



Department of Labour

HIV/AIDS Technical Assistance Guidelines

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Foreword

This Technical Assistance Guidelines (TAG) document is intended to complement the earlier adopted 'Code of Good Practice on Key Aspects of HIV/AIDS and Employment' of 2000 within the framework of the policy options indicated in the 'Employment Equity Act' of 1998. The TAG will equip employers and other role players with practical tools to eliminate unfair discrimination based on HIV in the workplace.

One of the most serious public health problems facing South Africa is the HIV/AIDS epidemic. It not only threatens the lives of individual employees and employers, but has significant impact on each and every workplace, the effective functioning of the labour market and the national economy as a whole.

The impact of HIV/AIDS in the workplace is felt in many areas, for example the loss of productivity, increased cost of employee benefits, high production costs and lower workplace morale due to prolonged staff illness, increased absenteeism and mortality rates. This, in turn, impacts negatively on the economy of the country as it slows down economic growth with less economically active persons able to contribute to the economy. The loss of an employee requires an appropriate replacement to be selected and trained, which often is at great cost.

In re-affirming the government's commitment to intensify its comprehensive programme to fight HIV/AIDS in partnership with all sectors of society, my Department introduced specific provisions in the Employment Equity Act (1998), which specifically prohibit unfair discrimination on the grounds of an employee's HIV-status. The Act also prohibits testing by employers without the prior authorisation by the Labour Court. To assist parties to understand and fulfil their obligations under the Act, particularly in respect of HIV/AIDS, the Code was developed, inter alia, to provide strategies to reduce the impact of the epidemic by developing policies and procedures to manage HIV/AIDS in the workplace.

To assist with the practical implementation of the Act and the Code, we developed the Technical Assistance Guidelines (TAG) on Key Aspects of HIV/AIDS and Employment. The TAG builds on the Code to set out practical guidelines for employers, employees and trade unions on how to manage HIV/AIDS in the workplace. It also serves as a guide to ensure that individuals affected by HIV/AIDS are not unfairly discriminated against in the workplace. In essence, the TAG is based on the Department of Labour's broad goals in managing HIV/AIDS in the workplace, inter alia, promotion of equality and openness around HIV/AIDS, creation of a balance between rights and responsibilities, and restoration of the dignity of persons affected by HIV/AIDS.

In conclusion, I wish to express my sincere gratitude to the Commission for Employment Equity for the significant role it played in the development of the TAG. I also take this opportunity to thank the Employment Equity Directorate for providing support and technical assistance during the development of the TAG.

My special word of thanks go to the International Labour Organisation (ILO) and United Nations Development Programme (UNDP) for their unwavering financial and technical support.

MMS MDLADLANA, MP
MINISTER OF LABOUR

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Acronyms and abbreviations

AIDS	Acquired Immune Deficiency Syndrome
ASOs	AIDS Service Organisations
CCMA	Commission for Conciliation Mediation and Arbitration
COIDA	Compensation for Occupational Injuries and Diseases Act
DOH	Department of Health
DOTS	Directly Observed Treatment Short-course
EAP	Employee Assistance Programme
EEA	Employment Equity Act
GIPA	Greater involvement of people living with HIV/AIDS
HIV	Human Immunodeficiency Virus
ILO	International Labour Organisation
KAP	Knowledge, Attitudes and Practices
LRA	Labour Relations Act
M&E	Monitoring and Evaluation
NEDLAC	National Economic Development and Labour Council
NGO	Non Government Organisation
OHS	Occupational Health and Safety
PEP	Post-exposure prophylaxis
PLWA	Person living with HIV/AIDS
PWA	Person with AIDS
PMTCT	Prevention of Mother to Child Transmission
SADC	Southern African Development Community
SANAC	South African National AIDS Council
SANDF	South African National Defence Force
STD	Sexually Transmitted Disease
STI	Sexually Transmitted Infection
TB	Tuberculosis
TMPs	Traditional Medical Practitioners
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNDP	United Nations Development Programme
VCT	Voluntary Counselling and Testing
WHO	World Health Organisation

Glossary

AIDS	Acquired Immune Deficiency Syndrome - a syndrome that results from infection with HIV
Antibodies	Substances produced by cells in the human body's immune system in response to foreign substances that have entered the body
Asymptomatic	Infected by a disease agent but exhibiting no medical symptoms
Care	Steps taken to promote a person's well being through medical, psychosocial, spiritual and other means
Confidentiality	Right of every person, employee or job applicant to have their medical information, including HIV status, kept private
Counselling	Counselling is defined as a confidential dialogue between a client and a trained counsellor aimed at enabling the client to cope with stress and take personal decisions related to HIV/AIDS. Counselling may be provided by a professional or a lay counsellor.
ELISA test	Enzyme Linked Immuno-Sorbent Assay - the test used to identify the presence or absence of HIV antibodies
Epidemic	A disease, usually infectious, that spreads quickly through a population
Epidemiology	The study of the distribution and determinants of disease in human populations
Evaluation	An assessment of progress towards and the achievement of an objective. Generally carried out at a specific point, or points in time
HIV testing	Any form of testing designed to identify the HIV status of a person, including blood tests, saliva tests or medical questionnaires
HIV	Human immunodeficiency virus - the name of the virus which weakens the immune system and leads to AIDS
Immune system	A complex system of cells and cell substances that protects the body from infection and disease
Incidence of HIV	The number of new cases of HIV in a given time period, often expressed as a percentage of the susceptible population
Indicator	A direct or indirect measure of change
Monitoring	Monitoring is an ongoing assessment or measurement of a programme that aims to provide early indications of progress, or lack of progress in the achievement of the programme's objectives
Networks	Individuals and organisations willing to assist one another or to collaborate to achieve common goals
Occupational exposure	Exposure to blood or other body fluids, which may be HIV infected, during the course of carrying out working duties
Opportunistic infections	Infections that occur because a person's immune system is so weak that it cannot fight

	the infections
Pandemic	An epidemic occurring simultaneously in many countries
Partnerships	Relationships that are built with other organisations to support existing initiatives within the workplace and the community
Policy	Written document that aims at setting out an organisation's position and practices on HIV/AIDS
Positive living	A way of living with HIV or AIDS which enables people to cope with the difficulties and challenges they might face, and to live a long and fulfilling life
Prevalence of HIV	The number of people with HIV at a point in time, often expressed as a percentage of the total population
Prevention programme	A programme designed to prevent HIV transmission, including components such as awareness, education and training, condom distribution, treatment of sexually transmitted infections, occupational infection control
Risk	Probability of a person acquiring HIV
Risk behaviour	Individual, or group behaviour, that increases the risk of becoming infected with HIV
Risk environments	Environments in which social, economic or cultural factors increase the possibility of HIV transmission
Risk assessments	Identify factors that may make a particular workforce, workplace or surrounding communities more vulnerable to infection with HIV
Seroconversion	The point at which the immune system produces antibodies and at which time the HIV antibody test can register an HIV infection
Support	Services and assistance that could be provided to help a person deal with difficult situations and challenges
Susceptibility	Factors determining the rate at which the HIV epidemic is propagated at an individual, group or societal level
Treatment	Steps taken to care for and manage an illness
Unfair discrimination	An employee is treated differently due to their real or perceived HIV status, in a way that impairs their fundamental dignity. Discrimination is not unfair if it is based on the inherent requirements of a job
Vulnerability	External factors that place a person at risk of HIV infection. Vulnerability factors include for example, age, gender and income level
Wellness programme	A programme designed to promote the physical and mental health as well as the well-being of employees, including components such as counselling, support groups, nutritional supplements, provision of treatment for opportunistic infections, provision of anti-retroviral therapy
Window period	The incubation period between infection and detection of HIV
Workplace programme	An intervention to address a specific issue within the workplace (for example, providing staff access to a voluntary HIV counselling and testing programme).

Summary of the contents

1. The HIV/AIDS epidemic is having a significant effect on all South African workplaces and the economy. As the epidemic primarily affects working age adults, its impact will be seen primarily through an increase in absenteeism and sick leave, faster staff turn over due to early deaths, more employees placed on disability pensions, lower staff morale, greater pressure on employee benefit funds and possibly a change in markets and demands for services.
2. In the light of the impact of HIV/AIDS on workplaces described above and the high levels of discrimination faced by people affected by HIV or AIDS, the Employment Equity Commission with the Department of Labour, developed the Code of Good Practice on Key Aspects of HIV/AIDS and Employment.
3. The Code of Good Practice on Key Aspects of HIV/AIDS and Employment is a code of good practice that is attached to the Employment Equity and Labour Relations Acts. It is essentially a standard setting out the content and scope of an appropriate response to HIV/AIDS in the workplace.
4. The Technical Assistance Guideline (TAG) on the Code of Good Practice on Key Aspects of HIV/AIDS and Employment (the Code) is an implementation guideline issued by the Commission for Employment Equity and the Department of Labour. It is designed as an accessible, user-friendly manual for employers, employees and trade unions on how to deal with HIV related discrimination and to respond to the impact of HIV/AIDS in the workplace.
5. Chapter One of the TAG is an introduction to the TAG. It sets out the objectives of the Code and the principles it is based on and its application and scope; it details the purpose and objectives of the TAG; and sets out the context for the Code by describing the HIV/AIDS epidemic and its impact on the workplace.
6. Chapter Two of the TAG describes the legal and policy framework underlying the Code. It assists employers, employees and trade unions to understand the relevant law by setting out the provisions in the Code, the Constitution and other laws. Important terms are defined. Key issues are identified including common problems and issues for various stakeholders. Finally, it sets out implementation guidelines, including checklists and roles and responsibilities.

The chapter deals with the following elements of the Code:

- 6.1 The need to both prohibit unfair discrimination based on HIV status as well as promote a non-discriminatory work environment in which persons affected by HIV/AIDS are able to participate fully without fear of stigma or prejudice.
 - 6.2 The importance of ensuring that HIV Testing takes place in accordance with the provisions in section 792 of the Employment Equity Act and that it is accompanied by a guarantee of confidentiality. This section also details the importance of encouraging openness and disclosure and describes the steps that can be taken to create an environment in which Persons Living with HIV or AIDS (PLWAs) feel able to voluntarily disclose their HIV status.
 - 6.3 How to promote a safe working environment and the steps that should be taken to ensure that employees who become occupationally infected with HIV be able to apply for compensation.
 - 6.4 The need to ensure that employee benefits are provided in a relevant, sustainable, non-discriminatory fashion.
 - 6.5 The need to ensure that employees are protected from unfair dismissals, steps to be followed in effecting a dismissal for incapacity and how to promote a confidential, accessible grievance procedure to deal with HIV related disputes.
7. Chapter Three describes how to manage HIV/AIDS in the workplace. It provides practical guidelines relating to each of the provisions in the Code. It identifies key issues and suggests implementation guidelines such as check lists, best practices and case studies.

This chapter details:

- 7.1 An introduction to managing HIV/AIDS in the workplace including the importance of mainstreaming HIV and gender programming.
- 7.2 The responsibilities of management when responding to the epidemic for example the need to develop an HIV/AIDS committee and proactively ensure that employee benefit funds are sustainable.
- 7.3 How to determine the impact of HIV/AIDS on a particular workplace and to use this information to plan for such implications.
- 7.4 Developing an HIV/AIDS policy.
- 7.5 Developing a workplace HIV/AIDS prevention programme including awareness activities, voluntary counselling and testing, education and training, condom promotion and distribution, management of STDs and infection control measures.
- 7.6 Developing a workplace wellness programme including creating a non-discriminatory work environment, medical management of staff, treating and preventing TB, positive living, counselling and support groups, using traditional medical practitioners, providing family support programmes and reasonably accommodating infected employees.
- 7.7 Creating strategic partnerships to enhance the greater involvement of PLWAs and other organisations in the workplace programme.
- 7.8 Strategies for monitoring and evaluating workplace HIV/AIDS policies and programmes.

Chapter Four is a set of three appendices. Appendix A sets out additional facts on HIV/AIDS and the impact it will have in the workplace. Appendix B is an index to the TAG and lists additional resources for stakeholders requiring further assistance with their policy or programme. Finally, Appendix C contains a copy of the Code.

CHAPTER 1

1. Introduction

Chapter one sets out the purpose behind the development of the Code on Key Aspects on HIV/AIDS and Employment (the Code) and the Technical Assistance Guidelines (TAG). Furthermore, it outlines some basic facts on HIV/AIDS and the key contextual factors relating to the pandemic and its impact in the workplace.

Key points

The following key points are made in this section:

- The Code of Good Practice on Key Aspects of HIV/AIDS and Employment (the Code) is linked to the Employment Equity and Labour Relations Acts.
- The Code is based on principles and legal provisions contained within international law, the Constitution, labour legislation, other relevant acts and the common law.
- The Code has two objectives: Firstly to provide guidelines on how to eliminate unfair discrimination based on HIV status in the workplace; and secondly, to provide guidance on the management of HIV/AIDS in the workplace.
- The TAG provides guidelines for employers, employees and trade unions in the management of HIV/AIDS in the workplace.
- HIV/AIDS is a serious public health problem.
- There is no risk of HIV transmission in everyday social contact.
- The HIV/AIDS pandemic continues to have a significant impact in the workplace and has serious implications for the economy of South Africa. .
- Approximately 4.7 million men, women and children are infected in South Africa.
- Anybody who has unprotected sex is at risk – regardless of race, religion or sexual orientation.
- HIV/AIDS affects morbidity, mortality, absenteeism, staff morale, the cost of benefits, products and services and investment.
- To minimise the impact of HIV/AIDS, it is imperative that every workplace in South Africa responds to the challenge of HIV/AIDS through prevention of further infections and implementation of management strategies.

1.1 Background to the Code

The Code of Good Practice on Key Aspects of HIV/AIDS and Employment is a code that is linked to the Employment Equity and Labour Relations Acts. It is essentially a standard setting out the content and scope of an appropriate response to HIV/AIDS in the workplace.

1.1.1 Objectives of the Code

The Code aims to set out implementation guidelines for employers, employees and trade unions to ensure that individuals affected by HIV/AIDS are not unfairly discriminated against in the workplace. This includes provisions regarding:

- (i) Creating a non-discriminatory work environment;
- (ii) Dealing with HIV testing, confidentiality and disclosure;
- (iii) Providing equitable employee benefits;
- (iv) Dealing with dismissals; and
- (v) Managing grievance procedures.

The Code also aims to provide guidelines for employers, employees and trade unions on how to manage HIV/AIDS within the workplace. This includes provisions regarding:

- (i) Creating a safe working environment for all employers and employees;
- (ii) Developing procedures to manage occupational incidents and claims for compensation;
- (iii) Introducing measures to prevent the spread of HIV;
- (iv) Developing strategies to assess and reduce the impact of the epidemic upon the workplace; and
- (v) Supporting those individuals who are infected or affected by HIV/AIDS so that they may continue to work productively for as long as possible.

1.1.2 Principles underlying the Code

The Code is based on five key principles:

- Equality and non-discrimination between individuals with HIV infection and those without and between HIV/AIDS and other comparable illnesses;
- The creation of a supportive environment so that employees with HIV or AIDS can continue working for as long as possible;
- Protection of human rights;
- Ensuring the rights and needs of women are addressed in all policies and programmes; and
- Consultation, inclusively and participation of all stakeholders in all policies and programmes.

1.1.3 Legal background to the Code

The principles embodied in the Code have been drawn from both national and international law as well as best practices in the management of HIV/AIDS in the workplace.

International law

The most important of the international codes that have been used to inform and develop the Code are:

- The SADC Code of Good Practice on HIV/AIDS and Employment (1997)
- HIV/AIDS and Human Rights: International Guidelines (United Nations: 1998)
- The ILO Code of Practice on HIV/AIDS and the World of Work (2001)

South African law

The Code is based on principles and provisions contained in:

- The Constitution;
- Labour legislation;
- The common law; and
- Related legislation.

1.1.4 Application and scope of the Code

The Code is issued in terms of the provisions of the Employment Equity and the Labour Relations Acts; and it should be used as a standard against which the actions of employers, employees and trade unions may be measured in the management of HIV/AIDS in the workplace.

Use of codes of good practice

Section 54 of the Employment Equity Act provides that the Minister of Labour may on the advice of the Commission for Employment Equity (CEE) issue any code of good practice and that these codes are to be used to help employers, employees and trade unions in the implementation of the Act.

The Code as stipulated in item 4 states that it should:

- Apply to all workplaces whether formal, informal or self employed; and
- Be read with other employment related codes of good practice on the management of HIV/ AIDS in the workplace.

1.2 Background to the TAG

The Department of Labour and the Commission for Employment Equity, in association with the Department of Health and the International Labour Organisation (ILO), have recognised the need to assist employers, employees and trade unions in the management of HIV/AIDS in the workplace. The Technical Assistance Guidelines (TAG) presented in this document provides implementation guidelines for employers, employees and trade unions on how to respond to the scourge of HIV/AIDS and its impact in the workplace.

1.2.1 Specific objectives of the TAG

- Help employers and trade unions to implement the Code;
- Provide detailed guidance and information on the process in which the principles in the Code can be translated into day-to-day practice; and
- Identify best practices to respond to the impact of HIV/AIDS in the workplace.

1.3 Impact of HIV/AIDS in the workplace

Organisations will experience the impact of HIV/AIDS in a number of ways.

High morbidity (health of employees) and mortality (deaths) rates. As infected employees become ill they will take additional sick leave and this will disrupt operational activities. It is estimated that the costs to a manufacturing company could increase. This disruption will be amplified when more qualified and experienced employees are absent, as finding a temporary replacement becomes more difficult.

Mortality rates attributed to HIV/AIDS infection are expected to increase significantly. The loss of an employee requires an appropriate replacement to be selected and trained, often at great cost to the organisation. For highly qualified staff this is often difficult, particularly in developing economies with skill shortages. This could mean that an organisation's remuneration budget could increase.

As the HIV/AIDS pandemic advances, increases in deaths will lead to increased **absenteeism** as employees attend funerals of family members, friends and colleagues or take time off to care for sick family members.

A fear of infection and death, may lead to increased suspicion of others as well as resistance to shouldering the additional responsibilities for colleagues who are off sick, not fully functional or away from work. This could lead to **low staff morale**.

Employers and employees will feel the impact of HIV/AIDS as the cost of employee **benefits** increases.

Changing levels of disposable income will affect the markets and the profile of customers may also change with the intensifying HIV/AIDS pandemic. If the organisation provides **products and services**, the demand for these could increase (example, health and welfare) while the ability to provide the services may be affected due to the loss of key personnel.

Finally, local capital may be reduced as assets are used to meet immediate health needs. Foreign **investors** may be concerned about the impact of HIV/AIDS when contemplating **investment**.

1.3.1 Impact of HIV/AIDS on the economy

HIV/AIDS has a profound impact on growth, income and poverty. It is estimated that the annual per capita growth in half the countries of sub-Saharan Africa will fall as a direct result of HIV/AIDS. In addition, per capita GDP in some of the hardest hit countries may drop and per capita consumption may fall even more.

People at all income levels are vulnerable to the economic impact of HIV/AIDS, but the poor suffer most acutely. The management of HIV/AIDS without resources pushes people deeper into poverty as households lose their breadwinners to HIV/AIDS, livelihoods are compromised, and savings are consumed by the cost of health care and funerals.

1.3.2 Impact on other sectors

The HIV/AIDS epidemic will have a significant impact in a number of other areas including:

- Families and communities;
- The informal sector; and
- Development objectives and poverty reduction programmes.

1.3.3 Responding to the impact of HIV/AIDS in the workplace

There are a number of reasons why every role-player in the workplace should be involved in responding to the prevention and the management of HIV/AIDS in the workplace. In terms of the Non-Intervention scenario projections based on the Metropolitan Doyle model, if South Africans do nothing about the prevention and management of the HIV/AIDS pandemic, the following scenarios are painted:

The following is adapted from the Non-intervention scenario projections on the Metropolitan Doyle model:

- In 2001, 18,02% of the South African workforce between the ages of 16-59 were HIV positive. If nothing is done, it is projected that this number will increase to 22,35% in 2005 and to 24,08% in 2010
- In 2001, 0,93% of the South African workforce had a full-blown AIDS. If nothing is done, it is projected that this number will increase to 1,98% in 2005 and to 2,91 in 2010
- In 2001, 235 000 new AIDS cases were reported. If nothing is done, it is projected that this number will increase to 329 000 in 2005 and to 541 000 in 2010.
- In 2001, 197 000 AIDS orphans were reported. If nothing is done, it is projected that this number will increase to one million in 2005 and to two million in 2010.
- In 2001, the life expectancy of females was estimated at 52 years. If nothing is done, it is projected that the life expectancy rates will be reduced to 43 years in 2005 and to 37 years in 2010.
- In 2001, the life expectancy of males was estimated at 49 years. If nothing is done, it is projected that the life expectancy rates will be reduced to 43 years in 2005 and to 38 years in 2010.

These reasons alone make it imperative for employers, employees and trade unions to be involved in the reversal of the scourge of the HIV/AIDS pandemic.

CHAPTER 2

2. Key legal and policy components of the Code

This chapter provides an overview of the legal and policy framework on the elimination of unfair discrimination on the ground of HIV status and the promotion of equality in the workplace upon which the Technical Assistance Guide (TAG) on the Code of Good Practice on HIV in the Workplace is based. The chapter also provides assistance on the interpretation of the key legal concepts or phrases used in the Code and the Employment Equity Act No 55 of 1998 (S 5-11 thereof) and this includes guidelines on action required in compliance with the law.

