

A 3D-rendered wooden gavel with a handle and a head, resting on a circular wooden base. The gavel is positioned vertically, with the handle extending to the right. The wood has a natural grain and is highlighted with soft shadows and highlights to give it a realistic appearance.

Fitness for Duty GTSWCA

Supervisory Training Program



Training Objectives

- Review all fitness program policies including OSHA due diligence
- Ensure that supervisors understand their legal obligations related to impairment on the job
- Give supervisors the skills for handling impairment issues promptly, effectively and in accordance with company policy



- Supervisory Obligations
 - Due Diligence
 - OHSA & Regulations
 - Criminal Code of Canada
- Company Policy/Policies
- Possible Test Situations
 - 'Reasonable Cause', Post-Incident, and Return to Work Agreements



Topics (cont)

- Drug and Alcohol Testing Procedures
- - 'Addicts' versus 'abusers'
- Impairment
 - Signs and Symptoms



Legal Obligations



Due Diligence- every reasonable precaution

Taking “all reasonable care”, as required under the OHSA, can be proven if the employer can show that: (i) it has a comprehensive system in place to prevent health and safety violations; and (ii) steps are in place and were taken to ensure the effective operation of that system..



Due Diligence Steps

- Know your obligations under the OHSA and comply with them. *Ignorance of the law is not a defence.*
- • Plan jobs carefully with consideration for health and safety risks. -- *Identify risks and hazards.*



Due Diligence Steps continued

- Ensure that workers have proper training, instructions and the PPE they need to carry out their work. -- *Saying "just do it" is insufficient.*
- Implement a comprehensive system to prevent hazards from harming workers. --*Ensure that everyone has been adequately trained and signs off on policies/procedures*
- Develop and implement workplace health and safety policies and procedures to implement the policies.



Due diligence continued

- Engage in ongoing and meaningful communications with unions, workers, joint health and safety committees, health and safety representatives.
- • Investigate all occupational health and safety incidents and “near misses” thoroughly.
- Document, document, document!



Supervisors

For purposes of the OSHA, a “supervisor” is a person who has charge of a workplace or authority over a worker by, for example, assigning tasks, scheduling work or enforcing discipline. Supervisors can include: lead hands, forepersons, department managers, and even a company’s General Manager, Vice-President and President.

Supervisors must:

- take every precaution reasonable in the circumstances for the protection of the worker;
 - ensure worker works in manner and with protective devices, measures and procedures required by OSHA;
- ensure that workers use/wear the required PPE;
- advise workers of any potential hazards or dangers to their health and safety, of which the supervisor is aware;
- where prescribed in the OSHA, provide a worker with written instructions as to the measures and procedures to be taken for worker’s protection.



The OHSA also imposes duties and responsibilities on workers, including:

- working in a safe manner in compliance with OHSA;
- wearing and using PPE;
- reporting defects in equipment;
- reporting contraventions of OHSA; and
- refraining from rough-housing or boisterous conduct.

Workers also have rights under the OHSA, including: the right to refuse unsafe work and the right to protection from employer reprisals related to occupational health and safety matters.



Drugs and Alcohol Policy

- Objective
 - Workplace free from the impairment effects of drug and alcohol use, whether by addicts or abusers- unacceptable risk
- Rationale
 - Errors in judgment or compromised motor skills can result in serious injury or death to workers
 - The law requires us to take action; impairment due to any cause, including impairment due to drugs or alcohol, is unacceptable



Specific Requirements

- Employee must report for work and remain fit for duty, and free from the impairing effects of alcohol or drugs (including recreational cannabis/marijuana)
- Employees must self-report/ disclose impairment and also suspected dependency
- Use/sale/possession on the job prohibited (excluding prescribed medication use disclosed and taken as directed per policy)



Consequences of Breach

- Non-compliance with the policy will result in disciplinary action, up to and including dismissal
 - In serious cases of breach, dismissal may result for a first offence
- In cases involving non-culpable breach of the policy, appropriate action will be taken subject to the duty to accommodate up to the point of undue hardship



