

# Continuing to Improve Alberta's Drug and Alcohol Public Policy

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## Issue

The effects of drug and alcohol use in the workplace can have serious implications for workplace safety and employee health. In the continuing interest of keeping employees from hurting themselves, their co-workers or members of the public while on the job, the ongoing review of legislation that covers implementation and administration of comprehensive drug and alcohol policies will require monitoring and updates. Though most industry and the province are diligent in working with Occupational Health and Safety and Alberta Health Services there remains challenges for all in the understanding and interpretation of human rights legislation in order for industry to implement models to provide a safe workplace. Employers are confronted by litigation arising out of privacy and human rights legislation, as they try to take action to identify and manage the risks of alcohol and drugs in the workplace. The government must continue to act and take action to remove the conflicts and tension between its various bodies of legislation. A balance has to be struck between obligations regarding individual privacy and human rights rules.

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## Background

Many leading employers have implemented alcohol and drug policies. One such policy, developed collaboratively by a range of stakeholders and commonly applied in construction and maintenance, is the Canadian Model for Providing a Safe Workplace.<sup>30</sup> For drug and alcohol policy to help enhance health and safety in the workplace, it is imperative to take account of new information, technologies and trends.

The use of drugs and alcohol is widespread and according to recent statistics is growing. More prevalent in drug use is the escalation of the use of prescription opioids (oxycodone and hydromorphone) and fentanyl. While the opioid crisis has affected every region of the country, western Canada (B.C. and Alberta) and the northern territories have experienced the highest burden.<sup>31</sup>

The Canadian Tobacco, Alcohol and Drugs Survey (CTADS) reported that the prevalence of past-year use of cannabis among the general population was 15% in 2017, an increase compared to 2015 (12% or 3.6 million) reported in the 2017 Canadian Alcohol and Drug Use Monitoring Survey.<sup>32</sup> Now with the legalization of marijuana and potential upcoming legalization of marijuana edibles, workplace impairment, as influenced by marijuana may be difficult to identify for an employer.

Alcohol was in the past the most common drug used by Canadians. In 2016, an estimated 19% of Canadians aged 12 and older (roughly 5.8 million people) reported alcohol consumption that classified them as heavy drinkers. Canada's Low-Risk Alcohol Drinking Guidelines were developed under the NAS, as was a website to encourage screening, brief interventions and referrals (SBIR) by primary care professionals to help address

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<sup>30</sup> Canadian Model for Providing a Safe Workplace (July 1, 2018) <https://www.coaa.ab.ca/COAA-Library/SAF-CDM-CBP-01-2018-v6%20Canadian%20Model.pdf>

<sup>31</sup> Evident synthesis – The opioid crisis in Canada; a national perspective <https://www.coaa.ab.ca/COAA-Library/SAF-CDM-CBP-01-2018-v6%20Canadian%20Model.pdf>

<sup>32</sup> Canadian Centre on Substance Use and Addiction <http://www.ccdus.ca/Eng/topics/Costs-of-Substance-Abuse-in-Canada/Pages/default.aspx>

alcohol problems early. Nova Scotia and Alberta have alcohol-specific provincial strategies guiding efforts to address the harm and costs of alcohol.

Costs related to lost productivity amounted to \$15.7 billion or 40% of the total cost.<sup>33</sup> In most provinces and territories, lost productivity accounted for the greatest proportion of alcohol and opioid related costs, while health care accounted for the greatest proportion of tobacco-related costs. Workers who struggle with harmful use, abuse and dependence are also workers, that have poorer attendance records, higher turnover frequency and more frequent errors. Canadian employers continue to pay out millions each year for worker's compensation claims, attributed to alcohol. Having updated clear and reasonable legislation can assist employers in preventing a variety of potential legal issues and save litigation costs for all.

Irrespective of the size of an employer, the employer and its employees have obligation pursuant to Section 2 of the Occupational Health and Safety Act to ensure the health and safety of every worker. Moreover, Section 217.1 of the Criminal Code states: "...everyone who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task"., potentially putting an onerous task on the employer and lessening the responsibility of the employee who may struggle with addiction and/or substance abuse.

Employers have obligations under the Occupational Health and Safety Act to undertake periodic assessments of the workforce for health and safety risks. While drug and alcohol policy have significant benefits for the employer, there continues to be tensions in balancing human rights and privacy against safety concerns. With the recent "Suncor Energy Inc. v. Unifor, Local 707A, 2016 AGQB 269, the Alberta Court of Queen's Bench confirmed and clarified the test that an employer must meet in order to justify random drug and alcohol testing in a unionized workplace<sup>34</sup>. The takeaways for employers were:

- Whether random drug or alcohol testing is justifiable in a safety sensitive workplace is assessed on a case by case basis. This sort of testing is not automatically acceptable
- An employer must at a minimum adduce evidence of a general problem with alcohol and drugs in the workplace, but the problem does not necessarily have to be "serious", "significant" or "egregious"
- There is no requirement to adduce evidence of the problem specifically in relation to the bargaining unit. Evidence from the entire workplace is relevant and helpful This is a common-sense approach in modern industrial workplaces where union, non-union and contractor workers work and sometimes live, side by side.
- There is no requirement to demonstrate a causal connection between a drug and alcohol problem and accident or near miss history at the workplace. This is, however, certainly helpful in demonstrating a problem.

As with alcohol issues, the human rights, privacy law issues and the implementation of rules around the issue of drugs (legal or not) will all need careful consideration. The best big-picture approach is to address the issues of objective impairment and objective job performance, and stay clear of looking to monitor the morality of substance abuse. And perhaps most importantly, any addiction and medically required drugs always need to be placed in a very separate category of disability related steps and policies. Most employers help employees that have violated their alcohol and drug policies to get assessed, diagnosed and assisted through treatment programs appropriate to their diagnoses. Education and awareness programs are an

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<sup>33</sup> Canadian Centre on Substance Use and Addiction <http://www.ccdus.ca/Eng/topics/Costs-of-Substance-Abuse-in-Canada/Pages/default.aspx>

<sup>34</sup> Alberta Court Confirms and Clarifies Requirements for Random Drug Testing <https://ropergreyell.com/resource/alberta-court-confirms-clarifies-requirements-random-drug-testing/>

integral part of any prevention effort. While the programs can vary, the overall objective should be to create a safe and well-informed workplace where the employees can have access to assistance.

The government of Alberta has taken positive steps to crack down on impaired driving, given the recent administrative sanctions further imposed as of July 2018 and it is time to do the same for impairment in the workplace. Responsible drug and alcohol-free workplaces are a reasonable public expectation, especially when dealing with heavy machinery and other potentially dangerous equipment.

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**The Alberta Chambers of Commerce recommends that the Government of Alberta:**

1. Continue to improve supports and provide clarity for employers as to their obligations and responsibilities to a safe and healthy workplace;
2. Protect and provide certainty for employers who address workplace risks of alcohol and drugs, while providing assessment and treatment options for employees; and
3. Provide education and economical access to new technologies and innovation for employers to be able to assess workplace impairment-associated risk by alcohol and drugs.