The TAG and Code on HIV/AIDS in the workplace are based on the national and international legal framework for eliminating unfair discrimination and the promotion of equality in the workplace. This framework, includes the Constitution of the Republic of South Africa, relevant international instruments, including United Nations (UN) Human Rights Treaties, International Labour Organisation (ILO) Conventions and appropriate regional (Africa) and sub-regional (SADC) instruments, as well as national laws and policies. As indicated in chapter 1, the Code and its supporting TAG are issued in terms of Section 54(1)(a) of the Employment Equity Act, No 55 of 1998 and section 203(1)(a) of the Labour Relations Act, No 66 of 1995.

2.1 Eliminating unfair discrimination and promoting a non-discriminatory workplace

The Code provides a framework for the promotion of equality and non-discrimination against individuals with HIV infection, and between HIV/AIDS and other comparable medical and health conditions.

Item 6.1 of the Code expressly states that no person with HIV or AIDS shall be unfairly discriminated against within the employment relationship or within any employment policies or practices.

- People living with HIV/AIDS face many forms of unfair discrimination in the work environment.
- The law protects employees and job applicants from unfair discrimination on the basis of HIV/AIDS, specifically section 5 (read with section 6), requires employers to "take steps to promote equal opportunities in the workplace by eliminating unfair discrimination (on various grounds including HIV status) in any employment policy or practice". It furthermore encourages the promotion of equality on the basis of HIV/AIDS in all employment policies and practices.
- Section 6(2)(b) states that "it is not unfair discrimination to distinguish, exclude or prefer any person on the basis of an inherent requirement of a job."
- Eliminating unfair discrimination on the basis of HIV/AIDS in the workplace is a vital step towards reducing the impact of HIV on affected employees, as well as preventing the further spread of the epidemic.
- The law prohibits harassment on the grounds of HIV status or a combination of HIV status and one or more prohibited grounds.

2.1.1 Legal framework for eliminating unfair discrimination and promoting a non-discriminatory workplace

Constitution of the Republic of South Africa Act, 108 of 1996. Section 9 of the Constitution provides that every person is entitled to equality before the law and equal protection of the law, and prohibits both the State and any person from unfairly discriminating directly or indirectly against another person on various grounds, such as race, gender and disability. The prohibition covers grounds that are listed in the Constitution, unlisted grounds and a combination of grounds.

Although HIV and AIDS is not a listed ground in the equality clause, in the case of **Hoffmann v South African Airways** the Constitutional Court found that discrimination on the basis of HIV status was unfair discrimination in terms of the equality clause.

Hoffmann v South African Airways 2001 (1) SA 1 (CC)

Hoffmann applied for a position as a cabin attendant with SAA. He successfully completed a 4-stage interview process and a medical examination, and was found to be a suitable candidate for the position in all respects. However, when the results of an HIV test came back positive, his medical report was altered to read "HIV Positive" and "unsuitable" and he was denied the position of cabin attendant.

The Constitutional Court found that SAA had unfairly discriminated against Hoffmann in rejecting his application for employment on the basis of his HIV status, and that this was a violation of the equality clause. The case made it clear that our Courts will find discrimination on the basis of HIV status to be unfair discrimination, where the impact of the discrimination is an infringement of a person's dignity.

Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000

Section 6 of the Equality Act prohibits unfair discrimination against any person, and this will include employees living with HIV or AIDS. Section 34(1) of the Equality Act recognises HIV and AIDS as a serious issue and recommends that the Equality Review Committee investigate and make recommendations to the Minister of Justice on whether HIV/AIDS should be specifically included in the Act as prohibited grounds of unfair discrimination.

With regard to employment, this Act only applies to workplace issues that are not covered by the Employment Equity Act. For example, employees within the SANDF, National Intelligence Agency and the Secret Service are excluded from the Employment Equity Act and protected by the Equality Act.

Employment Equity Act, No. 55 of 1998

The Employment Equity Act, No 55 of 1998 was the first piece of legislation to specifically prohibit unfair discrimination against an employee or job applicant on the basis of HIV status. Section 6 (1) states that:

"No person may unfairly discriminate directly or indirectly against an employee, in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, **HIV status**, conscience, belief, political opinion, culture, language and birth.

It should be noted that the Employment Equity Act includes a job applicant in the definition of an employee for purposes of section 6(1). This means that both employees and job applicants are protected against unfair discrimination on the basis of HIV status, in the workplace. Furthermore the Act prohibits harassment on the basis of HIV status, as well as direct and indirect unfair discrimination.

According to section 6(2)(b) of the Act, it is not unfair discrimination to distinguish, exclude or prefer any person on the basis of an inherent requirement of a job. This means that if a person is treated differently, or excluded from an employment opportunity because of an 'inherent requirement of a job', this will not be considered unfair discrimination.

2.1.2 Defining unfair discrimination in employment policies and practices

Unfair discrimination:

Drawing a distinction, between individuals or groups, based on their personal characteristics which:

- Imposes burdens, obligations or disadvantages on such individuals or groups which are not imposed on others; or
- Withholds or limits access to opportunities and benefits available to other members of society

Direct and indirect discrimination

Discrimination may be direct when a distinction, exclusion or preference is made on the basis of a direct reference to a person's HIV status. For example, an employment policy that provides lower remuneration to employees living with HIV/AIDS directly discriminates on the basis of HIV/AIDS.

Discrimination may be indirect, when the application of a certain practice or policy impacts more negatively on people living with HIV/AIDS. For example a training and development policy that provides training opportunities to employees who have not used sick leave during a given period may indirectly discriminate against employees living with HIV/AIDS who are more likely to have used sick leave when they start to develop opportunistic infections related to HIV/AIDS.

Employment policies and practices:

- **Recruitment procedures, advertising and selection criteria:** Recruitment and selection procedures and policies cannot exclude, directly or indirectly, people on the basis of HIV status, for instance, by insisting that only applicants who are HIV negative may apply.
- **Appointments and the appointment process:** The appointment process cannot unfairly discriminate, directly or indirectly, against applicants living with HIV/AIDS, for instance by denying appointments to those who test HIV positive as was done in the Hoffmann v SAA case.
- **Job classification and grading:** The policies relating to job classification and grading of employees should not unfairly discriminate against employees living with HIV/AIDS by for instance, denying them, directly or indirectly, certain types of employment for this reason.
- **Remuneration, employment benefits and terms and conditions of employment:** Employees with HIV/AIDS may not be unfairly discriminated against, directly or indirectly, for instance by offering them lower rates of pay or denying them employee benefits, on the basis of their HIV/AIDS status.
- **Job assignments:** HIV/AIDS should not be a factor used to unfairly discriminate, directly or indirectly against employees in assigning jobs. For instance, an employee living with HIV/AIDS should not be unfairly denied the opportunity to take job assignments abroad.
- **The working environment and facilities:** Policies relating to the working environment and work facilities should not unfairly discriminate, directly or indirectly, against employees living with HIV/AIDS. For instance, employees living with HIV/AIDS should enjoy equality of access to workplace facilities such as toilets and canteens.
- **Training and development:** Training and development policies may not unfairly discriminate, directly or indirectly, for instance by denying training opportunities to employees living with HIV/AIDS.
- **Performance evaluation systems:** Systems and policies regarding performance evaluation should not unfairly discriminate, directly or indirectly, on the basis of HIV status, so that employees living with HIV/AIDS are evaluated on a fair and non-discriminatory basis.
- **Promotion:** HIV status should not be used as a factor to unfairly discriminate, directly or indirectly, against an employee in determining promotion opportunities.
- **Transfer:** Policies may not unfairly discriminate, directly or indirectly against an employee with HIV/AIDS.
- **Demotion:** HIV/AIDS should not be used to unfairly discriminate, directly or indirectly, against an employee by for instance, demoting someone who is known to be living with HIV/AIDS.
- **Disciplinary measures other than dismissal:** Policies and procedures regarding disciplinary measures should ensure that HIV status is not used to unfairly discriminate, directly or indirectly against employees in the application of such measures.
- **Dismissal:** Dismissal procedures may not unfairly discriminate, directly or indirectly on the basis of HIV/AIDS, for instance by dismissing employees who are known to be living with HIV/AIDS.

Inherent requirements of a job:

Employment policies or practice that distinguishes, excludes or prefers a person on the basis of HIV status may not be unfair, if it is based on the inherent requirements of a particular job. An inherent requirement of a job is an essential characteristic, quality or capacity that is required in order to fulfil the duties of a job.

It is difficult to imagine when HIV negativity could be considered to be an inherent requirement of a job. Certainly, if a job requires strenuous labour, it may be that a certain level of physical fitness is an 'inherent requirement' of a job. Denying such a position to a person living with HIV/AIDS, whose physical capacity was impaired, would not be unfair discrimination. But in this situation, it is the level of physical fitness, not the person's HIV status, which is the inherent requirement of the job.

HIV status an 'inherent requirement' of a job

In the case of *Hoffmann v SAA*, South African Airways argued that HIV negativity was an inherent requirement of the position of cabin attendant. They based their argument on the fact that a cabin attendant has to be fit for world-wide duty, and in order to fulfil travel duties to foreign destinations, a cabin attendant is required to be vaccinated against yellow fever. SAA argued that medical evidence showed that a yellow fever vaccination was unsafe for people living with HIV/AIDS. HIV negativity was thus argued to be an 'inherent requirement' of the job.

The medical evidence however, showed that it was not necessarily unsafe for people living with HIV/AIDS to be vaccinated against yellow fever. Thus the argument that HIV negative status was an inherent requirement of the position of cabin attendant was rejected by the Court.

Active promotion of equal opportunities and elimination of unfair discrimination (non-discrimination)

Ensuring non-discrimination on the basis of HIV/AIDS means more than simply prohibiting unfair discrimination in employment policies and practices. The Code recommends that employers and trade unions should take steps to eliminate unfair discrimination, through positive measures such as:

- Developing HIV/AIDS policies and programmes for the workplace, such as HIV/AIDS policies based on the principles of non-discrimination and equality;
- Awareness, education and training on the rights of all persons with regard to HIV/AIDS;
- Mechanisms to promote acceptance and openness around HIV/AIDS;
- Providing support for all employees infected or affected by HIV/AIDS; and
- Developing grievance procedures and disciplinary measures to deal with HIV-related complaints in the workplace.

2.1.3 Key issues on eliminating unfair discrimination and promoting a non-discriminatory workplace

Common problems

- Companies and organisations refusing to hire job applicants who are known to be living with HIV, without having regard to their capacity to perform the inherent requirements of a job. Female workers in particular may experience greater discrimination, as through ante-natal screening they are more likely to know their HIV status;
- Employees known to be living with HIV/AIDS being offered different, and often sub-standard, terms and conditions of employment and employee benefits;
- Employees living with HIV/AIDS being passed over for promotional and training opportunities; and
- Employees living with HIV/AIDS being dismissed simply on the basis of their HIV status, once this becomes apparent, without regard to their capacity to perform the inherent requirements of a particular job.

Case study:

Unfair demotion and dismissal on the basis of HIV status

The AIDS Law Project case files between 1993–2000 reveal that 23% of all cases received related to unfair discrimination due to HIV status in the workplace.

In a case dealt with by the AIDS Law Project, a woman who worked as a radio controller for a company was demoted when the employer found out her HIV status. She was subsequently moved to the position of a security guard and then to a 'cleaning position'. She was eventually dismissed and the employer failed to provide her with her 'blue card' which would have enabled her to draw unemployment benefits.

Richter, M 2001

Issues for trade unions

- Being involved in processes to develop non-discriminatory HIV/AIDS policies and programmes;
- Recognising gender issues and their possible impact on employee rights; and
- Ensuring that union members are aware of their rights and the importance of non-discrimination on the basis of HIV status.

Issues for small businesses and the informal sector

- Ability to manage the impact of HIV and AIDS, as the loss of one or more employees can have a major impact on productivity and the survival of the enterprise.
- The importance of fostering key partnerships with organisations and social partners in order to access the necessary resources to reduce the impact of HIV and AIDS upon affected employees and to prevent further HIV infections.

2.1.4 Implementation guidelines on eliminating unfair discrimination and promoting a non-discriminatory workplace

Rationale for the elimination of unfair discrimination

- South Africa has committed itself in terms of the highest laws in the land to equality, human dignity and freedom.
- The Constitution recognises that certain vulnerable groups in society need more protection, as a result of the impact that discrimination has on their lives, in order to assist them to participate fully in their rights and entitlements.
- It is internationally recognised that protecting the rights of people living with HIV/AIDS is an important step in minimising the impact that HIV has on the lives of those infected and affected, as well as preventing the spread of the HIV epidemic.
- Promoting and supporting the rights of employees living with HIV/AIDS helps them to continue working productively for as long as possible. It also creates a climate of openness and acceptance in which those affected will be more willing to come forward for testing, counselling and care, thus helping to reduce the spread of HIV.

Hoffmann v South African Airways 2001 (1) SA 1 (CC)

"People who are living with HIV constitute a minority. Society has responded to their plight with intense prejudice. They have been subjected to systemic disadvantage and discrimination. They have been stigmatised and marginalised. As the present case demonstrates, they have been denied employment because of their HIV positive status without regard to their ability to perform the duties of the position from which they have been excluded. Society's response to them has forced many of them not to reveal their HIV status for fear of prejudice. This in turn has deprived them of the help they would otherwise have received. People who are living with AIDS are one of the most vulnerable groups in our society ... The impact of discrimination on HIV positive people is devastating. It is even more so when it occurs in the context of employment. It denies them the right to earn a living. For this reason, they enjoy special protection in our law."

Judge Ngcobo

Checklist: Prohibition and elimination of unfair discrimination

- Develop a policy on the elimination of unfair discrimination on the basis of HIV status and include the elimination of harassment on the grounds of HIV status;
- Ensure that other policies and procedures that promote non-discrimination in your work environment include HIV status or AIDS as a ground for non-discrimination;
- Evaluate and review your employment policies and practices to ensure that they do not discriminate, either directly or indirectly, on the basis of HIV/AIDS; and
- Take discrimination seriously: ensure that disciplinary procedures are in place, or that existing grievance procedures can be utilised, to deal with disputes relating to unfair discrimination on the basis of HIV and AIDS.

Daimler Chrysler South Africa (Pty) Ltd Workplace Policy on HIV/AIDS Stigmatisation and Discrimination

"Through the provision of information, education and communication about HIV and AIDS, and normal DCSA disciplinary and grievance procedures, this policy aims to protect all HIV positive employees from stigmatisation and discrimination by co-workers, based on their HIV status. It guarantees that job access, status, promotion, security, and training will not be influenced merely by the HIV status of an employee."

June 2001

Checklist: Promotion of the elimination of unfair discrimination

- Make your commitment to non-discrimination on the basis of HIV/AIDS known in the work environment.
- Create an awareness of the rights of employees living with HIV/AIDS, through education, training and media activities;
- Be seen to provide programmatic support for employees living with HIV/AIDS;
- Consider involving people living openly with HIV/AIDS in your awareness and support services for affected employees;
- Determine and address the fears, prejudices and misconceptions around HIV and AIDS in your working environment, in order to build understanding and support for employees living with HIV and AIDS.

Educational programmes around HIV/AIDS and discrimination

" The objectives of education, prevention, counselling and training should be:

- To create awareness of the HIV/AIDS epidemic;
- To promote safe sex through condom distribution;
- To provide care and support for employees with HIV/AIDS;
- To remove the stigma and discrimination by co-workers, unions or employers against those infected.

The company, its employees and their respective trade unions or associations agree that HIV/AIDS education and prevention programmes shall be conducted at the workplace.

Education shall be the vehicle to combat discrimination and irrational responses to HIV/AIDS in the workplace. Attendance at such programmes shall be compulsory for all employees including management personnel.

Education programmes shall inform management and employees of the provisions of the employment codes on HIV/AIDS and the rights and duties of persons living with HIV/AIDS.

Impala Platinum Limited HIV/AIDS Policy

Roles and responsibilities

Employers

- Showing a commitment to addressing HIV and AIDS in the workplace, through taking a strong stand on unfair discrimination in relation to HIV and AIDS, developing non-discriminatory workplace HIV/AIDS policies, and setting aside resources (both financial and human) for their implementation.
- Assisting in creating a climate of non-discrimination by ensuring that employees with HIV/AIDS are given the necessary acceptance and support, and by dealing fairly with HIV-related discrimination and disputes.

Employers' organisations

- Initiating and supporting educational and awareness programmes on the rights of employees living with HIV/AIDS, in consultation with workers and their unions; and
- Encouraging and supporting fellow employers, government and labour, to contribute towards addressing HIV-related discrimination within the working environment through key partnerships.

Individual employees

- Participating in awareness, education and training opportunities;
- Confronting and addressing their own underlying fears and prejudices; and
- Making their needs known.

Trade unions and employees

- Assist in determining the needs of employees living with HIV/AIDS in order to ensure that these needs are accommodated within workplace HIV/AIDS policies;
- Assist in creating an enabling environment of non-discrimination, acceptance and support for affected employees through awareness, education and training programmes; and
- Using their bargaining power to ensure that HIV/AIDS workplace policies receive adequate resource allocation, and are implemented in an effective and efficient manner in the working environment.

Social partners

- Entering into collaborative partnerships with government departments, and key non-governmental agencies in order to share information and expertise on HIV/AIDS and unfair discrimination.

Partnership against AIDS

"The power to defeat the spread of HIV and AIDS lies in our partnership – as youth, as women and men, as business people, as workers, as religious people, as parents and teachers, as students, as healers, as farmers and farm workers, as the unemployed and the professionals, as the rich and the poor – in fact all of us. Today we join hands in the Partnership Against HIV/AIDS, united in our resolve to save the nation. As Partners Against AIDS, together we pledge to spread the message ... As Partners Against AIDS, together we pledge to care! ... As Partners Against AIDS, together we pledge to pool our resources and to commit our brain power! ... Together, as Partners Against AIDS, we can and shall win."

Deputy President Thabo Mbeki, 1998.

2.2 Testing, confidentiality and disclosure

The Code provides that all HIV testing shall be undertaken in compliance with section 7 of the Employment Equity Act and other legal requirements. The key requirement is that no testing should take place without authority of the Labour

Court. Confidentiality must be maintained and an environment, which promotes openness and disclosure, should be encouraged.

HIV testing

Item 7.1.1 of the Code provides:

"No employer may require an employee, or an applicant for employment, to undertake an HIV test in order to ascertain that employee's HIV status. As provided for in the Employment Equity Act, employers may approach the Labour Court to obtain authorisation for testing."

The Code recommends instances where HIV testing should only take place with Labour Court authorisation, and instances where HIV testing at the request of an employee may be permissible within the working environment in the absence of Labour Court authorisation.

Item 7.1.6 states that all testing should be conducted in accordance with the Department of Health's National Policy on Testing for HIV.

Item 7.1.8 provides for surveillance testing:

"Anonymous, unlinked surveillance or epidemiological HIV testing in the workplace may occur provided it is undertaken in accordance with ethical and legal principles regarding such research. Where such research is done, the information obtained may not be used to unfairly discriminate against individuals or groups of persons. Testing will not be considered anonymous if there is a reasonable possibility that a person's HIV status can be deduced from the results."

Confidentiality and disclosure

Items 7.2.1 and 7.2.2 state:

"All persons with HIV or AIDS have the legal right to privacy. An employee is therefore not legally required to disclose his or her HIV status to their employer or to other employees.

Where an employee chooses to voluntarily disclose his or her HIV status to the employer or to other employees, this information may not be disclosed to others without the employee's express written consent. Where written consent is not possible, steps must be taken to confirm that the employee wishes to disclose his or her status."

The Code provides in item 7.2.3 that mechanisms should be created to enhance disclosure of HIV status within the workplace.

Key points

The following key points are made in this section:

- Confidential, voluntary HIV testing and counselling form an important part of an HIV/AIDS and the workplace programme. Steps should be taken to promote such testing;
- HIV testing may only take place within the workplace following Labour Court authorisation. Authorised testing must, unless the contrary is stipulated by the Labour Court, be undertaken with informed consent and counselling;
- All employees have a legal right to privacy;
- All workplaces need to work towards an environment in which openness and disclosure of HIV status is promoted. Steps should be taken to create such an environment;
- The gender issues relating to HIV testing must be addressed in order for a workplace programme to be successful; and
- Process and impact assessments can be used to monitor HIV testing within the workplace.

2.2.1 Legal framework on testing, confidentiality and disclosure

Constitution of the Republic of South Africa Act, No.108 of 1996

The Constitution provides that every person has the right to privacy and bodily integrity. This means that no person may be treated (including HIV testing) without informed consent and they have the right to privacy regarding their HIV status.

Employment Equity Act, No. 55 of 1998

The Employment Equity Act prohibits testing of an employee for HIV without authorisation by the Labour Court. This means employers are required to apply to the Labour Court for a Court Order granting permission to test for HIV before requiring employees to submit to such a test.

Section 7(2) of the Act states:

"Testing of an employee to determine that employee's HIV status is prohibited unless such testing is determined justifiable by the Labour Court in terms of section 50(4)."

Section 50(4) provides the Court with the power to impose conditions on authorised HIV testing. It states if the Labour Court declares that the medical testing of an employee as contemplated in section 7 is justifiable, the Court may make any order that it considers appropriate in the circumstances, including imposing conditions relating to:

- (a) The provision of counselling;
- (b) The maintenance of confidentiality;
- (c) The period during which the authorisation for any testing applies; and
- (d) The category or categories of jobs or employees in respect of which the authorisation for testing applies."

