto Primary Metal (Kitimat) / Kemano Operations v. CAW Local 2301*, 2008 B.C.C.A.A.A., No. 170
- *Cambridge Memorial Hospital v. Ontario Public Service Employees Union, Local 239*, 2018 CanLII 9683
- *Kitchener / Waterloo Record v. C.E.P., Local 87-M*, 2006 O.L.A.A. No. 114
- *Syndicat du prehospitalier v. Corporation d'urgences-sante*, 2018 CanLII 26777
- *Syndicat canadien de la fonction publique, section locale 4333 et Terminal maritime Sorel-Tracey Service de quai Fagen*, 2016 CanLII 795
- *Calgary v. Canadian Union of Public Employees*, 2015 CanLII 61756
- *Canadian Union of Public Employees, Local 30 v. EPCOR Utilities Inc.*, 2016 CanLII 66181
- *Resource Development Trades Council of Newfoundland and Labrador v. Hebron Project Employers' Association Inc.*, 2014CanLII 61909
- *Bombardier Transportation and Teamsters Canada Rail Conference, Division 660*, 2014 Carswell 240
- *Imperial Oil Ltd., v. C.E.P., Local 900*, 2006 157 L.A.C., 4th 225
- *Imperial Oil Ltd., v. C.E.P., Local 900*, 2009 O.N.C.A. CanLII 420
- *United Steelworkers, Local 5890 v. Evraz Regina Steel*, 2014 CanLII 37939
- *KVP Co. Ltd (1965)*, 16 L.A.C., No. 73. In KVP, six tests for rules that are unilaterally set out by employers (and which impact employee privacy as per the balancing of interests approach [if a unilaterally imposed and implemented rule infringes on employee privacy, and that rule is to be considered reasonable, the employer must be able to demonstrate that the rule is necessary to address an existing problem, and that the employer has exhausted options that are less intrusive of the employee's rights]):

- The rule must not be inconsistent with the Collective Agreement
- The rule must not be unreasonable
- The rule must be clear and unequivocal
- The rule must be brought to the attention of the employee before the employer can act on the rule
- The employee must have been notified that a breach of the rule could result in discharge if the rule is used as a foundation for the discharge
- The rule should be consistently enforced by the employer from the time it was introduced

Any substance use policy or procedure should be reviewed by the CUPE National Representative. CUPE health and safety committees should not agree to employer substance use Policies and procedures.

According to a new survey of 5,710 businesses by the Canadian Federation of Independent Business (“CFIB”), 34% of employers do not have a drug and alcohol policy in place.⁶¹ Employer counsel⁶² have stated that any policy or procedure that pertains to marijuana use in the workplace should consider the following (noting that the following is an example of views of the Employer community and not CUPE nor WorkSafeBC):

- Prohibit a worker from working when not fit for duty due to the use of illegal drugs, legal drugs or alcohol
- Prohibit a worker from possession or use of any illegal drug, legal drug or alcohol in the workplace (this includes the possession of edibles)
- Require the disclosure of any drug or medication that may render an employee unfit for work
- Advise that accommodation may be provided if a worker has a substance use dependency or is required to use a drug for medical reasons
- Advise that it may be necessary to obtain additional medical information to facilitate accommodation
- Address any permissible reasonable alcohol consumption for work-related purposes (such as a client event, work-related party or function)

⁶¹ Canadian Federation of Independent Business. (2019). Retrieved April 21, 2020 from [https:// www.cfib-fcei.ca/sites/default/files/2019-10/Cannabis-in-workplacereport.pdf](https://www.cfib-fcei.ca/sites/default/files/2019-10/Cannabis-in-workplacereport.pdf)

⁶² Tetreault, McCarthy. (2018). Retrieved April 19, 2020 from <http://www.mondaq.com/canada/x/736922/employee+rights+labour+relations/ Legalized+Cannabis+Employer+FAQs>

- If testing is contemplated for a safety-sensitive position, set out when and how testing will occur (for example, reasonable cause, post-incident or return to work), and what measures will be taken to protect privacy. identify a third-party testing provider and confirm:
 - the steps for testing
 - the substances to be tested
 - what constitutes a “positive” test with respect each substance and how this will be determined
 - how test results will be provided to the employer and the estimated timelines
- Address discipline for an employee’s violation of the Drug and Alcohol Policy
- Train supervisors on the Drug and Alcohol Policy, including the obligation to report when it is suspected a worker is not fit for duty, and how to address the worker
- Consider providing supervisors with additional training on how to recognize when a worker may not be fit for duty
- Inform workers about the Drug and Alcohol Policy, including the obligation to report
- Have each worker sign an Acknowledgment and Consent to comply with the Drug and Alcohol Policy (and a Consent to testing, if applicable)
- Ensure each new worker is trained on the Drug and Alcohol Policy and signs the Acknowledgment and Consent
- If a worker requests accommodation under the Drug and Alcohol Policy, determine whether accommodation is for substance use dependency (which would not require continued use of the drug or alcohol) or a disability for which the drug is being used medically. Engage in the appropriate accommodation process based on the underlying medical information
- Before imposing discipline for a violation of the Drug and Alcohol Policy, ensure any human rights or accommodation issue has been considered
- Revise the Drug and Alcohol Policy as necessary based on legislative changes, case law developments and the needs of the workplace⁶³

⁶³ Gokhale, S. & Gorsky, S. (2019). Cannabis at work: 1 year after legalization. HRReporter. Retrieved April 20, 2020 from <https://www.hrreporter.com/employment-law/news/cannabis-at-work-1-year-after-legalization/323820>

These were reiterated, in part, in *Canadian Health and Safety Law* (all of which is subject to the applicable provincial or federal human rights legislation, labour relations legislation, workers compensation legislation, occupational health and safety legislation and Regulations, Collective Agreement entitlements and obligations, medical evidence, the most recent DSM V, etc). These include the following:⁶⁴

- A position statement
- An outline of the purpose and goals of the Policy
- A statement of the scope and application of the Policy including:
 - Which substances are covered?
 - Which workers are covered?
- Definitions e.g. a definition of the workplace, including which sites and locations, off site meetings, business meetings, business travel, etc; definition of incident; definition of safety sensitive; etc.
- If the Policy includes testing, random testing, etc including what the basis for the testing is, how reasonable cause will be defined and applied, etc.
- Expectations and responsibilities for all workers, including supervisors, managers, etc.
- Methods that are used to identify substance abuse and substance dependence (the terminology being dependent on the most recent version of the DSM V), etc.
- Privacy considerations
- Collection, use and retention of information
- Actions and consequences to be taken for breaches of the Policy
- Actions to be taken for problems that are identified but there is not breach of the Policy
- Resources and education available for workers
- Deferment of imposing discipline, where a breach of the Policy occurs, where there are substance use and substance abuse issues (the terminology being dependent on the most recent version of the DSM V), where treatment is suggested or required, where accommodation is required, etc.
- Acknowledgment of the application and adherence to the applicable provincial or federal human rights legislation, labour relations legislation, workers compensation legislation, occupational health and safety legislation and Regulations, Collective Agreement entitlements and obligations, medical evidence, the most recent DSM V, etc. (this is not an exhaustive list)

⁶⁴ Keith, N. (2020). *Canadian Health and Safety Law*. Canada Law Book. Thomson Reuters. Volume 2. Chapter 7. Section 14. Pages 14-11 to 14-12.

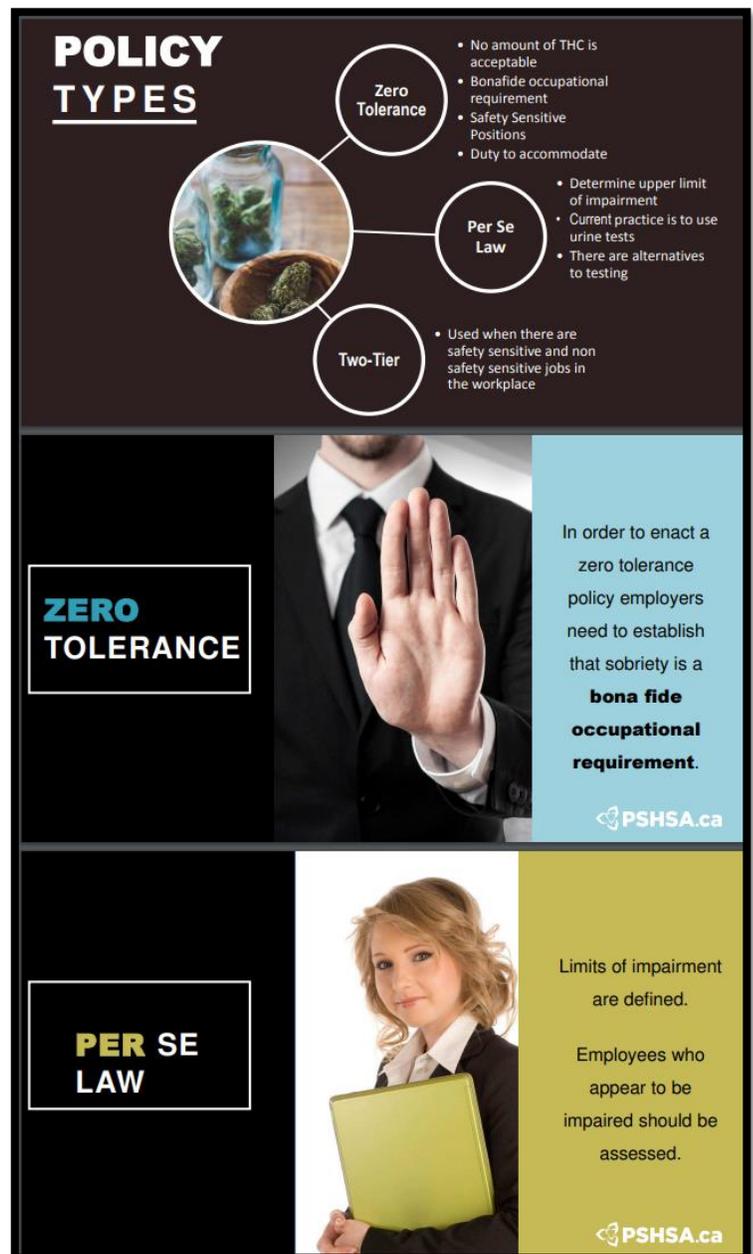
Many Policies are deficient in numerous areas including:

