



# Temporary Impairment

Dealing with an Employee's  
Temporary Impairment

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Everyone in a New Zealand workplace is responsible for helping to make that workplace healthy and safe.

The Health and Safety in Employment Act defines hazards and harm in a comprehensive way, and requires the employer to manage circumstances that the employer knows about, or ought reasonably to have known about. It also places responsibilities on employees for their own and other employees' health and safety at work.

This includes dealing with the potential for harm from **temporary impairment** – that is, circumstances that affect an employee's health or behaviour in the short term and can even lead to longer periods of incapacity. These can include family or relationship problems; the abuse of alcohol or other drugs; mental or physical fatigue; traumatic shock; or medical conditions or treatments.

These factors can also influence the productivity and profitability of an enterprise and should also be dealt with for that reason.

Dealing with personal issues that create workplace hazards requires good communication and supportive relationships. These requirements have been made clearer in the Health and Safety in Employment Amendment Act 2002, and are introduced in this booklet.

Another publication, *Healthy Work*, gives advice on managing stress in the workplace. Other publications produced by the Occupational Safety and Health Service in a series explaining the legislation are listed at the back of this booklet. In addition, advice on other aspects of the employment relationship, from recruitment to dispute resolution, is contained in publications from the Employment Relations Service of the Department of Labour.

To acquire these publications, or for more information or assistance, contact the Department of Labour's Workinfo service at [www.workinfo.govt.nz](http://www.workinfo.govt.nz) or by freephone on 0800 20 90 20.

## What is temporary impairment?

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Once in a while, everyone's physical or mental competence or productivity is reduced by influences that are not normally present.

When this affects workplace safety or health, this is a **temporary impairment** that should be managed as a potential workplace hazard.

As every employer and employee knows, a problem outside the workplace can undermine workplace relationships or reduce efficiency at work. Where the problem also creates a potential hazard to the employee or to others, then the employer must make sure the problem is managed through the workplace's health and safety system.

Problems that can lead to temporary impairment include:

- a crisis in the employee's family
- the effects of alcohol or other drugs
- shock or insecurity after a workplace accident, fire or robbery
- unresolved conflict with the employer, or among employees
- treatment or medication with side effects (such as radiotherapy causing tiredness, or antibiotics causing nausea)
- tiredness due to long work periods, managing more than one paid job, or preparing for an external activity such as an exam or wedding
- the disruption to body processes caused by changes in shift work patterns especially when these are badly designed
- sexual harassment or bullying.

## Who is responsible for keeping workplaces healthy and safe?

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The Health and Safety in Employment Act requires employers and employees to maintain safe working environments, build good-faith relationships, and implement 'best practice' to protect health and safety in the workplace.

The onus is on the employer to have a proactive safety and health system in place that provides opportunities for employee involvement. But the employer is required to deal with what she or he can reasonably be expected to know about, not to have eyes in the back of the head or the ability to read minds.

Most employers want to know as soon as possible that an employee has become a hazard to themselves or others. Any such report should be treated at face value and investigated. Open communication about temporary impairment will help to ensure it is resolved, even if there is disagreement on the cause of the problem.

Identifying hazards is more than just looking at isolated processes or activities. It requires assessing and managing the whole work environment, including the people in the workplace, and how they react and interact.

Thus the employer and employees should work together to manage hazards by assessing:

- the skill and knowledge of employees
- the supervision they are given
- the demands of workloads
- employees' access to assistance.

The level of vigilance required depends on the nature of the work and the potential consequences of impairment-related error. For example, higher standards will be expected in the forestry industry than in a low-risk office.

## What is the role of employee participation schemes in keeping the workplace safe?

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Where a health and safety representative, committee or other arrangements are in place they should be involved in establishing a system to identify problems and protocols for dealing with them. Responses to individual employees' needs will require flexibility, but there is also a need for certainty. Effective systems give people the confidence to raise their own and other employees' problems, because it is clear that each case will be dealt with confidentially and fairly.

In circumstances where behaviour leading to impairment is part of the culture of an organisation, for example where excessive overtime or after work drinking is the norm, involving the health and safety representative can be part of getting an acceptance for a different culture.

Also where workplaces employ a range of people with different cultural responses to health or family problems, a representative group of employees can provide support and advice to both their colleagues and the employer.

