Mr. Demers is a recognized international speaker and authority on the Canadian and international landscape of cannabis. Mr. Demers serves on the executive team of CannAmm as the director responsible for educating Canadian employers on fit for duty best practices within occupational safety programs. Mr. Demers is a Certified Substance Abuse Program Administrator (C-SAPA), published and an accomplished international speaker on the topic of fitness for duty in safety sensitive workplaces. Mr. Demers' international presence and commitment to best practices demonstrated by serving on the Substance Abuse Program Administrators Association (SAPAA) International and Government Relations Committees, and International Forum on Drug and Alcohol Testing (IFDAT) Legal Committee and as a member of the International Council on Alcohol, Drugs and Traffic Safety. Mr. Demers' dedication to his community and the pursuit of a safer workplace pursued by serving on the board of directors, as president, for SAPAA. By providing trustworthy information, tools, and best practices for occupational testing, Mr. Demers seeks to achieve his mission of sustainably ensuring more workers and the public make it home to their families.

Cannabis is Legal. Now What?
Technology and Compliance Approaches to Assess Worker Fitness for Duty

What's changed since the legalization of cannabis?

- Consumption patterns continue to rise at a steady state, as of Q4 2018
- 18% of the Canadian population used cannabis in Q1 2019 vs. 14% in Q1 2018. Source
- Many employers are unsure how to manage this change
- Some employers are clear the risks are real for their operations
    - Aviation
    - National Defence and the Canadian Armed Forces
- Transport Canada now prohibits cannabis use within 28 days of flying. Source 1, Source 2
- What do these employers know that you don't?

What we all need to know about cannabis?

- Cannabis effects are complex, cannabis itself is complicated
- We underestimate this complexity in a variety of ways
- We assume all consumption methods are created equal; they are not. Route of administration has varying pharmacokinetics, namely onset, and duration.
- New preparations and concentration of cannabis via selective breeding has increased the potency many times over
    - *THC potency in dried cannabis has increased from an average of 3% in the 1980s to around 15% today. Some strains can have an average as high as 30% THC.*
- Cannabis contains many psychoactive ingredients, not just THC, in fact over 70 compounds are psychoactive of the over 100 known phytocannabinoids
- Impairment impacts many regions of the brain responsible for safe work activities

Can't we treat cannabis like we do alcohol?

- We cannot compare cannabis with alcohol regarding workplace safety standards. Comparing alcohol to cannabis is like comparing an apple with a hubcap – both circular, however entirely different. The mechanism of action of THC, pharmacokinetics has inherent differences as compared to ethanol (alcohol). The most concerning of these differences is the lingering effect on select regions of the brain, summarized by the "3 R's" Reasoning, Reaction and Recall".
- Impairment from single-use can last beyond 24 hours, and chronic daily use stopped impairs for weeks:
    - Health Canada (Source)
    - Ontario Zero Tolerance for Commercial Vehicles (Source)
    - Department of National Defense / Armed Forces (Section 5.2, Source)
    - Transport Canada, Aviation (Source)
    - Occupational and Environmental Medical Association of Canada (Source)
    - World Health Organization (Source)
    - National Safety Council (Source)
- The line in the sand is simple, before performing ANY safety sensitive activity an employee must abstain from cannabis use for at least 24 hours prior to work performed. Noting **many** occupations require far more prolonged periods of abstinence due to the significant public safety implications of neurocognitive impairment. Employers who err on the side of caution are successfully holding the line thus far, with growing regulatory support.

What do we need to know about medical cannabis?

- Most of us are only one connection away from a satisfied user of medical cannabis, and medical cannabis as a topic is emotionally charged. When looking at medical cannabis through the lens of workplace safety, we have to be clear we are focused just that, and drop any negative judgments or bias we may have regarding the effectiveness of cannabis as a medicine – because that's not what matters.
- When looking at medical cannabis through a lens of safety, the complexity previously mentioned remains intact, as do the resulting safety concerns. Medical cannabis is not a prescription, a physician or nurse practitioner legally authorize it. Yes, some prescriptions of impairing substances can be safely cleared for use by a physician with occupational health training in dangerous occupations, however, cannabis is not a prescribed medical treatment cannabis is an authorized medical treatment. Without the evidence to support precise and predictable cannabis dosage, drug interactions, safe timing, and other critical pharmacokinetic elements – a physician's work clearance to permit medical cannabis use in dangerous occupations is often well intended, however, is not a strong evidence-based conclusion and often a professional opinion. Physicians and medical professionals have blind spots the same as we all do, providing medical clearance for cannabis use in dangerous workplaces is uncommon but it occurs frequently enough to be mentioned and should be flagged as a workplace safety hazard no employer overseeing dangerous work should leave unchallenged. Challenge is in the form of a re-assessment at arm's length, by an expert occupational physician trained on the current cannabis research related to safety.
- Medical cannabis and safety sensitive work is incompatible. Employers dealing with medical cannabis should first remove the individual from danger, including dangerous work, until their investigation is concluded. Employers should obtain proof of medical authorization, collaboratively explore options that include alternative treatments, changes to the position to make it "non-safety sensitive", or medical leave. Dismissal is not a recommended course of action. If an employer believes they have reached a threshold of "undue hardship", it is recommended to obtain legal counsel before pursuing dismissal.

