

The information contained in this resource is not legal advice and should not be relied on as such. Please note that this resource focuses primarily on impairment that is due to drug (legal and illegal) or alcohol use.

1. What is impairment at work?
2. Why do workplaces need a drug and alcohol policy?
3. What do employers need to consider when addressing drug and alcohol impairment in the workplace?
4. What should be done if an impaired individual is suspected?
5. Can I perform drug and alcohol testing on my employees?

1. What is impairment at work?

Impairment at work can be the result of various situations, including the use of legal or illegal drugs, or alcohol. The Canadian Human Rights Commission lists the following as possible characteristics of impairment in the workplace:

- personality changes or erratic behaviour (e.g., increased interpersonal conflicts, overreaction to criticism)
- appearance of impairment at work (e.g., odour of alcohol or drugs, glassy or red eyes, unsteady gait, slurring, poor co-ordination)
- consistent lateness, absenteeism or reduced productivity or quality of work.

Causes of impairment can also include fatigue, medical conditions, some prescription medications and unresolved conflict (personal or work-related). Displaying some or all of the signs of impairment does not necessarily indicate substance use or substance abuse. Employers and supervisors should not make assumptions about causes of impairment, and should talk to workers they believe may be impaired to investigate the situation further. It is appropriate to ask the worker what is going on. However, employers do not have the right to ask for or access workers' personal health information.

Sources: Canadian Centre for Occupational Health and Safety (CCOHS); Canadian Human Rights Commission

2. Why do workplaces need a drug and alcohol policy?

As set out by *The Workplace Safety and Health Act* and *Workplace Safety and Health Regulation*, employers must take necessary precautions to ensure the safety, health and welfare of workers, and to provide and maintain a safe workplace.

Drugs and alcohol can impair a person's mental and physical abilities, which can affect their safety and the safety of others at their workplace.



Employers can demonstrate due diligence in preventing impairment in their workplace by having a drug and alcohol policy in place to show that they have identified hazards (the risk of drug or alcohol impairment in the workplace), made changes to correct these conditions as necessary and trained supervisors and workers on the drug and alcohol policy (CCOHS).

Source: CCOHS

3. What do employers need to consider when addressing drug and alcohol impairment in the workplace?

- Employers should develop and follow a drug and alcohol policy. You should never copy or use a blank policy. It is important to seek legal counsel when developing a policy in order to create one that addresses the specific needs of your workplace.
- Employers should educate their employees on the drug and alcohol policy. Training should include information on how to recognize impairment, and how to best respond to an impaired individual in the workplace.
- Employers must accommodate workers who have a disability, up to undue hardship. This is required by Manitoba's *Human Rights Code*. Disabilities can include disabling medical conditions or addiction.
- Employers should provide impairment prevention strategies and supports in their workplace (e.g., Employee Assistance Programs, community supports). These strategies and supports can be outlined in the drug and alcohol policy.
- Employers should regularly evaluate their drug and alcohol policy to ensure it is working. The policy should be updated as required.

Note: CCOHS notes that employers and supervisors do not need to diagnose substance use problems. Their role is to follow their workplace's drug and alcohol policy if they believe a worker is impaired by drugs or alcohol.

Sources: Atlantic Canada Council on Addiction; CCOHS; Manitoba Human Rights Commission

4. What should be done if an impaired individual is suspected?

CCOHS advises that "if a supervisor or co-worker becomes aware of an employee who is showing signs of impairment (regardless of cause), it is very important that action is taken." Be empathetic and do not judge. CCOHS suggests the following actions be taken:

- Speak to the worker in a private area to discuss their behaviour. Ask another supervisor or designated person (e.g., a union representative) to be present as a witness. A union representative should be involved if the worker is a member of a union.
- If the person is in crisis, dial 911.
- State your concerns to the worker and request that they explain what is going on. Do not assume you know the cause of impairment.
- Based on the worker's response, discuss options, including accommodation if applicable. Accommodation plans should take into account the recommendations of the worker's physician or other medical professional. Follow the procedures in your policy.
- Provide information on your Employee Assistance Program.



- If necessary, ensure the worker has a safe way to get home.
- If disciplinary action is required, follow your policy.
- If applicable, notify senior management, human resources and/or your union representative.
- Put together an incident report following every discussion.
- Be aware that you don't need to diagnose the problem, and that more than one discussion with the worker may be required.

Source: CCOHS

5. Can I perform drug and alcohol testing on my employees?

The law on drug and alcohol testing is complex and evolving, with different legal tests applying to different types of drug and alcohol testing. When an employer is creating a drug and alcohol policy, and/or is considering drug and alcohol testing, they should seek legal counsel.

The Manitoba Human Rights Commission notes that “unreasonable testing or automatic or severe discipline or other job-related consequences for positive test results discriminates against certain employees in a manner prohibited by The Human Rights Code.” For more information on The Human Rights Code with respect to drug and alcohol testing in the workplace, visit The Manitoba Human Rights Commission's guide for employers on drug and alcohol testing in the workplace.

Sources: The Manitoba Human Rights Commission; CannAmm Occupational Testing Services

For additional SAFE Work Manitoba resources, visit safemanitoba.com and search for “Impairment.”

Sources

The following resources were consulted in the development of this document, and were valid at the date of publication.

- Addictions Foundation of Manitoba, <https://afm.mb.ca/>
- CannAmm Occupational Testing Services, <https://www.cannamm.com/>
- *Drug & Alcohol Testing of Workers: The Current State of the Law in Canada*, OHSInsider, 2013. <http://ohsinsider.com/wp-content/uploads/2013/07/drug-alcohol-testing-of-workers-the-current-state-of-the-law-in-canada3.pdf>
- *Impaired at Work: A Guide to Accommodating Substance Dependence*, Canadian Human Rights Commission, 2017. <https://www.chrc-ccdp.gc.ca/eng/content/impaired-work-guide-accommodating-substance-dependence>
- The Manitoba Human Rights Commission, <http://manitobahumanrights.ca/v1/>, including:
 - *Drug and Alcohol Testing in the Workplace*, <http://manitobahumanrights.ca/v1/education-resources/resources/drug-alcohol-testing-in-the-workplace.html>
 - *Reasonable Accommodation in the Workplace*, <http://www.manitobahumanrights.ca/v1/education-resources/resources/reasonable-accommodation.html>
- *OSH Answers Fact Sheets: Impairment at Work*, Canadian Centre for Occupational Health and Safety, <http://www.ccohs.ca/oshanswers/hsprograms/impairment.html>
- *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, 2011. http://www.health.gov.nl.ca/health/publications/addiction_substance_abuse_workplace_toolkit.pdf
- *Safety Tip - Drugs and Alcohol*, Canadian Occupational Safety magazine, 2016. <http://www.cos-mag.com/videos/safety-tip-videos/788-safety-tip-drugs-and-alcohol/>
- *Workplace Strategies: Risk of Impairment from Cannabis*, 2nd edition, Canadian Centre for Occupational Health and Safety, 2018. http://www.ccohs.ca/products/publications/cannabis_whitepaper.pdf