

Impairment at Work

The Law

Effective October 17, 2018, the possession and growing of cannabis became legal. The laws surrounding cannabis use are complex and contained in a variety of statutes and regulations. Information can be found in the *Cannabis Act*; *Cannabis Regulations*; *Cannabis Control Act, 2017*; *Cannabis License Act, 2018*; *Smoke Free Ontario Act, 2017*; and *the Criminal Code of Canada*.

Being in violation of any laws can have a serious impact on an employee. Educators may face discipline by the employer or an investigation by the Ontario College of Teachers or the College of Early Childhood Educators. A criminal conviction must be disclosed to the employer on the Annual Offence Declaration. Off duty conduct that results in criminal charges can result in discipline.

School boards may also have policies written for their employees regarding impairment at work.

Fit for Duty

Employees must at all times be “fit for duty”. An employee must be able to perform assigned duties safely and productively without limitation caused by the use or after-effects of an impairing substance. Where impairment is a result of a medical condition (e.g. effects of medication) there may be a duty to accommodate the worker, but only if this does not constitute undue hardship to the employer.

Any substance, including but not limited to alcohol, illegal substances, non-prescription substances (e.g. recreational cannabis) and/or prescription or over-the-counter medication (including medical cannabis), which has the potential to change or adversely affect the way a person thinks, feels or acts would be considered an impairing substance.

Employee Responsibilities

Employees must...

- Be fit for duty and remain fit for duty throughout the work day;
- Refrain from using an impairing substance while in the workplace or while performing work related duties (e.g. attending a school related event or on a field trip); and
- Responsibly use all medications by discussing medications with their doctor or pharmacist to determine if they will cause impairment.

Substance Abuse or Addiction

If a member is experiencing a substance abuse or an addiction issue, there is support available. In addition to reaching out to their doctor or care provider, ETFO can also provide support and assistance. You may also have access to an Employee Assistance Program (EAP) through the school board.

Members with an addiction can be accommodated in the workplace in accordance with the *Human Rights Code* and the school board's duty to accommodate.

If the impairment is related to an addiction it would be considered a disability. The employee must participate in an active treatment plan.

If an employee requires medication that has the potential to cause impairment, the employer must provide reasonable accommodations. However, reasonable accommodations have limits and the use of medical cannabis or other impairing medications may not be compatible with the job requirements and the expectations of being fit for duty.

Members experiencing any professional difficulties related to impairment at work should contact their local ETFO office and PRS immediately for assistance.

Possession of an Impairing Substance

An employee needs to take extreme caution when bringing any medication to work. Impairing substances that are recreational in nature should never be brought into the workplace. If medication is required by the employee during the workday, the employee must ensure it is stored safely and away from the children. If an employee allows a child to access medication, intentionally or otherwise, there could be serious consequences. Conduct that puts students in harm's way could result in an investigation by the school board, the Children's Aid Society, police, the Ontario College of Teachers and/or the College of Early Childhood Educators.

Employer Rights and Responsibilities

Employers have a right to ensure their employees are fit for duty. If an employer has reasonable cause to believe that an employee is impaired, or if there is a workplace accident or incident, employers may initiate an investigation. An employer must balance their interests – workplace safety and preventing harm – with the interests of the employee – privacy, dignity and bodily integrity. The employer must consider matters such as the seriousness of any incident where impairment was suspected, the safety sensitivity of the employee's position, the indications that the employee was impaired and the employee's history of impairment or discipline for breaches of the impairment policies.

Discipline for Impairment

Educators are in a safety sensitive position. Impairment at work could place others at significant risk. Educators also work with minimal supervision, requiring greater trust on the part of the employer. These factors are reasons why the penalty for impairment at work may be substantial.

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