



# Drugs and alcohol in the workplace

Your rights  
Your responsibilities

A guideline developed under *The Human Rights Code*

# Introduction

The Manitoba Human Rights Commission (the “Commission”) is an independent agency of the Government of Manitoba responsible for administering *The Human Rights Code* (“*The Code*”).

*The Code* outlines a complaint process and mandates the Commission to educate the public and promote human rights principles. *The Code* has special status over all other laws of the Province of Manitoba.

Section 5 of *The Code* authorizes the Commission to prepare and distribute guidelines to assist in the understanding and application of *The Code*.

This guideline represents the Commission’s interpretation of the rights that apply to employees in the workplace who use or are directed to use intoxicating substances or substances that may otherwise impair their ability to function in the workplace, and the corresponding responsibilities of employers. If there is any conflict between this guideline and *The Code*, *The Code* prevails.

# Intoxicating substances in the workplace

Employers have the right to establish and enforce policies prohibiting the use of alcohol and drugs in the workplace, in the same way they may enforce no-smoking policies, dress codes or other policies that set expectations around employee behaviour and the work environment.

Drug and alcohol policies should not be used to manage absenteeism, deter drug and alcohol use or enforce moral standards in the workplace. Rather, they should be used to maintain safety standards by ensuring employees do not report for work impaired.

The legalization of cannabis does not impact the rights of persons with disabilities or addictions or an employer's ability to maintain a safe and healthy workplace.

For example:

- A delivery driver reports for work smelling like alcohol. His employer may immediately suspend his employment for breaching their zero-tolerance policy on drugs and alcohol in the workplace.
- A salesperson advises her manager that she has been prescribed pain medication that makes her feel foggy in the mornings. Her employer may discuss re-assigning some of her morning sales appointments so she does not need to drive.
- A warehouse worker is reported to be vaping cannabis on breaks. He tells his employer that he has a prescription to manage symptoms related to osteoarthritis. His employer may ask him to substantiate this need and discuss expectations about its use in the workplace.

# Drug and alcohol testing

Drug and alcohol testing is a useful tool to measure impairment. Drug and alcohol testing impacts employees with disabilities and without disabilities.

Employers should acknowledge an employee's right to privacy and consider how best to test for impairment by considering the degree of intrusiveness (i.e. breathalyzer versus blood test), accuracy, response time and reliability of the information gathered.

Employers must be able to justify testing based on evidence of enhanced safety risks in the workplace and a problem with drugs and alcohol in the workplace.

Pre-access or pre-employment testing may be justified for safety sensitive positions in a work environment where there has been a history of substance use. Post-incident testing which is testing after a serious infraction in the workplace, or testing where an employee is returning to work after treatment for a drug or alcohol addiction, may also be justified. It is however far more challenging to justify random testing.

Because testing raises concerns about infringement on a person's privacy or agency, a testing program should be carefully considered. Allowance should be made to address addiction and dependence issues separately as well.

The employer should carefully consider if there are less intrusive ways of ensuring a safe workplace, including testing if an incident arises, having an awareness campaign, training supervisors to assess behaviour, using performance tests to monitor impairment, or enhanced monitoring and audits.

For example:

- An employer may be able to justify requiring a clean drug test before confirming employment for a heavy machine operator position, because any impairment would raise real and significant safety concern. For other positions in the workplace like an administrative position, this may not be as easily justified.
- An employer may be able to justify requiring a breathalyzer test immediately following a serious safety infraction in a warehouse facility where an employee has previously been disciplined for reporting to work under the influence of alcohol. If this is a first infraction, this may not be as easily justified.
- An employer may be able to justify random drug tests of employees working highly dangerous or safety-sensitive positions in an oil refinery or similar environment because of the enhanced safety risks. For other positions in the workplace like sales or marketing staff, this may not be as easily justified.

Employers should therefore be very cautious not to rely on a very broad objective of maintaining safety to justify drug and alcohol testing. They must be able to show a rational connection between the testing requirement and the position or duties performed in that workplace, that the requirement is made in good faith, and that testing is reasonably necessary in the circumstances.

Employers should consult with experts before implementing a drug and alcohol testing program.

# Discrimination based on addiction

*The Code* prohibits discrimination based on various characteristics, including ancestry, age, family status, religious belief, sexual orientation, gender identity, physical or mental disability and social disadvantage.

