

GENERAL ADMINISTRATION MANUAL

VOLUME 3: HUMAN RESOURCE POLICIES

TITLE: SUBSTANCE USE AND IMPAIRMENT

EFFECTIVE: First issued October 1, 2018

1 SCOPE

1.1 Authority

1.1.1 This policy is issued under the authority of DMRC Minute #18-18 (September 18, 2018).

1.2 Application

1.2.1 This policy applies to all Yukon government workplaces and all persons hired under the *Public Service Act* and *Education Act*.

1.3 Purpose

1.3.1 This policy outlines the Yukon government's expectations of its employees and casual and substitute personnel in relation to substance use, impairment and fitness for duty, and establishes core responsibilities to minimize and manage impairment in the workplace. It also helps implement and enforce the Yukon government's corporate Health and Safety Rules, which are an element of the government's Health and Safety Management System.

1.4 Principles and Legal Obligations

1.4.1 The Yukon government is committed to ensuring that the business of government is carried out in a safe, effective and professional manner.

1.4.2 The Yukon government is committed to supporting employees' well-being and success at work, and to addressing personnel matters related to substance use, impairment and disability in a manner that respects an employee's dignity and personal privacy.

1.4.3 The *Occupational Health and Safety Act* requires Yukon employers to take all reasonable steps to prevent or reduce the risk of work-related injuries. Such steps may include the adoption of policy and procedures that aim to reduce the risk of injuries resulting from substance use and impairment.

1.4.4 The Act also requires workers to take necessary precautions to ensure workplace safety, report potentially dangerous situations, to inform their employers of any impairment that may endanger themselves or others in the workplace, and to not report to or remain at work if their ability to work safely is compromised by substance or medication use.

1.5 Definitions

- **casual or substitute personnel:** a person engaged pursuant to the *Public Service Act* or *Education Act* who is excluded from the definition of employee under those Acts.

- **duty to inquire:** the obligation of an employer to ask questions of an employee regarding observed or reported changes or deficiencies in the employee's attendance, behaviour or work performance to assess if the employee might have a disability, including a substance use disorder, that is affecting their ability to perform their duties and which may require accommodation.
- **employee:** any person hired under the *Public Service Act* or *Education Act* including a contract employee, any person working for the Yukon government under secondment or temporary assignment, and casual and substitute personnel for the purposes of this policy, even though such personnel are excluded from the definition of employee under the Acts.
- **employer:** the Yukon government, which may be represented by human resource personnel, managers and supervisors.
- **fitness for duty:** a state of body and mind that allows an employee to perform their assigned tasks competently and in a manner that does not endanger their own safety, the safety of others, or the integrity of equipment, property or the environment.
- **illegal drug:** any controlled substance which cannot be legally possessed by someone under Canadian law.
- **impairment:** an adverse change in a person's physical or mental capacities that is likely to reduce their ability to perform work duties safely and competently.
- **medication:** any prescribed or over-the-counter drug that has a Drug Identification Number assigned by Health Canada.
- **safety-sensitive duties or work:** activities which, if not performed in a safe manner, can cause direct and significant (a) damage to property, and/or (b) injury to the employee, others around them, the public and/or the immediate environment. Abilities required to perform the work include adequate perception, vigilance, speed, dexterity and/or judgement.
- **substance:** any material or compound that is consumed or taken for recreational, therapeutic or other purposes, other than medication taken as recommended by the manufacturer or attending health professional.
- **workplace:** Yukon government work premises, parking lots and work vehicles, and any location where an employee is on duty.

2 ***POLICY STATEMENT***

2.1 **Expected Conduct**

2.1.1 The Yukon government expects all of its employees to be fit for duty throughout their work day, and able to perform their job duties safely and competently. This means that employees must not arrive or be at work, or be on paid standby, while their ability to perform their job duties safely and competently is compromised by:

- a) the adverse or impairing effects, including after-effects, of substance use or medication use; or
- b) an emergent physical or mental condition, such as fatigue, illness and emotional or psychological stress.

