

## MEMBER ADVISORY

# Cannabis Referendum – Impairment risks from drugs and alcohol

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### Purpose

In 2020 there will be a referendum on the legalisation of cannabis. This provides a timely opportunity for Forum members to proactively review and assess the sufficiency of their approach to managing risks emerging from impairment, drug and alcohol.

This advisory seeks to support Forum members with that review by:

- Outlining some core principles
- Summarising experience out of Canada and the U.S. who have recently legalised cannabis
- Providing some examples of questions leaders can use to look at their current approach.

The Forum is not taking a formal position on the referendum question itself.

### Executive summary

Whether cannabis is legal or not, the substantive issue for work is its potential to impair people at work. Cannabis use and the related risk of impairment at work is not a new issue for New Zealand workplaces.

Most organisations have policies and practices for managing this risk. If well-developed and effective, they will almost certainly be fit-for-purpose if cannabis were to be legalised in the future.

Experiences from Canada, who legalised recreational use of cannabis in 2018 and share a similar legislative approach for health and safety, strongly affirm a sensible and balanced call for businesses to continue to focus their efforts on managing the issue of impairment from drugs and alcohol.

Put simply –manage the risk, not the moral argument. Take the timely nature of the cannabis referendum to proactively assess and review your approach for managing drugs and alcohol at work.

Use the pending referendum as a constructive and engaged opportunity to ask yourself and your organisation - **Is our approach to drugs and alcohol:**

- Accessible?
- Coherent?
- Engaged?
- Rational?
- Fair and resilient?
- Empathetic?

This advisory includes additional detail and questions to support leaders to ensure they are focusing on what matters for a safer and healthier workplace.

## Cannabis is an impairment risk – regardless of its legal status

Cannabis is an impairment risk in the workplace. This risk is not new to New Zealand workplaces, despite cannabis being an illegal substance currently.

The issue of a substance's legality is secondary to its impact on impairment. Alcohol and prescription medicines are legal substances, and like cannabis, create impairment risks at work. Their legality does not diminish their impairment potential and commensurate need to manage that potential impact on health and safety at work.

As a result of that long-standing situation, most NZ organisations have some type of approach for managing impairment risks from cannabis, alcohol and other substances including prescription medicines.

This means for most businesses the potential legalisation of cannabis will have minimal impact.

It does, however, provide organisations a timely and constructive opportunity to review and assess their impairment, drug and alcohol policies and practices.

## Ensure your approach to drugs and alcohol is fit-for-purpose

Below are two sets of questions to support you review and assess the sufficiency and appropriateness of your approach to managing the impairment risks from drugs and alcohol:

1. Is our approach fit-for-purpose?
2. Are we on the right track?

These are intended to prompt an engaged discussion within your organisation. They are not a set of binary questions to ascertain compliance.

Is our approach to drugs and alcohol fit-for-purpose?

Key characteristics	Key questions
<b>Accessible</b>	Is our policy and practice clear, understandable and use plain English? Do all of our people understand our approach and what it means for them?
<b>Coherent</b>	Does our approach tell a clear story clear about the <i>why</i> ? Is it clear why managing impairment fmo drugs and alcohol matters to us as a company, our customers, the public and why it should matter to our workers?
<b>Engaged</b>	Have our people (including Unions where applicable) been constructively part of developing and applying our approach to drug and alcohol induced impairment?
<b>Rational</b>	Is our approach risk-based or morally-based? What would your people see as the primary motivation for our approach to drugs and alcohol - reducing the risk of impairment or moral judgement?
<b>Fair + resilient</b>	Does our approach have a just and fair range of options for responding to the presence of drugs and alcohol beyond punitive sanctions? Is there sufficient capacity in safety critical tasks (especially) for workers to <i>fail safely</i> ? i.e. what is the safety margin for failure as a result of impairment?
<b>Empathetic</b>	Does our approach provide support options for people with addiction or health issues to reclaim their wellbeing and contribute to our business?

What are the smoke signals that we are on the right track?

