



# Impairment and Workplace Health and Safety

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**Disclaimer:** This resource has been prepared to help the workplace parties understand some of their obligations under the Occupational Health and Safety Act (OHSA) and regulations. It is not legal advice. It is not intended to replace the OHSA or the regulations. [For further information please see full disclaimer.](#)

## Introduction

This information is meant to help workplaces manage occupational health and safety issues related to impairment due to substance use.

Impairment is a longstanding occupational health and safety issue that can pose hazards in the workplace. There are many sources or causes of workplace impairment. This guidance material is limited to impairment arising from substance use, which includes legal, illegal and prescription substances.

This document does not specifically address circumstances such as workplace substance abuse or addiction issues, or workplace impairment due to fatigue, stress, etc.

Employers should remember that in addition to the occupational health and safety issues discussed in this document, there are other obligations that they should consider and with which they may need to comply when addressing impairment in the workplace.

Additional resources about some of these obligations are included at the end of this document including information from the Ontario Human Rights Commission related to an employer's duty to accommodate workers with disabilities.

## Impairment and cannabis legalization

The federal government's proposed legalization of recreational cannabis has brought forward the issue of workplace impairment. Workplace parties should examine the possible workplace hazards posed by impairment arising from substance use, including cannabis.

In response to the proposed legalization, Ontario has developed a safe and sensible framework for recreational cannabis, which includes ensuring the continued protection of worker health and safety in the province's workplaces.

Ontario passed legislation in December 2017 to safely regulate the use and distribution of recreational cannabis. Please visit the page on [cannabis legalization in Ontario](#) for further information.

Ontario's legislation would affect workplace safety in several areas, including the following examples:

### **Consumption of recreational cannabis**

Should the federal bill become law, the consumption of recreational cannabis would be permitted in private residences only. Consumption would not be allowed in workplaces, public places or motor vehicles.

Please note: Some refinements and exemptions have been proposed for recreational and medical cannabis users in regulations pertaining to places of use under the [Cannabis Act, 2017](#) and under the [Smoke Free Ontario Act, 2017](#).

### **Zero tolerance for commercial drivers**

Commercial drivers would face zero tolerance sanctions for the presence of drugs, as detected by an approved drug-screening device prescribed by the Criminal Code of Canada. Proposed regulations would define a commercial vehicle driver for the purposes of applying zero tolerance sanctions as a person operating the following classes of motor vehicles from having any alcohol or drugs in their body:

- a vehicle that requires the driver to hold a Class A, B, C, D, E or F driver's licence
- a road-building machine as defined in Regulation 398/16. E.g. bulldozers, graders, low-speed street sweepers, etc.
- a vehicle that requires a Commercial Vehicle Operator's Registration (CVOR) (e.g. trucks with a registered or actual weight greater than 4,500 kg or buses with a designed seating capacity of more than 10 passengers.)

Please note: Commercial drivers will also face zero tolerance sanctions for the presence of alcohol in the blood, as detected by an approved screening device.

You can contact the [Ministry of Transportation](#) for additional information related to commercial drivers. There are other penalties related to impairment for all drivers under the [Highway Traffic Act](#) and the regulations.

### **Occupational health and safety at Ontario workplaces**

The [Occupational Health and Safety Act](#) (OHSA) sets out the rights and duties of workplace parties, describes ways of dealing with workplace hazards and provides for enforcement by the Ministry of Labour where compliance is not achieved voluntarily.

Workers performing work when they are unable or unfit to do so safely may introduce a hazard to the workplace, to themselves or to others, and workplace parties are required to address such hazards under the OHSA.

Hazards may arise from a worker's impairment due to the use of various substances (e.g., alcohol, prescription and non-prescription medication, medical cannabis and other substances, such as fentanyl and other opioids and recreational cannabis).

Under the OHSA, all workplace parties including constructors, employers, supervisors and workers, have a role in protecting workplace health and safety. What follows are some examples of constructor, employer, supervisor and worker duties under the OHSA that may apply to impairment in the workplace.