Exceptions may be allowed for use of an impairing medication or therapeutic substance, or for an employee to work while impaired by an emergent physical or mental condition, when the employee and employer have jointly agreed in writing on accommodation measures to address the associated safety and performance concerns, or when a supervisor implements a short-term measure, such as restricted duties, to promptly address the safety risks of an uncertain situation.

2.1.2 As required by the employer's corporate Health and Safety Rules, employees are prohibited from consuming or possessing alcohol, cannabis or illegal drugs while in the workplace or on duty.

Exceptions for the consumption of alcohol at work-related events may be allowed as outlined in Annex 1 of this policy. Conditional exceptions for the use of medical cannabis may be allowed as part of a formal accommodation plan. Terms of any allowed use of medical cannabis are determined on a case by case basis.

2.1.3 As a measure to uphold the good reputation of the public service, employees must take care not to smell of intoxicants, such as alcohol or cannabis, while in the workplace or on duty.

2.2 Additional Employee Responsibilities

2.2.1 Employees whose ability to work safely and competently is compromised by use of a substance or medication, or by an emergent physical or mental condition, must either:

- a) refrain from reporting to or remaining at work, following proper procedure for requesting an absence from work; or
- b) disclose their situation to their supervisor who will then advise on a course of action.

2.2.2 Employees who are taking prescribed or over-the-counter medication are responsible for:

- a) taking the medication appropriately (e.g., for its intended purpose and recipient, and at the specified or recommended dosage);
- b) learning the side-effects of the medication and advising their supervisor of any reasonable likelihood of adverse effects that could result in impairment. Based on the information provided and the nature of the employee's work, the employer may recommend adjusted work duties or hours, leave or other measure to reduce workplace risks.

2.2.3 Employees are responsible for advising their supervisor or manager of any situation that is a probable risk to workplace safety. This includes situations where there is reason to suspect that a colleague, manager, contractor or volunteer is unfit for duty.

2.2.4 Employees who have or may have a dependency on an impairing substance or medication are encouraged to disclose their situation, in confidence, to their supervisor, manager or human resources officer. When such a dependency is compromising an employee's ability to work safely or competently, the employee must comply with paragraph 2.2.1 above. Disclosures of disability are to be handled with due care and respect for the employee's privacy, following procedures outlined in the employer's Disability Management and Accommodation Framework and accompanying guidelines, as well as any relevant procedures annexed to this policy.

2.2.5 Employees must promptly inform the employer if, as a result of any action performed while on duty or in the workplace, or while driving or occupying a work vehicle, they are:

- a) charged with an impaired driving, or an alcohol or drug offence; or

b) convicted of an offence for which substance use or impairment was a contributing factor.

2.3 Employer Responsibilities

2.3.1 The employer is responsible for accommodating known restrictions and limitations in an employee's work ability or performance that are related to an illness, health condition, injury or disability, in accordance with the *Human Rights Act*. A substance use disorder (i.e., an addiction) is recognized as a disability.

2.3.2 The employer must take a risk-management approach when determining options for accommodating the adverse or impairing effects of a medication or substance, or a physical or mental condition. This means that an employee with a health issue does not have an unqualified right to work while impaired.

2.3.3 The employer encourages proactive disclosure by employees of unsafe situations and acknowledges there can be no reprisal against an employee who reports a concern about their health or safety or that of others in the workplace. However, the employer may investigate incidents of employee misconduct and take appropriate action.

2.3.4 Supervisory staff have a "duty to inquire" when there are directly observed or reported changes or deficiencies in an employee's attendance, behaviour or work performance, including the employee's attendance at work while unfit for duty. This query of the employee's situation, and any subsequent actions, will be carried out in a manner that respects the employee's dignity and protects their personal privacy.

2.3.5 If a matter requires investigation which may lead to formal discipline, the employer will advise a bargaining unit employee of their right to request union representation at any meetings on the matter the employee is requested to attend. Human resources personnel may be present at any investigative meetings held with the employee.