Discrimination therefore means treating a person or group differently because they have, or are presumed to have, one of the characteristics listed in *The Code*, without reasonable justification for doing so.

Addiction or substance dependence is a disability within the meaning of *The Code*.

Discrimination may be based on stereotypes or assumptions and offends a person's dignity because it ignores their individual merit.

Discrimination in the workplace based on addiction or substance dependence typically looks like refusing to hire a person because they are perceived to be a person with an addiction or substance dependence.

For example:

- An administrative assistant is not hired because her reference discloses that she attended an alcohol rehabilitation program four years ago. Her employer should seek information about her reliability and work performance and assess whether or not she is qualified to perform the duties of the position, rather than assume that she will relapse without any information to indicate that she has continued to struggle since she participated in the program.

Discrimination also looks like failing to reasonably accommodate the needs of a person with an addiction or substance dependence.

If there is information to suggest the employee has an addiction or dependence, the employer should assess whether or not it would incur undue hardship if they allowed the employee to attend a rehabilitation program or other measures could be implemented to ensure the employee is able to work or return to work.

An employee who is using alcohol or drugs on a casual basis or for recreational purposes may be disciplined by the employer in the normal course.

For example:

- A machine operator is questioned about attendance issues. He discloses that he has a substance dependence and that his life is chaotic. Rather than immediately terminating his employment because he would pose a safety risk, the employer should consider if he is willing to participate in a rehabilitative program and return to work on conditions that assure he is safe to return to his regular duties.
- An accounting clerk returns to work after attending a three-month residential rehabilitation program. Within six weeks of returning, her employer notes she is again missing deadlines and behaving inappropriately in the workplace. Her employer raises concerns and she discloses she has relapsed and that she would like to attend daily counseling sessions for cocaine addiction. Her employer must assess whether or not it is possible to reassign some of her duties and allow for the time off to attend these regular sessions.

Employers should conduct individualized assessments relying on specific information about the nature and extent of the employee's addiction, their job duties, skills and qualifications and any specific employment risks, when designing a return to work plan.

It is important to acknowledge that an employee with a disability may be prescribed a drug like cannabis to manage their symptoms. The employer should manage the accommodation process in the same way they would for any other employee with a restriction or disability-related need in the workplace.

For example:

- The accommodation process for an employee with a chronic back condition who advises he has been prescribed marijuana for pain, should look very similar to the process to manage an employee who has been prescribed a narcotic. The employer may gather more information about dosage, frequency and manner of taking the drug from his care provider and can then discuss how to manage risks in the workplace.

Employers should be cautious not to rely on impressionistic assumptions about the way in which an employee with an addiction will behave or perform in the workplace, by relying on previous or personal experiences with people with addictions or social or political views about drugs and alcohol.

Challenging myths about people with addictions and fostering open dialogue goes a long way to removing the stigma around addictions and substance dependence.

For example:

- An employee provides information from his addictions counselor to indicate he can now drink alcohol responsibly and can better identify triggers that lead to destructive behaviour. Rather than assuming that this employee will surely relapse and imposing stringent weekly alcohol testing requirements, the employer should consider if testing is even necessary, and may choose to monitor his behaviour through regular check-in meetings.



# Duty to enquire

Generally, if an employee can substantiate that their request for accommodation is based on needs related to their disability, the employer will have a corresponding responsibility to assess the request and offer accommodation.

It is acknowledged that people with addictions are often not willing, or able, to identify that they need rehabilitation or other support. Human rights law therefore recognizes that employers have a duty to make reasonable enquiries when it is suspected an employee's workplace behaviour may be impacted by an addiction or substance dependence.

For example:

- An employee who is observed to be having difficulty concentrating is confronted with concerns about the accuracy of his numerical calculations. A co-worker had previously reported that the employee uses marijuana and that since legalization, he has been using at work. Although the employer may have already proactively circulated its drug and alcohol policy, they should directly question the employee about drug and alcohol use and make him aware of available assistance programs for substance use issues. If the employee discloses an addiction, the employer can assess if it needs more information and ultimately, if it can reasonably accommodate any associated needs.

Employers should directly address concerns about intoxicating substances in the workplace, even when it may be awkward to do so, to ensure a safe work environment for all. This also enables employers to identify early on if their responsibilities under *The Code* are triggered.



## Need more information?

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Le présent guide est également disponible en français.