

# IMPAIRMENT

## THE NEWEST BUZZWORD IN WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

BY SHARON BOTTCHEER

It is important to understand that a positive drug test does not necessarily determine impairment.

Impairment in the workplace can have severe consequences. Workplace drug testing programs are designed to detect the presence of alcohol, illicit drugs and/or certain prescription drugs while also preventing potential on the job impairment. Drug testing is a common practice in workplaces of all industries and sizes, serving as a prevention and deterrent method implemented as part of a comprehensive program.

Impairment can be the result of various situations such as stress, fatigue, medical conditions, alcohol consumption or drug use; although the most common cause of impairment is the use and abuse of alcohol and drugs, whether legal or illegal. Impairment caused by drugs and/or alcohol often creates unfit working conditions and restricts ability to safely perform work functions. It causes impaired judgment, thinking and decision making or decreased motor coordination, reaction time and sensory perception. Employers have a responsibility to address impairment in the workplace, and for a good reason.

### **Why is impairment being brought into the mix of workplace testing programs?**

Until now, impairment has not been a focus in drug and alcohol testing. As states pass medicinal and recreational marijuana laws, some states have put into place stipulations that require employers to prove there is a connection between a positive drug test result and actual impairment before taking adverse employment action. Knowing the signs of drug or alcohol impairment and adequately addressing impairment in your policy may mean the difference between a compliant program vs. program failure and non-compliance.

Additionally, most states have workers' compensation laws that allow denial for either failing a drug test or being impaired or intoxicated when injured.

*This information is provided for educational purposes only. Reader retains full responsibility for the use of the information contained herein.*

## Why is documenting signs or symptoms of impairment encouraged prior to drug testing?

It is important to understand that a positive drug test does not necessarily determine impairment. There is varying evidence on how drug levels correlate with impairment, and some sample types (urine and hair, for example) can detect drug use that occurred weeks ago, as opposed to recent drug use that is more likely to impact impairment. On top of that, the effects of drugs and alcohol vary from person-to-person. Some factors that may affect drug levels and impairment include:

- General mood
- General health
- Body fat percentage and weight
- Amount of drug consumed
- Tolerance to drugs and alcohol

Nevertheless, what a positive drug test does prove is that an individual had drugs in their system at the time of testing. Therefore, the safest and most comprehensive way to determine impairment is to complement recent-use drug testing with an investigation into whether an employee exhibited any of the physical and behavioral signs associated with impairment.

Some states require employers to identify signs of impairment before permitting disciplinary action of an employee for marijuana use.

To prove impairment it is important to have sufficient evidence that is well-documented, similar to when an employer performs reasonable cause testing. Documentation of observed behaviors is the evidence applied to justify and merit the request for a drug test. When such behavior is documented, it signals possible impairment from drugs or other factors. The drug test is used to rule out prohibited drugs as a source of a particular behavior. Documenting signs and symptoms of impairment does not necessarily mean that an individual is using drugs and needs a drug test. Rather, a drug test post-documented signs is used as a means to exclude possible impairment as a cause of unusual behavior.

## What are common signs and symptoms of impairment, and should it be included in your policy?

To implement a successful drug testing program, it is essential to know what constitutes a sign or symptom of impairment. Observing signs of impairment identifies that an individual is not functioning normally. This red flag allows the observer to pull the individual aside as a safety precaution and for further investigation. Additionally, it may aid in the early identification of an employee who

*Continues on page 8...*

**OraSure Technologies**

**#1 lab-based oral fluid test is in stock and ready to meet your needs**

**Intercept**  
Oral Fluid Drug Test

In USA only. 2021 Drug testing survey by CCG of U.S. based companies only.

# I 1 M 3 P 3 A 1 I 1 R 1 M 3 E 1 N 1 T 1

Continued from page 7...

might need help. Some states require employers to identify signs of impairment before permitting disciplinary action of an employee for marijuana use.

Identifying and confronting individuals exhibiting signs of impairment can be a difficult and uncomfortable task. Proper training can help provide the confidence and knowledge necessary to take the appropriate steps.

There is not an all-inclusive or complete list of signs and symptoms of impairment however, there are common signs and symptoms of possible impairment to watch for which include but are not limited to the following:

- **PHYSICAL:** poor appearance/hygiene, sweating, headaches, tremors, diarrhea, restlessness, slurred speech, unsteady gait, etc.
- **PSYCHOSOCIAL:** mood fluctuations, inappropriate verbal or emotional responses, irritability, confusion, memory lapses, isolation, lack of focus, lying, etc.
- **PERFORMANCE:** calling in sick frequently or working more overtime, arriving late/leaving early, extended breaks, errors in judgment, deterioration in performance, non-compliance with policies, changes in quality of work, etc.

## State laws may require specific items in your policy

Naturally, state laws have varying requirements as to what must be included in the policy such as definitions or procedures that must be observed. For example, Illinois law indicates an employee can be considered to be under the influence or impaired if the employer has 'good faith belief' that the employee manifests at least one of the following articulable symptoms that decreases or lessens the employee's performance of job duties: speech, physical dexterity, agility, coordination, demeanor, irrational or unusual behavior,

negligence or carelessness in operating equipment or machinery, disregard for the safety of employee or others, involvement in any accident that results in serious equipment or property damage, disruption of the production or manufacturing process, or carelessness that results in an injury to the employee or others.

New York, in contrast, indicates that employers can take action if an employee is impaired by cannabis at work. Impairment in New York means that the individual in question manifests specific articulable symptoms of impairment that decrease or lessen job performance or interfere with the employer's obligation to provide a safe and healthy workplace. Employers should look for symptoms that are objectively observable indications that the employee's performance is decreased. Additionally, an employer cannot use a drug test as the basis for their determination that an employee was/is impaired by cannabis. Other states may have laws that require documentation of other signs or symptoms or may leave it up to individual employers to determine what constitutes impairment.

## Developing a workplace policy on drug impairment

It is vital to include specific state law requirements in your policy. At a minimum, your policy should include the impact of possible impairment, company definitions of "impairment" and "under the influence" and required employee conduct. The policy should also clearly indicate the employer's position on the use, possession or being under the influence of substances while at work.

While the employer is ultimately responsible for developing a policy that includes the applicable provisions required, the supervisor has a vital role to play in the safety of their teams. Supervisors should be educated regularly on policy changes as regular reviews and updates occur. The success of the supervisor, in part, is determined by an accurate and comprehensive policy.

© 2010–2022 The Current Consulting Group, LLC – No portion of this article may be reproduced, retransmitted, posted on a website, or used in any manner without the written consent of the Current Consulting Group, LLC. When permission is granted to reproduce this article in any way, full attribution to the author and copyright holder is required.