Criteria the Labour Court will take into account in determining whether HIV testing is justifiable

- The prohibition on unfair discrimination
- The need for the HIV testing
- The purpose of the test
- The medical facts
- Employment conditions
- Social policy
- Fair distribution of employee benefits
- Inherent requirements of the job
- Categories of employees concerned

The Court will also take note of the following factors even though they do not relate directly to the justifiability inquiry:

- Attitude of employees
- Whether the test will be voluntary or compulsory
- Financing of the test
- Employee preparedness for the testing
- Pre-test counselling
- Nature of the proposed test and procedure
- Post-test counselling

Joy Mining v NUMSA (2002) BLLR 372 (LC) at para. 22 – 23

Common law

Every person has a common law right to privacy, which includes the right to:

- Not be subjected to medical treatment (including HIV testing) without informed consent; and
- Confidentiality regarding their medical condition and treatment.

The duty of confidentiality is particularly strong within the doctor-patient relationship, where medical practitioners are under a legal and ethical duty to protect confidentiality. The Supreme Court of Appeal held in *Jansen van Vuuren and Another NNO v Kruger* (1993 (4) SA 842 (A)) that a doctor acted unlawfully when he informed two other doctors on the golf course of a patient's HIV status.

On the value of confidentiality, our Courts have quoted the rationale used in English law:

"On the one hand it protects the privacy of the patient. On the other it performs a public interest function. This was recognised in *X v Y* (1988) 2 All ER 648 653 a - b where Rose J said:

'In the long run, preservation of confidentiality is the only way of securing public health; otherwise doctors will be discredited as a source of education, for future individual patients 'will not come forward if doctors are going to squeal on them'. Consequently confidentiality is vital to secure public as well as private health, for unless those infected come forward they cannot be counselled and self treatment does not provide the best care ..."

Jansen van Vuuren and Another NNO v Kruger

There are very few exceptions to the confidentiality rule. These include:

- Disclosure of a person's HIV status to a third party is authorised in terms of ethical guidelines in circumstances where they are at risk of infection;
- A Court may order a person to disclose the information; or
- A Court may find a disclosure made in the public interest to be justifiable.

2.2.2 Defining the provisions on HIV testing, confidentiality and disclosure

HIV testing

An HIV test is generally a blood test, which is screened for HIV anti-bodies. The HIV test may however take many forms. Medical testing (which would include testing for HIV) is defined in section 1 of the Employment Equity Act as "any test, question, inquiry or other means designed to ascertain or which has the effect of enabling the employer to ascertain whether an employee has any medical condition."

This means it would include:

- Blood, urine, saliva or any other medical tests for HIV;
- Questionnaires; or
- Any other form of inquiry about possible risk behaviour or HIV status e.g. questions about a job applicant's sexual orientation.

The Code prohibits an employer from requiring an employee or job applicant to undertake an HIV test in order to ascertain an employee's HIV status, unless such testing is authorised by the Labour Court. This means that if an employer wishes to determine the HIV status of an employee, for whatever reason, the employer can only do so where the Labour Court has authorised HIV testing.

The Code indicates circumstances where an employer must approach the Labour Court for authorisation if the

employer wishes to undertake HIV testing:

- During an application for employment (for example, pre-employment HIV testing of job applicants);
- As a condition of employment (for example, where an employer requires all employees to undertake an HIV test as part of their terms and conditions of employment);
- During procedures related to termination of employment (for example, requiring an employee to undertake an HIV test during incapacity proceedings);
- As an eligibility requirement for training and staff development programmes; and
- As an access requirement to obtain employee benefits (for example, where an employer requires an employee to undertake an HIV test in order to access a retirement fund benefit).

The Code suggests that testing without the Labour Court authorisation is permissible at the request of an employee, in the following circumstances:

- As part of a health care service provided in the workplace;
- In the event of an occupational accident carrying a risk of exposure to blood or other body fluids;
- For the purposes of applying for compensation following an occupational accident involving a risk of exposure to blood or other body fluids.

In *Joy Mining v NUMSA* the Labour Court held that although the issue was not before them for consideration they were concerned as to whether an employee could waive their rights in terms of item 7(2) of the EEA as suggested by the 'permissible testing' section in the Code. It is therefore advisable to take legal advice before embarking on any of the above testing without Labour Court authorisation.

All HIV testing, whether it be 'authorised' HIV testing or 'permissible' HIV testing, should only take place:

- With informed consent;
- Within a health care worker and employee-patient relationship;
- With informed consent and pre- and post-test counselling; and
- With strict procedures relating to confidentiality.
- With regard to 'permissible' testing, the testing may only take place at the initiative of an employee.
- In accordance with the Department of Health's National Policy on Testing for HIV.

Informed consent:

Informed consent is defined in the Code as circumstances where the individual has been provided with information, understands it and based on this has agreed to undertake the HIV test or treatment. It implies that the individual understands what the test is, why it is necessary, the benefits, risks, alternatives and any possible social implications of the outcome.

"... there can only be consent if the person appreciates and understands what the object and purpose of the test is, what an HIV positive test result entails and what the probability of AIDS occurring thereafter is. Evidence was led in this case on the need for informed consent before the HIV test is performed. Members of the medical profession and others who have studied and worked with people who have tested HIV positive and with AIDS sufferers have developed a norm or recommended minimum requirement necessary for informed consent in respect of a person who may undergo such a blood test. Because of the devastation which a positive test result entails, the norm so developed contains as a requirement counselling both pre- and post-testing, the latter in the event of a positive test result."

C v Minister of Correctional Services 1996 (4) SA 292 (T)

Surveillance testing:

Anonymous and unlinked surveillance or epidemiological testing is defined in the Code as anonymous, unlinked testing which is done in order to determine the incidence and prevalence of disease within a particular community or group to provide information to control, prevent and manage the disease. The Code states further that such testing will not be considered anonymous if there is a reasonable possibility that a person's HIV status could be deduced from the results.

Confidentiality:

Confidentiality means keeping personal information about an employee from others unless the employee has consented to the disclosure. Disclosure occurs when employees voluntarily declare their HIV status either to a limited number of persons or the entire workforce.

The Code provides for confidentiality of an employee's HIV status. This means that an employee is under no obligation to disclose his or her HIV status to an employer or to other employees.

Openness and disclosure:

According to the Code, where an employee does choose to disclose his or her HIV status, (for example, to an HR manager or to an occupational health worker), the information may not be disclosed further without the written consent of the employee.

Mechanisms should be created within the workplace to encourage openness, acceptance and support for employers and employees who do disclose their HIV status. The Code recommends the following steps be taken:

- (i) Encouraging persons openly living with HIV or AIDS to conduct or participate in education, prevention and awareness programmes;
- (ii) Encouraging the development of support groups for employees living with HIV or AIDS; and
- (iii) Ensuring that persons who are open about their HIV or AIDS status are not unfairly discriminated against or stigmatised.

2.2.3 Key issues on HIV testing, confidentiality and disclosure

Common problems

- HIV testing without Labour Court authorisation;
- HIV testing for discriminatory purposes;
- Breaches of confidentiality; and
- A lack of support for employees who openly disclose their HIV status.

A Kwa-Maphumulo teacher was dismissed by the school's governing body after she informed the principal that she was HIV positive. The principal then informed other teachers and the governing body of her HIV status without her permission.

Natal Witness, 22 December 2001

Issues for trade unions

- Ensuring employers act lawfully; and
- Ensuring employees have access to voluntary HIV testing and counselling programmes either within the workplace or within the community.

Issues for employers and employer organisations:

- Parity between the costs of providing a voluntary HIV testing and counselling programme and the long term

benefits of a workforce with a lower HIV infection rate;

- Encourage female and male employees to come forward for HIV testing and ensure that they have access to social support for dealing with the results.
- Ensuring legal requirements are met without undue costs being incurred; and
- Promoting voluntary counselling and testing as an entry point for positive living and treatment.
- Creating a caring working environment that affirms persons affected by HIV/AIDS and protects them from harassment.

2.2.4 Implementation guidelines on HIV testing, confidentiality and disclosure

Why is HIV testing, confidentiality and disclosure important?

- HIV testing forms the link between prevention and care programmes. HIV testing helps employees to determine their HIV status, obtain support, information, the skills and means to prevent infecting others. It also enables employees to become involved in a care programme to protect their own health.
- Without guarantees of confidentiality it is difficult to encourage openness and disclosure; and
- With more employees aware of their HIV status it is easier to encourage openness, disclosure and acceptance in the workplace.
- Anonymous testing may allow an employer to estimate the future impact of HIV on the business and to plan accordingly.

What steps can you take to prevent unlawful HIV testing, breaches of confidentiality and to promote openness?

- Understand the law on HIV testing, confidentiality and disclosure;
- Review current practices to ensure compliance with law; and
- Discipline persons not adhering to the policy guidelines and the law;
- Address legal rights in education, training and awareness programmes.

Case study: Ndebele Mining Company (Pty) Ltd

The Ndebele Mining Company (Pty) Ltd applied to the Labour Court for authorisation to provide voluntary HIV testing and counselling services to all staff employed at their kaolin mine, under the following conditions:

- All HIV testing would be at the request of the employee and be voluntary;
- All persons being tested for HIV would undergo confidential, pre- and post- test counselling;
- The test results would remain confidential and only be disclosed with the written consent of the employee concerned; and
- No person would be discriminated against on the basis of the HIV test results.

The Labour Court granted the order after they had asked the employer to serve the Court papers on all the employees who would be affected by the Court Order, to give employees an opportunity to apply to Court to express their views. The Court gave the company permission to provide voluntary HIV testing and counselling services in accordance with the proposed conditions.

Guideline: Making an application to the Labour Court for authorisation for HIV testing

- Applications do not need to be made in every individual case;
- Papers placed before the Court should be as detailed as possible;
- It is important to get the support of all stakeholders within the workplace before making the application. This will include notifying all affected employees and the relevant trade unions;

- Other interested parties may make applications to the Labour Court in the form of amicus curia (a friend of the Court), if they have different and useful submissions to make to the Court;
- The assistance of an attorney will be needed in making the application.

What steps can you take to promote lawful HIV testing, confidentiality and disclosure?

Research shows that employees will not participate in a voluntary HIV testing and counselling service or disclosure campaign, unless:

- They are certain they will not be discriminated against on the basis of their HIV status;
- There are guarantees of confidentiality and the medical staff are seen to be independent from management;
- The testing facilities are integrated into other services so that employees using them cannot be identified by others; and
- There exists some 'benefit' for the employee; for example, they will be able to enrol in a treatment programme.

Checklist: Implementation guidelines on HIV testing, confidentiality and disclosure

- Ensure policies and practices within the workplace protect the rights of employees;
- Ensure that HIV testing services are confidential;
- Ensure that promoting the benefits of voluntary HIV testing and counselling form part of the HIV/AIDS awareness programmes;
- Encourage persons openly living with HIV or AIDS to conduct or participate in education, prevention and awareness programmes;
- Encourage the development of support groups for employees living with HIV/AIDS;
- Ensure that persons who are open about their HIV or AIDS status are not unfairly discriminated against or stigmatised.

Research shows that a workplace in which a number of HIV positive persons are open about their HIV status generally has the following characteristics:

- HIV positive employees are not discriminated against;
- Treatment programmes are offered to HIV positive employees;
- 'Positive' images of HIV positive employees are created in HIV/AIDS awareness and prevention programmes;
- Steps are taken against persons who unfairly discriminate against HIV positive employees; and
- Management openly supports HIV/AIDS and the workplace initiatives.

Roles and responsibilities

Trade unions and employees:

- Ensure that employers are only undertaking HIV testing in terms of the Employment Equity Act and the Code;
- Assist employees to take up grievances where breaches of confidentiality have occurred; and
- Support efforts of members to be open about their HIV status or about the HIV status of family members.

Employers and employer's organisations:

- Ensuring HIV testing practices are lawful;
- Developing and co-ordinating protocols and policies on HIV testing, confidentiality and disclosure;
- Allocating resources towards voluntary HIV testing and counselling programmes;
- Encouraging other employers to embark on voluntary HIV testing and counselling programmes through raising such issues at employer organisation meetings.

Small businesses and the informal sector

- Linking with voluntary counselling and testing resources within the community, and referring employees to such services if they are not available at the workplace.

2.3 Promoting a safe working environment

The Code provides that:

- every employer is obliged to provide and maintain, as far as reasonably practicable, a workplace that is safe and without risk to the health of its employees;
- although the risk of HIV transmission in the workplace is minimal, occupational accidents involving bodily fluids may occur, and therefore, every workplace should ensure that it complies with provisions of the Occupational Health and Safety Act, including the Regulations on Hazardous Biological Agents. That workplace policy should deal with, amongst others:
 - (i) the risk, if any, of occupational transmission within the particular workplace;
 - (ii) appropriate training, awareness, education on the use of universal infection control measures so as to identify, deal with and reduce the risk of HIV transmission in the workplace; and
 - (iii) the procedure to be followed in applying for compensation for occupational infection.

2.3.1 Legal framework for promoting a safe working environment

Common law

In terms of our common law, every employer is obliged to take reasonable care of the health and safety of employees in the work place.

Occupational Health and Safety Act, No. 85 of 1993 (OHSA)

The Act covers all employees, except those in the mining industry, who fall under the Mine Health and Safety Act 29 of 1996. In terms of OHSA and the Mine Health and Safety Act, an employer must provide and maintain as far as is reasonably practicable, a working environment that is safe and without risk to the health of its employees. These general provisions apply equally to the situation of HIV and AIDS.

What is meant by 'reasonably practicable'?

The Act defines reasonably practicable as having regard to:

- The severity and scope of the hazard or risk;
- The state of knowledge reasonably available concerning the hazard or risk and any means of removing or mitigating the hazard or risk;
- The availability and suitability of means to remove the hazard or risk; and
- The cost of removing or mitigating the hazard or risk in relation to benefits derived there from.

Regulations for Hazardous Biological Agents

The Regulations set out measures for dealing with hazardous biological agents, including HIV, which may create a hazard to human health, in the workplace. Annexure C to the Regulations sets out Standard Precautions to be followed for the prevention and control of HIV/AIDS.

2.3.2. Defining a safe workplace

The Code does not encourage measures aimed at identifying, isolating or possibly excluding employees living with

HIV/AIDS as a means of ensuring a safe work place. Rather, it recommends an approach based on:

- the assumption that any employee may be potentially infected with HIV; and
- the management of possible risks of HIV transmission through infection control measures.

Items 8.2(i) – (vii) and section 9.2 (i) and (ii) of the Code, it is recommended that all organisations take the following steps:

Identify the risk of occupational transmission

Each organisation should assess its environment and conditions to identify the risk, if any, of occupational transmission of HIV. Section 6 of the Regulations for Hazardous Biological Agents provides that all affected environments should conduct a risk assessment.

Occupational accidents involving body fluids may occur in a variety of work environments, and not simply health related or research laboratory environments. Section 2(1) of the Regulations for Hazardous Biological Agents provides that the Regulations should apply in environments that deliberately produce, process, use, handle, store or transport a hazardous biological agent (HBA), such as HIV; and also in any environment in which an accident involving blood or body fluids may expose a person to HIV, and such an accident could occur in a variety of workplaces.

Appropriate training, awareness and education

Employers and employees should receive training, awareness and education on the use of universal infection control measures so as to identify, deal with and reduce the risk of HIV transmission in the workplace.

Providing appropriate equipment and materials

Employers should ensure that appropriate equipment and materials are available to protect employees from risk of exposure to HIV, and should implement universal infection control procedures.

The Standard Precautions for preventing and controlling HIV/AIDS set out in Annexure C of the Regulations for Hazardous Biological Agents include:

- Hand washing after touching blood, body fluids, secretions, excretions and contaminated items, whether gloves are worn or not;
- Wearing of gloves when touching blood, body fluids, secretions, excretions and contaminated items, or before touching mucous membranes and non-intact skin
- Wearing of masks, eye protection or a face shield to protect mucous membranes of the eyes, nose, and mouth during procedures and activities that are likely to generate splashes or sprays of blood or body fluids, secretions and excretions;
- Measures for handling of patient-care equipment soiled with blood, body fluids, secretions and excretions, and for the provision and disposal of disposable syringes;
- Measures for general environmental control, such as routine care and cleaning of environmental surfaces;
- Measures for handling, transport and processing of used linen soiled with blood and body fluids, secretions and excretions in a manner that prevents contamination;
- Measures to prevent injuries when handling, cleaning and disposing of needles, scalpels and other sharp instruments;
- Use of mouthpieces, resuscitation bags or other ventilation devices as an alternative method to mouth-to-mouth resuscitation; and
- Isolation of patients who either contaminate the environment or cannot be expected to assist in maintaining appropriate personal hygiene or personal control.

Some of the measures listed above apply specifically to the situation of patient care in a typical health care environment. However, the general principles relating to standard precautions should be adapted to suit each workplace.

Management of occupational exposure to HIV

The Department of Health's Guidelines recommend that the following steps be taken in the event of an occupational exposure to HIV:

- Immediate infection control: for all exposures, immediately clean the affected area with an antiseptic agent and water.
- Evaluate the exposure: assess the nature of the incident and whether it warrants the provision of post-exposure prophylaxis to the affected person.
- Determine the HIV status of the exposure source: take various steps to identify the HIV status of the 'source' person involved in the occupational incident, such as checking existing medical records to determine whether HIV status is known, requesting voluntary HIV testing with pre-and post-test counselling, or requesting a doctor to provide a clinical diagnosis of the patient.
- Provision of post-exposure prophylaxis: provide post-exposure prophylaxis, with ongoing HIV testing at regular intervals, in the case of high-risk exposures.

HIV/AIDS Policy Guidelines, January 2000

The Code suggests that employers do not need Labour Court authorisation to provide HIV testing at the request of an employee following an occupational accident. However, in a recent decision by the Labour Court in *Joy Mining v NUMSA & Others* (2002) 4 BLLR 372 (LC) it appears that the Court disagreed with the approach of the Code which stated that HIV testing at the request of an employee in specified circumstances, including testing after an occupational accident is 'permissible'. In the light of this it is advisable for an employer to apply to the Labour Court to authorise all HIV testing.

Where the 'source person' refuses to take an HIV test, the Department of Health recommends that:

- Where an existing blood sample is available, an HIV test may be conducted on that sample without the consent of the 'source person';
- Where there is no existing blood sample, the 'source person' cannot be compelled to take an HIV test, and the risk of HIV transmission will need to be assessed without knowledge of the source person's HIV status.

The Code further requires that employers take reasonable steps to help employees with compensation claims, including:

- Providing information on the procedures for a compensation claim.
- Helping to collect the information needed to prove occupational infection with HIV.

Reporting of all accidents

Organisations should provide for adequate reporting of all occupational accidents involving body fluids. Reporting of accidents is important for gathering information for monitoring and evaluation of the risk of occupational transmission of HIV within your particular working environment, as well as for purposes of assisting employees' claim compensation for occupational HIV infection.

Monitoring occupational exposure

Organisations should ensure that adequate monitoring of all occupational exposure to HIV takes place. This should include monitoring the nature and extent of occupational incidents, the steps that were taken following such incidents, as well as ongoing medical evaluation of affected employees if necessary.

2.3.3 Key issues on promoting a safe working environment

Common problems

- A common, and misguided response to health and safety is the idea that the identification, and possible exclusion of people living with HIV/AIDS from particular working environments will promote a safe workplace;
- Irrational fears exist regarding occupational transmission of HIV and employee fears of working with other employees living with HIV/AIDS need to be minimised;
- Health and safety in the context of HIV and AIDS requires more than simply providing materials and equipment for dealing with occupational incidents. It requires clear policy guidelines on the procedures to be followed in the event of an occupational accident, as well as education and training for all employers and employees.

Some main issues for trade unions and employees:

- Ensuring health and safety measures are in place;
- Negotiating for employers to provide access to PEP following an occupational accident; and
- Access to adequate compensation for infected employees.

Some main issues for employers:

- Reducing the number of occupational accidents; and
- Minimising workplace disruptions following an occupational accident.

2.3.4 Implementation guidelines on promoting a safe workplace

Why is health and safety important?

All employers are obliged to provide a safe working environment. In the context of HIV and AIDS, the creation of policies and procedures to reduce occupational exposures to HIV is furthermore an important mechanism in dispelling irrational fears and prejudices against employees known to be living with HIV and AIDS.

Why is compensation for occupational HIV infection important?

Employees who become infected with HIV as a result of carrying out their work duties are entitled to be compensated. Compensation can assist the employees and their dependants to deal with the economic impact of HIV and AIDS on a family.

Checklist: Health and safety policies

- A clear definition of the types of occupational incidents which necessitate the use of HIV prevention guidelines created;
- Measures to be taken to prevent the risk of occupational exposures to HIV, and procedures to be followed in handling occupational exposure to HIV developed;
- Programmes to create awareness and to conduct education and training for all employees on measures to reduce occupational exposures, as well as universal infection control measures in the event of an occupational exposure occurring; and
- The provision of appropriate equipment and materials to implement universal infection control in place.
- Provision for information and services to be offered to employees involved in an occupational accident which may expose them to HIV developed and communicated to all staff;
- Reporting procedures to be followed in the event of any occupational exposure to HIV provided;
- Provision for ongoing medical monitoring of affected employees.