As with all other elements of health and safety at work, good training and active support by the employer for the work of the representatives are essential.

A publication, *Involving Employees in Safety at Work*, has been developed to assist in reviewing and establishing employee participation schemes and is available from Workinfo on freephone 0800 20 90 20 or at [www.workinfo.govt.nz](http://www.workinfo.govt.nz).

## How does temporary impairment affect safety at work?

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A situation that can be handled safely within an employee's normal level of competence can become a hazard when an employee is impaired.

For example, alcohol impairs judgement of speed and distance; tiredness can lead to memory loss; concern over harassment can lead an employee to avoid a colleague whose help they need; anger can lead to foolhardy acts; problems at home can lead to fatigue and inattention.


Where such problems occur all reasonably practicable steps should be taken to manage them because of their effect on employee safety, productivity and the smooth running of the workplace.

## Assessing an employee's safety to be at work

The questions in the table below can help employers and employees assess the likelihood that a temporary impairment will lead to increased safety and health risk.

Criterion			
	Won't usually need assessment		Increasing need for assessment
How many hours did the employee work in the past week?	Under 40 hours.		Increasing numbers of hours*.
What is the pattern of the hours worked in the past week?	Regular 8-hour shifts.		Extended irregular shifts.
Is the employee suffering from acute sleep loss?	Regular sleep of usual day/night pattern and length.		Disturbed or curtailed sleep.
Does the employee have a sleep debt?	No reason for sleep debt.		Hours worked or personal circumstances make sleep debt likely.
Is the employee working hours that are out of sync with the employee's circadian rhythm?	No.		Sleep patterns are out of synchrony with the employee's personal circadian rhythm.
Is the employee experiencing life stresses away from work?	None.		Life events pose major problems.
How well has the employee coped in the past?	Has coped well in the past.		Has not coped well in the past.

\*Notes on hours of work

Criterion			
	Won't usually need assessment		Increasing need for assessment
Does the employee get support at work and at home?	Has had good support in the past.		Support networks not evident.
What is the physical intensity of the work?	Medium.		Very low or very high.
Does the employee's physical fitness match the demands of the work?	Close match between fitness and requirements.		Obvious discrepancies.
What are the mental and emotional demands of the work?	Medium.		Very low or very high.
Does the employee's mental and emotional state match the demands of the work?	Close match.		Obvious discrepancies.
Do environmental factors pose an additional load?	No influences.		Major influences.

**Note:** This table provides examples of typical hazards as a starting point for thinking about your workplace. It is not a complete list of all possible hazards or issues.

- Each situation will need to be considered on its own merits. The difficulties of working increasing numbers of hours a week are not in simple linear proportion to the number of hours worked.
- While no firm mathematical formula can be supplied, it is likely that, because the available recovery time decreases as the working time increases, the relationship will be exponential.

## What about hazards that are outside the employer's control?

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Employers are not responsible for factors outside of work that impact on an employee's ability to cope or that lead to fatigue. But they are required to have systems that identify and deal with such factors when they may affect workplace safety.

Good relationships and communication help, because they create an atmosphere of trust in which employees can discuss problems openly. Talking the matter through with the employee is a good place to start, and can also be the start of a performance management programme if the impairment becomes longstanding.

Employee Assistance Programmes, provided confidentially by a neutral third party, can help employees manage their external pressures, or give them the confidence to discuss them with a workplace health and safety representative or with a manager.

Support from a fellow employee who has experienced a similar situation can be helpful. For example, if someone is trying to return to work too early after surgery, a colleague who has suffered a similar illness may find it easier to get that person to take the time they need to recover properly.

It is also important to ensure that health and safety representatives are well known and are well trained and supported, because they are valuable in managing employees' temporary problems.

It is also important to make sure that employees are aware of their responsibility to look after themselves and know how to recognise signs of impairment. Employers should try to create an atmosphere where employees feel secure enough to tell their employer if they are unable to undertake their work safely, instead of feeling they must carry on out of loyalty or fear.

## What if the employee doesn't recognise the risk the impairment is causing?

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The standard of care required under the Act is that 'all practicable steps' must be taken to prevent harm. This means doing those things that are reasonable in the circumstances to avoid harm occurring to any employee. 'Reasonable' means that you only have to take the steps that are practicable, i.e. steps that a sensible and prudent person would do in the same situation.

