



Disability Management and Accommodation Framework

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| Guideline: | Substance Use Disorders (supplement to Complex Cases guideline) |
| Cross reference: | <ul style="list-style-type: none">▪ GAM Policy 3.59: Accommodating Employees with Disabilities▪ Disability Management and Accommodation Framework |
| Approved by: | |
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Preamble

The Yukon government (YG) is committed to providing a safe and healthy workplace for its employees. Employees must be able to perform their job duties in a safe, productive and effective manner while working for YG.

One of the ways YG ensures a safe workplace is to require employees to be fit for work. Employees also have the obligation to notify their supervisor if they feel they are unfit to perform their normal duties regardless of the cause. Additionally, YG may temporarily remove an employee from their safety sensitive duties and/or the workplace if: they are involved in a workplace incident, or serious near miss, where impairment due to alcohol or drugs is suspected; their behaviour or performance is having a negative impact on the workplace due to suspected impairment; or, their behaviour puts their own safety or the safety of others at risk.

If an employee's attendance, performance or behaviour may indicate a possible substance use disorder, the employer is obliged to inquire whether the employee might have a disability that is affecting their ability to perform their duties, and which may require accommodation. Where an employee has a verified disability, YG has a duty to accommodate the employee. This supplement to the Guideline: Complex Cases addresses YG's approach to identifying and accommodating substance use disorders.

Terms used in this document

- **Substance Use Disorder:** a substance use disorder means a disability diagnosed by a medical professional, and occurs when the recurrent use of alcohol and/or drugs causes clinically and functionally significant impairment, such as health problems or a failure to meet major responsibilities at work, school, or home.

- **Substance Use Problem:** a substance use problem is an assessment that drugs or alcohol may be having an impact on an employee's participation in the workplace that has not yet been diagnosed with a disability.
- **Safety-Sensitive Position:** a position which, if not performed in a safe manner, can cause direct and significant damage to property, and/or injury to the employee, others around them, the public and/or the immediate environment. ¹
- The definitions that are provided in GAM Policy 3.59: *Accommodating Employees with Disabilities* and the *Disability Management and Accommodation Framework* also apply to this supplement.

Overview

Keeping in mind that the approach to and decisions made during employee accommodations are governed by the unique facts and circumstances of each case, managers and any other staff involved should follow the process outlined below.

Recognize the signs

Possible substance use problems/disorders can be self-disclosed by the employee, or identified by observing changes in an employee's attendance, performance or behaviour that affect the employee's ability to participate in the workplace. Either of these situations triggers the employer's obligation to initiate a discussion with the employee about a possible need for accommodation of a disability (i.e. duty to inquire).

The Canadian Human Rights Commission highlights the following changes in an employee's attendance, performance or behaviour that may trigger the duty to inquire:

- personality changes or erratic or inconsistent behaviour (e.g. increased interpersonal conflicts/angry outbursts; overreaction to criticism);
- appearance of impairment at work (e.g. the smell of alcohol on the breath/odor of drugs, glassy or red eyes, slurred speech, impaired coordination or judgement);
- The employee is working in an unsafe manner;
- Consistent lateness, frequently missed days/shifts (i.e. excessive absenteeism), frequent use of sick leave or unauthorized leave/unexplained absences, or reduced productivity or quality of work.

Keep in mind that there could be other explanations for these situations identified above, such as:

- Another disability or temporary medical condition
- Conflict at work
- Job dissatisfaction or low morale

¹ Canadian Human Rights Commission, 2017: *Impaired at Work: A guide to accommodating substance dependence*

- The stress in balancing work and caregiving obligations
- Personal problems unrelated to work ²

Duty to Inquire

When an employee's workplace attendance, performance or behaviour may indicate a possible substance use problem/disorder, the employer has a duty to have a discussion with the employee about a potential need for accommodation of a disability. During the conversation, the employer should not try to diagnose a substance use disorder or recommend treatment.

When an employee's attendance, performance or behaviour in the workplace has become problematic or concerning, or the supervisor determines that for safety reasons an employee must leave the workplace immediately, the supervisor should arrange a fact-finding/investigation meeting with the employee at the earliest opportunity and offer union representation.

During the meeting the supervisor should:

- a) factually describe to the employee concerns about their attendance, performance or behaviour that have been observed and/or brought to his/her attention;
- b) offer the employee an opportunity to explain the reasons for the attendance issues, poor performance, or misconduct or change in behavior;
- c) explain the employer's duty to accommodate all disabilities, including substance use disorders, and then ask the employee if there is anything else the employee would like the employer to consider with respect to the concerns raised. Also, let the employee know about other workplace supports such as the Employee and Family Assistance Program (EFAP).

Verification of a disability and duty to accommodate

When there is uncertainty regarding the existence of a disability and whether there is a need to accommodate the employee, the employee will be asked to have an assessment for a possible substance use disorder by a health care provider or specialist. The supervisor should consult with their departmental Human Resources (HR) and the relevant Disability Management (DM) Consultant as per the process set out in the Complex Case guideline for medical verification.

