

Response to:

Workplace Impairment Consultation
& the Legalization of Cannabis

Submitted to:

Minister Don Morgan
Ministry of Labour Relations and Workplace Safety

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The Canadian Union of Public Employees (CUPE) – Saskatchewan represents 30,000 members working in a variety of public service occupations across the province including: health care, K-12 school system, universities, libraries, municipalities, community-based organizations, and various boards and agencies.

Workplace Impairment Consultation & *the Legalization of Cannabis*

In response to the Government of Saskatchewan's consultation being conducted in relation to the impending legalization of cannabis on October 17, 2018, CUPE Saskatchewan provides the following comments.

Impairment in the workplace is a serious health and safety concern that puts workers and their fellow co-workers at risk of injury. Impairment, however, can be caused by many factors and may influence workers differently. Impairment can be temporary, or it can be a more chronic problem. Some impairment may require accommodation, and some impairment can be avoided with knowledge and preventative actions. Impairment can be difficult to measure or define, and workplaces vary on the type of hazards and risks that may occur when a person works while impaired.

CUPE Saskatchewan, the largest union in the province representing over 30,000 members in many diverse workplaces and sectors, believes that we can all do our part to make our workplaces safe. Robust workplace health and safety committees with employee representation, education, training, safety equipment and smart workplace design, and employers working collaboratively within the scope of negotiated union contracts, all have a role in keeping our workplaces safe. Workers should be able to come home from work safe.

Impairment is not just caused by cannabis, and we already have an adequate occupational health and safety system in place to address impairment in the workplace.

CUPE Saskatchewan believes the current legislation and regulations contained in *The Saskatchewan Employment Act* and *The Occupational Health and Safety Regulations* are sufficient to address impairment, including any impairment resulting from the legalization of cannabis. The legislative regime in place already provides the framework and tools necessary to keep workplaces and workers safe. Indeed, workplaces have already been addressing medical cannabis use for some time now.

The legalization and recreational use of cannabis is not extra cause for alarm, rather it is an opportunity to discuss and focus on the many factors that can cause impairment – whether it be from general fatigue caused by inflexible work schedules or shift work, some prescription drugs, or from the recreational use of alcohol or drugs such as cannabis. Impairment can also be caused by other factors such as the experience of traumatic or stressful events, extreme temperatures, temporary disability, or a result of an injury or mental health issue.

Furthermore, the haste to greet the legalization of cannabis with more stringent legislative requirements, or unjustified sanctioning of punitive zero-tolerance workplace policies, or increased employee testing only moralizes an issue resolved and decided by the Parliament of Canada while violating the dignity and privacy of workers.

These aforementioned practices further discourage the preventative reporting of impairment by an employee for fear of punitive discipline or from reporting injuries for fear an employer may discover they used cannabis or other substances during off-work hours.

CUPE Saskatchewan cautions against any additional legislation and regulation regarding impairment in response to the pending legalization of cannabis. The legalization of cannabis does not alter an employer's responsibility to ensure a safe workplace or an employee's role to be able to perform work in a safe manner. More legislative requirements, more testing, or more narrowly focused and blanket policies that are used as a template will not effectively manage the many hazards in the diverse workplaces in the province, and such policies and practices do not effectively detect impairment.

Workplaces will be safer when employees can be upfront about their limitations and possible temporary impairment without fear of punitive actions. Workplaces will be safer when the government and employers remove the stigma around cannabis use during off-work hours, and the focus turns to encouraging employees to work safely and know when they may be at risk of impairment. Workplaces will be safe while upholding the dignity of employees and respecting their privacy.

In the consultation document provided by the Government of Saskatchewan, entitled: "*Consultation on Impairment in the Workplace*," the document identifies several legislative options. CUPE Saskatchewan provides a response to each option as follows:

1. Duty of an employer to accommodate

Employers have a legal obligation to accommodate employees for disability to the point of undue hardship, which includes addiction to impairing substances. More education and training should be provided to employers to ensure this process is first engaged rather than discipline.

2. Duty of an employer to develop a policy

CUPE Saskatchewan cautions against any additional requirement for a mandated impairment policy, and submits that the current occupational health and safety legislation and regulations are sufficient.

Should any policy be developed, the policy should be in consultation with a workplace health and safety committee and the union. The policy should first and foremost have a non-punitive self-reporting ability if a worker feels they will be unable to perform their job safely and the ability to discuss alternatives. Claims should be free from discipline, reprisal, or suppression. The right to confidentiality and privacy should be addressed in the policy. Employee assistance should be offered without risk of discipline.

Any policy should involve the workplace health and safety committee. The provincial government should again compel the submission of regular committee minutes to the Ministry instead of allowing employers to police themselves without oversight of regular meetings, as it was reversed with the implementation of *The Saskatchewan Employment Act*.

Employers should also be obligated to provide regular and approved education and training on working safely, the right to refuse unsafe work, the role of workplace health and safety committees along with minute keeping and posting, and the risks of impairment while at work.

3. Duty of a worker

CUPE Saskatchewan is opposed to any additional legal duties for workers.

Instead, workers should have a right to disclose if they believe they are impaired without any risk of discipline or reprisal.

4. Testing for impairment

CUPE Saskatchewan is strongly opposed to any authorization or further ability for testing in the workplace.

Any requirement or ability for testing must only happen when there is strong evidence of suspected impairment and should only be for cause. No random testing or post-incident testing should be permitted. Any testing should only happen as a last resort.

Employees should first have the ability to speak with a supervisor and have the ability to self-report without fear of discipline and reprisal. Any testing regime must adhere to The Charter, human rights, and privacy law, and related jurisprudence, and should not deprive the worker of dignity.