University of the Western Cape HIV/AIDS Policy: Risk Reduction

"The University has various departments in the health care, clinical and biological sciences fields (e.g. campus health, dentistry, clinical departments in the Community and Health Sciences faculty). Employees and students working in these fields face higher risk of accidents that can lead to HIV infection. HIV infection may be regarded as an 'accident' as defined in the Compensation for Occupational Injuries and Diseases Act, No 13 of 1993 (COID), provided that the employee/student acquires the infection as a result of an incident which arose out of, and in the course of his/her employment or studies at the university, and provided that the date, place and circumstances of such an incident are ascertainable. The university will provide HIV prophylaxis in the form of anti-retrovirals where clinically appropriate in cases of potential exposure to HIV and when these are not provided by the State medical services as a result of:

- Injuries or contact with contaminated materials that occur in the line of duty or study on campus or at an approved off-campus site, and are officially reported. Incidents of this nature must be reported at the earliest opportunity to the Safety and Health Officer (or if not available, the Chief Fire Officer);
- Rape or assault that occurs on campus.

All employees and students of the university should implement universal precautions to effectively eliminate the risk of transmission of all blood-borne pathogens, including HIV, in the university. The university undertakes to educate all students and staff in this regard and first aid instructions regarding the general precautions that need to be followed when dealing with blood and bodily fluids will be prominently displayed in all relevant working areas."

Draft UWC HIV/AIDS Policy, March 2001

Checklist: Do's and don'ts

- Take reasonable steps to create a safe and healthy workplace.
- Do report all incidents involving blood or body fluids.
- Do deal with concrete issues in detail, such as who will pay for HIV testing services, where will the HIV testing services be administered, who will conduct pre- and post-test counselling, when will the HIV testing take place, how will the HIV testing take place etc.
- Don't assume you know who is living with HIV/AIDS in a situation of occupational exposure;
- Don't attempt to identify and isolate employees living with HIV/AIDS; and
- Don't force an affected employee to take an HIV test, but do explain the implications this decision may have for them in terms of personal health and compensation.

Roles and responsibilities

Employers

- Developing appropriate and effective policy guidelines, accompanied by all necessary support services;
- Training and educating employees on the use of health and safety guidelines;
- Reporting and monitoring all occupational incidents in the workplace.

Employers' organisations

- Forming partnerships with government where necessary, to ensure that all work environments have access to support services, such as protective equipment, counselling services, male and female condoms etc. to implement risk reduction in the workplace.

Individual employees

- Minimising occupational exposures to HIV by following safety guidelines;
- Using infection control measures in the event of an occupational exposure;

- Reporting all incidents that may potentially expose any person to HIV.

Trade unions and employees

- Creating an awareness of the importance of health and safety in the context of HIV and AIDS, and in dispelling myths, fears and prejudices relating to the risk of HIV transmission within the working environment;
- Education and on the procedures to be followed in the event of an occupational exposure;
- Protecting the right of all affected employees to health and safety, compensation, HIV testing only with voluntary and informed consent and pre- and post-test counselling, and confidentiality, is protected.

Minimising fears and prejudices

"It is the responsibility of the company in conjunction with trade unions / associations to ensure that all employees are educated in and are in the possession of facts relating to the transmission of HIV/AIDS – this will help to minimise discrimination and irrational fears"

Impala Platinum Limited HIV/AIDS Policy

Social partners

Social partners should pool resources and skills in order to facilitate access to:

- Updated medical information and guidelines on managing occupational exposures to HIV, including issues such as post-exposure prophylaxis and different types of HIV tests that may be administered;
- Awareness, education and training on various aspects of health and safety in the context of HIV/AIDS, including implementing universal infection control procedures, training of HIV counsellors, administering HIV tests and the rights of employees to health, safety and compensation in the context of occupational exposure to HIV;
- Useful media on HIV/AIDS health and safety issues; and
- Support services, including access to gloves, barrier methods such as condoms, information services, and confidential counselling and testing services for affected employees.

2.4 Compensation for occupational infection with HIV

Item 9 of the Code provides

- that an employee may be compensated if he or she becomes infected with HIV as a result of an occupational incident, in terms of the Compensation for Occupational Injuries and Diseases Act;
- that employers should take reasonable steps to assist employees with the application for benefits, including:
 - (i) providing information to affected employees on the procedures that will need to be followed in order to qualify for a compensation claim; and
 - (ii) Assisting with the collection of information which will assist with proving that the employee were occupationally exposed to HIV infected blood
- Occupational exposure should be dealt with in terms of the Compensation for Occupational Injuries and Diseases Act. Employers should ensure that they comply with the provision of this Act and any other procedure or guideline issued in terms thereof.

Summary

- Employers have a legal duty to create a safe, working environment.
- The risk of occupational transmission of HIV through casual contact is minimal.
- Since reasonably simple, cheap and effective steps can be taken to reduce the risk of occupational infection of HIV, employers are obliged to take such steps in order to create a working environment that promotes the health and safety of all employees.
- Creating a safe work environment does not require identifying, removing or isolating employees identified to be living with HIV/AIDS.

- Employees who become infected with HIV as a result of an occupational accident are entitled to compensation and employers should take reasonable steps to assist them in this regard.
- In order to claim compensation, employees will need to prove that their HIV infection is due to an occupational incident or accident.

2.4.1 Legal framework for compensation for occupational infection

Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993

Section 22(1) of the Act provides that an employee can get compensation if he or she is involved in an occupational accident causing injury or death, while carrying out work duties. Section 65(1) of the Act also provides that an employee is entitled to compensation if the employee contracts a disease while carrying out work duties. Where the disease is a scheduled 'occupational disease' in terms of the Act, then it is presumed that the disease was contracted as a result of the employee's employment. However, where the disease is not a 'scheduled occupational disease' (as in the case of HIV/AIDS), the employee will need to prove that he or she contracted the disease as a result of his or her employment.

2.4.2 Defining compensation for occupational infection

Detailing steps that must be taken following an occupational accident and steps to assist with compensation

Each organisation should ensure that they have policy guidelines and procedures that detail the steps that must be taken following an occupational accident.

These guidelines are important for various reasons:

- Steps can be taken following an occupational incident to assist in reducing the risk of HIV transmission (such as offering post-exposure prophylaxis);
- Steps can be taken (such as counselling and HIV testing) to help affected employees to deal with the possible consequences of HIV infection;
- Steps can be taken to assist an employee who becomes infected with HIV to prove a claim for compensation for occupational infection with HIV.

HIV/AIDS claims procedure

An employee who becomes infected with HIV as a result of an occupational incident will need to prove to the Compensation Fund that the HIV infection arose out of and in the course of his or her employment.

The Compensation Fund has indicated that they would require proof that at the time of the accident the employee was HIV negative, that the other person was HIV positive, and that the affected employee subsequently became HIV positive.

Based on these requirements, the following are generally recognised as appropriate steps to be taken:

- Complete a report of the incident or accident leading to an occupational exposure to HIV;
- Request that the affected employee take an HIV test, to determine his or her HIV status at the time of the incident, which test should be HIV negative;
- Request that the 'source employee' take an HIV test to determine his or her HIV status at the time of the incident, which test should be HIV positive;
- Where the 'source employee' refuses to take an HIV test, record this information and any steps to counsel them on the importance of the test; and
- Request that the claimant employee take further HIV tests at intervals of 3-6 weeks, 12 weeks and 6 months to determine whether the employee has seroconverted to HIV positive.

2.4.3 Key issues relating to compensation for occupational infection

- An employee who becomes occupationally infected with HIV needs to prove that the HIV infection is work-related, to claim compensation. However, proof is difficult in most situations, and particularly in situations where the 'source person' refuses to take an HIV test.
- Compensation for HIV exposure should be dealt with in terms of the Compensation for Occupational Injuries and Diseases Act
- Employers need to be directed to the relevant Compensation Authority
- Employers should ensure that they comply with the provisions of the Compensation for Occupational Injuries and Diseases Act and any procedure or guideline issued in terms thereof.

Some main issues for trade unions and employees:

- Ensuring health and safety measures are in place;
- Negotiating for employers to provide access to PEP following an occupational accident; and
- Access to adequate compensation for infected employees.

Some main issues for employers:

- Reducing the number of occupational accidents;
- Minimising workplace disruptions following an occupational accident; and
- Taking reasonable steps to assist employees with the application of benefits including:
 - (i) providing information to affected employees on the procedures that will need to be followed in order to qualify for a compensation claim; and
 - (ii) assisting with the collection of information which will assist with proving that the employees were occupationally exposed to HIV infected blood.

2.4.4. Implementation guidelines on compensation for occupational infection

Why is compensation for occupational HIV infection important?

Employees who become infected with HIV as a result of carrying out their work duties are entitled to be compensated. Compensation can assist the employees and their dependants to deal with the economic impact of HIV and AIDS on a family.

Checklist: Compensation procedures

- All incidents which potentially involve an occupational exposure to HIV being reported;
- Information given to the affected employee on the possibility of exposure to HIV as well as the possibility of claiming compensation in the event of an occupational exposure;
- Access provided to voluntary HIV testing services, on an ongoing basis where necessary, for all affected employees;
- Education, awareness and training programmes for key support staff on the processes and procedures to be followed in the event of an occupational exposure to HIV;
- Training programmes for occupational health care workers, if applicable, on the HIV testing procedures to be followed in the event of an occupational exposure to HIV; and
- Ensuring the availability of, or access to voluntary HIV counselling and testing services.

Roles and responsibilities

Social Partners

Social partners should pool resources and skills in order to facilitate access to:

- Updated medical information and guidelines on managing occupational exposures to HIV, including issues such as post-exposure prophylaxis and different types of HIV tests that may be administered;
- Awareness, education and training on various aspects of health and safety in the context of HIV/AIDS, including implementing universal infection control procedures, training of HIV counsellors, administering HIV tests and the rights of employees to health, safety and compensation in the context of occupational exposure to HIV;
- Useful media on HIV/AIDS health and safety issues; and
- Support services, including access to gloves, barrier methods such as condoms, information services, and confidential counselling and testing services for affected employees.

2.5 Employee benefits

The Code of Good Practice on Key Aspects of HIV/AIDS and Employment prohibits unfair discrimination in the allocation of employee benefits, such as death benefits, disability benefits, pensions, provident funds and retirement funds, so as to ensure that employees living with HIV/AIDS are provided with the same benefits as employees with other comparable life threatening illnesses.

Item 10 of the Code provides that employees with HIV or AIDS may not be unfairly discriminated against in the allocation of employee benefits, and should be treated like any other employee with a comparable life threatening illness with regard to access to benefits.

Item 10.3 of the Code contains an express prohibition with regard to medical schemes and prohibits employers providing medical schemes that unfairly discriminate on the basis of HIV and AIDS.

Item 10.3 of the Code furthermore provides that information regarding HIV status or AIDS obtained by benefit schemes should be kept confidential.

Item 7.1.4 of the Code recommends that, given the prohibition on HIV testing of an employee, employers should approach the Labour Court for authorisation in the event that they wish to conduct HIV testing as an admission requirement for employee benefit schemes.

Summary

- Employees with HIV/AIDS are entitled to have access to employee benefits. Benefit schemes should treat employees with HIV/AIDS in the same way as employees with other life-threatening illnesses.
- Employees may not be required to take an HIV test as an admission requirement for employee benefit schemes. Labour Court authorisation should be sought in order to conduct HIV testing in this circumstance.
- Employers may not use information on an employee's HIV status from an employee benefit scheme, to unfairly discriminate against that employee.
- Medical schemes must offer minimum benefits, as prescribed from time to time by the Minister, to employees living with HIV/AIDS.

2.5.1 Legal framework relating to employee benefits

Constitution of the Republic of South Africa Act, No. 108 of 1996

Section 9 of the Constitution prohibits both the State and any person from unfairly discriminating against another person on various grounds. Although HIV/AIDS is not a listed ground for non-discrimination, this would not prevent our Constitutional Court from finding that any action that discriminates on the basis of a person's HIV status, or AIDS, is unfair discrimination, as was done in *Hoffmann v South African Airways*.

The Constitution does provide for the limitation of certain rights, provided that rights are limited in accordance with the guidelines set out in section 36: the 'limitation clause'. In terms of this clause, a right may only be limited by a law of general application that is reasonable and justifiable.

In effect, this means that laws governing employee benefits, such as the Pensions Funds Act and the Medical Schemes Act, are bound by the constitutional prohibition against unfair discrimination. Any provisions in these laws which differentiate between persons must be deemed to be reasonable and justifiable in terms of the Constitution in order not to be found to be discriminatory.

Employment Equity Act, No. 55 of 1998

The Employment Equity Act also prohibits unfair discrimination on the basis of HIV status in all employment policies and practices. Section 1 of the Act defines employment policies and practices, and includes:

"Remuneration, employment benefits and terms and conditions of employment".

Medical and HIV testing of an employee is no longer permitted, unless justified, in terms of the Act. Section 7(1) says that medical testing of an employee is prohibited, unless it is justifiable in the light of various factors, including "the fair distribution of employee benefits". Section 7(2) of the Employment Equity Act also prohibits HIV testing of an employee, unless Labour Court authorisation has been obtained for such HIV testing.

In effect this means that in the event that a company or organisation wishes to conduct HIV testing as an admission requirement for an employee benefit scheme, they would need to approach the Labour Court and set out justification for such testing, in order to obtain authorisation to do so.

Medical Schemes Act, No. 131 of 1998

Section 24(e) of the Medical Schemes Act provides that a medical scheme, in order to be registered, may not unfairly discriminate directly or indirectly against any person on one or more arbitrary grounds including "state of health". Section 29(3) of the Act prohibits medical schemes from providing for the exclusion of any applicant or dependant of an applicant. This means that medical schemes may no longer unfairly discriminate against, or deny medical coverage, to people living with HIV/AIDS. Medical schemes are obliged to make provision in their rules for minimum benefits, as prescribed by the Minister in terms of section 67 of the Act.

Minimum benefits for HIV and AIDS

Section 67(g) of the Medical Schemes Act gives the Minister the power to enact regulations relating to:

"The prescribed scope and level of minimum benefits to which members and their registered dependants shall be entitled to under the rules of a medical scheme".

In January 2000 the Minister of Health enacted Regulations relating to minimum benefits for HIV/AIDS care on medical schemes. The Regulations stipulate that schemes must provide for the following minimum benefits:

Treatment for HIV-related opportunistic infections; and costs of hospitalisation.

The Regulations do not provide for anti-retroviral treatment as a minimum benefit relating to HIV/AIDS care.

2.5.2 Defining the provisions on employee benefits

Defining unfair discrimination in relation to employee benefits is difficult. Many benefit schemes would simply argue that it is not cost-effective to offer cover to people living with HIV/AIDS, and therefore that discriminating or offering different benefits to employees with HIV and AIDS is not unfair discrimination.

What is unfair discrimination?

Our Courts have not considered whether the provision of limited benefits to employees with HIV or AIDS, and employees with other similar conditions, is unfair discrimination. If they were called upon to do so, our Constitutional Court would consider factors like:

- whether the different treatment is unfair (looking at issues such as the impact it has on the dignity of the persons being discriminated against);
- whether the unfair discrimination is reasonable and justifiable, in terms of the constitutional limitation clause.

A useful test which the Courts could consider is whether HIV/AIDS is treated differently from any other life-threatening diseases.

The Code, other legal provisions and case law provide further guidance as to what may be considered unfair discrimination:

Medical schemes

The Medical Schemes Act says that people living with HIV/AIDS:

- should not be denied access to medical schemes;
- should be provided with a minimum level of benefits.

So, while the Medical Schemes Act does not provide for unlimited benefits for people living with HIV/AIDS, it recognises that certain standards should apply in the case of HIV/AIDS.

Other funds

The Code states that people living with HIV/AIDS should at least receive similar treatment to those with other comparable life-threatening illnesses. This indicates that the provision of benefits to employees living with HIV/AIDS should be treated on a rational basis. Employees living with HIV/AIDS should not be offered membership of differentiated funds.

Denial of access to schemes

It is clear that an employee living with HIV/AIDS may not be denied access to employee benefit schemes outright. This would amount to unfair discrimination.

NS vs Old Mutual (1999)

NS applied for a job with Old Mutual. She was asked to take an HIV test on her application, and when she tested HIV positive she was excluded from membership of 3 employee benefit schemes, including the medical aid scheme.

NS resigned and the matter was taken to the Labour Court, where Old Mutual offered to settle during the proceedings, which NS accepted.

AIDS Law Project Annual Report (2001)

What is confidentiality in relation to employee benefits?

Where an employee voluntarily discloses his or her HIV status in terms of an employee benefit scheme (for example, in the situation where a medical aid scheme offers treatment for employees living with HIV/AIDS), this information must be kept confidential.

2.5.3 Key issues on employee benefits

Common problems

- Unlawful HIV testing of job applicants and employees as a requirement for access to benefits;
- Denying access to employee benefits to job applicants and employees living with HIV/AIDS;
- Offering different, and often sub-standard, benefits to employees living with HIV/AIDS; and
- Breaches of the confidential information on an employee benefit scheme relating to an employee's HIV status.

Some main issues for trade unions and employees:

- Ensuring the wellness of members;
- Ensuring that members are not excluded from employee benefit schemes, or provided with sub-standard employee benefits, on the basis of HIV and AIDS;
- Keeping the cost of employee benefit funds and schemes low;
- Participating in discussions and processes around the restructuring of employee benefit schemes and funds; and
- Ensuring that the provisions of the Labour Relations Act, as set out in the Code of Good Practice on Disability, are met in relation to the ill-health retirement of persons with HIV/AIDS.

Some main issues for employers:

- Complying with the law relating to HIV/AIDS and employee benefits;
- Managing employees with HIV/AIDS so as to decrease illness and absenteeism, increase productivity and reduce disability and death of employees;
- Providing cost-effective and sustainable employee benefits for all employees; and
- Managing the impact that HIV/AIDS will have on employee benefit schemes.

Some main issues for trustees:

- Complying with the law relating to HIV/AIDS and employee benefits; and
- Ensuring that the interests of both HIV positive and HIV negative members are considered when making decisions as to the fair allocation of employee benefits.

Some main issues for small businesses:

- Creating awareness amongst all employees of public health care and welfare services available to assist employees infected with and affected by HIV/AIDS, such as the disability grant, and health care services;
- Ensuring that where they insure employee benefits, the insurer does not adopt discriminatory practices.

2.5.4 Implementation guidelines on employee benefits

What steps can you take to ensure non-discriminatory and sustainable employee benefits in the context of HIV/AIDS?

- Review existing employee benefit schemes to determine whether funds or schemes deny benefits to employees living with HIV/AIDS, or unfairly discriminate on the basis of HIV/AIDS, in terms of benefits offered;
- Commission an actuarial impact analysis to determine the impact that HIV/AIDS will have on existing employee benefit schemes and funds; and
- Develop a holistic HIV/AIDS employee benefit strategy that optimises management of the impact of HIV/AIDS as well as prevention of further HIV infection.

Checklist: Do's and don'ts

- Do get Labour Court authorisation for HIV testing for employee benefit purposes;
- Don't deny or offer unfairly discriminatory benefits to employees living with HIV/AIDS
- Do provide employees with HIV/AIDS the same level of cover as HIV negative employees where death or disability is caused by accident or non-AIDS related conditions
- Do provide employees with HIV/AIDS the same level of cover for death or disability as a result of AIDS as that offered to other similarly "impaired lives", e.g. members suffering from cancer
- Ensure that any limitations or exclusions of particular benefits to employees living with HIV/AIDS are legal, reasonable and rationally justifiable (in terms of actuarial principles, and taking the Constitutional right to non-discrimination into account).
- Do ensure that medical schemes provide the stipulated minimum benefits for HIV/AIDS;
- Do ensure that an employee's medical information on an employee benefit fund or scheme is kept confidential; and
- Do understand and address the impact of HIV/AIDS on your company's employee benefits, and develop a holistic strategy to manage HIV/AIDS and employee benefits.

Roles and responsibilities

Employers and employers' organisations

- Funding a thorough review and analysis of all employee benefit funds and schemes, in the context of HIV and AIDS
- Developing a non-discriminatory HIV/AIDS strategy based on the principles of management of HIV and AIDS, and prevention of further HIV infection.

Individual employees

- Contributing to employee benefit schemes and funds;
- Using and not abusing the various benefits offered;
- Taking an active role in managing illness;
- Adopting preventive health care measures to minimise further HIV infection and AIDS.

Trade unions

- Establishing and administering pension, provident and medical funds in a non-discriminatory and sustainable way, in terms of powers given to Bargaining Councils by S28 of the Labour Relations Act.

Trustees

- Basing decisions on sound actuarial principles
- Balancing the interests of both HIV positive and HIV negative members.

Social partners

- Business can provide technical expertise and assistance in the process of reviewing, analysing and restructuring employee benefit schemes to the benefit of both employer and employee;
- Government can provide information and media on, as well as access to, supplementary health care and welfare services in the event that employee benefit schemes and funds are not able to meet needs adequately; and
- Labour can assist in the vital role of educating members on the importance of HIV/AIDS prevention, care and

support, to minimise the impact of HIV and AIDS on employee benefits.

2.6 Dismissals and grievances

The Code provides that employees may not be unfairly dismissed. Furthermore, every workplace must make provision for the resolution of HIV-related disputes through an appropriate grievance procedure.