Safety-Sensitive Workplace

- Construction is an inherently safety-sensitive enterprise
- No worker can be permitted to work while impaired for any reason whatsoever; there is no “right” to impairment (i.e. regardless of whether impairing substances are legal or illegal, addict or abuser)
- Fitness for duty means unimpaired at time of reporting and during shift

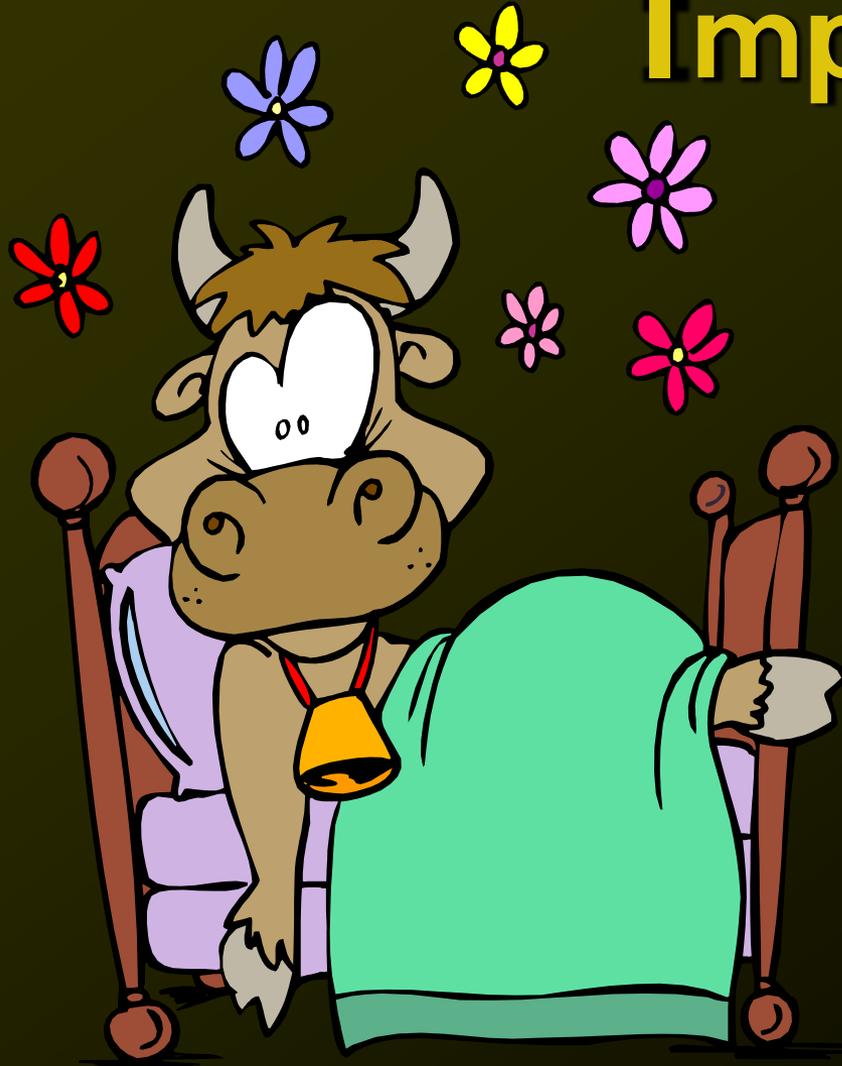


Supervisor Obligations

- Supervisors must immediately remove a worker from the work site pending investigation if the supervisor has reasonable grounds to believe the worker may be impaired
- Not a scientific test- reasonable grounds
- Supervisor will conduct an investigation to substantiate reasonable grounds



Reasonable Grounds- Impairment





Signs and Symptoms

- **Requirements**

- Specific
- Current
- Observable
- *Deviation from norm*

- **Observables**

- Speech
- Odour
- Behaviour
- Appearance
- Physical evidence





- Slurred words
- Slow speech pattern
- Giggling
- Talkative
- Slow





- Breath smells of alcohol
- Breath smells of mints or other masking aromas
- Excessive use of cologne or perfume





Appearance

- Eyes
 - Dilated pupils
 - Heavy, partially closed eye lids
 - Faraway look
 - Narrow pupils
 - Redness, bloodshot
 - Glassy





Appearance (Cont.)