- Collective Agreement obligations
- Duty to Accommodate and Human Rights
- Occupational Health and Safety
- Sick Leave
- Attendance Management
- Return to Work
- Privacy

The Ontario Ministry of Labour has created an occupational health and safety resource “Impairment and Workplace Health and Safety” dated October 2018.⁶⁵ The resource lists the duties of employers, workers, supervisors and others. The duties of employers include:

- Create and maintain a written Occupational Health and Safety Policy, which includes impairment arising from substance use, and which is reviewed annually
- Include instruction and information for workers, supervisors, etc. (see Sections 21 to 30 of the revised BC *Workers Compensation Act*)
- Provide training on the dangers of using equipment or machinery while impaired
- Provide training to supervisors on how to recognize the signs of impairment

This is a partial list. See the OHS Regulations and OHS Guidelines for a detailed explanation.



⁶⁵ See <https://www.ontario.ca/page/ontario-public-service-occupational-health-and-safety-policy-and-impairment-workplace> and <https://www.labour.gov.on.ca/english/hs/pubs/impairment.php>

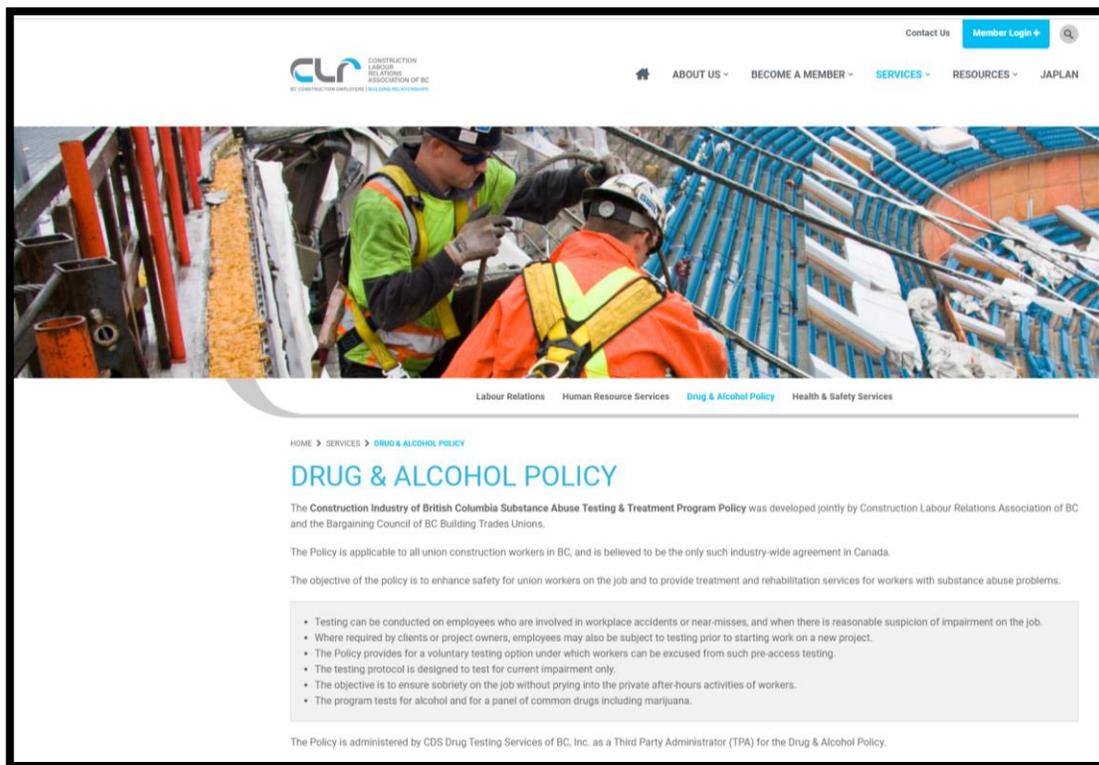
The Canadian Centre for Occupational Health and Safety has created a whitepaper titled “Workplace Strategies: Risk of Impairment from Cannabis”.

The screenshot shows the CCOHS website interface. At the top left is the CCOHS logo with the text 'Canadian Centre for Occupational Health and Safety'. A navigation menu includes 'Legislation', 'Hazards', 'Workers', 'Health and Wellness', and 'Programs'. A search bar and 'I am looking for...', 'HELP', and 'LOGIN' links are on the right. Below the navigation, there are breadcrumb links: 'Home → Products and Services → Publications' and a 'Your Cart' icon. The main heading is 'Workplace Strategies: Risk of Impairment from Cannabis' with a red banner that says 'FREE!*Updated!*'. Below the heading, there are two preview images: one of the whitepaper cover and one of the table of contents. To the right of these images are options for 'Format: PDF' and 'Language: English | French', with a green 'Download' button. Below the download options is a promotional message: 'Become a member to SAVE 5-10% [optional]'. On the left, under the heading 'Description', there is a paragraph about impairment, a paragraph about the publication's content, a bulleted list of key points, and a paragraph about the third edition. On the right, under the heading 'I want to...', there are buttons for 'Ask a question about this publication', 'Read the FAQs', 'View the return policy', and 'Request sample pages', along with a green 'view all publications' button. At the bottom right, under the heading 'The CCOHS Difference', there is a paragraph about the unique nature of CCOHS publications.

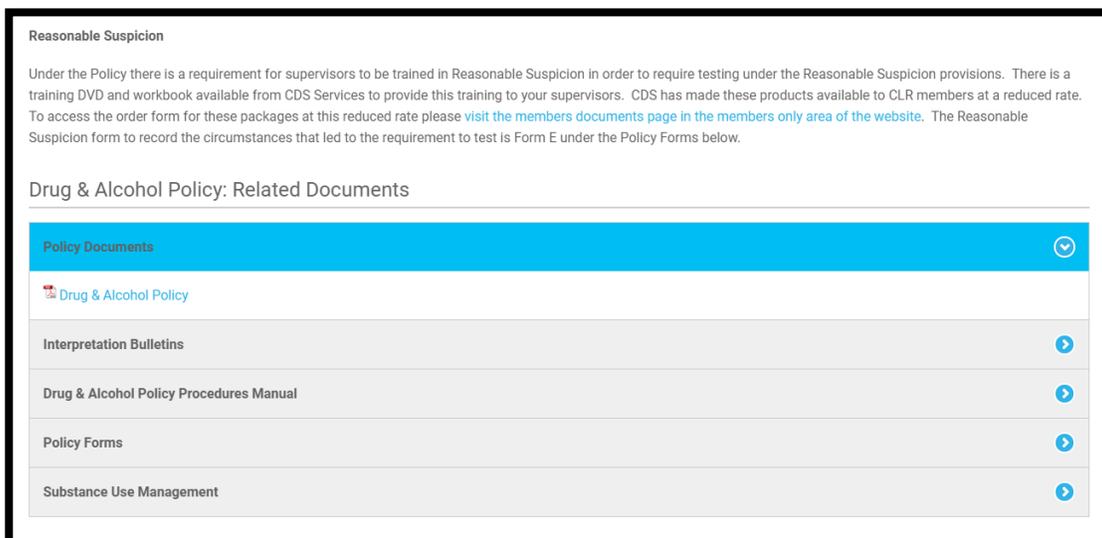
Canadian Centre for Occupational Health and Safety at https://www.ccohs.ca/products/publications/cannabis_whitepaper.pdf

CUPE (BC Region) does not agree with the contents of the whitepaper for the reasons previously indicated in this Guide e.g. the deficiencies noted on page 78. This whitepaper is referred to in order to show the wide variety of resources available and positions taken by both Unions and employers. Assessments should be individualized (noting that arbitrators have not uniformly agreed with this) and adhere to relevant legislation e.g. workers compensation, human rights and privacy; OHS Regulations; the Collective Agreement etc.