Dismissals

The Code deals with dismissals in item 11 where it states that employees with HIV/AIDS may not be dismissed solely on the basis of their HIV status. Furthermore, where an employee has become too ill to perform their current work, an employer is obliged to follow accepted guidelines regarding dismissal for incapacity before terminating an employee's services, as set out in the Code of Good Practice on Dismissal contained in Schedule 8 of the Labour Relations Act.

Finally, the Code provides that employers should ensure that as far as possible, the employee's right to confidentiality regarding his or her HIV status is maintained during any incapacity proceedings. An employee cannot be compelled to undergo an HIV test or to disclose his or her HIV status as part of such proceedings unless the Labour Court authorises such a test.

Grievance procedures

The Code provides in item 12 that employers should ensure that the rights of employees with regard to HIV/AIDS, and the remedies available to them in the event of a breach of such rights become integrated into existing grievance procedures. Furthermore, employers should create an awareness and understanding of the grievance procedures and how employees can utilise them. Finally, employers should develop special measures to ensure the confidentiality of the complainant during such proceedings, including ensuring that such proceedings are held in private.

Key points

The following key points are made in this section:

- Employees have a legal right not to be dismissed simply because they are HIV positive.
- Employees may be dismissed if they lack capacity to perform the key elements of their job. This must be done in accordance with the guidelines set out in the Code of Good Practice on Dismissals.
- Employers must deal with HIV related grievances in an efficient and effective manner in order to manage HIV/AIDS in the workplace effectively.
- Workplaces which do not address issues relating to unfair dismissals and HIV/AIDS related grievances undermine and reduce the effectiveness of HIV/AIDS programmes as this re-enforces myths such as "HIV positive employees are not able to work productively".

2.6.1 Legal framework for dismissals and grievances

Constitution of the Republic of South Africa, Act No.108 of 1996

The Constitution provides that everyone is entitled to 'fair labour practices' in section 23. This means in this context that employees may not be:

- Unfairly dismissed; or
- Denied the opportunity to resolve HIV/AIDS related disputes with co-workers or their employer in a speedy and efficient manner.

Promotion of Equality and the Prevention of Unfair Discrimination Act

This Act provides in section 11 that no person may be subject to harassment. This is defined as "unwanted conduct which is persistent or serious and demeans, humiliates or create a hostile or intimidating environment or is calculated to induce submission by actual or threatened adverse consequences and which is related to a person's membership of a group identified by one or more of the prohibited grounds or a characteristic associated with that group." This means that if a person is being harassed in the workplace due to their HIV status they may be protected by this Act.

Employment Equity Act, No. 55 of 1998

Section 6(1) prohibits any person from unfairly discriminating against any employee based on "HIV status" in any employment policy or practice. This would include dismissing an employee for being HIV positive.

Labour Relations Act, No. 66 of 1996

Section 185 of the LRA every employee has the right not to be unfairly dismissed. A dismissal will only be fair if it is for a fair reason relating to:

- Conduct;
- Capacity; or
- The employer's operational requirements; and
- Done in accordance with a fair procedure.

Section 188(1)(a)(i) of the LRA provides that an employer may lawfully dismiss an employee if that employee is too ill to continue working. The Code of Good Practice on Dismissal sets out substantive (fair reason) and procedural (process) guidelines that must be used when dismissing an employee for temporary or permanent incapacity. These include both procedural and substantive requirements for a fair dismissal. It also separates out temporary and permanent incapacity.

With permanent incapacity an employer must first try to:

- Find **alternatives**; or
- **Adapt** the work environment; or
- **Accommodate** the employee's disability.

Code of Good Practice on the Employment of People with Disabilities:

- Adapting existing facilities to make them more accessible;
- Adapting existing equipment or acquiring new equipment including computer hardware and software;
- Re-organising workstations;
- Changing training and assessment materials and systems;
- Re-structuring jobs so that non-essential functions are re-assigned;
- Adjusting working time and leave;
- Providing readers, sign language interpreters; and
- Providing specialised supervision, training and support."

ILO, Code of Practice on HIV/AIDS and the World of Work:

- Re-arrangement of working hours;
- Access to special equipment;
- Opportunities for additional rest breaks;
- Time off for medical appointments;
- Flexible sick leave;
- Part-time work; and
- Return to work arrangements.

With temporary incapacity the employer must first try to:

- Investigate the extent of the incapacity; and
- Investigate alternatives to dismissal, considering factors of the case such as nature of the job, period of absence, seriousness of illness or injury, possibility of a temporary replacement.

The following criteria may be relevant when determining whether an incapacity dismissal is appropriate:

- The nature of the incapacity;
- Whether the employee is capable of performing the work;
- The extent to which the employee is capable of performing the work;
- The extent to which the employee's work duties can be adapted;
- The availability of alternative work;
- The likelihood of recovery or improvement;
- The effect of the employee's absence on the employer's operations;
- The size of the business;
- The effect of the employee's disability on the welfare and safety of others;
- The employee's status;
- Length of service; and
- Cause of the incapacity.

There are no legal provisions on grievance procedures. The creating of an effective grievance procedure is a matter that is left to the parties to regulate through collective bargaining.

2.6.2 Defining the provisions on dismissals and grievances

Dismissals:

The Code prohibits the dismissal of an employee simply on the basis of his or her HIV status. A dismissal is defined in the Labour Relations Act in s 186(1)(a) as "termination of a contract of employment with or without notice". It includes circumstances where the employee resigns because the employer has made the employment relationship "intolerable".

This does not mean that an employee living with HIV/AIDS may not be dismissed. An employee living with HIV/AIDS may be dismissed on the basis of misconduct, incapacity or operational requirements where necessary. However, they may not be dismissed simply because they are living with HIV or AIDS.

The Code recognises that there may be instances where an employee living with HIV/AIDS is no longer able to perform his or her job functions as a result of ill-health. In this situation, a dismissal for incapacity on the basis of ill health may be fair, but must nevertheless be conducted in accordance with the Code of Good Practice on Dismissal.

An employee's HIV status may be known, and in this case the Code provides that where such an employee is undergoing incapacity proceedings, the employee's HIV status must be kept confidential and should not be disclosed outside of those proceedings.

Grievances:

A grievance procedure is an internal process that allows employees to raise issues or concerns for discussion and resolution.

The Code provides that employees should be able to resolve HIV/AIDS related disputes by using existing grievance procedures.

The Code further provides that employers are required to ensure that grievance procedures are confidential and do not result in the disclosure of a person's HIV status. This means that if an employee is required to disclose his or her HIV

status in order to effectively deal with a grievance, the information should not be used outside of the grievance proceedings.

2.6.3 Key issues on dismissals and grievances

Common problems

- Dismissal once the employer discovers the employee is HIV positive.
- Confidentiality not being maintained during incapacity hearings; and
- Employers refusing to adapt, accommodate or find alternatives for incapacitated employees.
- Co-workers, on becoming aware of an employee's HIV status, make their work environment unpleasant or even intolerable;
- Co-workers refusing to work with an employee who has disclosed their HIV status; and
- Disputes between supervisors and employees on sick leave allocation or how to accommodate an HIV-related disability.

Case study

"In 1995, a 38-year old unmarried woman approached the ALP for advice. Ms. X was the mother of four children and responsible for five dependants (one of them being her own mother) and working as a domestic worker at a middle-class white family in Johannesburg for R30/day. She was responsible for the usual domestic work duties in the home of her employer as well as looking after their 1-year old son. After working there for two months her employer informed her that she had to be tested to see if she was healthy enough to care for the child. In her statement, Ms. X says the following: "I asked her if what if they found out I am sick. She replied that she would help me because she is also a woman."

The employer's doctor tested Ms. X for HIV and spoke in English, which she could not understand. The employer translated into Afrikaans, but Ms. X still did not grasp what was being done to her. After some time, Ms. X returned to the doctor where she was given a letter by the receptionist. The employer opened the letter and informed the client that she had AIDS. She was given R400.00 to go to hospital and subsequently dismissed.

*Richter M,
Preliminary Assumptions on the Nature and Extent of
Discrimination Against PWA in South Africa, AIDS Law Project, 2001 at 30*

Some main issues for trade unions and employees:

- How to monitor dismissals;
- Ensuring employees are properly represented at incapacity hearings;
- Negotiating with employers to develop alternatives to dismissal when employees become too ill to continue in their current jobs;
- Ensuring migrant workers who are dismissed for incapacity and who return to rural areas with few or no community based medical services are assisted in accessing home-based care and other social services;
- Ensuring an effective grievance procedure is negotiated through collective bargaining; and
- Placing pressure on the employer to take HIV related grievances seriously.

Some main issues for employers:

- Ensuring that the workforce is able to work productively
- Setting standards for appropriate behaviour within the workplace, through ensuring unfair dismissals do not take place and that grievances are resolved at an early stage;
- Assisting vulnerable employees, particularly women to use grievance procedures, since research shows that women face hostility and aggression when they disclose that they are HIV positive; and
- Ensuring that inappropriate behaviour towards PWAs is not tolerated within the workplace.

2.6.4 Implementation guidelines on dismissals and grievances

Why is protecting employees from unfair dismissals important?

Unfair dismissals due to HIV status are not only illegal but they undermine an attempt to develop an HIV/AIDS programme in the workplace as they send a message that:

- Persons with Aids (PWA) are not productive;
- PWAs are a threat to workplace safety; and
- You can keep the workplace "AIDS free" by dismissing workers with HIV/AIDS.

Why is resolving disputes related to HIV/AIDS important?

If disputes relating to HIV/AIDS within the workplace are not resolved it leads to the following problems:

- It is difficult for persons living with HIV/AIDS (PLWAs) to be open about their HIV status;
- It is difficult for PLWAs to be healthy and function at their optimum level as they may be facing stress from the reactions of co-workers and supervisors; and
- It affects the productivity of all workers as they are focusing on the 'dispute' instead of their core job functions.

"Violations of dignity have such significant, pervasive, and long-lasting effects that injuries to individual or collective identity may represent a thus far unrecognised pathogenic force of destructive capacity towards well-being at least equal to the capacity of viruses or bacteria."

*Mann J "AIDS and Human Rights: Where do we go from here?"
Health and Human Rights Vol 3 NO 1 at 148*

What steps can you take to prevent unfair dismissals?

- Develop clear guidelines on the procedures that must be followed in dismissals, particularly dismissals for incapacity;
- Ensure that all managers and supervisors are aware of the law and how to apply it within the particular workplace;
- Make a clear policy statement on dismissals setting out what steps the company will take to adapt an employees' working environment, how it could accommodate ill employees and what alternatives, if any, exist.
- Take corrective action against individuals who do not follow the law and company policy; and

Steps that should be taken in effecting a dismissal for incapacity:

Step one:

Determine the employee's capacity to perform their core functions by:

- Requesting them to submit to a medical examination; or
- Asking them to attend an interview about their health status.

Step two:

Advise the employee of their rights which include:

- The right to representation at the hearing;
- The right to bring their own medical evidence (if available); and
- The right to a confidential process.

Step three:

Investigate the possibility of adapting the employee's working environment, accommodating their disability or finding alternative work for them. Involve the employee and their representative in these discussions.

Step four:

Hold a hearing to determine the employee's capacity to perform their job functions. Make a decision regarding their future employment.

Step five:

If an employee is dismissed, assist them to access any employee benefits due to them and other forms of community based support.

What steps can you take to deal with HIV related grievances?

- Deal with any dispute as quickly as possible;
- Use ordinary grievance procedures but ensure that all parties are protected by confidentiality clauses;
- Give employees various options for resolving the dispute i.e. using the set procedures, going for joint counselling, moving to an alternative position within the company, etc;
- Where possible, offer to arrange for an external or outside facilitator to assist with resolving the dispute. This will help to ensure that confidentiality is maintained;
- If the particular offender has breached the employee's rights to privacy, for example, advise them of their rights e.g., instituting a civil claim, etc; and
- Integrate courses on attitudes and discrimination into HIV/AIDS awareness programmes so that all staff can begin to work through their own fears and prejudices.

What steps can you take to promote the use of the grievance procedures?

- Ensure they are well known within the working environment;
- Display the procedures in general areas within the workplace; and
- Provide support to employees who try to resolve disputes using these procedures. See for example the Code of Good Practice on Handling Sexual Harassment Cases attached to the Labour Relations Act for advice on how to deal with harassment issues as many similarities exist between such disputes. A copy of this code may be obtained from www.labour.gov.za

Checklist: Do's and don'ts

- Do listen to your employees
- Don't lower your expectation of the employee simply because they have HIV or AIDS
- Do develop policies on dismissal for incapacity and make employees aware of policy and procedures;
- Do negotiate and consult on all forms of reasonable accommodation;
- Don't act unilaterally
- Do maintain confidentiality regarding HIV status during an incapacity hearing; and
- Do ensure flexible, confidential grievance procedures exist; and
- Don't treat people with HIV or AIDS differently from others unless this is related to the reasonable accommodation of an employee.

Lawyers for Human Rights handled a case in 1998 where an employee was being discriminated against on the basis of her HIV status. One of the solutions which was mooted during a conciliation of the dispute was transferring the employee to another branch of the company where no one would know of her HIV status.

AIDS and Human Rights Programme

Lawyers for Human Rights

Annual Report

1998

CHAPTER THREE

3. Framework for managing HIV/AIDS in the workplace

The Code of Good Practice on Key Aspects of HIV/AIDS and Employment contains guidelines for employers, employees and trade unions on the management of HIV/AIDS in the workplace. According to item 13 of the Code:

The effective management of HIV/AIDS in the workplace requires an integrated strategy that includes, amongst others, the following elements:

- **An understanding and assessment of the impact of HIV/AIDS on the workplace; and**
- **Long and short term measures to deal with and reduce this impact, including:**
 - **An HIV/AIDS policy for the workplace;**
 - **A prevention programme;**
 - **A wellness programme; and**
 - **Management strategies to deal with the direct and indirect costs of HIV/AIDS.**

Organisational HIV/AIDS responses should have two main focuses, one internal and the other external. The internal response refers to what organisations can do in response to HIV/AIDS in the workplace; the external response refers to recognising and exploiting the comparative advantages of an organisation to 'make a difference' to the nature and course of the epidemic within the sector in which it operates.

- The workplace response should have four main elements:
 - A prevention strategy;
 - A wellness strategy;
 - A set of management strategies to deal with the direct and indirect costs of HIV/AIDS; and
 - A partnership strategy.

It is important to note that these elements are interlinked – in particular, prevention activities and wellness management are not independent of one another – rather they form part of a continuum of prevention and care.

- The workplace response should be underpinned by:
 - An impact assessment to determine the nature and extent of the problem;
 - A policy framework; and
 - A monitoring and evaluation plan.
- Mainstreaming HIV/AIDS is a fundamental requirement for workplace responses to be appropriate and sustainable.
- Programmes must be gender sensitive.

3.1 Principles underlying a comprehensive response to HIV/AIDS

Two general principles should inform all responses to HIV/AIDS in the workplace:

- Mainstreaming HIV/AIDS activities into the core function of the organisation; and
- Developing a gender sensitive programme.

Mainstreaming

Mainstreaming HIV/AIDS is increasingly acknowledged as the optimal means to develop and implement a comprehensive response to HIV/AIDS. A mainstreamed response to HIV/AIDS is one in which there is an HIV/AIDS policy which is:

- Linked to other organisational policies; and
- Conceptualises the organisation's response in the light of existing policies, practices and programmes which:
 - Integrates HIV/AIDS activities into other programmes, e.g. staff induction; and
 - Integrates HIV/AIDS activities into the core functions of the organisation.

Gender specific response

It is accepted that there is a link between gender, inequality and vulnerability to HIV/AIDS. For example, gender dynamics in sexual relationships place both men and women at heightened risk of HIV infection:

- There appears to be tolerance for male promiscuity – thus placing them and their partners at greater risk of HIV infection;
- Likewise, it appears that women are placed under pressure to exert little or no control over their sexual relationships – thus again placing them at greater risk.

Both prevention and care programmes need to recognise gender differences and respond to such issues.

Examples of gender specific activities

- Promote understanding around the ways in which gender stereotypes affect men and women, including discussions on the different ways in which girls and boys are raised.
- Support efforts to promote gender equality in the workplace.
- Promote greater understanding and acceptance of men who have sex with men.
- Introduce programmes to reduce sexual and domestic violence.
- Promote discussions on alternative versions of masculinity.
- Encourage men to take a more active role in providing care for persons living with AIDS.
- Develop prevention programmes which do not just target men or women but assist with developing communication skills between the sexes.
- Introduce and promote use of the female condom.

3.2 Managing HIV/AIDS in the workplace

Item 15.2.2 (xi) of the Code recommends that workplaces develop strategies to address direct and indirect costs associated with HIV/AIDS in the workplace.

This requires proactive management of the epidemic by seeking to understand it, monitoring it and mitigating its impact as part of every organisation's response to the HIV/AIDS epidemic.

- The key strategies to manage the epidemic are:
 - To establish a structure responsible for all aspects of the workplace response;
 - To collect and analyse data to inform integrated planning processes;
 - To integrate HIV/AIDS into all steps of skills development planning;
 - To regularly check for compliance with labour and other legislation; and
 - To demonstrate leadership and management commitment for the workplace HIV/AIDS response.

There is broad acceptance that HIV/AIDS is having and increasingly will have a significant impact on the workplace. Ideally HIV/AIDS should be managed in the same manner as other long-term threats to an organisation. This implies that organisations should have a management plan to support their workplace HIV/AIDS response. The following table is an example of the core objectives and actions that could form the basis for a management plan.

Management Strategies

Objectives	Actions
To create a mechanism to communicate on policy and programme issues (internally and externally)	<p>Structure</p> <ul style="list-style-type: none"> • Establish a representative AIDS Committee with official terms of reference • Modify job descriptions to include roles relating to the workplace HIV/AIDS responsibilities
To provide regular reports and advice to management	<p>Communication and reporting</p> <ul style="list-style-type: none"> • Mechanisms for communicating internally and externally • Identification of reporting requirements
To understand the epidemic: <ul style="list-style-type: none"> - in the workforce and the surrounding community - currently and in the future 	<p>Analyse data received from risk and impact assessments conducted:</p> <ul style="list-style-type: none"> • Profiles of the workforce and the community • A model of the epidemic • Impact assessments – base-line and periodically thereafter
<p>To facilitate budgetary provision and ensure financial accountability</p> <p>To utilise this understanding for short and medium term planning and budgeting</p>	<p>Analyse data received on direct and indirect costs of:</p> <ul style="list-style-type: none"> • Absenteeism and sick leave • Morbidity and reduced productivity • Replacement recruitment and retraining • Medical costs • Disability and ill-health retirement, pensions, dependent benefits and funeral costs
To clarify all HR issues and ensure compliance with legislation	<p>Review HR policies and procedures, such as:</p> <ul style="list-style-type: none"> • Job access and job security • Access to training and promotions • Confidentiality, disclosure and protection against discrimination • Performance management • Reasonable accommodation for symptomatic employees • Skills succession planning • Disciplinary and grievance procedures • Employee benefits • And ensure in line with HIV/AIDS policy
To address socio-economic factors which fuel the epidemic within the context of sustainable development	<p>Examine development plans to ensure that HIV/AIDS is considered</p>
To ensure the protection of human rights and compliance with labour legislation	<p>Analyse policies and procedures for legal compliance</p>
To provide leadership, and lead by example	<p>Demonstrate commitment for the policy and programme by:</p> <ul style="list-style-type: none"> • Management and • Unions
To identify roles and responsibilities in respect of the policy and programme	<p>Define the HIV/AIDS-related responsibilities of:</p> <ul style="list-style-type: none"> • Management • Supervisors and team leaders • Unions • Health care workers

	<ul style="list-style-type: none"> • Peer educators • Employees
To facilitate on-going monitoring and periodic evaluation	<ul style="list-style-type: none"> • Identify data sources for monitoring • Conduct on-going monitoring • Conduct periodic evaluation • Review policy at regular intervals

The following checklist can be used to review the management strategies component of a workplace HIV/AIDS response and to identify areas for future or expanded action.

Management strategies checklist

Elements	Overall assessment			Areas for Action	Prompts
	Good	Average	Poor		
Structure to direct the strategies					Does a standing structure exist? What is the composition of the structure? What is its mandate?
Planning the response: including data collection, analysis and development of long term strategies					Who has responsibility for planning the response? With whom do they consult? What is planned to address risk factors?
HIV/AIDS/STD/TB Policy Preliminary checklist Coordination Management issues HR issues (recruitment, training) Prevention programme (awareness, education) Testing and counselling Confidentiality and disclosure Medical issues (wellness, STD's and infection control) Employee benefits					Does the policy cover all areas of a comprehensive response? Does the policy cover all workplace programme elements? How was the policy developed? How has the policy been communicated? Has the policy been revised/reviewed? What data is readily available? Can it be used to monitor trends? What other data is needed for meaningful monitoring?
Skills Plan					Have critical positions been identified? Can a multi-skilling programme reduce the risk to production?
Employee benefits					Has the impact of HIV/AIDS on employee benefits been considered? Have benefits been reviewed to accommodate the impact?
Analysis of legal obligations – BCEA, LRA, EEA – COIDA, OHS					Is the organisation operating in accordance with legislation that has HIV/AIDS implications?
Commitment – By management – By unions					What commitment is demonstrated by management and unions?

3.3 Implementation guidelines

Most of the management strategies that are proposed in this document are not new – rather the challenge is to integrate HIV/AIDS into existing and well-established management practices. The guidelines that follow attempt to assist in this process.

