

To: SIMSA Members

From: SIMSA – Eric Anderson, Executive Director

Date: October 12, 2018

Re: Marijuana/Fitness for Work

SIMSA and its members operate in a highly safety-sensitive industry. With the legalization of marijuana on October 17, 2018, SIMSA members need to remain focused on ensuring safety.

SIMSA takes this opportunity to provide some high-level information regarding drug and alcohol testing and fitness for work.

1. Educating Employees About Impairment

SIMSA members should educate employees on the possible consequences of impairing substances. There is real risk that substances consumed away from work will have an impairing effect on employees during work.

Many drugs can be detected in a donor's system beyond the time period the donor feels impaired. Substances consumed while away from work (during evenings, weekends, vacations) can have an impairing effect during work hours and can be detectable with a drug and alcohol test for a significant time period.

With marijuana in particular, there is no universal time period users should wait to be free from the impairing effects. Individuals who no longer feel "high" may still have residual impairment. The Government of Canada¹ has outlined that:

- Marijuana impairment can last for "...more than 24 hours..." after use and last "...well after other effects may have faded."
- People who use marijuana regularly "... may have trouble with certain skills needed to drive safely. This may persist for weeks after their last use."

Further, academic articles have outlined that users of marijuana may test positive 30+ days after their last usage with a urine test² or up to 29 days after with a saliva test.³

¹ <https://www.canada.ca/en/health-canada/services/drugs-medication/cannabis/health-effects/impairment-safety-risk.html>

² [https://www.mayoclinicproceedings.org/article/S0025-6196\(16\)30825-4/fulltext](https://www.mayoclinicproceedings.org/article/S0025-6196(16)30825-4/fulltext)

³ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4532432/>

Employees should be educated on the risk of lasting impairment and lasting inability to pass a drug and alcohol test from recreational marijuana usage. The safest approach to ensure employees are not impaired and can pass required drug and alcohol tests is to abstain from using recreational marijuana and other drugs at all times.

2. Approach of Industrial and Mining Companies

Most industrial and mining companies operating in Saskatchewan have a drug and alcohol policy and/or a fitness for work policy. These policies generally:

- Prohibit the presence of alcohol or certain drugs at specified cut-off limits in breath, urine, and/or saliva. Individuals testing above the limits are in breach of the policy.
- Prohibit impairment by both legal and non-legal substances. Even where an individual is below the cut-off limits or takes a substance that is not tested for, if they are impaired in the workplace based on reasonable observations that will generally be a breach of the policy.
- Are comprehensive and outline procedures for testing, for accommodating disabilities, and for disclosing impairing medications.

Note, while most companies use the U.S. Department of Transport cut off limits, not all necessarily do; plus, the cut off limits are different for saliva and urine testing (per item 1 above). Some companies test one or the other, and some test both. It is recommended that SIMSA members get copies of the policies in effect, with any mining or other companies where they are sending employees.

SIMSA members may be required to have policies in place that meet or exceed the standards of some industrial and mining companies in order to work with that company.

3. When Drug and Alcohol Testing is Permitted

The general rule is that employers with drug and alcohol testing policies can test "safety-sensitive positions" for drugs and alcohol in limited circumstances, including pre-employment, with probable cause and post incident. Each policy will specify when testing can occur. Whether a position is safety-sensitive must be viewed in context, but a standard definition utilized by employers is:

Any position where impaired performance, impaired motor skills or lack of judgment could result in a significant incident affecting the health and safety of employees, customers, contractors, the public, property or the environment, and includes those persons in a supervisory or managerial position who either oversee workers in safety-sensitive positions, or are responsible for, or actually perform the same duties as workers in safety-sensitive positions.

If a position is safety sensitive, employers may be able to test:

- Pre-employment;
- Pre-placement where an employee transfers from a non-safety sensitive position to a safety-sensitive position;
- Pre-access, where a drug test is a requirement of access to a worksite;
- Where there is reasonable cause to suspect impairment;
- Where the employee is involved in an accident or near-miss; and
- As part of a return to work or accommodation plan.

In very rare circumstances, employers may be able to randomly drug test safety-sensitive employees if there is an ongoing problem with drugs and alcohol.

4. Occupational Health and Safety Obligations

There is currently no explicit legislative requirement in Saskatchewan to have a drug and alcohol policy, fitness for work policy, or do drug and alcohol testing. However, there are extensive obligations upon employers and SIMSA members to generally ensure the workplace is safe and free from impairment.

Although a drug and alcohol policy, fitness for work policy, and drug and alcohol testing are not specifically required, they are an important tool to discharging occupational health and safety obligations and should be implemented. There is a potential argument that not having appropriate drug and alcohol policies is a breach of occupational health and safety obligations.

SIMSA members are encouraged to review and implement drug and alcohol testing policies and/or fitness for work policies in advance of legalization of marijuana.

Conclusion

SIMSA encourages its members to take an active approach to drugs and alcohol in the workplace and their lasting impairing effects.

While a comprehensive drug and alcohol testing policy is 20 or more pages long and contains a lot of important detail, and the following cannot be a substitute for an actual drug and alcohol policy; given marijuana can stay in your system for up to 29 days, which may put you in breach of resource company policy, and some employees may need to visit sites on short notice; until further clarification on the topic is given, it is recommended that any employee who may be required to visit sites abstain from consuming/using marijuana.

This information is for awareness purposes only and is only intended for SIMSA members. SIMSA members should review the particular circumstances of their workplace (such as work performed, presence of a trade union, and existing policies and contracts), and consult legal counsel.

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