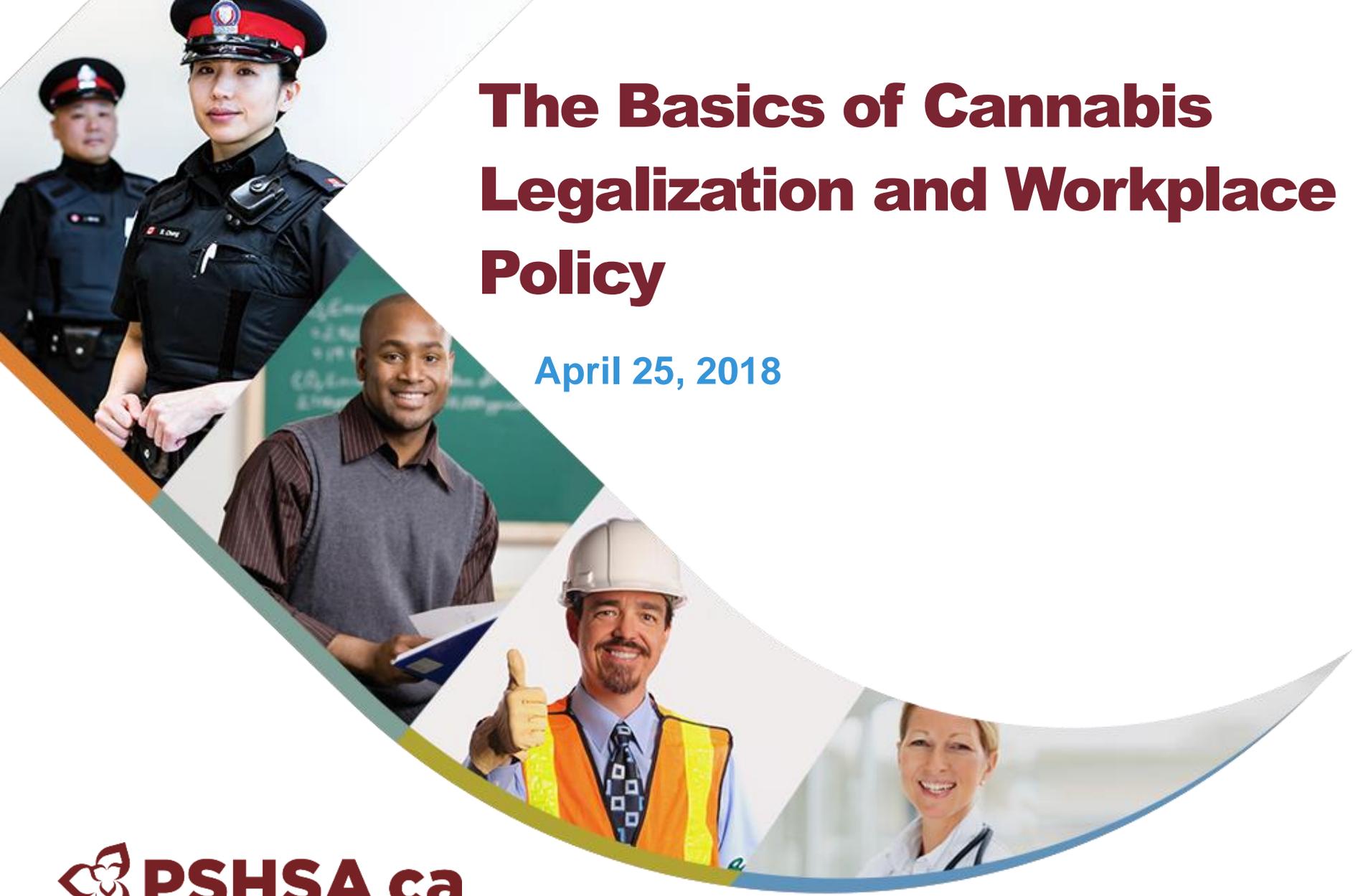


# The Basics of Cannabis Legalization and Workplace Policy

April 25, 2018



# Webinar Objectives

1. To outline the different workplace policy approaches to cannabis impairment.
2. To understand the pros and cons of workplace drug testing.
3. To consider alternatives to workplace drug testing.