2.3.6 Where there is reason to suspect an employee is unfit for duty, supervisory staff must take prompt and appropriate action to safeguard the safety of the employee and others in the workplace. This may include immediately and unobtrusively removing the employee from duty or from safety-sensitive duties or work settings, and arranging the employee's safe transportation to their home or a medical facility, as appropriate. The employee will be provided reasons for any action taken.

2.3.7 As appropriate to their role and degree of involvement, supervisory and human resources staff are responsible for documenting:

- a) the details of occasions when there has been reason to suspect an employee has been unfit for duty;
- b) the details of conversations held with the employee and any other relevant parties on the matter;
- c) all steps taken to address the matter, if there is cause for concern, including the provision of feedback to the employee regarding their safety or work performance.

Privacy and Records Management

2.3.8 In any and all discussion or documentation of medication/substance use effects, emergent or ongoing health conditions, accommodation measures, suspected or actual impairment, and potential or actual disability, supervisory and human resources staff must respect and protect an employee's personal privacy. This means that information on such matters may only be disclosed

to those who have a legitimate need to know the information, and any related documentation must be kept confidential and secure from unauthorized access or accidental loss.

2.3.9 The employer will ensure that privacy protection and records management protocols are in place and made known to employees and supervisory and human resources staff.

2.4 Outcomes and Consequences

2.4.1 Employees who are reasonably suspected of being unfit for duty while at work:

- a) may, at the employer's discretion and as appropriate to the circumstances, be promptly assigned alternate (non-safety-sensitive) work or removed from duty altogether and advised/assisted to go home or seek medical attention; and
- b) will be given an opportunity to explain any facts and circumstances relevant to their situation, with the option for union representation (if applicable).

2.4.2 Employees who are deemed to be in violation of a provision of this policy may be subject to progressive disciplinary action, up to and including dismissal.

2.4.3 An employee's substance use disorder does not exempt the employee from the requirement to comply with this policy.

Support for Employees with a Substance Use Disorder

2.4.4 Employees who have a substance use disorder are entitled to reasonable accommodation of their disability. Accommodations are managed in accordance with GAM Policy 3.59: Accommodating Employees with Disabilities and with the Disability Management and Accommodation Framework and accompanying guidelines.

2.4.5 Employees may seek confidential counselling support on their own initiative through the Employee and Family Assistance Program and, where applicable, through their extended health benefits. Other avenues of support include the services of health professionals and the Mental Wellness and Substance Use Services branch of the Department of Health and Social Services.

3 IMPLEMENTATION AND AMENDMENT

3.1 Supplementary Policy and Procedures

3.1.1 This policy may be expanded by annexes outlining additional policy provisions or administrative procedures.

3.1.2 Additional corporate policy provisions will be approved and amended through the process outlined in GAM Policy 3.1: Maintenance, with the exception of Annex 1: Provision and Consumption of Alcohol at Work-Related Events, which will be approved and amended by the Public Service Commission.

3.1.3 Administrative procedures implementing approved policy provisions may be approved and amended by the Public Service Commission.

3.1.4 Individual departments and agencies of the Yukon government may establish additional policy provisions and procedures on substance use or impairment, so long as such documents do not contradict or undermine this policy (and its annexes) or any other corporate policy. Departmental documents must be submitted to the Public Service Commission for review prior to their implementation.

3.2 Review of this Policy

3.2.1 This policy will be reviewed for clarity and effectiveness within two years of its initial approval.

3.2.2 This policy will be reviewed and possibly amended whenever there are relevant revisions to the Yukon government's corporate Health and Safety Rules, other corporate policy or the Yukon *Occupational Health and Safety Act* or Regulations.

References

- *Occupational Health and Safety Act*, and Regulations (Part 1)
- *Human Rights Act*
- *Access to Information and Protection of Privacy Act*
- Yukon Government GAM Policy 3.48: Health and Safety
- Yukon Government GAM Policy 3.49: Accommodating Employees with Disabilities
- Yukon Government Health and Safety Rules
- Yukon Government Disability Management and Accommodation Framework and accompanying guidelines.