The Construction Labour Relations Associations of BC has developed a general drug and alcohol Policy.



Construction Labour Relations Associations of BC general drug and alcohol Policy at <https://www.clra-bc.com/services/drug-alcohol-policy/>



Construction Labour Relations Associations of BC general drug and alcohol Policy at <https://www.clra-bc.com/services/drug-alcohol-policy/>

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Construction Labour Relations Associations of BC general drug and alcohol Policy at <https://www.clra-bc.com/services/drug-alcohol-policy/>

Some employers have opined that post incident testing and near miss / hit testing is permissible if the worker has been involved in a workplace accident or incident, near miss / hit, and there is reason to believe that substance use was involved, even if there was not a safety sensitive position or duties involved.⁶⁶ Even after an incident or accident, an employer may insist on testing if there are concerns for fitness for duty. The CUPE National Representative should be contacted when this occurs. See Appendix E.

⁶⁶ Gokhale, S. & Gorsky, S. (2019). Cannabis at work: 1 year after legalization. HRReporter. Retrieved April 20, 2020 from <https://www.hrreporter.com/employment-law/news/cannabis-at-work-1-year-after-legalization/323820>

IX.II. WORKSAFEBC PRINCIPLES FOR IMPAIRMENT POLICIES

WorkSafeBC has developed a Guide for the development of impairment Policies:

The screenshot shows the WorkSafeBC website interface. At the top left is the WorkSafeBC logo. To the right is a search bar with the text 'Search worksafebc.com' and a magnifying glass icon. Below the logo and search bar is a navigation menu with the following items: 'Health & Safety', 'Insurance', 'Claims', 'I Am a...', and a 'More' button with a hamburger menu icon. The main content area features the title 'Guide to Managing Workplace Impairment and Developing an Impairment Policy'. On the left side of this area is a thumbnail image of the guide's cover. To the right of the thumbnail is a short introductory paragraph: 'Workplace impairment as an occupational health and safety issue is of concern to employers, workers, and other stakeholders in British Columbia. This guide provides employers with information on managing workplace impairment and developing an impairment policy.' To the right of this paragraph is a large blue button labeled 'Download PDF'. Below the button, there is a list of languages: 'Also available in: Tiếng Việt, বাংলা, 한국어, 中文(繁體), 中文(简体), Español, हिंदी'. Further down, it states 'Publication Date: Sep 2018', 'File type: PDF (91 KB)', and 'Asset type: Guide'. At the bottom of the page, there is a 'Share via Email (Anonymously)' button and a row of social media sharing icons (Facebook, Twitter, LinkedIn, YouTube, Instagram, Facebook Messenger, and Email).

WorkSafeBC Guide to Managing Workplace Impairment and Developing an Impairment Policy at <https://www.worksafebc.com/en/resources/health-safety/books-guides/guide-managing-workplace-impairment-developing-impairment-policy?lang=en>

Guide to managing workplace impairment and developing an impairment policy

Workplace impairment as an occupational health and safety issue is of increasing concern to British Columbia employers, workers, and other stakeholders. Physical or mental impairment in the workplace can create a significant risk of injury and death to the impaired worker, co-workers, and members of the public. This document provides employers with guidance on managing workplace impairment and developing an impairment policy.

About substance use and impairment in the workplace

Impairment can have many causes, but the most common substance-related causes of impairment in the workplace are the use of the following:

- Alcohol
- Recreational cannabis (legal as of October 17, 2018)
- Illegal drugs
- Prescription drugs (including medically prescribed cannabis) to treat medical conditions
- Over-the-counter medications

Impairment from substance use can cause physical and behavioural changes that affect people's ability to work safely, putting them or their co-workers at risk of injury. Such changes can include the following:

- Impaired judgment, thinking, and decision making
- Decreased motor coordination, reaction time, and sensory perception
- Psychological or stress-related effects, such as mood swings or personality changes

Employer responsibilities for managing impairment

As an employer, you have a duty to ensure the health and safety of workers. You must not assign impaired workers to activities where impairment may endanger anyone. You must also not permit

workers to remain at any workplace while their ability to work safely is affected by alcohol, a drug, or any other substance or condition.

You should also make workers aware that they have some responsibilities for managing impairment, including the following:

- Making sure that their ability to work safely is not impaired by alcohol, drugs, or other causes
- Not working if their impairment may endanger themselves or anyone else
- Notifying their supervisor if their ability to work safely is impaired for any reason
- Notifying their supervisor if they see someone who appears to be impaired

Employers should develop policies and procedures that address impairment in the workplace. An impairment policy that takes a fitness-to-work approach to impairment can help you to meet your workplace safety obligations. You should make sure workers know and understand your impairment policy.

Steps toward managing impairment

Taking the following steps can help you fulfill your duty to manage impairment in the workplace:

- Assess the tasks carried out in your workplace, and identify hazards that may arise from performing those tasks while impaired.
- Put appropriate controls in place to eliminate or minimize the risk of those hazards arising

in your workplace. An impairment policy is a common administrative control used to minimize the risk of hazards caused by impairment in the workplace. Many workplaces already have impairment policies in the form of drug-and-alcohol or substance-abuse policies.

- If you already have an impairment policy, you should update it to ensure it deals with both medical cannabis use (similar to prescription drug use) and non-medical or recreational cannabis use (similar to alcohol use) after October 17, 2018.
- If you don't have an impairment policy yet, you should develop one.
- Communicate your impairment policy (whether new or updated) to everyone in your workplace.
- Train your workers and supervisors in their responsibilities and rights under the policy.
- Enforce your impairment policy in a fair, consistent manner throughout the workplace.

Who should be involved in developing an impairment policy

Develop your organization's impairment policy in consultation with worker representatives (the worker health and safety representative, joint health and safety committee, or union, as applicable). Depending on the size and complexity of your workplace, it may also be helpful to obtain input from an occupational health professional (such as a nurse or physician) and a lawyer.

Elements of an impairment policy

An impairment policy should include the following elements:

- A statement of purpose
- Rules
- Procedures
- Additional considerations

The following sections provide some guidance about the types of information to include in each element of the policy.

Purpose

The purpose of an impairment policy is to clearly set out your organization's approach to managing workplace impairment and reducing the risks it presents. Include a statement that as the employer, you are committed to providing a safe workplace, and explain what that commitment means. (For example, "The management at [company/organization name] is committed to providing a safe workplace. This duty includes addressing any issues that may impair people's ability to perform their work functions safely. To that end, we have put in place rules and procedures with respect to workplace impairment. These rules and procedures will help protect everyone at our workplace.")

Rules

- Require that individuals must not work if they are impaired.
- Provide a definition of workplace impairment. For example, "Being impaired means being mentally or physically unable to perform assigned work functions safely due to the use or after-effects of alcohol, cannabis, illegal drugs, prescription drugs, or over-the-counter medications, or any other issue that may impair judgment or performance."
- Require that individuals inform their supervisor if their ability to safely perform assigned work is impaired for any reason.
- Require that individuals inform their supervisor if they have concerns about a co-worker's fitness to safely perform assigned work functions.
- Set out restrictions on the presence and use of alcohol, cannabis, and illegal drugs in the workplace.
- State the consequences of policy violations (for example, discipline up to and including dismissal).
- State the consequences of voluntary disclosure (for example, non-disciplinary reassignment, when appropriate, and the availability of an employee assistance program providing support and assistance for individuals with impairment issues).

Procedures

Written procedures should indicate the roles and responsibilities of everyone involved in the procedures (i.e., workers, supervisors, and the employer). The procedures should describe the following:

- How workers can inform their employer if their ability to safely perform assigned work is impaired for any reason.
- How workers can inform their employer of concerns about a co-worker's fitness to perform assigned work functions.
- How employers, supervisors, and workers can [identify signs of impairment](#).
- How supervisors can assess for impairment using functional fitness-to-work testing or substance testing, and the steps supervisors are to take when impairment is suspected.
- How the employer will remove impaired persons from the workplace (for example, arranging for immediate transportation home).
- How the employer can fulfill its duty to accommodate disability-related impairment under the BC Human Rights Code, such as in the following cases:
 - Individuals using a potentially impairing substance, with medical authorization or prescription by a health care professional, to treat a disabling condition.
 - Individuals having a diagnosed substance-use condition.

If you have an accommodation policy, include a reference to it in your impairment policy.

- The support and assistance available for individuals with impairment issues (for example, an employee assistance program).
- The return-to-work process following removal for impairment.

Disclaimer

This document was produced to help workplace parties understand some of their obligations under the *Workers Compensation Act* and the Occupational Health and Safety Regulation. It is not legal advice, and it does not replace the Act or the Regulation.