Management strategies to deal with the impact of HIV/AIDS in the workplace

Management needs to implement a number of strategies to deal with the impact of HIV/AIDS in the workplace. These include:

- Creation of an HIV/AIDS Committee
- Development of a database of information to enhance planning
- Development of an HIV/AIDS policy
- Succession planning strategies and skills development plans
- Management of employee benefits
- Compliance with legal obligations
- Demonstration of management commitment
- Workplace HIV/AIDS prevention and wellness programmes
- Monitoring and evaluation.

3.3.1 Creation of an HIV/AIDS committee

A committee should be appointed consisting of a committed group of nominated officials/employees with a clear mandate to develop, oversee, implement, monitor and report on the workplace HIV/AIDS response.

An HIV/AIDS Committee should include representation from the following sectors:

Checklist

- Women and people with disabilities;
- All departments and all levels;
- Employees who are living with HIV/AIDS
- Trade union officials and shop stewards; and
- People with relevant skills.

3.3.2 Development of a database of information to enhance planning

All organisations collect a range of data and information about employees and operations such as the number of deaths in service, number of ill-health retirements, rates of absenteeism etc. Much of this data can be used to generate a picture of the epidemic in the organisation, and will form part of its impact assessment.

The following three questions can assist in evaluating the data collected:

- Do we have the information/data to **measure the impact of the epidemic on our organisation now?** If not, what do we need and where do we get it?
- Do we have the information/data to make **future predictions about the epidemic and the impact on our organisation?** If not, what do we need and where do we get it?
- What are the **questions** we should be asking to enable us to integrate HIV/AIDS into our planning?

The aim of the organisation's HIV/AIDS response is to integrate the topic of HIV/AIDS into all aspects of an organisation's planning process. The following step-by-step planning process can lay the foundation for sustained integrated planning. At each step, it is critical to ensure full participation of key role players. This, in turn, will lead to shared ownership of the plan.

Step 1: Analyse factors that contribute to risk of HIV infection

- Identify employees at risk or vulnerable to HIV infection
- Identify factors which put employees at risk of HIV infection
- Identify and prioritise obstacles and opportunities for reducing HIV infection amongst employees.

Step 2: Analyse your response to HIV/AIDS

- What prevention programmes (including safer sex promotion, reducing the vulnerability of specific target groups and STD prevention and control) are available to employees?
- What treatment, care and support programmes (including access to voluntary counselling and testing, clinical management and home/community based care) are available to employees?
- What programmes are in place to mitigate the impact of HIV/AIDS (including social welfare support and non-discrimination activities)?
- What programmes are effective?
- What programmes are not effective?
- What programmes are missing?

Step 3: Analyse current and potential partners

- Who is involved in policy making?
- Who is involved in co-ordination?
- Who is involved in implementation?
- Who provides technical input?
- How do they work together?
- Who else could become involved in these activities?
- How could they be recruited?
- What are the optimal mechanisms for consultation, communication and collaboration?

Step 4: Planning

- Set objectives in priority areas;
- Develop action plans to reach objectives;
- Examine each for acceptability, technical soundness, feasibility/affordability, chance of succeeding and potential impact;
- Indicate responsibilities; and
- Identify resources.

Step 5: Monitoring and evaluation system

- Define goals and objectives of the response;
- Determine achievement of the objectives;
- Formulate feedback mechanism;
- Give feedback to role players in the organisation on the impact of the intervention in the workplace; and
- Use monitoring and evaluation data to review the impact of HIV/AIDS in the workplace.

The complexity of the planning process required will depend on factors such as the size and structure of an organisation. Planning could be done by an organisation, by companies in an area or group, or even by a sector.

3.3.3 Development of an HIV/AIDS policy

Item 15.1 of the Code recommends that every workplace develop an HIV/AIDS policy in order to ensure that employees affected by HIV/AIDS are not unfairly discriminated against in employment policies and practices.

Policies should be developed consultatively; should reflect the nature and needs of the organisation; and should be monitored and reviewed regularly.

According to the code, the policies should cover the following:

- An organisation's position on HIV/AIDS;
- An outline on the HIV/AIDS programme;
- Details on employment policies;
- Express standards of behaviour expected of all employers, employees and trade unions;
- Grievance procedures;
- Communication strategies;
- Employee assistance programmes;
- Roles and responsibilities of participating role players; and
- Monitoring and evaluation mechanisms.

A policy sets in place a framework for an organisation's workplace HIV/AIDS response. It must have a clearly stated goal and principles that define rights and responsibilities. Time and effort invested in ensuring that the workplace HIV/AIDS policy is developed in a consultative manner; is jointly owned; supported by operational guidelines and regularly monitored, is worth it.

Rationale for an organisation's HIV/AIDS policy

The following are significant benefits to developing and adopting an HIV/AIDS policy which:

- Defines an organisation's position on HIV/AIDS;
- Sends a strong message that HIV/AIDS is a serious issue in the organisation;
- Indicates commitment to dealing with HIV/AIDS;
- Sets a foundation for the HIV/AIDS programme;
- Provides a framework for consistency of practice;
- Expresses standards of behaviour expected of employees, supervisors and management;
- Sets standards for communication about HIV/AIDS; and
- Let employees know what assistance is available.

A workplace HIV/AIDS policy could take many different forms including a comprehensive HIV/AIDS policy; a brief statement of intent referenced to other organisational policies; and an integrated policy (e.g. HIV/AIDS integrated within a terminal illness policy or within a disability policy).

In addition, the policy goals should be clearly stated, for example: "to minimise the impact of HIV/AIDS in the workplace", or "to manage the impact of the epidemic on infected employees and the company operations".

A workplace policy should include key principles such as **confidentiality, non-discrimination and rights and responsibilities**.

Good practice example of an HIV/AIDS policy (adapted from the project support group, Zimbabwe)

Principle 1: Promote non-discrimination and openness around HIV/AIDS.

Principle 2: Because AIDS is a preventable disease it makes sense to offer prevention education to all employees

and to specifically invest in targeting situations of high risk.

Principle 3: AIDS prevention works – we can change behaviour, but information alone is not enough to achieve this. Behaviour change is only possible if we reach solutions by developing our own responses. People need to be taught skills to enable them to put the information into practice.

Principle 4: Education needs to be complimented by supportive services.

Principle 5: AIDS programmes in the workplace can help control the epidemic and reduce impact on businesses.

Principle 6: Effective AIDS prevention yields enormous savings in averted AIDS costs.

Principle 7: The most powerful change agents are our friends and peers.

Principle 8: The involvement of people living with HIV/AIDS is central to an effective workplace programme.

Principle 9: AIDS programmes must be simple, specific, concrete and verifiable. Use core management principles (simplicity, focus, precise, targets and strong performance monitoring), and explicit results chain (required inputs, outputs, outcomes and impacts).

Principle 10: Strategies and projects in areas of economic and social development should address poverty, income inequality, the bargaining power of women, housing, migrancy and so on, will address the underlying factors which fuel the epidemic.

Policy development process

Policy development should follow the seven-step process below:

Step one: Create an HIV/AIDS committee

- Identify a senior person to lead the process;
- Develop the terms of reference for a Policy Task Team; and
- Nominate representatives for the Policy Task Team.

Step two: Develop committee's capacity

- Provide training for the Policy Task Team on relevant HIV/AIDS facts, on the impact of HIV/AIDS (particularly on workplace) and on the terms of reference.
- Review past policy and programme – if in existence.

Step three: Gather information

Gather data/information:

- About the organisation;
- About the HIV/AIDS situation in the organisation;
- About the concerns/issues related to HIV/AIDS;
- About other workplace HIV/AIDS policies; and
- About research on HIV/AIDS and the workplace.

Step four: Reach consensus

Reach consensus on:

- The type of policy (stand-alone, integrated, etc);
- The goals of the policy

- Guiding principles; and
- Elements of the policy.
- Identify any areas where expertise is required (legal and medical status).

Step five: Formulating the policy

- Develop a draft policy (with technical inputs where required);
- Establish a consultation process
- Revise and finalise the policy; and
- Identify indicators by which to monitor the policy implementation.

Step six: Negotiate policy

The following should be considered when preparing to negotiate a workplace policy:

- Identify the issues that need to be included within a policy;
- Define what objectives you want to achieve through the development of a policy;
- Gather information to support your positions;
- Develop a strategy; and
- Reach agreement.

Step seven: Develop implementation strategy

- Develop a strategy to launch and popularise the policy;
- Adopt and launch the policy formally;
- Conduct public relations activities around the policy; and
- Conduct research to identify and address any barriers to ownership and implementation.

Good practice example of a generic company workplace HIV/AIDS policy

1. Scope

This policy applies to all employees employed by the company.

2. Objective

The objective of this policy is to ensure that all employees of the company are kept informed about the HIV/AIDS pandemic as well as to detail the steps that will be taken to protect both the company and the employee against the effects of this disease. This will be achieved by:

- Eliminating unfair discrimination in the workplace;
- Promoting an environment in which people living with HIV/AIDS in a structured manner;
- Monitoring the prevalence of HIV/AIDS in a structure manner;
- Developing proactive guidelines and programmes; and
- Implementing HIV/AIDS awareness programmes aimed at providing support and education.

3. Responsibility

Implementation of this policy is the responsibility of all managers and supervisors, as is the continued dissemination of information about HIV/AIDS to all employees. It is however the responsibility of employees to take appropriate action on being informed about HIV/AIDS, to protect themselves and their families and to seek counselling in case of uncertainty.

4. Principals

The following principles will be covered in the HIV/AIDS policy:

i. AIDS awareness

Line management will be provided with all information pertaining to HIV/AIDS. This is aimed at establishing a reservoir of information and knowledge that will be available to all employees and which will better enable them to make informed decisions. This information will be updated from time to time.

ii. Pre- employment testing

HIV testing is not a pre-requisite for employment and pre-employment testing will therefore not be conducted by the company.

iii. Special circumstances requiring HIV testing

In the case of persistent illness, an employee may be referred for medical examination, and may be required to undertake an HIV test. Any report on the employee's state of health will only be divulged to the company with the employee's consent in writing.

iv. Disclosure of HIV test results

HIV test results will not be disclosed to management without the employee's written consent and such disclosure will be treated as strictly confidential. It is however the employee's prerogative to disclose such test results to any party he/she wishes to.

The employee reserves the right to disclose the results of his/her HIV test at any given time.

v. Pre-test counselling

Before an employee undergoes HIV testing, he/she will receive pre-test counselling.

vi. Post-test counselling

Following an HIV test, each employee will receive post-test counselling.

vii. Discrimination

No employee may be discriminated against based on his/her HIV status. Discrimination against HIV positive employees by fellow employees, based on their HIV status, will not be condoned. Such action will render employees involved subject to disciplinary action in accordance with the company's disciplinary code and procedure.

viii. Protection against HIV infection in the workplace

HIV may be transpired in a number of ways:

- The exchange of body fluids, i.e. exposure to blood products or through sexual conduct;
- Through the exchange of intravenous needles; and
- From mother to unborn child.

Every employee must take the appropriate precautions when faced with a situation that may lead to the transmission of HIV.

ix. Transparency

The company will adopt a consultative and transparent approach to the management of HIV/AIDS. This policy will be reviewed should the company's strategy or legislation change.

x. Grievances

All grievances about issues related to HIV/AIDS will be handled according to the standard policy that exists within the company to deal with complaints and grievances of employees.

xi. Access to training, promotion and benefits

An employee with HIV/AIDS will be expected to meet the same performance requirements that apply to other employees, with reasonable performance accommodation if necessary. Reasonable accommodation refers to those steps that management will take regarding any employee with a disability. Reasonable accommodation may include, but is not limited to, flexible or part-time working schedules, leave of absence, work restructuring or reassignment. HIV infected employees will be entitled to the same benefits as all other employees.

xii. Budget

A budget will be allocated to ensure that all facets of the programme are implemented.

5. Implementation and monitoring

This policy will be reviewed on a regular basis, using the following indicators:

- Absenteeism;
- Sick leave;
- Early retirement; and
- EAP referrals (treatment and counseling).

Good practice example of a public sector workplace HIV/AIDS policy

1. Preamble

The Department of (insert appropriate department's name) acknowledges the seriousness of the HIV/AIDS epidemic, seeks to minimise the social, economic and developmental consequences to the Department and its staff; and commits itself to providing resources and leadership to implement an HIV/AIDS and STD Programme.

2. Principles

The Department affirms that:

- The policy shall be developed and implemented in consultation with staff and their representatives;
- Staff living with HIV/AIDS have the same rights and obligations as all staff;
- HIV status shall not constitute a reason to preclude any person from employment;
- No staff shall be required to undergo HIV testing. Where testing is done at the instance of the employee, this will be with his/her informed consent and accompanied by counseling; and
- Confidentiality regarding the HIV status of any member of staff shall be maintained at all times.

3. HIV/AIDS and STD programme in the workplace

3.1. Co-ordination and implementation

The Department shall appoint the HIV/AIDS Programme Co-ordinator and Working group to:

- Communicate the policy to all staff;
- Implement, monitor and evaluate the Department's HIV/AIDS programme;
- Advise management regarding programme implementation and progress;
- Liaise with local AIDS service organisations and other resources in the community;
- Create a supportive and non-discriminatory working environment.

3.2. Management of infected employees

HIV/AIDS shall be treated in the same way as other disabling or terminal conditions.

3.3. Programme components

The HIV/AIDS programme of the Department shall provide all staff with access to:

- Information, education and communication activities including small media materials and peer education;
- Barrier methods, particularly male condoms;
- Health Services for the appropriate management of STDs;
- Treatment of opportunistic infections for infected staff;
- Testing and counseling services;
- Personal protective equipment for staff who may potentially be exposed to blood or blood products; and
- Support for both infected and affected staff.

3.4 Planning

The Department shall conduct regular impact analyses in order to understand the evolving epidemic and how it will impact on the future of the Department as that relates to its structure, operations and functions.

3.5 Benefits

HIV infected staff are entitled to the same benefits as all staff.

3.6 Budget

The Department shall allocate an adequate budget to implement every aspect of its HIV/AIDS programme.

4. Interaction with civil society

The Department shall endeavor to utilise all opportunities in which it interacts with civil society to contribute to the mission and objectives of the National AIDS programme.

5. Interaction within government

The Department shall serve on the Provincial Interdepartmental Committee to ensure a uniform and concerted response by government to the epidemic.

Good Practice example of an HIV/ AIDS policy (adapted from Family Health International)

1. People with HIV/AIDS are entitled to the same rights, benefits and opportunities as people with other serious or life-threatening illness.
2. Employment practices related to HIV/AIDS will, at a minimum, comply with national, regional and local laws and regulations.
3. Employment policies should be based on scientific and epidemiological evidence that people with HIV/AIDS do not pose a risk of transmitting HIV to co-workers through ordinary workplace contact.
4. The highest level of management, union and other worker leadership should endorse non-discriminatory employment policies and educational programmes about HIV/AIDS.
5. Employers, unions and other worker representatives should communicate their support of these policies in simple, clear and unambiguous terms.
6. Employers should provide employees with sensitive and up-to-date training about HIV/AIDS risk reduction in their

personal lives.

7. Employers have a duty to protect the confidentiality of employees' medical information.
8. To prevent work disruption and rejection by co-workers of an employee with HI/AIDS, employers and worker representatives should undertake education for all employees before such an incident occurs and as needed thereafter.
9. Employers should not require HIV screening as part of pre-employment or general workplace physical examinations.
- 10 In special occupational settings where workers are regularly exposed to human blood or blood products, such as health care facilities, there may be potential risk of exposure to HIV. In such settings, employers should provide ongoing education, training and the necessary equipment to reinforce appropriate infection control procedures and ensure that they are implemented.

Guide to a successful workplace

Good workplace HIV/AIDS policies comply with certain standards. **The following checklist provides a guide against which an existing workplace HIV/AIDS policy can be evaluated.**

Checklist

- Policy clearly states the organisation's position on HIV/AIDS
- Policy formulated around principles, non-discrimination, equity and confidentiality, rights and responsibilities;
- Policy process was consultative;
- Policy communicated to all existing and all new staff members;
- Policy addresses the needs and concerns of the relevant role players in the organisation;
- Key elements of a workplace HIV/AIDS programme are present;
- Details of employment policies (such as HIV testing, employee benefits, performance management, etc) and employee assistance programmes in the context of HIV/AIDS are included;
- Standards of behaviour expected of employers and employees relating to HIV/AIDS are out;
- Grievance procedures for HIV-related complains are detailed;
- Complies with the laws relating to HIV/AIDS in the workplace;
- Consistent with the current technical, medical and scientific understanding and best practice on HIV/AIDS in the workplace;
- Makes provision for meaningful participation by people infected with and affected by HIV/AIDS (GIPA);
- Appropriate to the organisation;
- Responsibilities are assigned;
- Resources are allocated;
- Policy is dynamic and able to adapt to changing situations; and
- Provides for monitoring, evaluation and review.

3.3.4 Succession planning and skills development

Succession and skills development planning should be an integral part of any organisation and should be no different for people with HIV/AIDS. Developing a succession planning capability and implementing a skills succession plan should follow the steps below:

- Research and describe the business case for creating a succession plan that includes trends in the economy, demographic changes in the profile of the working population, an analysis of recruiting costs and the need to change from succession planning for top management positions to succession planning for all key positions.
- Conduct a gap analysis of core competences that relate to organisational needs.
- Define the strategies to guide succession planning.
- These need to be developmental and consultative; they should include assessment techniques (e.g. of the talent of employees) and a plan for regular review.

- Benchmark the strategies against best practices in successful companies.
- Agree on the process for identifying positions and individuals to be included in succession planning pool.
- This includes differentiating between the positions identified as "corporate critical roles", and the positions/roles earmarked "needing continuity".
- Assess training needs related to the pool.
- Integrate the skills succession process into other organisational processes, particularly HR process such as employee development.
- Implement the succession planning process.
- Audit the process.

Succession planning must include competency identification, integrating the succession plan with employee development processes and creating a talent pool from which the organisation can draw the needed competencies.

Good practice from Kgalagadi Breweries (PTY) LTD, Botswana (Loweson et al "Company Best Practice in AIDS and Employment")

KBL machinery works on a continual process and may not be unattended at any time. Each machine therefore has a full time and a relief operator, who work the same shift, allowing one person to take breaks. When KBL increased its mechanisation, jobs became redundant in the company, and affected employees could either be redeployed or retrenched. Rather than choose retrenchment, and recognising the potential losses that could occur due to AIDS, KBL used the extra people to create a buffer pool of 10 people. Of the original 10 people, 4 have been redeployed, now leaving a pool of 6 people. This pool was multi skilled at operational level and remains full time employees who fill in wherever they are needed. This was originally seen as a cost but is now reported to have yielded a production benefit that exceeds the costs.

KBL has a formal succession plan for identical positions, motivated by the strong localisation programme in the company. A position usually has more than one potential successor to promote competition within the company, also saving on the costs of recruitment and training when employees are lost or leave. There are currently nine expatriate positions, all with understudies. These understudy positions also have understudies, so the system is three-tiered. Usually the vacant position is discussed with employees and any required training is provided on the job, but may include formal courses.

KBL has taken a holistic approach to HIV/AIDS, with a special focus on human resource strategies. The company has made investments in sustaining a buffer pool of labour and skills development that has helped to avoid lost work time due to HIV/AIDS. The total training budget for 1997 was US\$393 000. The strategies are backed by structured channels for communication and consultation. The intervention has been planned by a skilled and experienced HR director who is included at Board level, and who is supported by bipartite discussions.

3.3.5 Employee benefits

In terms of 15.1 and 15.2 of the Code of Good Practice on the Employment of People with Disabilities, an employer who provides or arranges for occupational insurance or other benefit plans directly or through a separate benefit scheme or fund, must ensure that they do not unfairly discriminate, either directly or indirectly against people with disabilities (Including people who are living with HIV/AIDS).

Employees with disabilities may not be refused membership of a benefit scheme only because they have a disability (Including people living who are living with HIV/AIDS).

Management needs to further consider ways to manage the impact of HIV/AIDS on employee benefit schemes. This

requires an integrated strategy aimed at measures to manage the costs of HIV/AIDS on employee benefits, as well as ensuring that an HIV/AIDS strategy based on prevention and wellness of employees is implemented.

Examples of strategies include:

- Benefit restructuring to limit the financial impact of early death and disability;
- Intensive and focused education programmes to prevent further HIV infection;
- Appropriate disease management programmes to reduce absenteeism and limit of AIDS morbidity;
- Sick and disability management policies to ensure that the decision as to when a member is disabled is taken on the basis of function (that is, ability to perform the job), rather than pure medical (that is, the fact of a person being HIV positive) grounds.

Checklist of critical benefit fund

Checklist
<ul style="list-style-type: none">• To what extent does the value of benefits payable on death or disability exceed actuarial reserves? Are there more cost effective ways of structuring benefits while still meeting needs of members, e.g. by converting lump sum disability benefits to income replacement benefits? What is the level of exposure to HIV/AIDS risk in the fund? How can education strategies be developed to ensure that risky behaviour is minimised?• To what extent is the fund protected against inappropriate ill-health retirement practices by the employer or the insurer, and to what extent can proper sick leave and disability management reduce the impact of HIV/AIDS on the fund?• Does the projected change in cash flow patterns as a result of HIV/AIDS require a different investment policy? (e.g. where benefits are paid earlier, thereby reducing the term of investments.)• What is the risk profile of this scheme?• What benefit restructuring can be done, in particular where there is a danger of anti-selection where particularly generous benefits are offered in an open medical scheme?• What is the structure and aim of an appropriate HIV/AIDS disease management programme?• How do we ensure enrolment on the programme and ensure compliance with anti-retroviral treatment where it is offered?• Financial actuarial modeling of the costs and benefits of the disease management programme.