If the employee does not disclose a possible substance use problem or disability, or refuses to attend a health care provider for verification of such a disability, the employer will outline the consequences of this and address the attendance, performance or other behaviour issues in accordance with employer policy.

Under YG's Accommodating Employees with Disabilities Policy: GAM 3.59, employees have the responsibility to cooperate and participate in the accommodation process by providing relevant

² ibid

medical information, and to follow treatment and/or rehabilitation programs recommended by health care providers as part of the accommodation plan.

In order to properly meet the employer's duty to accommodate the employee, current and accurate information is required to verify the existence and nature of the disability, and to clarify and confirm whether there are associated limitations and restrictions related to the employee's ability to perform their job. The employer may access a variety of resources in order to obtain this information. When requesting medical information, employers must use the least intrusive means possible.

Depending on the facts and circumstances of each case, the DM Consultant may, with the employee's consent and informed choice, use one or more of the following methods for confirming a substance use disorder diagnosis:

- a) **Targeted letter to the employee's health care provider.** The health care provider will be advised that the employer requires confirmation of a diagnosis of a substance use disorder if one exists. If the employee occupies a safety-sensitive position, the employer will further advise that it requires the employee to maintain abstinence and that treatment and aftercare recommendations, including monitoring, are required for this purpose. The employer will require the healthcare provider to confirm that the employee has successfully participated in treatment, indicate when they are fit to return to work and provide the recommendations for the aftercare and monitoring. The health care provider will also be advised that the Disability Management Unit offers assessment through a local specialist should the health care provider wish to consider this option for their patient.
- b) **Assessment by a specialist** based on a referral by the employee's health care provider. In the event the family physician is unable or unwilling to confirm a diagnosis for, or related to, a substance use disorder, then the family physician, through the territorial health insurance plan, with the employee's consent, may determine the appropriate referral resource for further assessment and determination of such a diagnosis, and treatment and aftercare recommendations. The DM Consultant will, with the employee's consent, obtain the necessary information from the employee's health care specialist. Any associated costs with this option will not be paid by the employer.
- c) **Assessment by employer chosen specialist.** This involves an assessment conducted by a local independent specialist qualified in diagnosing and treating substance use disorders. The specialist provides an objective, limited report of the assessment to the employer and, with consent of the employee, a full report may be provided by the specialist to the employee's health care provider. Treatment will generally be provided locally unless the specialist makes other recommendations. Where issues of timeliness or conflict of interest arise, the DM Consultant will discuss with the employee the option of an assessment and treatment to be conducted out of territory. The costs of the specialist assessment and the employee travel, if any, will be paid by the employer.

In any of the above situations, if the employee's health care provider is involved, DM Consultants will follow up with the health care provider, with the employee's consent, if they

have any questions or concerns relating to an employee's return to work and/or accommodation.

With the consent of the employee, the health care provider or specialist is provided in advance with the relevant facts and circumstances of the case including:

- a brief history about how the workplace issues arose,
- the employee's job description and relevant information about job duties, including whether the employee's job is considered to be safety-sensitive, and
- any other relevant information that is particular to the workplace.

The treatment and aftercare recommendations resulting from a diagnosis of a substance use disorder generally may include:

- attendance at a residential, abstinence-based treatment program for one to three months, (alternatively may occur on an out-patient basis),
- post-treatment participation in community-based support programs and counselling, and
- where the employee occupies a safety-sensitive position, drug and alcohol monitoring .

The approach to treatment, aftercare and monitoring of an employee with a substance use disorder may depend on whether the employee occupies a safety-sensitive position.

A form for assessing risk and determining whether a position is safety-sensitive is included with this supplement and should be maintained in department files. It should be developed by the supervisor or manager of the position and signed by the departmental HR director. The employee should be notified of the determination. Corporate Health and Safety staff of the Health, Safety and Disability Management branch of the Public Service Commission can also assist departments with assessing risk to determine whether a position is safety-sensitive; however, it is ultimately a department's decision whether or not a particular position is safety-sensitive.

Process 1: Accommodating an employee who works in a safety-sensitive position

The treatment approach favoured by most specialists in substance use disorders, and by many community support groups such as Alcoholics Anonymous and Narcotics Anonymous, is to assist the person with a substance use disorder in learning to not rely on the substance. This requires the person's participation in an effective, comprehensive, abstinence-based recovery program.

The goal of all substance use treatment for and monitoring of YG employees occupying safety-sensitive positions is complete abstinence. This approach best protects the interests of the employee with the disability, other employees, YG as an employer and the public. An employee in a safety-sensitive position who has a substance use disorder will be expected to undergo treatment and demonstrate verified abstinence before they can return to their safety-sensitive duties.