What should employers do about this?

- **A balance of interests should never compromise workplace safety:** Keep safety a priority in the balance of interests and be aware they have an obligation, 217.1, under the criminal code to do so. To keep safety a priority and adequately address other considerations like labour law, privacy, and human rights – a balanced approach is needed. The balance is achieved via a fitness for duty program consisting of three parts.
    1. **Policy and Procedures**: If you don't have one, get one. If you have one, be sure to review it periodically. For your policy to be deemed reasonable, among many things, it must be clear, emphasize a heightened need for safety, and a goal of reducing risk of impairment versus identifying impairment alone. Your policy must define what safety sensitive means, who it applies to, and be developed from a strong foundation tailored and legally reviewed for your organizational needs and conditions.
    2. **Education and Training**: You must communicate your policy and procedures effectively, expectations for each role must be clear and unequivocal, and your supervisors/managers entrusted to enforce your policy need to have formal training to identify and address when a fitness for duty hazard presents itself, and how to deal with it in accordance with your policy and procedures.
    3. **Compliance and Deterrence:**
        - **Why is compliance important?** An essential component of all effective safety systems. The promise of fitness is not enough; and this is no different than a promise to wear personal protective equipment absent any oversight or accountability.
        - **Under what general circumstances are employers permitted to test their workforce?** All testing reasons are lawful under reasonable conditions, the only laws we have in Canada obligate testing, including random testing, at a federal level. The first condition for testing is a need to preserve workplace safety or security, and therefore, is limited to safety or security sensitive roles, work performed, and work areas. This condition reasonably permits post-accident/incident, reasonable cause/suspicion, return to duty and follow up testing – the latter two reasons are essential to ensure the safe return to work following a violation or self-disclosure of recreational user or accommodation of a worker with a substance abuse disorder back into dangerous work. The second condition for testing is a known substance use issue within the workplace or workforce, this reasonably permits additional proactive measures including pre-employment (technically post offer), and pre-access (often property/client driven testing). The third condition for testing is ongoing serious incidents, loss of life or near misses, related to substance use, despite the best efforts of the employer. This third condition reasonably makes random testing outweigh the balance of interests against the need for privacy. In some cases, this balance is so strong it supersedes collective agreements, a word of caution is to tread carefully and consult a legal expert knowledgeable in this space before presuming so if your collective bargaining agreement explicitly prohibits testing.
        - **What are acceptable approaches to workplace testing?** Testing needs to be: minimally invasive, identify a reasonable or actionable risk relevant to safety, must be accurate, precise, and legally defensible. Testing methods should be supported by legislative testing standards or follow best

practices where legislative standards are absent. Thresholds for testing are never set to zero; there are always concentrations for every drug that can exist in a biological sample and yet still produce a negative laboratory result. Trusted authorities and regulators establish these thresholds, and deviating from these thresholds is ill-advised. With this in mind, we are left with three acceptable biological mediums: urine, oral fluid and breath (alcohol testing only) as the only acceptable biological mediums of testing for workplace safety requirements. Alternative biological measures are blood, sweat, fingerprint, hair, and brain biopsies – each has a calamity of issues, most common sense, and beyond the scope of this summary.

- **Any New Alternatives to Testing?** There are promising emerging technologies to potentially add to employer's tool belt in reliably identifying fitness for duty hazards in the workplace, however at this time these technologies remain as "screening" tools where employment consequences based on the outcomes of these tests have not been tested in court. These kinds of evaluations include, but are not limited to, breath testing for cannabis, ocular testing for impairment, and cognitive testing using an app.

- **Going off balance:**
  1. **Inadequate Preventative Measures:** Any employer of positions that are bonafide safety sensitive, without a fitness for duty program. Employers who have a fitness for duty program, however, fail to apply the program uniformly across all business units and/or operating locations. Any employer who's current approach is proving ineffective at mitigating harm related to harmful substance use and is failing to take both reasonable and timely preventative measures within their fitness for duty program, training and/or compliance applications.
  2. **Inconsistent Application:** Employers who apply their program when it is convenient and/or driven by client requirements and ignore it otherwise. Employers who have inadequately trained supervisors/managers, resulting in very different safety interventions and employment consequences under very similar precipitating circumstances.
  3. **Inappropriate Application:** Employers who do not have return to duty or follow up testing as a listed test reason in their program, do not have a mechanism for all employees, including managers, to safely self-disclose a possible addiction without fear of reprisal. Employers that apply disciplinary action in direct conflict with their policy. Employers who fail to take reasonable steps to identify, at arm's length, an underlying addiction and accommodate to the point of undue hardship as a primary step before applying progressive discipline. Most seriously, an employer who looks the other way when a fitness for duty hazard presents itself.
  4. **Complicit Practices (Criminal):** Employers who are knowingly complicit/participatory in unsafe work activities such as consuming drugs and/or alcohol while performing safety sensitive work, selling drugs and/or deliberately and actively circumventing testing, such as supplying a substitution device to a worker about to undergo testing.

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