- Skin
 - Pale
 - Red, flushed
 - Swollen



Behaviour

- Mood changes
 - Cheerful
 - Noisy
 - Less inhibited
 - Less shy
 - Sleepy
 - Slow
 - Distant, disengaged





Behaviour (Cont)

- Hungry
- Reckless
- Energetic
- Talkative
- Depressed, down
- Irritable
- Restless
- Hallucinates



Behaviour (Cont.)

- Physical
 - Heavy arms and legs
 - Frequent use of washroom
 - Lack of coordination
 - Sleeping on the job
 - Stumbling
 - Accidents or near miss incidents
 - Forgetful





Behaviour (Cont.)

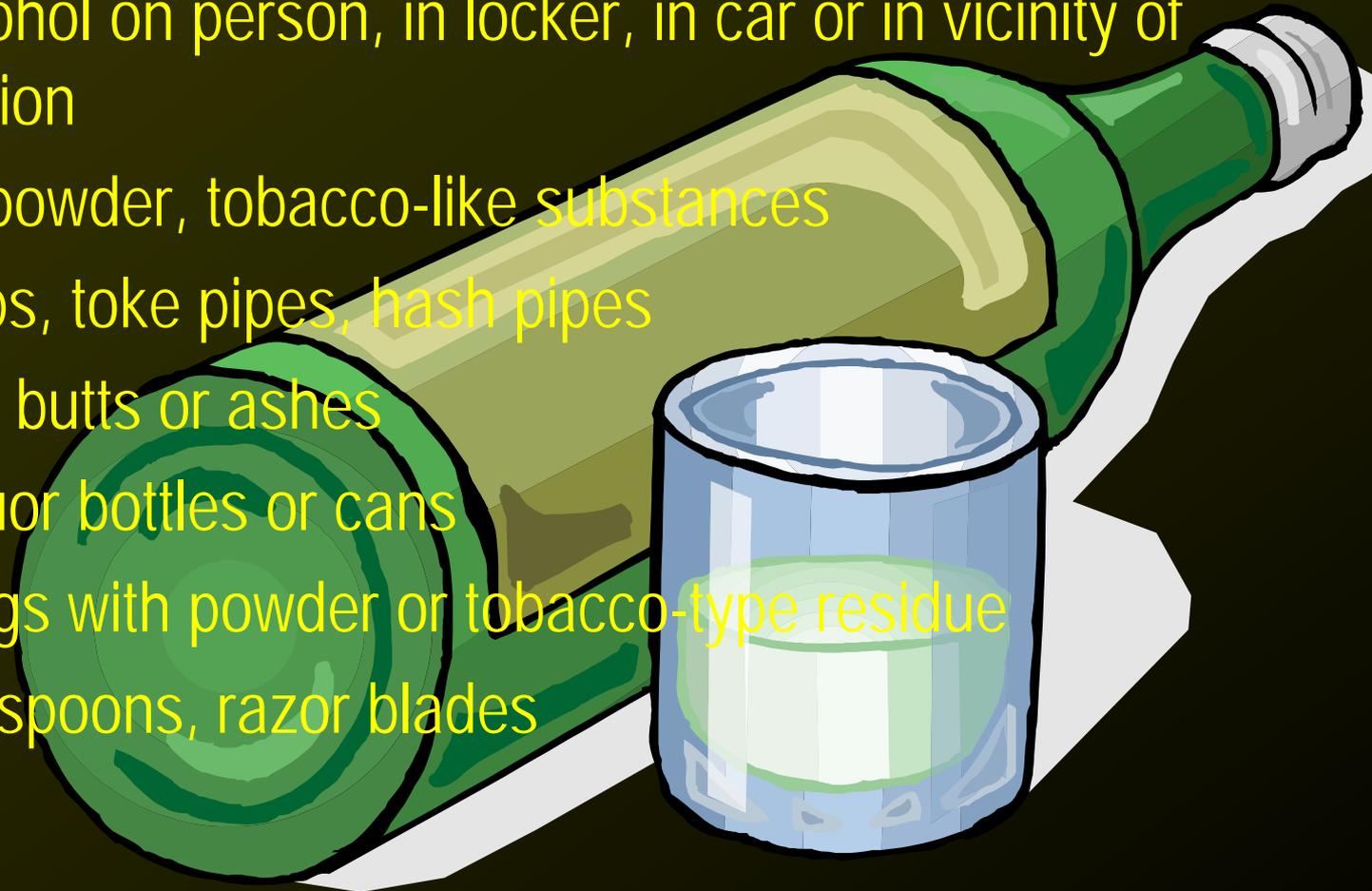
- Physical (cont.)
 - Slow breathing
 - High pain tolerance
 - Slowed reactions





