

ISSUE IN FOCUS



Celebrating 100 Years

SASKATCHEWAN
CHAMBER of COMMERCE

Impairment in the Workplace

Background:

The Saskatchewan Chamber of Commerce submitted comments on the Consultation on Impairment in the Workplace discussion paper released in July 2018.

This topic is of importance to the Chamber, given that employers are ultimately responsible for the health and safety of their employees during work hours. Echoing the sentiments of other employer groups, the Chamber supports the overall intent of the Consultations on Impairment in the Workplace discussions. We believe such consultations with key stakeholders are timely considering recreational cannabis being legalized effective October 17, 2018.

Issue:

In a January 2018 media release, the SCC recommended that the Government of Saskatchewan establish a working definition of the term "impairment" for the purposes of the Saskatchewan Employment Act and/or The Occupational Health and Safety Regulations, 1996. While the Ministry should be applauded for attempting to provide greater clarity around the term, the Chamber echoes a recommendation put forth by the Saskatchewan Mining Association seeking to incorporate quantifiable deemed per se limits into the criteria for substances such as cannabis.

Incorporating an 'X nanograms of THC or greater per milliliter of blood type-benchmark into the regulations will provide additional predictability and certainty to employers moving forward. While the Federal Blood Drug Concentrations Regulations reference 5 nanograms of THC or greater per milliliter of blood as the threshold for determining impairment, the Chamber will refrain from offering a prescriptive number at this point in time, given that the testing protocols for cannabis are an evolving science. The Chamber recommends the Government of Saskatchewan adopt a concentration level number that is supported by the latest scientific evidence

Ultimately, if an employer is unable to measure impairment in the workplace, it cannot manage or assess risk properly.

The Chamber also echoes the Saskatchewan Mining Association's concerns surrounding the inclusion of the phrase 'fatigue' in the definition of impairment outlined in the discussion paper. The Chamber is of the view that the concept of fatigue should be incorporated into the larger definition of 'fit for duty' instead of impairment, due to the inherent problems associated with testing for fatigue.

Recommendations:

1. That the Government of Saskatchewan make amendments to the regulations, and not to the Acts themselves.
2. That the Government of Saskatchewan, through agencies like WCB, WorkSafe Saskatchewan, and SGI, develop education and awareness tools to assist employers (particularly small and medium-sized enterprises) in fulfilling their duties and responsibilities.
3. The Chamber supports the proposal outlined in the discussion paper to clarify and enhance a worker's duty to disclose to their employer if they are impaired to an extent that performing work would pose a health and safety risk to themselves and others. Any fit for duty requirement that is being considered should also be implemented economy wide.
4. The Chamber supports the proposal contained in the discussion paper around clarifying an employer's duty and requiring an employer to develop and implement a policy on impairment in the workplace. The Chamber would support a proposal requiring all employers operating in the province to develop a policy with respect to impairment and/or fitness for duty as they relate to alcohol, drugs, and other substances.
5. The Chamber found the wording around "Duty to Accommodate Workers that Have Disclosed Impairment" proposal ambiguous and encourages the Government of Saskatchewan to provide greater clarity around the term 'accommodate' and who it applies to.
6. The Chamber supports the duty to offer accommodation to workers under the two conditions referenced earlier but opposes extending accommodations to workers disclosing impairment due to lifestyle choices. This distinction is important because according to the research done by the Construction Labour Relations Association of Saskatchewan around substance abuse assessments, most of the workers assessed did not present substance abuse disorders when testing positive.
7. The Chamber strongly recommends the Government of Saskatchewan provide clarity around the situations and circumstances under which randomized testing would be permitted. This would include which testing methods (blood, saliva, urine, etc.) would be sanctioned and who would be permitted to carry out the

testing. Further to this, the Chamber would support a provision allowing for randomized testing of workers as a proactive approach to promote enhanced workplace health and safety in safety-sensitive sectors.

8. The Chamber recommends the Government of Saskatchewan develop tools and guidance to assist employers and employees in meeting their health and safety obligations with respect to workplace impairment.

History:

Letter to Minister of Labour Relations and Workplace Safety 2018