# Webinar 1 Recap

- Bill C-45 will legalize recreational cannabis use and sales in summer 2018
- Main psychoactive chemical in cannabis is  $\Delta^9$ -tetrahydrocannabinol (THC)
- Impairment periods depend on:
  1. The dose
    - More THC  $\rightarrow$  stronger impairment
  2. The individual
    - Stays in the system longer for frequent users
  3. The route of absorption
    - Effects are felt later and longer if consumed orally

# Webinar 1 Recap

- There is a spectrum of impairment
- Physical cues:
  - Homemade cigarettes, pipes, shredded leafy debris, edibles, etc.
- Drowsiness, bloodshot eyes with dilated pupils, coughing, rapid heartbeat, dry mouth, elation, etc.

# Introduction to Workplace Drug Policy

- “What I do in my own time is my own business” ...?
- “... alcohol and drugs can adversely affect an individual’s mental and physical abilities. The fact presents an obvious and real concern for companies that are committed to providing employees with a safe workplace” - Enform
- Drug testing policies and EAPs significantly reduce incident rates

Enform, French 2004, Marquez 2016, Phillips 2015, Pidd 2014, Waehrer 2016, Wickizer 2004

# What is “Fitness for Duty”?

“A condition in which workers are physically, physiologically, and psychologically capable and competently and safely performing their tasks... [It] provides reasonable assurance that workers have the capacity, and are free of any impairment that could hinder their ability, to competently and safely perform the duties of their position, and as such do not pose a safety or security risk.”

- Canadian Nuclear Safety Commission

# What is “Impairment”?

- The deterioration of a person’s judgement and a decrease in their physical and mental abilities
- No current quantitative limit for cannabis impairment
- Research recommends a limit of 5 ng/mL of THC in blood for acute cannabis impairment

# What is “Addiction”?

“A primary, chronic disease, characterized by impaired control over the use of a psychoactive substance and/or behaviour. Clinically, the manifestations occur along biological, psychological, sociological and spiritual dimensions. Common features are change in mood, relief from negative emotions, provision of pleasure, pre-occupation with the use of substance(s) or ritualistic behaviour(s); and continued use of the substance(s) and/or engagement in behaviour(s) despite adverse physical, psychological and/or social consequences. Like other chronic diseases, it can be progressive, relapsing and fatal.”

- Canadian Society of Addiction Medicine

# What is a “Safety-Sensitive Position”?

“... one in which incapacity due to drug or alcohol impairment could result in direct and significant risk of injury to the employee, others or the environment. Whether a job can be categorized as safety-sensitive must be considered within the context of the industry, the particular workplace, and an employee’s direct involvement in a high-risk operation. Any definition must take into account the role of properly trained supervisors and the checks and balances present in the workplace.”

- Canadian Human Rights Commission

# How to Identify Safety-Sensitive Positions

Employers should consider:

1. Worker tasks during normal and emergency operations,
2. Nature of equipment used or materials handled, and
3. Actions assigned to the workgroup.

# Cannabis Policy Approaches

1. Zero Tolerance Policy
2. *Per Se* Policy
3. Two-Tier Policy



# **1. ZERO TOLERANCE POLICY**

# 1. Zero Tolerance Policy

- No amount of THC (cannabis) is acceptable
- Identify and define safety-sensitive positions
- Establish sobriety as a *bona fide* occupational requirement
- Meet the 3 points of the *Meiorin Test*

# *Bona fide Occupational Requirement (BFOR)*

- BFOR must pass the 3 points of the *Meiorin Test*:
  1. The employer must show that they adopted the policy or standard for a purpose **rationaly connected** to the performance of the job.
  2. The employer must establish that they **adopted** the particular policy or standard **in an honest and good-faith belief** that it was necessary to the fulfillment of that legitimate work-related purpose.
  3. The employer must demonstrate that the policy or standard is **reasonably necessary** to the accomplishment of that legitimate work-related purpose.