Additional considerations

Additional considerations include topics such as the following:

- How all workplace parties will be notified of and trained in the policy
- How supervisors will be trained to identify signs of impairment
- The confidentiality and privacy considerations that apply
- When the policy will be evaluated and updated

Resources

Sample impairment policies and impairment policy checklists

- [Drug & Alcohol Policy](#) (Construction Labour Relations Association of BC and the Bargaining Council of BC Building Trades Unions)
- [Workplace Strategies: Risk of Impairment from Cannabis](#) (Canadian Centre for Occupational Health and Safety; see Appendix A of the document)
- [Problematic Substance Use That Impacts the Workplace: A Step-by-Step Guide & Toolkit to Addressing it in Your Business/Organization](#) (Atlantic Canada Council on Addiction)

Other resources

- [Substance Use and Workplace Impairment](#) (WorkSafeBC)
- [Cannabis and Impairment in the Workplace Infographic](#) (Canadian Centre for Occupational Health and Safety)
- [Impairment at Work](#) (Canadian Centre for Occupational Health and Safety)
- [Impaired at Work: A Guide to Accommodating Substance Dependence](#) (Canadian Human Rights Commission; for federally regulated workplaces)

There is limited evidence for an impact on workplace health and safety by marijuana in all workplaces. An individualized assessment of the workplace, including hazard and risk assessments as part of an Exposure Control Plan (if applicable) that takes into account all applicable legislative (e.g. human rights, privacy, etc.), regulatory and Collective Agreement obligations is required. These should occur as required, as per the OHS Regulations and involve the JHSC.

Legalization of Marijuana—What Will It Mean for BC Employers?

If you enjoyed this Practice Point, you can access all CLEBC course materials by subscribing to the [Online Course Materials Library](#).

X. CONCLUSION

There is little evidence an increased impact on health and safety, increased incidence of impairment or intoxication or increased use of marijuana at work in all sectors (there is some evidence of an increase of marijuana use in certain sectors, such as primary industry, and increased use by age group).

While the statistics vary from province to province, there does not appear to have been an increase in non-driving related fatalities, injuries and occupational diseases due to marijuana use. There is no test in Canada that measures impairment due to marijuana. THC can be measured.

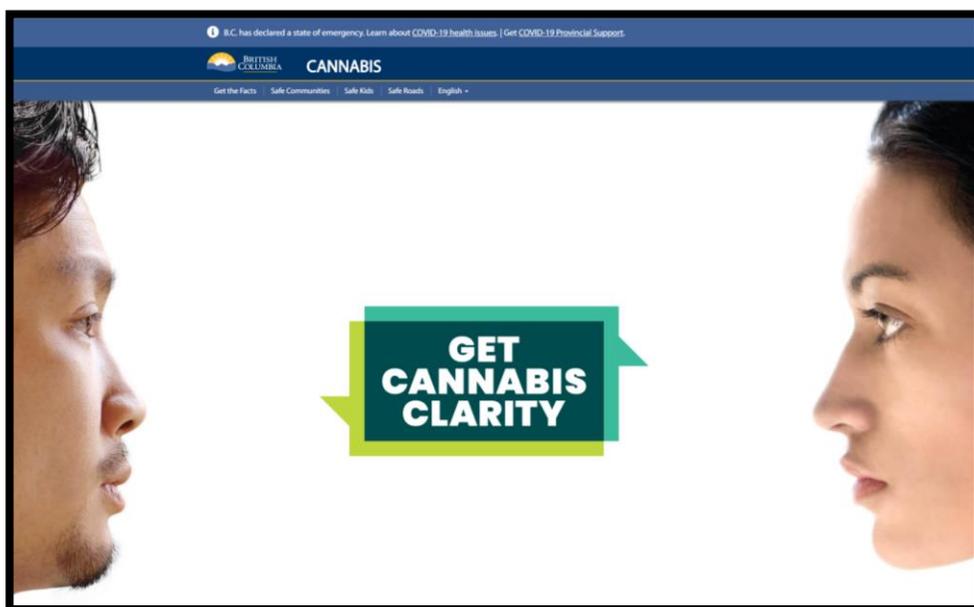
Everyone in the workplace has responsibilities – regarding any type of impairment - as summarized by the *BC Workers Compensation Act*:

- Employers employer must ensure the health and safety of all workers working for that employer, and any other workers present at a workplace at which that employer's work is being carried out, and remedy any workplace conditions that are hazardous to the health or safety of the employer's workers, including ensuring that the employer's workers are made aware of all known or reasonably foreseeable health or safety hazards to which they are likely to be exposed by their work as per Section 21 of the *Workers Compensation Act*.

- Supervisors must ensure the health and safety of all workers under the direct supervision of the supervisor, be knowledgeable about the OHS provisions and those regulations applicable to the work being supervised, and comply with the OHS provisions, the regulations and any applicable orders. They must also ensure that the workers under the supervisor's direct supervision are made aware of all known or reasonably foreseeable health or safety hazards in the area where they work as Section 23 of the *Workers Compensation Act*.
- Workers must take reasonable care to protect the worker's health and safety and the health and safety of other persons who may be affected by the worker's acts or omissions at work, carry out the worker's work in accordance with established safe work procedures as required by the OHS provisions and the OHS Regulations and ensure that the worker's ability to work without risk to that worker's health or safety, or to the health or safety of any other person, is not impaired by alcohol, drugs or other causes as per Section 22 of the *Workers Compensation Act*.
- A worker must advise their employer if their ability to safely perform their work is impaired for any reason, and to not knowingly do work when their impairment may create an undue risk to themselves or anyone else as per Sections 4.19 to 4.20 of the OHS Regulations.
- Employers are obligated to not assign impaired workers to activities where their impairment may create an undue risk to the worker or anyone else and to ensure that workers whose impairment endangers the worker or anyone else, do not remain at the workplace as per Sections 4.19 to 4.20 of the OHS Regulations.

See the BC *Workers Compensation Act* (revised 2020)

<https://www.worksafebc.com/en/law-policy/occupational-health-safety/searchable-ohs-regulation/workers-compensation-act/part-2-occupational-health-and-safety>





MENU

Canada.ca > Employment and Social Development Canada

Impairment and cannabis in the workplace

For more information on workplace impairment, please see the [Questions and answers page](#).

Workplace impairment

Someone who is impaired may have difficulty completing their work tasks safely and may put themselves, their coworkers and the public in danger.

There are many potential causes of impairment. In addition to factors such as fatigue and certain medical conditions, these include the use of legal and illegal substances such as:

- alcohol
- cannabis, including foods that contain cannabis known as "edibles"
- street drugs
- certain medications

A shared responsibility

Everyone has a role to play in workplace health and safety. Employers and employees alike should be prepared to prevent the risk of cannabis impairment at work and should note the following employer and employee responsibilities in [federally regulated workplaces](#). For businesses or industries regulated by the province or territory, please refer to [provincial and territorial governments](#).

Employers' responsibilities

Employers should:

- ensure the health and safety of all employees at work
- address physical and/or psychological hazards in their workplace, including when impaired.
- work with employee representatives to develop, implement and evaluate a [hazard prevention program](#) to monitor and prevent hazards
- include policies on substance use and impairment in hazard prevention programs when the use of cannabis and other causes of impairment represents a hazard.

Employees' duties

Employees must:

- work safely
- understand the impact that using substances (medical/therapeutic or non-medical) can have on their safety and that of others
- report to their employer anything or circumstance that is likely to be hazardous to the employees or any other person in the workplace
- inform their employer if a medical condition or treatment may cause impairment and impact their ability to perform their job safely
- follow all instructions provided by the employer concerning the health and safety of employees

Government of Canada. Impairment and cannabis in the workplace at <https://www.canada.ca/en/employment-social-development/services/health-safety/cannabis-workplace.html>



XI. ADDITIONAL INFORMATION

Boyd, N. (2013). The Enforcement of Marijuana Possession Offences in British Columbia: A Blueprint for Change. Simon Fraser University

<http://neilboyd.net/articles/Blueprint%20for%20Change.pdf>

British Columbia Pharmacy Association. (2015, August 5). BCPHA Board Position Statement: Medical Marijuana

http://www.bcpharmacy.ca/uploads/BCPhA%20Position%20Statement_Medical%20Marijuana_2015_08_05.pdf

Cannabis at Work. Toronto Transit Commission Implements Random Drug Testing. April 28, 2017

<http://cannabisatwork.com/articles/toronto-transit-commission-implements-random-drug-testing>

Canadian Centre for Health for Occupational Health and Safety

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

Canadian Centre for Occupational Health and Safety. Workplace Strategies: Risk of Impairment From Cannabis. Ottawa: Government of Canada, 2017

Canadian Legal Information Institute. *Amalgamated Transit Union, Local 113 v Toronto Transit Commission*, 2017 ONSC 2078

<https://www.canlii.org/en/on/onsc/doc/2017/2017onsc2078/2017onsc2078.html>

Canadian Legal Information Institute

Calgary (City) v. Canadian Union of Public Employees (CUPE 37), 2015

<https://www.canlii.org/en/ab/abgaa/doc/2015/2015canlii61755/2015canlii61755.pdf>

Canadian Legal Information Institute

French v. Selkin Logging, 2015 BCHRT 101.