3.3.6 Compliance with legal obligations

An important management function is to regularly review all workplace policies, employment practices and employment conditions to check for compliance with the legislation. In the context of HIV/AIDS, this could involve the following actions:

(I) Review:

- The situations in which HIV testing is being done;
- The policy on occupational exposure and post-exposure prophylaxis; and
- Confidentiality of medical information.

(II) Review all workplace policies, procedures and protocols and include appropriate references to HIV/AIDS.

(III) Nominate an official to monitor compliance with the legislation from time to time and particularly following the promulgation of any new legislation with employment implications.

3.3.7 Development of management commitment

A lack of visible leadership is frequently blamed for sub-optimal responses to HIV/AIDS. Demonstrating management commitment can take many forms, amongst others, are:

- Championing the course for corporate citizenship on HIV/AIDS;
- Promoting cross-sector HIV/AIDS partnerships;
- Acting as a catalyst to bring different organisations together to work on joint HIV/AIDS projects;
- Facilitating the transfer of innovative solutions;
- Demonstrating support for infected or affected employees and their families;
- Using platforms to educate customers and suppliers;
- Taking a principled stance on human rights issues;
- Serving as a role model to employees and to peers in other organisations.

3.3.8 Workplace HIV/AIDS prevention and wellness programmes

Item 15.2 of the Code recommends that every workplace should develop a workplace HIV/AIDS programme aimed at preventing new infections, providing care and support for employees who are infected or affected, and managing the impact of HIV in the organisation.

The Code also outlines recommended minimum components of a prevention programme, whilst recognising however that the nature and extent of a workplace programme will be guided by the needs and capacity of each individual workplace. The recommended minimum components are:

- Hold regular HIV/AIDS awareness programmes;
- Encourage voluntary testing;
- Conduct education and training on HIV/AIDS;
- Promote condom distribution and use;
- Encourage health-seeking behaviour for STDs; and
- Enforce the use of universal infection control measures.

Workplace prevention programmes are one of the cornerstones of a comprehensive workplace response to HIV/AIDS. HIV prevention through behaviour change is a complex issue that needs to be well understood if prevention programmes are to have any chance of success. The usual elements of a comprehensive workplace HIV/AIDS prevention programme includes:

- **Awareness raising activities** such as displays, distribution of pamphlets, industrial theatre, events on World AIDS Day and so on;
- **Voluntary counselling and testing programmes** either as an on-site service or as a referral to a service in the community;
- **Peer education** activities such as group discussions on a range of topics such as risk reduction;
- **Training of other key personnel;**
- **Condom use and distribution;**
- Optimal **management of STDs**, again as part of a workplace health service or in the community; and
- An **infection control programme**, specifically focusing on health care providers.

Rationale for an HIV prevention programme

The close link between HIV/AIDS and such diseases as TB and STDs suggest that HIV/AIDS prevention programmes should also include these diseases – they are therefore often referred to as HIV/AIDS/STD/TB programmes. The benefits of an HIV/AIDS/STD/TB workplace prevention programme are multiple and include:

- Increasing awareness of HIV/TB and STDs and improving knowledge of key facts;
- Reducing risk behaviour resulting in HIV and STD infections;
- Promoting VCT with the attendant benefits of knowing one's HIV status;
- Creating a more tolerant and accepting attitude towards HIV infected workers;
- Producing positive effects on morale and productivity;
- Ensuring a safe working environment; and
- Promotion of abstinence, especially for young people.

An example of strategies for formulating an HIV prevention programme

Objectives	Actions
<ul style="list-style-type: none"> • To raise awareness of HIV/AIDS/STDs and TB • To promote and support safer sexual practices • To promote and support STD health seeking behaviour • To promote voluntary counselling and testing • To provide employees with the knowledge and means to protect themselves from occupational exposure to HIV • To equip key employees with knowledge and skills to implement the workplace HIV/AIDS programme 	<p>Prevention activities</p> <ul style="list-style-type: none"> • Disseminate HIV/AIDS/STD/TB-related literature and materials • Conduct HIV/AIDS/STD/TB awareness campaigns • Conduct formal and informal prevention activities • Promote and distribute condoms • Facilitate access to STD treatment (syndromic management) • Promote voluntary HIV testing (with counselling) • Institute an infection control programme
	<p>Skills development and capacity building for implementation</p> <p>Conduct initial and on-going training for:</p> <ul style="list-style-type: none"> • Peer educators • Instructors/trainers • Supervisors/team leaders • Union representatives

Workplace prevention programmes are essential to combat the spread of HIV and to foster greater tolerance towards persons living with HIV/AIDS.

The following key issues should be considered in the development of a prevention programme:

- Prevention programmes should be presented in a variety of forms – not only relying on the written media;
- They should be targeted and tailored to age, gender, literacy levels and cultural contexts;
- As far as is practicable HIV prevention programmes should be integrated into other workplace programmes, such as safety and health promotion programmes;
- Behaviour change is dependent on a complex combination of awareness, skills, perceptions and cultural factors. HIV/AIDS prevention programmes that aim to promote and support behaviour change must recognise this complexity. They must also provide practical measures to support behaviour change.
- Prerequisites for behaviour change.
- Correct basic knowledge.
- Understanding how the disease may affect one's life and family.
- Motivation to act.
- Skills for decision-making, negotiation, condom use etc.
- Supportive social values.
- Access to appropriate services e.g. STD services, counselling.
- Acceptance and non-discrimination.
- Convey message, which promote risk reduction behaviour.

Characteristics of a successful HIV/AIDS/STD/TB prevention programme:

- Have top management support;
- Are developed, implemented and monitored by bipartite committees;
- Are integrated into general health promotion programmes;
- Are backed by access to health services;
- Develop an environment for long-term behaviour change;
- Monitor impact through collection and review of health, sick leave, turnover and productivity data;
- Provide training and information support to staff managing the programme; and
- Have a forum to exchange experiences and ideas.

There are many tools available for assessing the needs, knowledge levels and attitudes, particularly attitudes towards those living with HIV/AIDS. This information should be used to inform the prevention programme. Below is a simple questionnaire that can be amended or used in its present form to measure the knowledge, attitudes and practices about HIV/AIDS in the workplace.

Participant questionnaire

	Yes	No	Don't know
1. Did AIDS come from the green monkey in Central Africa?			
2. Can you get infected with HIV from donating blood?			
3. Can you get infected with HIV by having oral sex with an infected person?			
4. If you have only one sexual partner can you get infected with HIV?			
5. Is it safe to share a cigarette with someone who is HIV positive?			
6. Can the HIV test tell when a person was infected?			
7. Are all babies born to HIV infected mothers also infected?			
8. Is there treatment to prevent you from getting TB if you are HIV positive?			
9. Would you eat at your favourite restaurant if you knew that the chef was infected with HIV?			
10. Would you be willing to take care of a family member with HIV/AIDS?			
11. Should people with HIV/AIDS be allowed to have communion at church?			
12. Do you support virginity testing as a way to keep the youth free of HIV?			
13. Should people who are HIV positive have sex?			
14. Do you believe that the HIV/AIDS epidemic will sort out Africa's overpopulation problems?			
15. Should infected people be forced to disclose to their families?			
16. Would you support AIDS being made a notifiable disease?			

Developing an action or operational plan

The second step for an organisation is to develop a plan for a prevention programme. This should start with:

- Analysing the needs assessment
- Reviewing successful best practices;
- Synthesising the experiences that will be relevant for their organisation; and
- Then drafting an action/operational plan.

These plans describe how the individual prevention elements in the organisation's HIV/AIDS workplace policy will be put into operation, the costs involved, time frames and those responsible persons/departments. They also provide information for monitoring purposes by identifying outputs and indicators.

An example of an operational plan:

Policy statement	Activities	Process details	Outputs	Responsibility
Conduct training of peer educators	Identify 1 peer educator per 50 employees	Ensure representivity according to: - shift - language/ethnic group <u>Budget:</u> <u>Time frame:</u>	Register of peer educators	Team leaders <u>Partners:</u>
	Conduct initial 5-day training	Include information on: - HIV/AIDS/STDs/TB - Human sexuality - Risk reduction and condom use - Universal precautions and infection control - Testing and counselling - Legal and ethical issues and women's rights - Communication and motivation skills - Company policy - Internal & external resources/referrals/support <u>Budget:</u> <u>Time frame:</u>	Workshops Participant and trainer reports	Training Dept. <u>Partners:</u>

Monitor peer education meetings	<ul style="list-style-type: none"> - How often do they take place? - How many people participate? - What is discussed? - What problems do peer educators report? <p><u>Budget:</u> <u>Time frame:</u></p>	Feedback reports from peer educators	Nominated trainer Partners:
Conduct 2-day annual in-service training	<ul style="list-style-type: none"> - Conduct a needs assessment to inform programme for in-service training - Develop appropriate modules - Conduct training <p><u>Budget:</u> <u>Time frame:</u></p>	Needs assessment Training modules Workshop	Training Dept. Partners:

HIV prevention programme elements:

A prevention programme can include a wide range of activities aiming at reducing the spread of HIV. The following is an example of a good practice programme:

Good Practice Example of a Prevention programme policy (National Union of Metal Workers of South Africa)

This policy recommends that a prevention programme consist of the following components:

- Information
- Peer education
- Access to condoms
- Access to health services to treat TB and opportunistic infections
- Provision of treatment to prevent mother to child transmission of HIV
- Voluntary counseling and testing
- Protective equipment to prevent occupational transmission
- Post exposure prophylactic treatment after an occupational exposure
- Support for infected and affected persons and families.

Awareness activities should be linked to broader awareness campaigns on subjects such as violence against women and other symbols of HIV/AIDS awareness, including red ribbons and the addition of HIV/AIDS logo(s) on key organisational documents. The range of awareness materials can be found in the Department of Health (DOH) publication, South African HIV/AIDS materials catalogue.

Voluntary HIV counselling and testing programme (VCT)

Research shows that HIV testing and counselling are an important part of any HIV/AIDS prevention programme because:

- For behaviour change to take place individuals need to take responsibility for their own sexual health and for that of their sexual partners. Access to voluntary counselling and testing is a key strategy for encouraging and empowering people to take on these responsibilities;
- Knowledge of one's HIV status enables a person to take life-changing decisions such as starting a treatment programme and making changes.
- Counselling helps people to come to terms with their HIV status. It provides them with information on the basic facts of HIV/AIDS, how to protect others from infection and how to disclose their HIV status to others.

The VCT programme must be lawful; must be done with consent; counseling must be provided; must be confidential; and testing must ensure accuracy.

Ensuring that HIV testing complies with the law which requires that such testing meets the standards set out in the Employment Equity Act.

Consent will only be legal if the person consenting has legal capacity, eg children under the age of 14 do not have the legal capacity to consent on their own to the taking of blood; ensuring that the person fully understands what they are consenting to; ensuring that the person has been provided with information on the procedure, i.e. the nature and the form of the HIV test, and its risks and implications, particularly on the kind of information they have expressly agreed to the testing; counselling precedes the testing; and the person has been provide with pre- and post-test counselling.

Department of Health's Draft National Policy on HIV Testing (2000) defines pre- and post-test counselling in the following way. This definition forms a minimum standard for the core content of HIV-related counselling:

Pre-test counselling:

Pre-test counselling is that counselling given to an individual before an HIV test, to make sure that the individual has sufficient information to make an informed decision about having an HIV test. Pre-test counselling should include discussions on:

- What an HIV test is, the purpose of the test;
- The meaning of both a positive and negative test result, including the practical implications such as medical treatment and care, sexual relations, psycho-social implications, etc;
- Assessment of personal risk of HIV infection;
- Safer sex and strategies to reduce risk;
- Coping with a positive test result, including who to tell, identifying needs and support services; and
- An opportunity for decision-making about taking the HIV test.

Post-test counselling:

Post-test counselling is the counselling provided when an individual receives his or her HIV test result. Post-test counselling involves one or more sessions (ideally at least two) and should include discussions on:

- Feedback and understanding of results;
- If the result is negative:
 - Strategies for risk reduction;
 - Possibility of infection in the window period;
- If the result is positive:
 - Immediate emotional reaction and concerns;
 - Personal, family and social implications;
 - Difficulties a patient may foresee and possible coping strategies;
 - Who the patient wants to share the results with, including responsibilities to sexual partners;
 - Immediate needs and social support identification;
 - Follow-up supportive counselling; and
 - Follow-up medical care.

Workplace HIV counselling programmes should ideally be general counselling programmes. This will ensure that the service does not become stigmatised. Many organisations choose to integrate HIV counselling with their EAP (Employee Assistance Programmes) services.

Confidentiality:

The Code provides that employees do not have to disclose their HIV status. Confidentiality is therefore compulsory for voluntary counselling and testing.

In addition, steps must also be taken to ensure accurate HIV testing. The Civil Military Alliance, for example, suggest the following 4 steps to ensure that voluntary HIV counselling and testing is not undermined by the use of inaccurate HIV tests:

- Usage only of highly accurate tests;
- Conducting confirmatory tests before handing the persons a positive result;
- Offer the persons a new test; and
- Monitor and evaluate the laboratory procedures.

Education and training

The core of education and training is a use of peer educators who have either volunteered or been nominated to conduct HIV/AIDS education sessions. It is important to ensure that such persons have qualities such as maturity, empathy and good communication skills, and they should be highly motivated and respected.

Checklist of topics to be included in an education and peer training programme

Checklist

- Transmission of HIV;
- Prevention of HIV transmission;
- STDs;
- How to assess personal risk and formulate behaviour change plans;
- Safer sex;
- Testing facilities and processes;
- The rights of infected and affected employees (including confidentiality);
- How to treat a co-worker with HIV/AIDS;
- Treatment, care and support for infected employees;
- Infection control – in the workplace;
- The workplace HIV/AIDS policy;
- Non-discrimination – not only in terms of benefits; and
- Referral sources and services.

Management training

Training should be provided for managers, supervisors, personnel/HR officers, trade union representatives, occupational health and safety personnel and factory inspectors, as well as to peer educators.

Managers, supervisors, trade union representatives and personnel officers need training to:

- Explain the HIV/AIDS workplace policy;
- Understand and comply with legal requirements (such as those relating to testing and confidentiality);
- Deal with infected and affected employees;
- Identify and manage behaviour, conduct or practices that discriminate against infected and affected employees;
- Advise about health services and social benefits;
- Promote the different aspects of the workplace HIV/AIDS programme.

The following is a chart that can be used to determine the effectiveness of an HIV prevention programme.

An organisation can rate itself against the programme elements indicated in the chart.

Prevention programme evaluation tool

Elements	Overall assessment			Areas for Action	Prompts
	Good	Average	Poor		
Programme implementation document					How was the document developed? Who is responsible for implementation? What is the budget for the programme?
Awareness activities – HIV/AIDS – STD's – TB					How often and how are these activities conducted? What resources are used to support the activities?
Testing and counselling					Is voluntary HIV counselling and testing available & used? Is there evidence of an increase or decrease in VCT use? Is other or on-going counselling available? What training was provided and what on-going support is available to counsellors?
Peer education					What initial training do peer educators receive? What on-going training and/or support do peer educators receive? What activities do they undertake, how often and with whom?
Training of trainers					Have trainers been trained to run HIV/AIDS/STD/TB training? Is HIV/AIDS/STD/TB training integrated into the company training programme?
Condom promotion					How often are condom promotion activities run? What do these activities consist of?
Condom distribution					Where and when are condoms available? What is condom uptake? Is there evidence of an increase or decrease in condom use?
STD management					Are there STD services on site? Are HCWs trained in syndromic management? Is there evidence of increased or decreased use of STD services?
Infection control programme – equipment – training – procedures for occupational exposure – PEP					Are there STD services on site? Are HCWs trained in syndromic management? Is there evidence of increased or decreased use of STD services? What procedures were followed?

Infection control

HIV and other blood borne infections (like hepatitis B) can be transmitted in an accident situation where there is contact with blood. The risk of a person becoming infected with HIV in such a situation is dependent on factors such as the extent of the contact or the sort of injury that allows the blood to enter the person's body. The average risk of transmission is however low, approximately 0.3% following a needle stick-type injury.

Preventing occupational exposure to potentially infectious blood and blood products and managing occupational exposures are important elements of any workplace safety programme.

Infection control guidelines

The following are simple guidelines on how to manage the risk of HIV transmission in an accident:

- Assume that everyone is HIV positive and always take precautions in an accident.
- Ensure that personal protective first aid equipment (such as gloves) are available and that personnel have been trained to use the equipment.
- In the event of accidental contact with blood, follow standard first aid procedures.
- Make sure that any contaminated materials are disposed of safely.
- Comply with health and safety regulations in terms of recording and reporting incidences.
- Provide appropriate information and access to services for affected employees.

3.3.8.1 Wellness programmes

Item 15 of the Code recommends establishment of workplace HIV/AIDS programmes suited to the needs and capacity of each workplace.

Rationale for a wellness programme

- Large numbers of persons are already infected with HIV;
- The health system is over-burdened and cannot cope with the demand for services; and
- It helps keep people healthy, productive and at work for a longer period.

These programmes should include a wellness component on the following:

- Programmes to create a workplace that is conducive to openness and acceptance among all employers, employees and trade unions;
- Wellness programmes for employees affected by HIV/AIDS in the workplace;
- Access to counselling and other forms of social support; and
- Reasonable accommodation of affected employees to maximise performance.

A wellness programme in the workplace should be part of the prevention/care continuum and should aim to improve the quality of life of infected persons, reduce morbidity and mortality and increase productivity.

A wellness programme should consist of an **acceptance programme** aimed at promoting a supportive and accepting environment for persons infected with and affected by HIV/AIDS; **medical management** of infected employees within a continuum of care; access to **on-going counselling and support groups**; **referral systems** and collaboration with other health care providers and specialised agencies; **family assistance programmes**; and **reasonable accommodation for infected persons to maximise health and productivity**.

Planning for a wellness programme needs to take into account the various needs of different persons within the workplace. In particular, it should provide a continuum of care for those uninfected but at risk; asymptomatic HIV infected persons; persons with early HIV disease; persons with late disease or AIDS; and persons with terminal illness.

3.3.8.2 HIV/AIDS partnerships

Item 2.3 of the Code emphasizes the importance of fostering co-operation between the relevant role-players including:

- (i) Employers, employees and trade unions in the workplace; and
- (ii) Other stakeholders at a sectoral, local, provincial and national level.

The elements of an HIV/AIDS partnership programme should support Greater Involvement of People living with HIV/AIDS (GIPA); assess partners and resources that can be shared; and set up or participate in a multi-sector HIV/AIDS network.

Rationale for building partnerships

HIV/AIDS interventions must consider social, economic, cultural and developmental factors, and responses, if they are to be effective. Contributing to broader community-based responses is not only justifiable but a necessary part of mounting a comprehensive response to the epidemic.

Objectives of developing partnerships

Partnerships could have the following objectives and actions:

HIV/AIDS partnerships

Objectives	Actions
To work in partnership with public, private, NGO and community organisations to achieve common goals	Partnerships <ul style="list-style-type: none"> • Analyse partners • Form or participate in alliances and networks • Identify opportunities for community participation
To utilise comparative advantages to contribute to the country's HIV/AIDS goals	Support NGO/ASO/community projects <ul style="list-style-type: none"> • With funding • Technical assistance • Resources
To use scarce resources optimally	Assess company/organisational resources that can be shared <ul style="list-style-type: none"> • Marketing, advertising, PR • Communications and publishing • Information technology • Equipment (donation or loan) • Market research • Employee volunteers • Training resources • Distribution networks
To facilitate the on-going, meaningful participation of people living with HIV/AIDS	Support the greater involvement of people living with HIV/AIDS in: <ul style="list-style-type: none"> • Planning • Implementation • Monitoring

All organisations should form partnerships that will enhance their HIV/AIDS responses. The benefits of partnerships are a wider response – with different types of organisations and sectors involved; a more co-ordinated response – including better referral between organisations; a larger response – with innovative community efforts scaled up by larger institutions; better support and policies for PLWHAs; more financial and technical resources; stronger services and increased access to vulnerable communities; and more effective and creative responses – through the sharing of lessons and experiences.

Partnerships should also benefit community HIV/AIDS/STD/TB projects by increasing the capacity of communities to deal with HIV/AIDS; addressing stigma and discrimination, specifically by supporting the greater involvement of people living with HIV/AIDS (GIPA); allowing for the loaning of an organisation's resources and skills; improving inter-sectoral networking, co-ordination and communication; and supporting socio-economic development.

In 1994, at the Paris AIDS Summit, 42 National Governments declared that the principle of greater involvement of people living with or affected by HIV/AIDS (GIPA) was critical to ethical and effective responses to the epidemic. This means recognising the important contribution that PLWHAs can make in response to the epidemic; and creating the opportunity for their involvement and active participation.

Conducting a Partner Analysis

The first step to forming partnerships is to conduct an analysis of potential partners.

Conducting a partner analysis

1. Identify (i) current partners/role players and (ii) potential future partners/role players

- From within government – different spheres/levels and departments
- Parastatals
- Agencies (including donors)
- Networks
- Associations (professional e.g. medical and voluntary)
- Private sector (commerce and industry)
- Labour
- Training institutions
- Research institutions
- NGOs and civil society structures.