Monitoring and Relapse Prevention Plan agreements and compliance

YG supports the rehabilitation efforts of employees by requiring abstinence, and compliance with a monitoring and relapse prevention program. The components of this program are as follows:

- An employee agreeing to attend residential or out-patient treatment for a diagnosed substance use disorder will be required to participate in a period of monitoring. YG contracts an independent monitor for this purpose. The monitor will develop a Monitoring and Relapse Prevention Plan (MRPP) with the employee, based on the recommendations of the health care provider, specialist or treatment facility.
- Through participation in monitoring, an employee may be able to return to perform the duties of their safety-sensitive position.
- The monitoring period generally is a minimum of two years (or length of time prescribed by the health care provider or specialist), based on full compliance.
- The MRPP for an employee will set out the specific terms of the monitoring arrangement for that employee. Terms will include the employee's responsibilities to maintain abstinence, to participate in clinical alcohol and drug testing that is conducted by the monitor through an independent accredited laboratory, and to participate in the recommended aftercare plan.
- In entering into the MRPP, the employee is committing to maintain abstinence, and participate in all of the support systems recommended in the treatment and aftercare plan. The monitoring may begin immediately or once the prescribed period of treatment is successfully completed.
- The monitor will regularly report to the DM Consultant the results of clinical alcohol and drug testing, and whether the employee is complying with their other responsibilities in the MRPP, such as, the employee's attendance at alcohol and drug counselling sessions and support groups, if part of the recovery program, and any other aftercare recommendations.
- The DM Consultant keeps the Case Management Team informed of the employee's compliance with the monitoring requirements.
- The employee will be considered to be in compliance with the terms of the MRPP when:

clinical tests confirm that the employee is not using prohibited substances (i.e. is maintaining abstinence); and,

- the employee is meeting all of the other monitoring agreement requirements such as attendance at counselling sessions and support groups (Note: the monitor may allow for unforeseen situations, such as illness or a death in the family, with respect to an employee not meeting all of the commitments in a given reporting period).

- When an employee falls out of compliance, the DM Consultant works with the Case Management Team to determine next steps.

Temporary accommodation in non safety-sensitive positions

Where possible, employees undergoing rehabilitation from a substance use disorder will be accommodated through temporary workplace modifications such as: short-term or long-term sick leave to allow for treatment; changes to the employee's schedule to allow for treatment and/or aftercare meetings; modified work with safety-sensitive duties removed from the employee's substantive position; or a temporary accommodation in a non-safety-sensitive position, until the specialist or health care provider advises that the employee has completed the recommended treatment program and are participating appropriately in an aftercare program, and can therefore, return to their substantive, safety-sensitive position.

Process 2: Accommodating an employee who does not work in a safety-sensitive position

If the employee's substantive position is not safety-sensitive, accommodation of the employee's substance use disorder will not require the employee to attain, maintain and verify abstinence; and thus, monitoring by a medical monitor will not be conducted. Even so, the employee must still be an active participant in their treatment plan and remain fit for duty. At any time, if they believe they are not able to perform their work safely and competently due to impairment, they must notify their supervisor.

A supervisor must also respond to situations where an employee's attendance, behaviour or performance is having a serious impact on the workplace, due to suspected impairment.

Once a disability has been verified, an accommodation plan can generally be prepared by the departmental HR staff in consultation with the DM Consultant, if necessary.

A case management approach may be called for if the employee's substance use disorder is having an impact on their ability to meet work requirements (for example, if lateness or absenteeism has become an issue).

Relapses

Even for employees who have made the commitment to stop using prohibited substances, "relapse" (a recurrence of symptoms of a disease after a period of improvement) is common, and recognized as a symptom of substance use disorders. If a relapse is disclosed, either voluntarily or via the monitoring process the Case Management Team will discuss how to proceed.

Addressing concurrent issues

It is common for employees with substance use disorders to be facing multiple workplace issues related to attendance, behaviour or performance. If there are multiple workplace issues, the employer must examine the nature and cause of the issues. If the disability is a factor in the employee's attendance, behaviour, or performance, the employee cannot be disciplined; a supportive, accommodating approach is required. However, there may be situations where an employee has a disability, but there is

no causal connection to the misconduct or workplace concern, and there may be situations that are 'hybrid', that is, where the disability explains part of the behavior (e.g. impaired judgment), but part of the behaviour is not connected to the disability (e.g. dishonesty) and is culpable.

Any complicating non-disability factors (i.e. labour relations, workplace environment and/or conflict issues) must be addressed concurrently by the supervisor and/or departmental HR staff to facilitate a successful return to work and/or accommodation.

It is also common for employees with substance use disorders to have other disabilities, particularly mental disabilities such as depression, which can compound and complicate the effects of and treatment for a substance use disorder. This situation is often referred to as "co-morbidity." All known disabilities will be reasonably accommodated to support the employee and facilitate a successful return to work and/or accommodation.