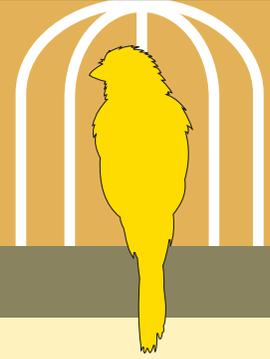


Management of Impairment in the Workplace



HEALTH AND SAFETY FACT SHEET

CUPE / Canadian Union
of Public Employees

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.

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.

References:

ccohs.ca/oshanswers/hsprograms/impairment.html

workplacestrategiesformentalhealth.com/psychological-health-and-safety/impairment-policy

FOR MORE INFORMATION CONTACT:

CUPE National Health and Safety Branch, 1375 St. Laurent Blvd.,
Ottawa, ON K1G 0Z7 tel (613) 237-1590 fax (613) 237-5508 health_safety@cupe.ca