If in the employer's judgement an employee is a risk to themselves or others, the employer should require them to cease work, and unless other safe work can be provided has the right to send them home.

In exercising that right, take care to discuss the problem, and put in place a process for dealing with it. As with other employee relationship issues the employer should establish processes that are well understood by employees, and which provide the employee with the right to support and advice from a union, advisor or colleague.

How payment or return to work are dealt with can differ according to the problem and to the agreement under which an employee is engaged. If you need advice in these circumstances you can phone Workinfo (0800 20 90 20), who will be able to provide you with information.

## What happens in cases of ongoing impairment?

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Situations will arise where an employee is consistently unable to fulfil their work obligations due to causes outside the workplace. As the employer, you should treat this just like any other employment relationship issue.

In the first instance, you should seek to discuss matters openly and frankly with the employee (and/or their representative) and seek an agreed resolution. Try to identify the issues or factors giving rise to the impairment, and the degree to which they can be reasonably modified or removed. This may include changing some work processes or practices, or removing the employee from a situation in which they are a hazard to their workmates.

Remember, the problem may involve more than just one employee; an approach involving employees jointly (and/or any relevant union) may be the most effective way of addressing such collective concerns.

Mediation may help where it proves difficult to identify or agree on the underlying problem and the best way forward. The Employment Relations Service, a division of the Department of Labour, provides mediation services under the Employment Relations Act. These services are available to any employer or employee with an employment relationship problem. Mediation is simple, effective, free and fair. Mediators are also able to make a final and binding settlement of a problem if both parties agree in advance to this.

If mediation does not lead to a satisfactory resolution you may decide it is necessary to take further action.

Any disciplinary action should be taken only after open and impartial consideration of all the relevant issues. In order to avoid claims of unfair treatment, the employer should clearly explain matters to the employee and make sure he or she has an opportunity to provide a considered explanation. Consider all the relevant information and options. Seek the views of those who will be affected by your decision, and carefully consider those views before finalising your course of action.

Before taking any action, it is wise to seek independent advice.

Employers can contact:

- Employers and Manufacturers Association (Northern) Inc – [adviceline@ema.co.nz](mailto:adviceline@ema.co.nz)
- Employers and Manufacturers Association (Central) Inc – [ema@emacentral.org.nz](mailto:ema@emacentral.org.nz)
- Canterbury Employers Chambers of Commerce – [info@cecc.org.nz](mailto:info@cecc.org.nz)
- Canterbury Manufacturers Association – [cma@cma.org.nz](mailto:cma@cma.org.nz)
- Otago/Southland Employers' Association – [maree@osea.org.nz](mailto:maree@osea.org.nz).

Employees can obtain information through their union or the CTU at [www.union.org.nz](http://www.union.org.nz).

Employers and employees in maritime industries can obtain assistance and advice from the Maritime Safety Authority on (04) 473 0111 or toll free on 0508 22 55 22 or the website at [msa.govt.nz](http://msa.govt.nz).

Staff at Workinfo (0800 20 90 20) are experienced in helping with day-to-day problems in workplaces. In most cases they can give you information to help you deal with your problem yourself by providing facts and common-sense suggestions.

### **Publications of the Occupational Safety and Health Service**

The Occupational Safety and Health Service (OSH) has produced a range of general publications to assist employers and employees.

These are available by contacting Workinfo by freephone 0800 20 90 20, can be downloaded from [www.workinfo.govt.nz](http://www.workinfo.govt.nz) or obtained from your local OSH office, which is listed in the blue pages of the telephone directory.

Publications include:

- *Working Together* – employees' rights under the Health and Safety in Employment Act
- *Involving Employees in Safety at Work* – developing an approach that suits your workplace
- *Healthy Work: Managing Stress in the Workplace*
- *An Introduction to Employer's Rights and Responsibilities* – under the Health and Safety in Employment Act
- *Are You Ready?* – voluntary work and workplace health and safety
- *Are You Ready?* – workplace health and safety and the self-employed
- *Working Safely for Your Community* – health and safety guidelines for community and voluntary organisations.

This booklet is a guide only and may not be accurate for all situations. It should not be used as a substitute for legislation or for legal or other expert advice.

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