

Workplace Impairment: Where Employers Get It Wrong and How to Fix It

By Bob Graham & Hema Ahuja

Key Takeaways

- Impairment in safety-sensitive workplaces can create immediate safety and legal risk
- Drug and alcohol testing must be justified, reasonable and policy-driven
- Substance dependence triggers a duty to accommodate under human rights law
- Policies only help reduce risk to employers if they are clear, communicated and consistently enforced

Why This Risk is Higher in Safety Sensitive Positions

Safety-sensitive positions have a key and direct role in an operation where impaired performance could result in a serious incident affecting the health and safety of employees, contractors, the public or the environment. In this environment, even momentary impairment can lead to serious injury or death. The legal consequences can be just as significant.

Balancing Employer Obligations

Impairment issues sit at the intersection of multiple legal regimes. Employers must consider occupational health and safety, criminal law, human rights, privacy and employment obligations at the same time. A decision made purely from a safety perspective can still create exposure if it overlooks privacy rights and human rights considerations.

A Clear Drug and Alcohol Policy is the Foundation of Effective Risk Management.

Strong policies set requirements around fitness for duty, outline when testing may occur, require disclosure of dependence issues in advance of an incident or accident and address consequences and disciplinary action.

However, policies alone are not enough. They must be clearly communicated, understood by employees, documented through sign-off and consistently enforced. Inconsistent enforcement is one of the fastest ways to undermine a defensible position.

When is Testing Appropriate?

Testing is not automatic and is often challenged if applied too broadly. It may be justified for safety-sensitive roles in relation to (a) pre-employment and site-access testing, (b) in response to objective signs of potential impairment, (c) following an incident or near miss, or (d) relating to return to duty and follow up testing. Even in those cases, employers must

ensure the decision to test is reasonable, documented and aligned with a clear policy. Automatic or blanket testing increases legal risk.

Human Rights Considerations

Substance dependence is recognized as a disability under human rights legislation. Once there are signs that an employee's work performance or behaviour may be impacted by a substance dependence, employers may have a duty to inquire. This does not remove safety obligations, but it does require a measured and individualized response. Employers who focus only on discipline without considering accommodation risk human rights complaints.

What We Are Seeing in Practice

Employers face the most exposure where policies exist but are applied inconsistently, where testing decisions are made without proper documentation, or where signs of dependence are ignored until after a serious incident. Courts and tribunals continue to focus closely on process, not just outcome.

Next Steps:

- Review your drug and alcohol policy to ensure it reflects current legal standards and clearly defines when testing may occur
- Train managers to recognize impairment, apply policies consistently and document decisions properly
- Build a clear process for accommodation and ensure employees have a safe way to disclose dependency before an incident occurs

Employers who take a proactive and structured approach to impairment are better positioned to protect workers, meet their legal obligations, and avoid costly disputes.

Workplace impairment issues can create significant legal, safety and employee relations risks. If you have questions about developing policies, managing accommodation requests or responding to a workplace incident, BD&P's [Employment and Labour](#) team can help.

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