# Duty to Accommodate

- Accommodation is required when:
  1. The employee is not in a safety-sensitive position, AND
  2. The employer cannot establish that the prohibition of medical marijuana in the workplace is a BFOR.
- Employer's duty to inquire
- Individualized and independent (up to the point of undue hardship)

# CHRC's 5 Steps to Accommodation

1. Recognize the signs.
2. Talk about it.
3. Gather and consider the relevant medical information.
4. Accommodate.
5. Follow-up and adjust.

# Undue Hardship

General conditions of undue hardship:

1. Cost,
2. Outside sources of funding (if any), or
3. Health and safety requirements.

CCOHS, CHRC, CHRC Impaired at Work, OHRC

# Drug Testing Alternatives

**“Awareness, education, rehabilitation, and effective interventions such as enhanced supervision and peer monitoring are the most effective ways of ensuring that performance issues associated with alcohol and drug use are detected and resolved.”**

**- Canadian Human Rights Commission**

# Types of Drug Tests

- Blood testing:
  - 2 ng/mL THC
- Urine testing:
  - Screening test: 50 ng/mL THCA
  - Confirmatory test: 15 ng/mL THCA
- Saliva testing:
  - Screening test: 50 ng/mL THC
  - Confirmatory test: 2 ng/mL THC

# Concerns about Drug Testing Effectiveness

1. Drug testing is unreliable.
2. Drug testing only measures past use.
3. Drug testing does not provide a quantitative level of impairment similar to a breathalyzer.
4. There is no legal limit for comparison for drug testing.

CHRC, CNSC, French 2004, OHRC, Phillips 2015



## ***2. PER SE POLICY***

## 2. *Per Se* Policy

- A tolerable upper limit of impairment is determined
- Used when there are non-safety-sensitive positions in the workplace

# What is “Reasonable Cause”?

“... information established by the direct observation of the employee’s conduct or other indicators, such as the physical appearance of the employee, the smell associated with the use of alcohol or drugs on his or her person, his or her attendance record or unexplained absences during regular work hours, circumstances surrounding an incident or near miss and the presence of alcohol, drugs or drug paraphernalia in the vicinity of the employee or the area where the employee worked.”

- Enform Alcohol and Drug Policy Model

# Drug Testing Situations

1. Drug testing before the job
  - NOT recommended for initial employee screening!
2. Random drug testing
  - Recommended only for safety-sensitive positions
3. Reasonable cause and post-incident testing
  - Following objective evidence of impairment, or following an accident, near miss, or report of dangerous behaviour
4. Testing as part of a rehabilitation plan
  - When returning to work in a safety-sensitive position



# **3. TWO-TIER POLICY**

### 3. Two-Tier Policy

- A combination of zero tolerance and *per se* policies
- Used when there are both safety-sensitive AND non-safety-sensitive positions in the workplace

# Recommendations to Employers

- **SEEK LEGAL COUNSEL** when developing your workplace drug policy!
- Clearly define “impairment”.
- Emphasize awareness, education, and training of all employees.
- Focus on rehabilitation rather than punishment.
- Review existing workplace policies.

# Summary

1. There is no legal limit for cannabis impairment, but research suggests 5 ng/mL serum THC.
2. Identify safety-sensitive positions in your workplace.
3. Always consider drug testing alternatives first, such as awareness, education, and training.
4. Choose the policy approach that best fits your workplace – Zero Tolerance, *Per Se*, or Two Tier.
5. Seek legal counsel when developing workplace drug policy.

# PSHSA Resources

- Fast Facts “Medical Marijuana in the Workplace”
- “Understanding the Signs and Symptoms of Cannabis Impairment and Potential Impacts on Workplaces” Webinar