<https://www.canlii.org/en/bc/bchrt/doc/2015/2015bchrt101/2015bchrt101.pdf>

Canada's Marijuana Regulations

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WorkSafeBC Due Diligence Checklist

<https://www.worksafebc.com/en/resources/health-safety/checklist/due-diligence-checklist?lang=en>

The screenshot shows the PSHSA.ca website with a navigation bar containing 'Training', 'Consulting', 'Safe Environments', 'Healthy Workers', 'Emerging Issues', and 'Company'. The main content area features three articles:

- MEDICAL CANNABIS IN THE WORKPLACE**: A 'Fast Fact' article providing basic information on cannabis, its history in Canada, applicable legislation, and suggested control measures for the workplace.
- Two-Part Series Webinar on Medical Marijuana**: A series of two webinars. Part 1, 'Dispelling the Myths', provides basic information on cannabinoids and medical marijuana. Part 2, 'Accommodating Medical Marijuana in the Workplace', provides in-depth information on legal framework, accommodation, and recommendations.
- Clearing the Haze: The Impacts of Marijuana in the Workplace**: An expert panel discussion from the HRP 2018 Annual Conference and Trade Show, reviewed by Kim Slade, Director of Emerging Markets and Commercialization.

Ontario Public Health & Safety Association at <https://www.pshsa.ca/emerging-issues/issues/cannabis-in-the-workplace>

XII. APPENDICES

APPENDIX A

WorkSafeBC has developed a Toolbox Meeting Guide for Substance Use and Workplace Impairment:

Substance Use and Workplace Impairment



Workplace impairment means being unfit to safely perform work. This toolbox meeting guide supports employers in speaking to workers about the causes of impairment and responsibilities for effectively managing it in the workplace.

[Download PDF](#)

Also available in: Tiếng Việt, বাংলা, 한국어, 中文(繁體), 中文(简体), Español, हिंदी

Publication Date: Sep 2018

File type: PDF (118 KB)

Asset type: Toolbox Meeting Guide

Reference: TG 18-01

[Share via Email \(Anonymously\)](#)



WorkSafeBC. Substance Use and Workplace Impairment Toolbox Meeting Guide at <https://www.worksafebc.com/en/resources/health-safety/toolbox-meeting-guides/substance-use-and-workplace-impairment?lang=en>

Substance use and workplace impairment

What is impairment?

Workplace impairment means being unfit to safely perform work. People who are impaired on the job can injure themselves or others.

Impairment can have many causes. One of the most common causes of impairment in the workplace is the use of substances such as the following:

- Alcohol
- Recreational cannabis (legal as of October 17, 2018)
- Illegal drugs
- Prescription drugs (including medically prescribed cannabis) to treat medical conditions
- Over-the-counter medications

Impairment from substance use (being “drunk,” “stoned,” “high,” or “buzzed”) can cause changes in the body and mind. These changes can affect people’s ability to work safely, putting them or their co-workers at risk of injury, and can include the following:

- Impaired judgment, thinking, and decision making
- Decreased motor coordination, reaction time, and sensory perception
- Psychological or stress-related effects, such as mood swings or personality changes

Responsibilities for managing impairment in the workplace

Workers

As a worker, you are responsible for your own safety as well as that of your co-workers. You must do the following:



- Make sure that your ability to work safely is not impaired by alcohol, drugs, or other causes.
- Do not work if your impairment may endanger you or anyone else.
- Tell your supervisor or employer if your ability to work safely is impaired for any reason.
- Tell your supervisor or employer if you see someone who appears to be impaired.

Employers

Employers also have responsibilities when it comes to managing impairment in the workplace. Employers must do the following:

- Prevent an impaired worker from performing activities where impairment may endanger the impaired worker or anyone else.
- Refuse to allow a worker to remain at any workplace while the worker’s ability to work safely is impaired by alcohol, drugs, or other causes.

Record of meeting

Project			
Address		City	Province
Employer		Supervisor	
Date (yyyy-mm-dd)	Time	Shift	
Number in crew		Number attending	

Other safety issues or suggestions made by crew members

Record of those attending

Name (please print)	Signature	Company
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		

Manager's remarks	
Manager's signature	Supervisor's signature

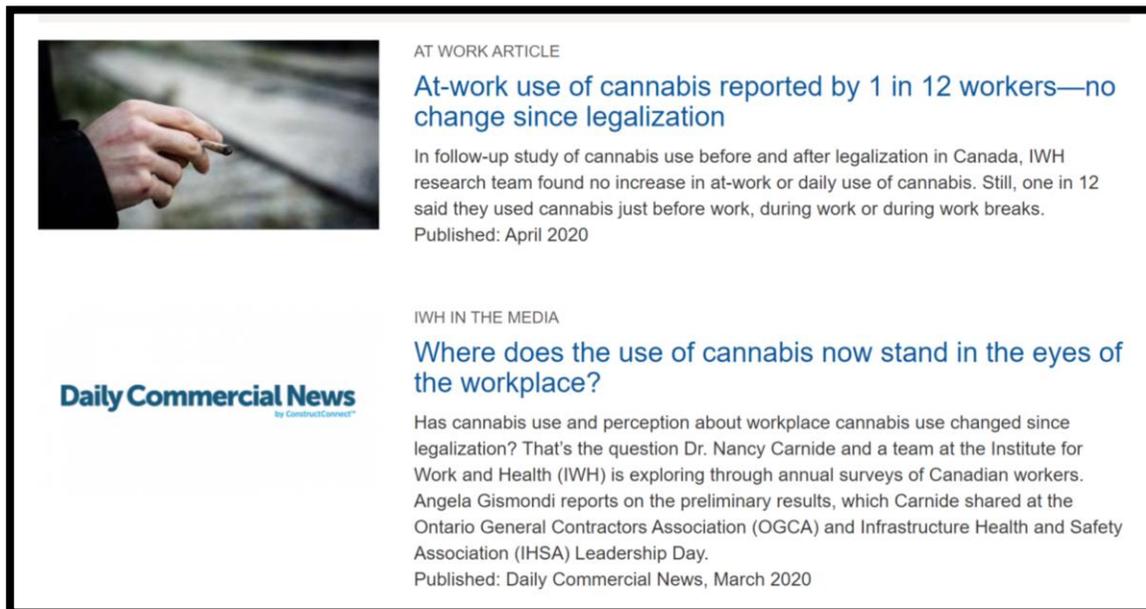
APPENDIX B

WorkSafeBC Due Diligence Checklist at <https://www.worksafebc.com/en/resources/health-safety/checklist/due-diligence-checklist?lang=en>

DUE DILIGENCE CHECKLIST		Page 1 of 2
<p>What is the <i>standard</i> of due diligence? Taking all reasonable care to protect the well-being of employees or co-workers.</p>		<p>What is the <i>defense</i> of due diligence? All reasonable precautions to comply were taken in the circumstances.</p>
<p>What is the <i>test</i> of due diligence? Documentation of an effective OH&S program; an effective OH&S program includes:</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> A written OHS program that has been implemented. <input checked="" type="checkbox"/> An employer who takes steps to control or eliminate specific hazards. <input checked="" type="checkbox"/> Written safe work procedures that are understood and followed by workers. <input checked="" type="checkbox"/> Workers who are provided with adequate instruction, training, supervision and discipline to work safely. 		
<p>How can this checklist help? The following checklist is intended to help employers determine if they have sufficient documentation of an effective OH&S program. Other due diligence factors to consider include health and safety performance in the workplace, the employer's history of compliance with the Workers Compensation Act and OH&S Regulation, the degree of hazard associated with violations, etc. This checklist is only a guideline.</p>		
<p><i>Workplace (specify):</i></p>		
<p>Part 1: Does the employer keep the following types of records or documents?</p>		
<input type="checkbox"/> Worker orientation records	<input type="checkbox"/> Records of worker/supervisor training showing the date, names of attendees and topics covered (e.g. Lockout, WHMIS)	
<input type="checkbox"/> Inspection reports and records of corrective actions taken to solve problems	<input type="checkbox"/> Incident/accident investigation reports and records of corrective actions taken to solve problems	
<input type="checkbox"/> Records of meetings and crew talks where safety issues were discussed	<input type="checkbox"/> Supervisor's notes and logs of safety contacts with workers	
<input type="checkbox"/> Records showing use of progressive discipline to enforce safety rules and written safe work procedures	<input type="checkbox"/> Joint OH&S Committee meeting reports showing steps taken to address health and safety issues	
<input type="checkbox"/> Subcontractor pre-qualification documents	<input type="checkbox"/> Equipment log books and maintenance records	
<input type="checkbox"/> First aid records, medical certificates, hearing tests	<input type="checkbox"/> Forms and checklists showing the employer requires workers to follow safe work procedures (e.g. confined space entry permits)	
<input type="checkbox"/> Sampling and monitoring records of exposures to harmful substances	<input type="checkbox"/> Emergency response plan and record of drills and any resulting improvements	
<input type="checkbox"/> OH&S related budget items and purchase orders	<input type="checkbox"/> Statistics on the frequency and severity of accidents	
<p>Part 2: Do the employer's records or documents show an effective OH&S Program?</p>		
<p>Do records/documents indicate that the employer/management:</p>		
1. State and communicate a clear workplace OH&S policy	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2. Assign responsibility and resources for implementing OSH Program to identified person(s)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
3. Include workplace OH&S issues on management meeting agendas	<input type="checkbox"/> Yes	<input type="checkbox"/> No
4. Require contractors to conform to OH&S regulations	<input type="checkbox"/> Yes	<input type="checkbox"/> No
5. Ensure records are maintained (See Part 1)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
6. Review statistics on the frequency and severity of accidents, as well as injury and illness trends over time	<input type="checkbox"/> Yes	<input type="checkbox"/> No
7. Assign responsibility for identifying hazards and conducting risk assessments	<input type="checkbox"/> Yes	<input type="checkbox"/> No
8. Implement appropriate controls (engineering, work practice/administrative, PPE) for identified hazards (e.g. machine guarding, lockout, bloodborne pathogens, confined space, falls from elevation, chemical hazards, repetitive strain injury, etc.)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
9. Implement a preventative maintenance schedule as required by manufacturers' and industry recommendations and standards	<input type="checkbox"/> Yes	<input type="checkbox"/> No
10. Address Joint Health & Safety Committee or health & safety representative recommendations	<input type="checkbox"/> Yes	<input type="checkbox"/> No
11. Review OH&S Program activities (e.g. once a year) and make improvements as needed	<input type="checkbox"/> Yes	<input type="checkbox"/> No