The general duties for the employer are set out in [s. 25](#) and [s. 26](#), the duties of the constructor are set out in [s. 23](#), the supervisor duties are set out in [s. 27](#), and the worker duties are set out in [s. 28](#) of the OHSA.

Please note: There are additional rights, duties, and requirements under the OHSA and the regulations not mentioned in this document that workplace parties must address.

## **General duties of employers, constructors and supervisors**

The OHSA imposes general duties on employers, constructors, and supervisors to protect workers. These duties may be applied to workplace impairment arising from substance use.

An employer is required to take every precaution reasonable in the circumstances for the protection of a worker. An employer should assess the circumstances of the workplace, identify the hazards that may be present and take every precaution reasonable in the circumstances to ensure that workers are protected. This duty may include ensuring workers are not impaired while performing their work, and ensuring workers are not introducing hazards to the workplace as a result of impairment arising from substance use.

To determine what precautions may be reasonable, an employer may consider conducting a risk assessment of the workplace to identify risks that may need to be addressed; then consider developing, maintaining and implementing written measures to control the risks; and, where practicable, eliminating the hazards identified in the assessment where they are likely to endanger a worker.

A general duty is also imposed on constructors and supervisors. Constructors must ensure that the health and safety of workers on the project is protected and supervisors must take every precaution reasonable in the circumstances for the protection of a worker.

In certain circumstances, these general duties may apply to issues of impairment at the workplace. For example, if an employer or supervisor becomes aware that a worker who operates heavy machinery alone or in proximity to other workers appears to be impaired, the employer or supervisor must take every precaution reasonable in the circumstances to ensure that the worker and all other workers are protected. In this scenario, the constructor must ensure that the health and safety of workers on the project is protected, and ensure that every employer, supervisor and worker on the project is complying with the OHSA and any regulations that apply.

These general duties require the constructor, employer and/or supervisor to take action where a hazard that could endanger a worker is present. The action taken will depend on the type of workplace and hazards present, which may include the actions of a worker who may be impaired.

## **Employer duties to maintain policy and program**

Employers are required to prepare and review at least once a year a written occupational health and safety policy, and to develop and maintain a program to carry out that policy. As part of the policy, it may be reasonable for an employer to include a section that addresses workplace impairment arising from substance

use. An element of the program could include any information or instruction for workplace parties (i.e., workers, supervisors, etc.) the employer believes may be necessary to protect workers.

An employer may also consider developing a workplace drug and alcohol (i.e., substance use) policy, where appropriate.

### **Employer and supervisor duties to provide information and instruction**

The OHSA and its regulations require employers to provide information, instruction and supervision to workers to protect their health and safety. This could include providing training to workers on the dangers of using equipment or machinery while impaired, or training for supervisors on how to recognize the signs of workplace impairment.

Supervisors are required to advise a worker of the existence of any potential or actual danger to the health or safety of the worker of which the supervisor is aware. If a supervisor observes or otherwise obtains knowledge of a worker's impairment that could give rise to a hazard in the workplace the supervisor is required to communicate this to any worker that may be in danger and to take every precaution reasonable in the circumstances for the protection of the worker(s).

### **Duties of workers**

Workers do not have the same obligations as employers and supervisors to ensure that every precaution reasonable in the circumstances for the protection of a worker is carried out. However, workers do have general duties that would require them to take certain steps if they encounter a hazard arising from workplace impairment due to substance use. This may include hazards caused by the worker's own impairment, or awareness of other workers who may be impaired and who may pose a hazard in the workplace.

A worker must report any contravention of the OHSA or the regulations or any known hazard to their employer or supervisor.

The OHSA also prohibits a worker from using or operating any equipment, machine, device or thing, or working in a manner that may endanger themselves or any other worker. This may include operating machinery or equipment while impaired.