# References

- Bill C-45. Cannabis Act, Third Reading. URL: <http://www.parl.ca/DocumentViewer/en/42-1/bill/C-45/third-reading>
- Bill C-45. An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts, Third Reading. URL: <http://www.parl.ca/DocumentViewer/en/42-1/bill/C-46/third-reading>
- Blood Drug Concentration Regulations. Government of Canada. URL: <http://www.gazette.gc.ca/rp-pr/p1/2017/2017-10-14/html/reg1-eng.html>
- Canadian Centre for Occupational Health and Safety (CCOHS) Workplace Strategies: Risk of Impairment from Cannabis. URL: [https://www.ccohs.ca/products/publications/cannabis\\_whitepaper.pdf](https://www.ccohs.ca/products/publications/cannabis_whitepaper.pdf)
- Canadian Human Rights Commission (CHRC): Policy on Alcohol and Drug Testing. URL: <http://www.addictionconsulting.com/media/drugpolicy.pdf>
- Canadian Human Rights Commission (CHRC) Impaired at Work: A guide to accommodating substance dependence. URL: [https://www.chrc-ccdp.gc.ca/sites/default/files/impaired\\_at\\_work.pdf](https://www.chrc-ccdp.gc.ca/sites/default/files/impaired_at_work.pdf)
- Canadian Nuclear Safety Commission – Fitness for Duty. URL: <http://nuclearsafety.gc.ca/eng/acts-and-regulations/consultation/comment/regdoc2-2-4-b.cfm>
- Cannabis Act, 2017, S.O.2017, c. 26, Sched. 1. URL: <https://www.ontario.ca/laws/statute/17c26>
- CBC – “Judge upholds random drug testing of TTC employees”. URL: <http://www.cbc.ca/news/canada/toronto/ttc-drug-test-1.4053810>
- CBC – “Toking allowed in homes but few other places under proposed Manitoba law”. URL: <http://www.cbc.ca/news/canada/manitoba/manitoba-cannabis-legislation-1.4584619>
- Enform Alcohol and Drug Policy Model [updated version]. URL: <http://www.enform.ca/resources/detail/70/alcohol-and-drugs-policy-model-for-the-upstream-petroleum-industry>
- Fan 2016. “Decision-critical” work: a conceptual framework. URL: <https://occup-med.biomedcentral.com/articles/10.1186/s12995-016-0115-8>
- French 2004. To test or not to test: do workplace drug testing programs discourage employee drug use?. URL: <https://www.ncbi.nlm.nih.gov/pubmed/15025064>
- Government of Canada: Health effects of cannabis. URL: <https://www.canada.ca/en/health-canada/services/substance-abuse/controlled-illegal-drugs/health-risks-of-marijuana-use.html>
- Health Canada: A framework for the legalization and regulation of cannabis in Canada. URL: <https://www.canada.ca/en/services/health/marijuana-cannabis/task-force-marijuana-legalization-regulation/framework-legalization-regulation-cannabis-in-canada.html>
- Human Resources Professionals Association (HRPA) Clearing the Haze: The impacts of marijuana in the workplace. URL: <https://www.hrpa.ca/Documents/Public/HRPA-Clearing-The-Haze.pdf>
- Marques 2014. The effect of alcohol and drug testing at the workplace on individual's occupational accident risk. URL: <https://www.sciencedirect.com/science/article/pii/S0925753514000769>
- McGuire 2013. Legalized marijuana and its effect on the workplace. URL: <https://ohsonline.com/Articles/2013/09/01/Legalized-Marijuana-and-Its-Effect-on-the-Workplace.aspx>
- Ontario Human Rights Commission (OHRC): Policy on Drug and Alcohol Testing. URL: [http://www.ohrc.on.ca/sites/default/files/Policy%20on%20drug%20and%20alcohol%20testing\\_revised\\_2016\\_accessible\\_1.pdf](http://www.ohrc.on.ca/sites/default/files/Policy%20on%20drug%20and%20alcohol%20testing_revised_2016_accessible_1.pdf)
- Phillips 2015. Marijuana in the workplace: guidance for occupational health professionals and employers. URL: <https://www.ncbi.nlm.nih.gov/pubmed/25862727>
- Pidd 2014. How effective is drug testing as a workplace safety strategy? A systematic review of the evidence. URL: <https://www.ncbi.nlm.nih.gov/pubmed/24922614>
- US Department of Transportation (DOT). URL: <https://www.transportation.gov/odapc/employee>
- Waehrer 2016. Employee assistance programs, drug testing, and workplace injury. URL: <https://www.ncbi.nlm.nih.gov/pubmed/27178080>
- Wickizer 2004. Do drug-free workplace programs prevent occupational injuries? Evidence from Washington State. URL: <https://www.ncbi.nlm.nih.gov/pubmed/14965079>



**Questions?**

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**Thank you!**