APPENDIX C

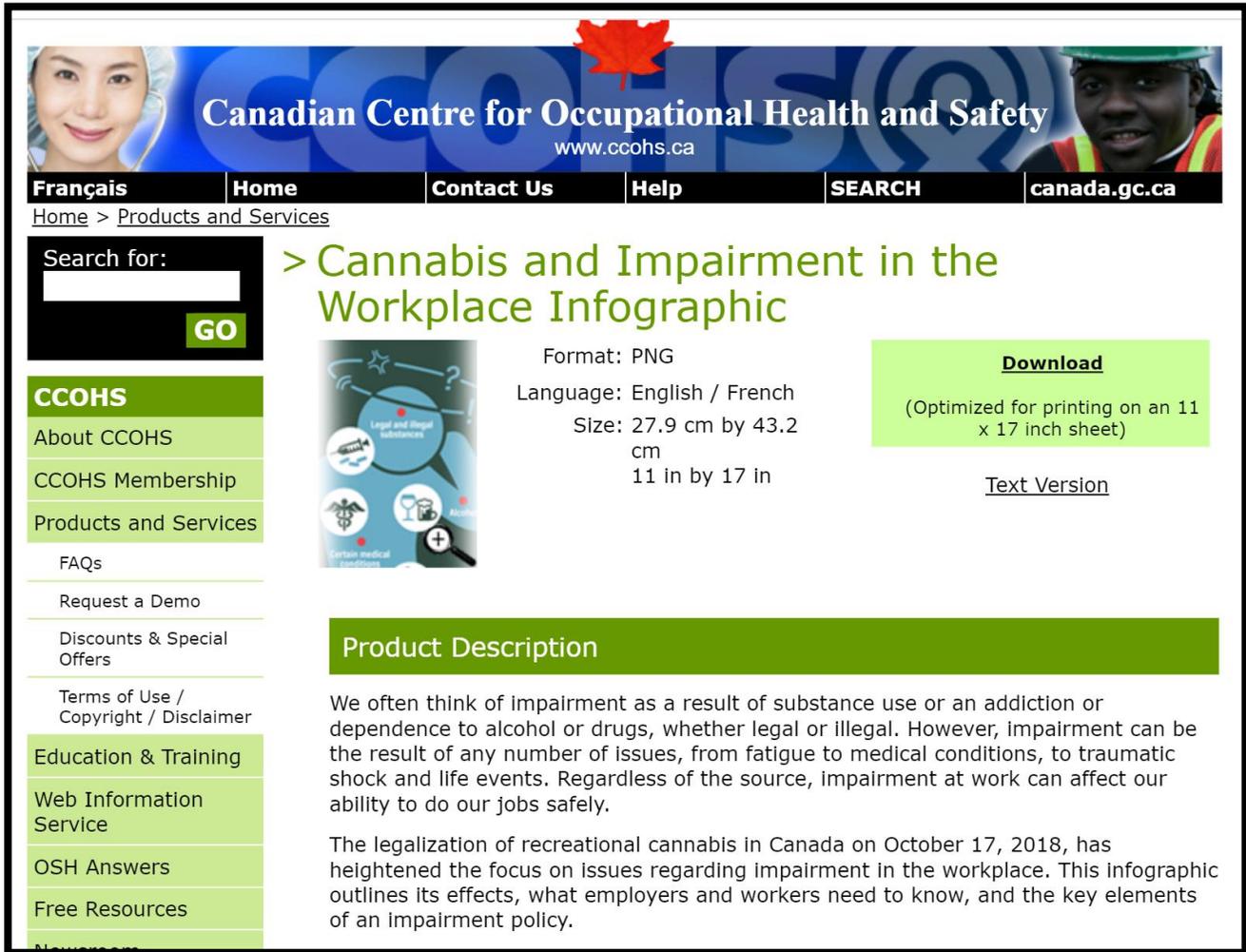
Institute for Work & Health (following two Figures):



Institute for Work & Health at
<https://www.iwh.on.ca/topics/cannabis-and-work?title=&type=All&page=1>

APPENDIX D

The Canadian Centre for Occupational Health and Safety has developed an infographic on Cannabis and Impairment in the Workplace:



Canadian Centre for Occupational Health and Safety
www.ccohs.ca

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> Cannabis and Impairment in the Workplace Infographic



Format: PNG
Language: English / French
Size: 27.9 cm by 43.2 cm
11 in by 17 in

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(Optimized for printing on an 11 x 17 inch sheet)

[Text Version](#)

Product Description

We often think of impairment as a result of substance use or an addiction or dependence to alcohol or drugs, whether legal or illegal. However, impairment can be the result of any number of issues, from fatigue to medical conditions, to traumatic shock and life events. Regardless of the source, impairment at work can affect our ability to do our jobs safely.

The legalization of recreational cannabis in Canada on October 17, 2018, has heightened the focus on issues regarding impairment in the workplace. This infographic outlines its effects, what employers and workers need to know, and the key elements of an impairment policy.

Canadian Centre for Occupational Health and Safety infographic on Cannabis and Impairment in the Workplace at

<https://www.ccohs.ca/products/posters/impairment/>

Cannabis and Impairment in the Workplace

Causes of impairment

- Legal and illegal substances
- Alcohol
- Certain medical conditions
- Fatigue
- Life stresses

Impacts of impairment

- Inability to concentrate, think clearly, and make decisions
- Dizziness, drowsiness, disorientation, and confusion
- Slowed reaction times and lack of coordination
- Confrontational and aggressive behaviours, disinterest

Impairment policy tips for employers

- Define impairment.
- Address impairment from both recreational and medical cannabis as well as other causes in your workplace policies and programs.
- State if the item is allowed on premise, and if so, under what circumstances.
- Educate workers on your policies and programs, and ways that the workplace can help and provide support, such as Employee Assistance Programs (EAPs).
- Train workers, supervisors and managers on how to identify signs of suspected impairment, and how to respond appropriately.
- Describe when accommodation will be considered (for example, workers with medical needs or disabilities).
- Explain how disciplinary actions will be conducted, when necessary.
- Seek legal advice before testing workers for substances. Testing typically doesn't reveal the level of impairment and is not generally supported by human rights legislation.
- Encourage employees to self-declare if they feel that they may be impaired, and that this statement can be made without fear of stigma or reprisal.

What the law says

Each province and territory can opt to set more restrictive laws over the federal rules about minimum age, possession limits, and where cannabis can be used.

Check with your jurisdiction here: <http://bit.ly/cannabislaws>

Employers are responsible for developing hazard prevention programs, which includes addressing any potential hazard in the workplace, including impairment.

Worker responsibilities

- As per policy, declare anything that might impair your ability to do your work safely
- Work in a safe manner
- Follow education and training
- Report concerns to your supervisor

CCOHS.ca
Canadian Centre for Occupational Health and Safety

They have also created a handout "Impairment: Cannabis in the Workplace":

Canadian Centre for Occupational Health and Safety
Centre canadien d'hygiène et de sécurité au travail

Canadian Centre for Occupational Health and Safety
www.ccohs.ca

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Help
SEARCH
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GO

> Impairment: Cannabis in the Workplace Handout

Format: Print

Language: English / French

Size: 19,6 cm by 21,6 cm
7.7 in by 8,5 in

Single Item: **\$2*** CAD

*Single item price. Minimum order of 10 items applies.

Shipping and handling and applicable taxes are added during Check Out.

Product pricing and availability are subject to change without notice.

To place an offline order, please call Client Services at 1-800-668-4284 or 905-570-8094.

[Printer-friendly](#)

Place your order:

Quantity:

Price: **\$20** CAD
Status: **In Stock**

CCOHS staff are currently working offsite and are unable to ship any physical products (guides, posters, pins) until further notice. PDF products are still available for purchase or download. We apologize for any inconvenience.