Physical Evidence

- Drugs/alcohol on person, in locker, in car or in vicinity of work location
 - White powder, tobacco-like substances
- Roach clips, toke pipes, hash pipes
- Discarded butts or ashes
- Empty liquor bottles or cans
- Plastic bags with powder or tobacco-type residue
- Syringes, spoons, razor blades





- The mere presence of physical evidence is not sufficient
- The evidence must be linked to the individual in question
 - Eg. That hash pipe isn't mine, its my buddy's from last night





Admissions

- During the course of an investigation, an employee may admit to using drugs or alcohol
- The supervisor must attempt to clarify the nature of such use
 - When were drugs or alcohol last used?
 - What drugs or alcohol, and in what amounts?
 - Does the employee regularly use drugs and/or alcohol?



Effect of an Admission

- An admission is important information in the context of the Supervisor's investigation
- Document, Document, Document- what was said, any witnesses, get written statements.



Direct Observation- Supervisor

1. Observe specific, current signs of impairment (impaired gait, slurred speech, glassy eyes/dilated pupils, slowed reaction time, odour i.e of alcohol or cannabis)
2. Seek corroboration from another supervisor (or if necessary, another worker)
3. If corroborated, remove employee from job site (not sent home... yet)
4. Document observations – supervisor and corroborating supervisor
5. Contact union representative and ensure that he/she is available



Direct Observation (Cont.)

6. Interview employee in presence of second supervisor and union representative
 - Purpose of interview:
 - Confirm observations
 - Offer employee opportunity to explain
7. Send home (cab or other means)



Reported Impairment (not direct observation)

1. Take a statement from the employee or supervisor reporting the incident
2. Immediately dispatch another supervisor to observe the employee and corroborate the report
3. If impairment is corroborated, immediately remove the employee from the job
4. Take Witness Statement from the supervisor



Reported Impairment (Cont)

5. Contact union representative and ensure that he/she is available
6. Interview employee in presence of second supervisor and union representative
 - Purpose of interview
 - Confirm observations
 - Offer employee opportunity to explain
7. Send home after interview completed



Consequences

- Operation of motor vehicle
 - Do NOT allow an employee who you believe is impaired to drive his or her motor vehicle
 - If the employee insists, advise him or her that you will contact the police and ask them to intervene
 - Send the employee home by taxi or other means



Consequences (cont)

- An employee who is suspended pending investigation due to (suspected) impairment will be sent home without pay
 - Employees have an obligation to refrain from working while impaired
 - Consequences depends on worker's control over the impairment
 - If the impairment is due to drug and alcohol abuse or other causes within worker control, further discipline may be imposed.
 - If the employee is unfit for work for non-culpable reasons, such as possible drug or alcohol dependency- more complex investigation will be required (duty to accommodate policy.)