Smoke detectors	Reading the signals
How well are your people (and Unions of relevant) engaging with you on the application of your drug and alcohol approach?	<p>If it's adversarial, then it's a good sign the current policy is targeting the wrong thing, is being misused by leaders, or too complex to follow procedurally.</p> <p>Most unions should support this sort of policy if it's managed well, and fit for purpose.</p>
What level of engagement do your people have with the rehabilitation aspects of your policy?	If it's working well it will be perceived as being 'value adding' and wellbeing focused as much as it is a safety control
What is your positive test result ratio?	Lower should be a good indicator of the policy working

## International experience

### United States

Over 30 U.S. states have legalised cannabis in one form or another. However, Federal law still treats cannabis as an illegal substance.

The majority of the commentary we identified from the U.S. was less focused on active management considerations, rather it emphasised the issue of discrimination of legal drug users and the legal rights of employers to enforce drug policies for legal substances.

#### *Discrimination of legal drug users*

In 2019, Nevada passed a bill prohibiting the denial of employment based on a positive test for marijuana. Equally, in Maine employers are not allowed to discriminate against people who have used cannabis, and the state has specific rules for drug testing. It is looking likely that in New York employers will no longer be able to force job applicants to take drug tests for cannabis use.

There was evidence of declining use of drug testing for cannabis, although a sense that screening for "safety sensitive roles" remained common.

#### *Legal rights of employers to enforce drug policies*

Courts have upheld the right of employers to set and enforce drug policies.

Most states, when they legalised cannabis use, gave employers the explicit right to discipline an employee for violation of a workplace drug policy or for working while under the influence.

Fiat Chrysler Automobiles in Michigan, a state that legalised recreational use in 2018, tests all of its employees – whereby a positive test for cannabis use will disqualify a candidate. Furthermore, its rules barred possession or use at work.

### Canada

Recreational cannabis use was legalised in Canada in 2018. The vast bulk of guidance issued at that time in Canada stressed the importance of viewing cannabis as an impairment risk and manage it accordingly.

There was a strong sentiment that if an organisation had robust approaches to impairment remained, that those efforts remained fit-for-purpose post legalisation.

Consequently, Canadian regulators and specialist health and safety organisations encouraged businesses to review their drug and alcohol policies and programmes – and included a summary of key components to consider. See below for table.

Canadian advice – What makes a robust drug and alcohol approach?

What to include	What that could look like
<b>Purpose</b>	Statement of the purpose and objectives of the programme or policy
<b>Definitions</b>	Definition of impairment Definition of what the employer considers to be impairment
<b>Coverage and confidentiality</b>	Statement of who is covered by the policy and/or programme Statement of the employee's rights to confidentiality
<b>Medicinal usage</b>	A mechanism for employees' to confidentially report when they have been prescribed a medication that may cause impairment Statement regarding if either medical/therapeutic or non-medical substances are allowed on the premises, or under what situations they would be allowed
<b>Education</b>	That arrangements have been made for employee education (e.g., a general awareness regarding disability due to substance dependence) That arrangements have been made for educating and training employees, supervisors, and others in identifying impaired behaviour and what steps will be taken
<b>Addiction support and return to work</b>	Provisions for assisting those with disability due to substance dependence Processes for accommodation, and return to work/remain at work planning
<b>Testing</b>	Statement of under what circumstances substance testing will be conducted, as well as the criteria for testing and interpretation of test results
<b>Justice and culture</b>	Provision for a hierarchy of disciplinary actions

## APPENDIX

### Links to useful resources

#### **New Zealand**

[WorkSafe guidance](#) for construction and adventure tourism

Employment advice from government on [Drugs and alcohol at work – policies, testing and rehabilitation](#)

[Eliminating alcohol and other drugs from the workplace – Plantation forestry code of practice](#)

#### **Canada**

[Workplace Strategies: Risk of Impairment from Cannabis](#)

[Guide to Managing Workplace Impairment and Developing an Impairment Policy](#)

[Workplace impairment: A primer on preparing for cannabis legalization](#)

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