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Canadian Centre for Occupational Health and Safety Handout “Impairment: Cannabis in the Workplace” at <https://www.ccohs.ca/products/boutique/impairment-handout/>



The Canadian Centre for Occupational Health and Safety has developed an online course and podcast “Impairment and Cannabis in the Workplace”:

Government of Canada / Gouvernement du Canada | Canada.ca | Services | Departments | Français

CCOHS

Canadian Centre for Occupational Health and Safety

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Impairment and Cannabis in the Workplace **Updated!**

Gain an understanding of your role in addressing impairment in the workplace, using cannabis as an example.

Single seat: **\$49.00** * CAD

Format: e-Course

Language: English/French

Access: Single Seat (90 days access from date of purchase)
Multi-seat (1 year access from date of purchase)

Quantity:

Language:

*Save up to 80% with [Multi-seat Licenses](#) for qualifying e-courses. The more seats you buy the more you save!

Status Immediate Access

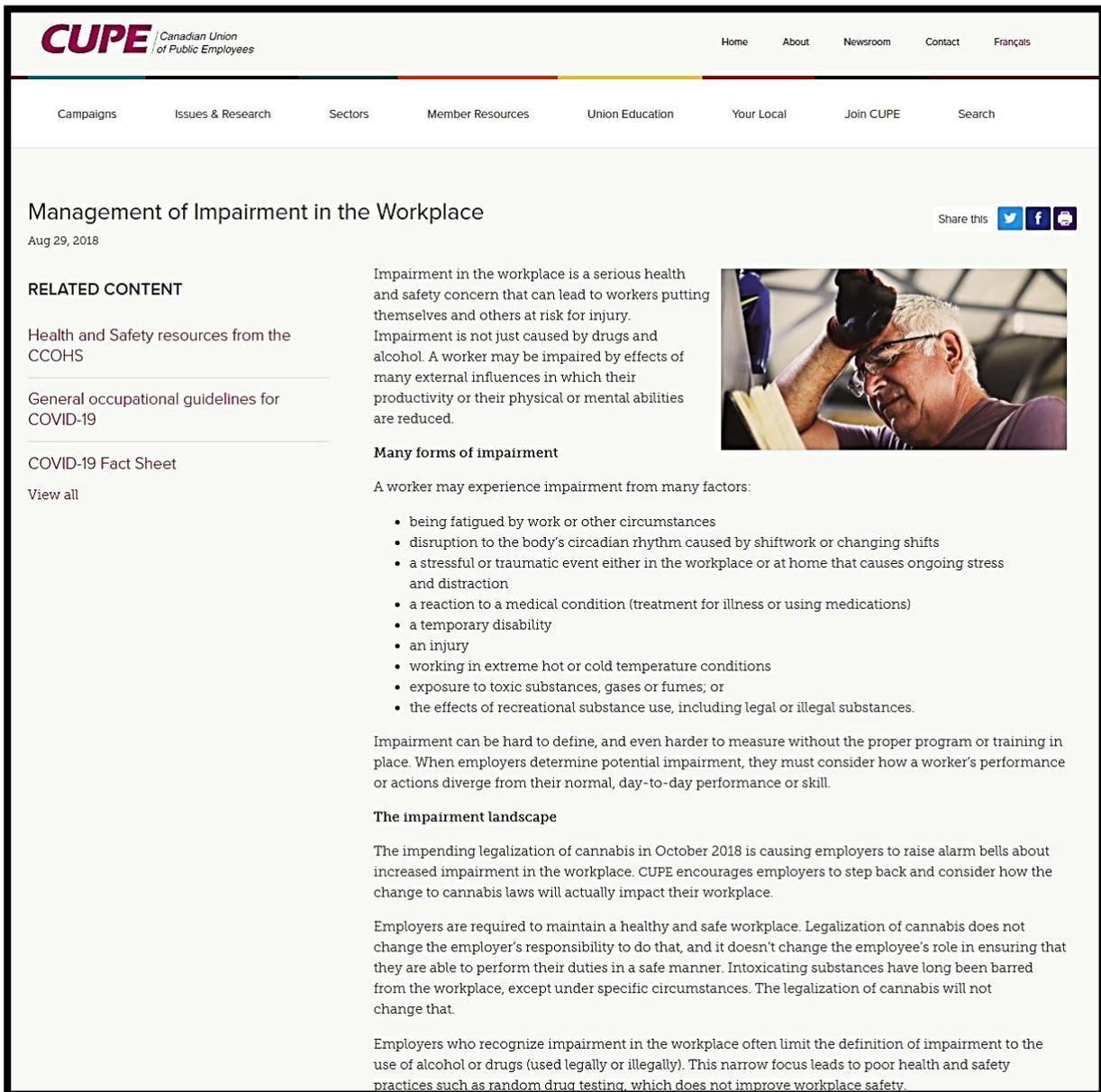
ADD TO CART

Become a member
to SAVE 5-10%
(optional)

Canadian Centre for Occupational Health and Safety has developed an online course “Impairment and Cannabis in the Workplace” at <https://www.ccohs.ca/products/courses/impairment/>

APPENDIX E

CUPE Health and Safety has developed materials on impairment, such as the “Management of Impairment in the Workplace” Fact Sheet:



The screenshot shows the CUPE website page for "Management of Impairment in the Workplace". The page features a navigation bar with links for Home, About, Newsroom, Contact, and Français. Below the navigation bar, there are tabs for Campaigns, Issues & Research, Sectors, Member Resources, Union Education, Your Local, Join CUPE, and Search. The main content area includes the title "Management of Impairment in the Workplace" with a date of Aug 29, 2018, and social media sharing options. A "RELATED CONTENT" section lists links for "Health and Safety resources from the CCOHS", "General occupational guidelines for COVID-19", and "COVID-19 Fact Sheet", with a "View all" link. The main text defines impairment as a serious health and safety concern and lists various factors such as fatigue, shiftwork, stress, medical conditions, injuries, and exposure to toxic substances. It also discusses the "impairment landscape" in relation to cannabis legalization and the responsibility of employers to maintain a safe workplace.

CUPE / Canadian Union of Public Employees

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Management of Impairment in the Workplace

Aug 29, 2018

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Impairment in the workplace is a serious health and safety concern that can lead to workers putting themselves and others at risk for injury. Impairment is not just caused by drugs and alcohol. A worker may be impaired by effects of many external influences in which their productivity or their physical or mental abilities are reduced.



Many forms of impairment

A worker may experience impairment from many factors:

- being fatigued by work or other circumstances
- disruption to the body's circadian rhythm caused by shiftwork or changing shifts
- a stressful or traumatic event either in the workplace or at home that causes ongoing stress and distraction
- a reaction to a medical condition (treatment for illness or using medications)
- a temporary disability
- an injury
- working in extreme hot or cold temperature conditions
- exposure to toxic substances, gases or fumes; or
- the effects of recreational substance use, including legal or illegal substances.

Impairment can be hard to define, and even harder to measure without the proper program or training in place. When employers determine potential impairment, they must consider how a worker's performance or actions diverge from their normal, day-to-day performance or skill.

The impairment landscape

The impending legalization of cannabis in October 2018 is causing employers to raise alarm bells about increased impairment in the workplace. CUPE encourages employers to step back and consider how the change to cannabis laws will actually impact their workplace.

Employers are required to maintain a healthy and safe workplace. Legalization of cannabis does not change the employer's responsibility to do that, and it doesn't change the employee's role in ensuring that they are able to perform their duties in a safe manner. Intoxicating substances have long been barred from the workplace, except under specific circumstances. The legalization of cannabis will not change that.

Employers who recognize impairment in the workplace often limit the definition of impairment to the use of alcohol or drugs (used legally or illegally). This narrow focus leads to poor health and safety practices such as random drug testing, which does not improve workplace safety.

CUPE Health and Safety Management of Impairment in the Workplace at <https://cupe.ca/management-impairment-workplace>

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Employers who recognize impairment in the workplace often limit the definition of impairment to the use of alcohol or drugs (used legally or illegally). This narrow focus leads to poor health and safety practices such as random drug testing, which does not improve workplace safety.

Random testing does little to detect impairment at the workplace, and it detracts from the employer's role in effectively and properly managing workplace hazards. It also intrudes upon a worker's privacy and dignity. Such testing has been largely rejected by courts and arbitrators in Canada. Most drug tests (with the notable exception of alcohol) only determine if a substance is present in a worker's body and does not test levels of impairment. As such, CUPE opposes random testing.

The cause of a worker's impairment can be short-lived, or it can be a more chronic problem. Either way, the impact is the same: the worker is unable to perform their job in a normal, functional manner. When this happens, employers have a responsibility to take steps to ensure the safety risk is managed so that people in the workplace are not injured.

Impairment is more than substance use

CUPE calls on employers to truly manage **all forms of impairment** to help keep the workplace safe. No one wants to see workers who are impaired at the workplace. However, workplace safety is the goal, and employers must adopt policies and practices that are actually based on the prevention of work-related injuries resulting from impairment.