Testing: Reasonable Grounds and Post Incident

- Testing is only an evidentiary tool and may be done in certain situations:
 1. Significant bodily injury
 2. Significant property or equipment damage
 3. Possible exposure to legal action or liability
 4. Significant environmental damage
 5. Near miss that may have resulted in any of the foregoing events



Procedure

1. Incident or accident occurs
2. Refer to first aid for evaluation, if possible injury
3. Complete preliminary incident investigation
4. If observable signs of impairment exist, have another supervisor corroborate observations
5. If observations corroborated, may have grounds for testing
6. If observations not corroborated, confirm whether grounds for post-incident testing exist
7. If grounds exist, contact union representative



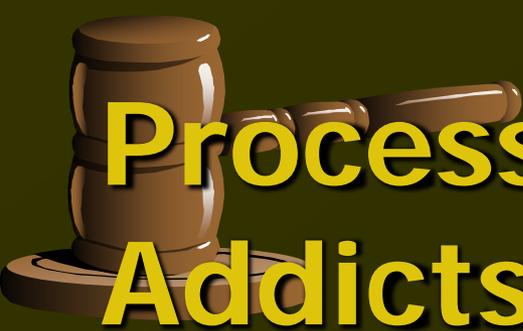
Procedure (cont)

8. Interview employee in presence of other supervisor and union representative
 - Purpose of interview
 - To determine whether incident/accident was caused by factors beyond employee's control
 - If incident caused solely by factors outside employee's control, don't test
 - If caused at least partly by factors within employee's control, and employee was otherwise competent to perform the work under the circumstances, test



Procedure (cont)

- *Does the investigation eliminate impairment as a probable contributing cause of the incident?*
 - If not, test- then send home pending investigation
 - If it does, don't test- send home pending investigation



Process – Abusers versus Addicts

- Abusers can control their use of drugs and/or alcohol and do not require treatment
 - Not disabled, so may be **no duty to accommodate**
- **Addiction** is an illness and requires accommodation
 - The goal is to assist those employee who have a legitimate substance addiction in overcoming their problem
- **Remember- no right to impairment at work. Zero tolerance.**



Accommodating the Addict

- The accommodation process must involve the Company, the Union and the employee

----Tripartite Model----

- The employee has a duty to facilitate reasonable accommodation
- The union has a duty to support reasonable accommodation
- Procedural and Substantive Obligations



Disciplining the Abuser

- Unlike addicts, abusers have control over their drug or alcohol use
 - Use of drugs or alcohol by abusers contrary to Company policy is a disciplinary issue
 - Once the employee is classified as an abuser, policy violations must be addressed by progressive discipline



Disciplining the Abuser (cont)

- Impairment at work is a very serious violation in a safety-sensitive workplace
 - Absent compelling mitigating circumstances, a disciplinary suspension is appropriate for a first offence
 - In the case of a repeat offender, termination is likely the appropriate disciplinary response
 - To avoid arbitration, a last chance agreement can be considered in either case (but never more than once)



Culpable Behaviors

- Addicts are not immune to disciplinary action, in appropriate circumstances
 - An addict cannot rely on his/her disability to excuse all substance abuse related misconduct
 - E.g. failure to disclose addiction or suspected dependency required under Policy
 - Addicts may be required to adhere to a Last Chance Agreement including treatment, random testing



Summary

- Impairment results in behavior that deviates from behavior typical of the individual in question
 - Document, Document, Document- Observable signs of deviation from norm
 - Corroborate- witness statements, physical evidence
 - Testing in certain circumstances (e.g. .post incident)
 - **Not scientific- a supervisor is not required to identify the cause or source of the impairment- sufficient to show 'reasonable grounds'**



Summary (Cont.)

- Impairment due to long-term drug or alcohol use can cause progressive changes in an employee over time
 - If the change is gradual enough, the deviation may be hard to detect
 - Careful recorded observation is the key
 - A supervisor is simply required to exercise good judgment in removing employees from the workplace who they have reasonable cause to believe are impaired



Questions