2. Determine roles: who is involved in:

- Policy making?
- Co-ordination?
- Implementation?
- Technical input?

And **how** do they work together?

3. Then describe **Future relationships or opportunities:**

- Who else has the potential to become involved in each of the areas?
- How should they be recruited?
- What are the optimal mechanisms for consultation, communication and collaboration?

3.3.9 Monitoring and evaluation

Item 15.2. of the Code states that every workplace should aim to regularly monitor and evaluate its HIV/AIDS programme.

Monitoring is an ongoing assessment or measurement of a programme that aims to provide early indications of progress; all lack progress in the achievement of the programme's objectives. Evaluation is a selective assessment of progress towards and the achievement of an objective, and is generally carried at a specific point, or point in time. Monitoring and evaluation is conducted by using indicators – measures of change. Once programmes have been monitored and evaluated, they can be reviewed based on the findings.

Every organisation should develop monitoring and evaluation strategies; assess monitoring and evaluation needs

based on the planned programme outcomes; develop appropriate monitoring indicators, tools and mechanisms; monitor both the effectiveness and ongoing impact of an HIV/AIDS workplace programme; use the information to continually review the HIV/AIDS policy and programme to minimise the impact of HIV/AIDS in the workplace in planning; and make special consideration when monitoring employee benefits.

Rationale for monitoring and evaluation

Monitoring and evaluation has a significant role to play in any HIV/AIDS workplace intervention as they assist in determining whether a programme is appropriate, cost effective, useful and meet the set objectives.

A strategy for both monitoring and evaluation is developed to determine a baseline of data; to determine indicators that are appropriate for the organisation and programme; to monitor and evaluate both the effectiveness and impact of an HIV/AIDS programme on the workplace; and use the information to continually review the HIV/AIDS policy and programme.

The following is a chart that can be used to evaluate an HIV/AIDS partnership programme. An organisation can rate itself against the programme elements indicated in the chart below:

Partnership evaluation tool

Elements	Overall assessment			Areas for Action	Prompts
	Good	Average	Poor		
Support GIPA (Greater involvement of PLWHA)					Does the organisation work with PLWHAs? If not, how can it work with PLWHAs?
Assessment of potential partners - public sector - private sector - NGOs and CBOs - development & community projects					How does the organisation interact with potential partners?
Assessment of available organisational resources <u>Preliminary checklist:</u> Marketing, advertising & PR, IT, market research					Who is responsible for identifying resources that can be shared and for liaison with community-based projects?
Participation in a multisectoral network					What role does the organisation play in the network?
Participation in community projects					How does the organisation participate in community projects?
Initiation of community projects					What community projects does the organisation support? What is the potential for these to include HIV/AIDS prevention and/or care elements? Has the organisation initiated any HIV/AIDS specific projects?
Support for NGOs and ASOs					Who is responsible for identifying NGOs and ASOs for support? What could that support entail?

Some important considerations for monitoring a workplace programme includes determining the changes to be measured and to develop indicators to accurately monitor these and set the intervals at which monitoring and evaluation will take place.

Example of the types of strategies for monitoring Occupational Health and Safety

There are different types of strategies for monitoring and evaluation, including monitoring of Occupational Health and Safety:

- Recording the number of occupational incidents involving exposure to HIV/AIDS. In this case one can record and detail the steps followed in each and every incident to assess compliance with the existing guidelines; and
- Conduct interviews with employers, employees and trade unions finally to determine awareness of health and safety guidelines in respect of HIV/AIDS.

In monitoring and evaluating a programme one must assess the nature of the programme's goals and objectives to determine:

- What information is needed to assess that outcome;
- What elements are most important to keep track of; and
- What needs to be done to indicate progress or success?

In addition, one needs to design monitoring tools and mechanisms which can be used to determine progress and achievement of programme objectives.

Monitoring and evaluation tools

There are a number of different ways of undertaking the monitoring and evaluation of the HIV/AIDS programme. These techniques range from very simple questionnaires to in-depth quantitative research.

To be of value, information obtained during ongoing monitoring and regular evaluations need to be constructively used. For example, too many policies remain "sterile" documents that are never revisited in the absence of monitoring and evaluation strategy. The purpose of reviewing the policy is to:

- Consider and perhaps incorporate new submissions from interested parties;
- Integrate changes in legislation, regulations or codes of good practice; and
- Add to or amend the policy in light of new scientific evidence or organisational positions (e.g. on treatment of infected persons).

The HIV/AIDS committee would need to review the data received and make decisions accordingly. It may be that:

- The data was set too high and needs to be adjusted; or
- Additional funds need to be allocated to the project; or
- A new strategy needs to be developed.

Each situation will differ – the outcome of monitoring and evaluation is not necessarily negative. The positive outcomes also need to be recorded as best practices and lessons learned.

Monitoring and evaluation data can be used to amend, improve or alter the HIV/AIDS intervention if goals and objectives are not met. The data can also be used to give feedback to employers, employees and trade unions on how effective the intervention has been.

HIV/AIDS is everyone's business. It impacts on work, individuals and families. The strategies presented in this document indicate that an integral approach to the reduction of HIV infection is imperative.

The management of HIV/AIDS in the workplace, therefore requires incorporating the creation of an HIV/AIDS committee; the development of a database of information to enhance planning; the development of an HIV/AIDS policy; succession planning strategies and skills development plans; the management of employee benefits; compliance with legal obligations; the demonstration of management commitment; workplace HIV/AIDS prevention and wellness programmes; and monitoring and evaluation.

APPENDIX A : HIV/AIDS/Epidemic in perspective

1. Basic facts on HIV/AIDS

– HIV and the immune system

HIV affects the body by affecting the immune system. HIV is able, by attaching to the surface of the CD4 lymphocyte (a cell which forms part of the body's immune system), to enter, infect and eventually destroy the cell. Over time this leads to a progressive and finally a profound impairment of the immune system, resulting in the infected person becoming susceptible to infections and diseases such as cancer.

In adults, the typical course from HIV infection to AIDS is as follows:

- About 6 weeks to 3 months after becoming infected a person will develop antibodies to HIV. At this time some people will experience a flu-like or glandular fever-like illness.
- There is usually thereafter a long 'silent' period – up to 8 years – during which the person may have no symptoms.
- Following that, almost all (if not all) infected persons progress to HIV-related disease and AIDS. They may develop skin conditions, chronic diarrhoea, weight loss or they might develop one or more opportunistic infections such as tuberculosis, pneumonia, fungal infections, meningitis and certain cancers.
- Death occurs as a result of one or more of these diseases or infections.

– Transmission

HIV is a weak virus that cannot survive outside the human body. Although present in all body fluids, HIV is only present in sufficient concentrations to cause infection in:

- Blood
- Sexual fluids (semen and vaginal secretions)
- Breast milk

HIV can only be transmitted by the following means:

- Sexual intercourse (vaginal, anal or oral)
- Contact with infected blood, semen, cervical or vaginal fluids – in situations where the infected body fluid is able to enter another person's body
- From an infected mother to her child – during pregnancy or birth, or from breastfeeding.

Related diseases – TB and STDs

It is important to understand the close associations between HIV/AIDS and diseases such as TB and infections such as other sexually transmitted infections.

– Tuberculosis (TB)

- TB is the most common opportunistic infection and the most frequent cause of death in people living with HIV in Africa.
- HIV and TB interact in the following way. In people with healthy immune systems, only 10% of those who are infected with TB ever become sick from TB. HIV, by destroying the immune system, increases the risk of progression from TB infection to TB disease from 10% per lifetime to 10% per year. This means that over 50% of people who are co-infected with TB and HIV will get sick with TB before they die. TB also accelerates HIV disease.
- The symptoms of TB are a cough for more than 3 weeks, loss of appetite and weight loss, night sweats, tiredness, chest pain and coughing blood.

- TB is spread through coughing. A person who is sick with TB and is not on appropriate treatment coughs TB germs into the air and another person breathes them into their lungs. TB patients who are on appropriate treatment are not infectious and therefore it is safe to work with them, socialise with them and live near them.
- TB can be cured as effectively.
- The DOTS (Directly Observed Treatment, Short-course) approach is the cornerstone of South Africa's approach to the management of TB. As part of DOTS, it is important that a treatment supporter encourages the patient to complete their TB treatment and observes them taking their treatment. Treatment supporters can be health workers, employers, co-workers, shopkeepers, traditional healers, teachers, and community or family members.
- The risk of getting sick with TB can be decreased in people living with HIV/AIDS by taking TB preventive therapy using a TB drug called isoniazid.

– Sexually transmitted diseases (STDs)

STDs, are diseases transmitted during unprotected sex with a person who has one or more STDs.

- The same behaviours that place people at risk for STD infection also place them at risk of HIV infection – both are transmitted during unprotected sex.
- STDs can be categorised as curable and incurable. The common curable STDs are gonorrhoea, chlamydial infection, syphilis, trichomoniasis and lymphogranuloma venereum. The STDs that are not curable are the viral STDs such as HIV, human papilloma virus, hepatitis B virus and herpes simplex virus.
- The signs and symptoms of STDs may be one or a combination of discharge, lower abdominal pain (in women), scrotal swelling (in men), dysuria, itching, warts, blisters, ulcers, lice and inflammation. Not all clients with STDs will experience symptoms and, in women in particular, STDs are often asymptomatic or 'hidden'.

Following infection with an STD, immune system cells that can be the host cells for HIV are present in large numbers, thus providing an opportunity for HIV infection to become established. Where the STD causes a break in the skin or mucous membrane, this can become an entry point for HIV. Therefore, where STDs are present, it is 5 to 10 times more likely for HIV to be transmitted from one person to another, particularly when there are ulcers present.

The presence of HIV infection in a person with an STD may result in the STD condition being more severe and treatment being less effective.

The best way of treating STDs is known as the 'syndromic approach'. It recognises that groups of STDs produce similar symptoms and that people commonly have multiple infections. The treatment therefore is given for a group of STDs, rather than trying to isolate and then treat the exact STD or STDs.

Diagnosis of HIV infection and treatment

– Diagnosis of HIV infection

A test, called an HIV test, or HIV antibody test, is the usual way in which a diagnosis of HIV infection is made. The test identifies antibodies to HIV (antibodies are produced in response to infections). Typically it takes about 6 weeks following infection with HIV for a person to develop antibodies. This period is called the window period – the period between infection and the production of antibodies.

Usually HIV antibody testing is done using an ELISA test (Enzyme Linked Immuno Sorbent Assay). The test can be done using a number of body fluids, but is usually done using blood. The ideal testing process involves two tests, if the first is positive. This re-testing, using a different test, allows for the positive test to be confirmed and excludes the possibility that the first test was a false positive.

- A positive test result means that HIV antibodies were detected – the person is infected.
- A negative test result means that HIV antibodies were not detected – the person is not infected, or may be infected, but be in the window period.

Pre- and post-test counselling are universally regarded as necessary accompaniments to all HIV testing where the

person concerned will receive his or her test result. The 3 'C's' are the standards for ethical HIV antibody testing:

- Informed Consent
- Counselling
- Confidentiality.

- Treatment

HIV/AIDS treatment and care may be defined within the following framework:

- For asymptomatic HIV-positive individuals
- For those with early HIV disease
- For those with late disease or AIDS
- For those with terminal illness.

Treatment, care and support needs are very different at different stages and are not restricted only to the infected person. The primary objectives therefore are:

For the infected person

- to reduce suffering and improve quality of life
- to provide appropriate treatment of acute intercurrent infections

For affected families

- to render practical support
- to lend bereavement support.

The health interventions for a person who is HIV infected are numerous and may include:

- Treatment for STDs and TB
- Treatment of opportunistic infections
- Prophylaxis for opportunistic infections
- Immune boosting therapies
- Palliative care
- Antiretroviral therapy.

Positive living is central to effectively coping with HIV disease. Positive living means an infected person taking control of aspects of his/her life such as:

- Eating a good diet whenever possible
- Staying as active as possible
- Getting sufficient rest and sleep
- Reducing stress as far as possible
- Staying occupied with meaningful activities
- Meeting and talking to friends and family
- Seeking medical attention for any health problems.

Antiretroviral therapy (ART) means using antiretroviral drugs to treat HIV disease and in some instances to prevent HIV infection. There are different classes of drugs but all act to prevent replication or reduce the rate of replication of the virus and so slow the progression of the disease and prolong the survival of infected persons.

Vaccines are substances that teach the immune system to recognise and protect against a disease caused by an infectious organism or virus. Some experimental HIV/AIDS vaccines are in development, but the widespread availability of an effective vaccine is still many years away.

2. Key facts on HIV/AIDS in the workplace

- HIV/AIDS has increased the burden of ill health and mortality in the 15 – 50 year age group two to three fold, according to the ILO, therefore an average of 15 years of working life will be lost per employee due to HIV/AIDS.
- The vulnerability of businesses to HIV/AIDS will vary, depending on factors such as the type of business and production processes. Businesses may also be susceptible to inadequate responses to HIV/AIDS by key suppliers – eg water and electricity, telecommunications and basic government services suppliers.
- Productivity growth may be cut by as much as 50% in hard-hit countries. Combined with the erosion of human capital and loss of skilled and experienced workers, this is likely to result in a mismatch between human resources and labour requirements.
- The indirect costs to a workplace of HIV/AIDS are greater than the direct costs. The costs of lost time have been consistently shown to be the most significant costs to organisations. Each HIV infection is likely to cost the organisation between 1 and 6 times the employee’s annual salary.
- HIV/AIDS will affect the growth of many markets for goods and services.
 - HIV/AIDS is reducing the ratio of healthy workers to dependants.
 - HIV infected persons have 5 - 10 years on average of asymptomatic productive working life. This period can be lengthened by health promotion and positive living.
- There are specific occupational risks in certain sectors, such as the health and emergency services. Otherwise the transmission of HIV poses little or no risk in most work settings.

3. Global and African review of HIV/AIDS statistics

The epidemic continues to spread around the world. Estimates from the Joint United Nations Programme on HIV/AIDS (UNAIDS) track the epidemic in time and in different parts of the world.

Of the 14 000 new infections which occur every day:

- 95% are in developing countries
- 2 000 are in children under 15 years of age
- About 12 000 are in persons between 15 and 49, and half of these are 15 to 24 year-olds.

HIV/AIDS killed 2.3 million African people in 2001. The estimated 3.4 million new HIV infections in sub-Saharan Africa in the past year mean that 28.1 million Africans now live with the virus.

**UNAIDS Report
(December 2001)**

Global summary of the HIV/AIDS epidemic: December 2001

People newly infected with HIV in 2001:	Total 5 million
Adults 4.3 million Women 1.8 million	Children < 15 years 800 000
3.4 million in Sub-Saharan Africa	
Number of people living with HIV/AIDS:	Total 40 million
Adults 37.2 million Women 17.6 million	Children < 15 years 2.7 million
28.1 million in Sub-Saharan Africa	
AIDS deaths in 2001:	Total 3 million
Adults 2.4 million Women 1.1 million	Children < 15 years 800 000

In Sub-Saharan Africa the epidemic is primarily a heterosexual epidemic with more women than men infected.

In the worst affected countries steep drops in life expectancies are beginning to occur, most drastically in Sub-Saharan Africa, where four countries, (Botswana, Malawi, Mozambique and Swaziland) now have a life expectancy of less than 40 years.

Though Sub-Saharan Africa heads the list as the region with the largest annual number of new infections, there may

be a new trend on the horizon – HIV incidence appears to be stabilising. Because the long-standing African epidemics have already reached large numbers of people whose behaviour exposes them to HIV, and because effective prevention measures in some countries have enabled people to reduce their risk of exposure, the annual number of new infections has stabilised or even fallen in many countries. These decreases have now begun to balance out the still-rising infection rates in other parts of Africa, particularly the southern part of the continent.

4. South African HIV/AIDS epidemic

The annual anonymous antenatal survey – of pregnant women attending public sector clinics – provides information on the distribution of the disease over time, by province and by age.

Although the data are from women attending the public sector health services, they provide useful information regarding trends in the general population and in the workplace. In 2000, the national antenatal prevalence was 24.5%. Making the necessary adjustments it is possible to estimate that:

- 1 700 new HIV infections occur every day
- 2.5 million women were infected (15-49 years)
- 2.2 million men were infected (15-49 years)
- 106 109 babies were infected

At the end of 2000, a total of more than 4.7 million men, women and children were infected in South Africa (total population = 40.6 million i.e. 11.6% of the total population were infected).

The number of infected South Africans is likely to rise to 5.3 – 6.1 million by 2005 and 6 – 7.5 million by 2010. By 2005, the number of AIDS deaths per year will be between 354 000 and 383 000, rising to between 545 000 and 635 000 in 2010.

DOH: AN survey 2000

Around half of all adults who acquire HIV become infected before they turn 25. Gender differences are also pronounced, with women at highest risk between the ages of 15 and 20, while the highest incidence in men is some years later.

Some of the factors contributing to the severity of the HIV/AIDS epidemic in South Africa are:

- Disrupted family and communal life – due to apartheid and migrancy
- Good transport systems and high mobility – which allows for the rapid spread of infection
- High levels of poverty and inequality
- Very high levels of other STDs – the presence of which enhances the risk of acquiring HIV
- The low status of women – resulting in situations which place them at risk of HIV infection
- Societal norms encouraging high numbers of partners
- Resistance to condom use
- Widespread myths regarding HIV and so-called "treatments and cures"
- Stigmatisation and discrimination of people living with HIV/AIDS and a resultant lack of openness.

5. Impact of HIV on specific sectors

5.1 Poverty

The epidemic is having a significant impact on development as so many people are dying in the prime of their lives. HIV/AIDS poses a serious threat to development. By reducing growth, weakening governance, destroying human capital, discouraging investment and eroding productivity, AIDS undermines countries' efforts to reduce poverty and improve living standards.

The Department of Social Development uses the annual antenatal data to assess the impact of the epidemic on various development targets. By 2000:

- Life expectancy has dropped to 56.6 years (from 63 years in 1990)
- Child mortality has risen to 91 per 1 000 (from 67 per 1 000 in 1990)
- The probability of a 15-year old dying before 60 has increased from 27 per 1 000 in 1990 to 40 per 1 000.

State of South Africa's Population Report 2000

Furthermore AIDS overburdens social systems and hinders health and educational development. The current number of children who have lost their mothers or both parents to the epidemic poses unprecedented social welfare demands for countries already burdened by huge development challenges.

- Teachers and students are dying or leaving school, reducing both the quality and efficiency of educational systems. Faltering education services will also diminish human capital in every other sector.
- Health care systems in many countries are overstretched as they deal with a growing number of AIDS patients and the loss of health care personnel.

5.2 Impact on community and households

In a typical community affected by HIV/AIDS:

- Economically productive adults leave work due to illness or to attend funerals or to care for sick family members – the financial impact of HIV/AIDS on households is as much as 30% more than when the death is due to other causes.
- Children are kept away from school to care for adults or sent to work, exacerbating child labour problems.
- There are increasing numbers of orphans – most of whom have less access to education and to adult role models.
- Limited family resources are spent on care and funerals. Food production declines, malnutrition increases and poverty increases.
- Disruption to family and community life emerges.
- People with HIV become stigmatised and face harm and discrimination.

5.3 Impact on the Informal Sector

Informal enterprise operators and workers are especially vulnerable to the consequences of HIV/AIDS.

- HIV/AIDS poses a particularly serious threat to informal enterprises because of their inherent dependence on a small labour base.
- Employers and workers in the sector lack access to health facilities and social protection.
- Their activities depend heavily on their own labour and rarely lead to financial security.
- Informal workers can easily lose their precarious livelihoods when they are infected or forced to withdraw from work to care for family members.

APPENDIX B

Contact numbers of Department of Labour offices

	Telephone	Telefax
Department of Labour (Head Office)	(012) 309-4000	(012) 320-2059
Laboria House 215 Schoeman Street Private Bag X117 PRETORIA 0001		
Provincial offices		
Eastern Cape Laboria Building 3 Hill Street Private Bag X9005 EAST LONDON 5200	(043) 701-3000	(043) 743-9719
Free State 43 National House Maitland P O Box 544 BLOEMFONTEIN 9300	(051) 505-6200	(051) 447-9353
Gauteng North Concillium Building 239 Skinner Street P O Box 393 PRETORIA 0001	(012) 309- 5000	(012) 309-5139
Gauteng South Annuity House 18 Rissik Street P O Box 4560 JOHANNESBURG 2000	(011) 497-3000	(011) 834-1081
KwaZulu-Natal Government Building Masonic Groove P O Box 940 DURBAN 4000	(031) 336-1500	(031) 307-6882
Mpumalanga Cnr. Hofmeyer Street and Beatty Avenue Private bag X7263 WITBANK 1035	(013) 655-8700	(013) 690-2622

Limpopo 42A Schoeman Street Old Boland Bank Private Bag X9368 POLOKWANE 0700	(015) 290-1744	(015) 290-1670
Northern Cape Laboria House No. 13 Cnr. Phiel/Compound Streets Private Bag X5012 KIMBERLEY 8300	(053) 838-1500	(053) 838-1531
North West SEBO Building Provident House Second Floor University Drive Private Bag X2040 MMABATHO 2735	(018) 387-8100	(018) 384-2745
Western Cape Thomas Boydell building 22 Parade Street P O Box 872 CAPE TOWN 8000	(021) 460-5911	(021) 465-7318