Impairment can be a result of much more than just substance use. Employer policies and practices must recognize that workers are not robots and that influences outside the workplace can lead to impairment situations. Employers must manage impairment by setting up systems that encourage non-punitive, self-reporting, face-to-face interactions between supervisors and workers, so that workers and their employers can find solutions to keep everyone safe at work, and where workers do not fear losing their jobs.

Managing impairment

To effectively manage impairment and assist workers, employers must work with unions and health and safety committees to develop and implement policies and programs.

Those policies and programs must include the following criteria:

1. **Purpose.** The purpose and goals of the policy and programs should be clearly defined.
2. **Definition of impairment.** Employers should include a broad definition that considers the multiple causes described above, including definitions of fatigue and other factors beyond substance use and substance dependence.
3. **Non-punitive reporting mechanism.** Workers should be able to contact their immediate supervisor if they do not feel like they will be able to perform their job safely and to discuss alternatives to perform work that would put themselves or others at risk. The right to confidentiality, where reasonable, should also be included. Additionally, workers should feel free to disclose any potential side effects of medications they are required to take without fear of reprisal (for example, potential side effects of diabetes insulin). They should not be compelled or required to disclose the underlying medical condition or the names of specific drugs.
4. **Privacy.** There are many privacy laws that policies must comply with. Employers must explain to workers how their privacy (both legal and in general) will be managed.
5. **Program maintenance.** The program should include expected steps that mid-level and direct management shall take to enforce policies, including regular meetings and discussions with their team members about impairment. The program should outline training, timelines for review and a process for updating based on new scientific research.
6. **Detailed response.** Policies should describe the steps that employers will take once an employee self-reports impairment issues. They should include guidelines for approaching and discussing potential impairment with a worker and guidelines for implementing any safety measures related to intervention. Workers should not be disciplined for self-reporting, nor should there be retaliation or reporting or claims suppression of any kind.
7. **Employee assistance and accommodation process.** Any worker experiencing issues with substance use should speak to a health care provider and/or a union to determine whether any treatment or accommodation is necessary to prevent the worker from attending work while impaired. Employer policies must provide for workers to disclose, and seek help for, any substance use issues, without risk of discipline, **to the point of undue hardship**. Options for appropriate accommodation should be explored with the employee, management, union representation and qualified professional(s). This should include re-integration into the workforce should a work absence be necessary to facilitate the recovery process.
8. **Employee reporting or response.** Employers should state when they would expect other employees to take action, and the processes they should follow, if they suspect other workers are impaired.

9. **Prohibited substances.** Employers should specifically describe substances that are prohibited in the workplace, and those that aren't.
10. **Discovered impairment.** Employers are within their rights to require an impaired worker to go home. The employer's response to workplace impairment must distinguish between culpable incidents, which may be dealt with in accordance with any progressive discipline policy, and non-culpable or disability-related incidents, which may, depending on the circumstances, require accommodation.
11. **For-cause testing.** If the employer imposes "for-cause" drug and alcohol testing, the policy or procedure must clearly outline the step-by-step process for a required test, as well as the testing procedure itself. Any requirement for testing should only happen after a face-to-face interaction between the employee and supervisor, and the documentation of strong evidence that suspected impairment is caused by a prohibited substance (such as smelling cannabis or alcohol). A union rep should also be involved. Any testing regime must adhere to human rights, privacy laws, *The Charter of Rights and Freedoms* and related jurisprudence.
12. **Post-incident testing.** CUPE does not support the notion that, just because a worker was involved in an incident, they should be compelled to participate in a drug test. CUPE believes that automatic post-incident testing only serves to drive down the reporting of incidents. As such, workers should not be automatically submitted to drug testing post-incident unless they meet the threshold of "for-cause testing" described previously.
13. **Policies must apply to all.** Any policy on impairment must apply organization-wide, regardless of an employee's position or function. Employers also need to consider how policies would apply to volunteers, students, interns, or third-party employees.
14. **Communication of policies and programs.** Policies should be communicated through an education program or other appropriate methods developed in consultation with the health and safety committee. Simply sending out a memo or a "policy update" email is not sufficient. Training should include all aspects of the policy or program.

For more information, visit cupe.ca/health-and-safety or contact your CUPE National Servicing Representative. You can also contact the CUPE National Health and Safety Branch at:

Canadian Union of Public Employees
1375 St. Laurent Boulevard
Ottawa, Ont.
K1G 0Z7

References:

<https://ccohs.ca/oshanswers/hsprograms/impairment.html>

<https://www.workplacestrategiesformentalhealth.com/psychological-health-and-safety/impairment-policy>

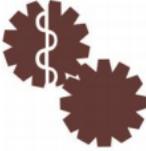
ATTACHMENTS

 Fact Sheet: Management of Impairment in the Workplace

APPENDIX F

The Occupational and Environmental Medical Association of Canada Position Statement On The Implications Of Cannabis Use For Safety-Sensitive Work dated September 24, 2018.

September 24, 2018



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**POSITION STATEMENT ON THE IMPLICATIONS OF CANNABIS USE
FOR SAFETY-SENSITIVE WORK**

The Occupational and Environmental Medical Association of Canada (OEMAC) is the largest national association of physicians with an interest in occupational and environmental medicine (OEM).

OEMAC serves as a unified voice for OEM in Canada and as an evidence-based organization it upholds its members' responsibility to ensure the health and safety of the working individual as well as worker populations, and it supports affirmative measures to ensure health and safety in the workplace. With this mission in mind, the present Position Statement aims to help OEMAC members navigate and advise on the implications of cannabis use on safety-sensitive work.

OEMAC recognizes that current evidence indicates cannabis is the most commonly encountered agent in workplace drug testing in Canada, and second to alcohol, the most prevalent substance implicated in driving under the influence.

OEMAC further recognizes the following evidence-based and expert-consensus based knowledge and statements:

- Cannabis is derived from the cannabis plant and delivers various pharmacologically active agents to the consumer.
- Delta-9-tetrahydrocannabinol (THC) is the principal psychoactive constituent of cannabis.
- THC is fat-soluble and can accumulate in the body resulting in prolonged exposure of the brain to the substance over time even after discontinuation of consumption. The risk for impairment may continue while the substance washes out of the body's fat stores and the brain continues to be exposed to it.
- The full extent of the effects of prolonged THC exposure to the brain is unknown.
- Cannabis use is associated with a wide range of adverse effects including short-term impairment of memory, motor coordination, and judgment, driving, and risk of injury.
- Aside from intoxication, cannabis is considered to be addictive and associated with the potential for the development of cannabis use disorder (cannabis dependence, addiction) as well as cannabis withdrawal.
- The presence of cannabis results in an increased risk of road traffic accidents, likely more than doubling the crash risk.
- The impairing effects of cannabis are expected to decrease with time following cannabis use and with the ensuing metabolism and elimination from the body of the pharmacologically active compounds. However, we recognize the considerable uncertainty around the extent and duration of impairment, especially taking into account individual differences between workers.



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- The impairing effect of cannabis, which is broader than the syndrome of intoxication, may be enhanced when the substance is used with other impairing compounds, including alcohol.
- Based on limited data, OEMAC concludes that the duration of impairment may exist for 24 hours or longer after use, and the user may be unaware of the impairing effects. More research is needed to delineate the duration of effect more precisely.

With respect to workers in safety-sensitive settings, and with the aim of ensuring the health and safety of the individual as well as worker populations, OEMAC draws attention to the following conclusive statements:

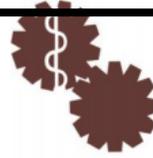
1. Irrespective of the source of procurement, the use of cannabis can lead to impairment, which may adversely impact the performance of individuals at work.
2. It is recognized that the timing and duration of cannabis impairment is variable and that more research is needed in this regard. To provide practical guidance, until definitive evidence is available, it is not advisable to operate motor vehicles or equipment, or engage in other safety-sensitive tasks for 24 hours following cannabis consumption, or for longer if impairment persists.
3. In light of the legislative change, it is recommended that employers update relevant workplace drug and alcohol policies to address the use of cannabis and the mitigation of occupational risk.
4. Education and training on the risks of cannabis use as well as the recognition of impairment, and the treatment options available to employees with substance use issues, for both employers and employees, is advisable.
5. More research is needed to adequately study cannabis-related impairment, including methods for the detection of impairment as well as the further implications of the legalization of cannabis on the individual, the workplace, and on human resources policies and practices.

Endorsement, acknowledgement, and disclaimer:

This Position Statement has been endorsed by the Board of Directors of the Occupational and Environmental Medical Association of Canada.

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As with any guidance document, application of this Position Statement to individual circumstances must be considered in the context of the specific situation and should take into account both the nature of cannabis use, and the safety-sensitive work in question.



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The Occupational and Environmental Medical Association of Canada Position Statement On The Implications Of Cannabis Use For Safety-Sensitive Work dated September 24, 2018 at <https://oemac.org/wp-content/uploads/2018/09/Position-Statement-on-the-Implications-of-cannabis-use.pdf>

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