

**SECTION HR 28**

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**MUNICIPALITY**

**EMPLOYMENT**

**POLICY FOR**

**HIV & AIDS**

## **SECTION HR 28**

### **EMPLOYMENT POLICY FOR HIV AND AIDS**

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## **SECTION HR 28**

### **EMPLOYMENT POLICY FOR HIV AND AIDS**

#### **1. Introduction**

The Human Immunodeficiency Virus (HIV) and the Acquired Immune Deficiency Syndrome (AIDS) are serious public health problems which have socio-economic, employment and human rights implications.

The HIV / AIDS epidemic is likely to affect every workplace, with prolonged staff illness, absenteeism and death impacting on productivity, employee benefits, occupational health and safety, production costs and workplace morale. In view of this, the Government has promulgated a Code of Good Practice on Key Aspects of HIV / AIDS and Employment. The Code was promulgated both in terms of the Labour Relations Act and the Employment Equity Act, on 1 December 2000, Government Gazette No. 21815.

This Code does not impose any legal obligations in addition to those in the Employment Equity Act and Labour Relations Act, or in any other legislation referred to in the Code. Failure to observe it does not, by itself, render an employer liable in any proceedings, except where the Code refers to obligations set out in law. The Code is merely a guideline for employers and trade unions who are advised to develop and implement an HIV / AIDS policy in the workplace.

This Section deals with briefly summarising the most important provisions of the Code of Good Practice on Key Aspects of HIV / AIDS and Employment, as well as setting out a proposed policy for Municipalities. A suggested pamphlet on AIDS, which should be handed to all employees as part of the induction training process, is also included in this Section.

#### **2. Code of Good Practice on Key Aspects of HIV / AIDS and Employment**

This Code attempts to deal with the following issues:

- eliminating unfair discrimination in the workplace based on HIV status
- promoting a non-discriminatory workplace in which people living with HIV or AIDS are able to be open about their HIV status without fear of stigma or rejection
- promoting appropriate and effective ways of managing HIV in the workplace

- creating a balance between the rights and responsibilities of all parties

## **2.1 Objectives of the Code**

The Code's primary objective is to set out guidelines for employers and trade unions so as to ensure that individuals with HIV infection are not discriminated against, by including provisions as follows:

- creating a non-discriminatory work environment
- dealing with HIV testing, confidentially and disclosure
- providing equitable employee benefits
- dealing with dismissals, and
- managing grievance procedures

The Code's secondary objective is to provide guidelines on managing HIV / AIDS within the workplace by:

- creating a safe working environment for all employers and employees
- developing procedures to manage occupational incidents and claims for compensation
- introducing measures to prevent the spread of HIV
- developing strategies to assess and reduce the impact of the epidemic upon the workplace, and
- supporting those individuals who are infected or affected by HIV / AIDS so that they may continue to work productively for as long as possible.

## **2.2 Legal Framework of the Code**

The Code should be read in conjunction with other legislative provisions. Some of these Acts are listed hereunder:

The Employment Equity Act provides:

- that no person may be unfairly discriminated against on the basis of their HIV status
- that no person may unfairly discriminate against an employee, or an applicant for employment, in any employment policy or practice, on the basis of their HIV status
- no employer may require an employee or applicant for employment, to undergo a HIV test in order to ascertain their HIV status, unless the Labour Court has declared such testing to be justifiable.

The Labour Relations Act provides:

- that no employee with HIV / AIDS may be dismissed simply because he is HIV positive or has AIDS

The Occupational Health and Safety Act provides:

- that an employer is obliged to provide, as far as is reasonably practicable, a safe workplace, which includes ensuring that the risk of occupational exposure to HIV is minimised

The Compensation for Occupational Injuries and Diseases Act provides:

- that an employee who is infected with HIV as a result of an occupational exposure to infected blood or bodily fluids, may apply for benefits in terms of the Act

The Basic Conditions of Employment Act provides:

- that every employer is obliged to ensure that all employees receive certain basic standards of employment, including a minimum number of days sick leave

The Medical Schemes Act provides:

- that a registered medical aid scheme may not unfairly discriminate directly or indirectly against its members on the basis of their 'state of health'

The Constitution of South Africa provides:

- that all persons with HIV or AIDS have a right to privacy, including privacy concerning their HIV or AIDS status. Accordingly there is no general legal duty on an employee to disclose his/her HIV status to their employer or to other employees

### **2.3 Promoting a Non-Discriminatory Work Environment**

The Code provides that no person with HIV or AIDS shall be unfairly discriminated against with regard to:

- Recruitment procedures, advertising and selection criteria

- Appointments, and the appointment process, including job placement
- Job classification or grading
- Remuneration, employment benefits and terms and conditions of employment
- Employee assistance programmes
- Job assignments
- The workplace and facilities
- Occupational health and safety
- Training and development
- Performance evaluation systems
- Promotion, transfer and demotion
- Disciplinary measures short of dismissal, and
- Termination of services

#### **2.4 Promoting a Safe Workplace**

An employer is obliged to provide and maintain, as far as is reasonably practicable, a workplace that is safe and without risk to the health of its employees.

#### **2.5 Grievance Procedure**

Employers should ensure that the rights of employees with regard to HIV / AIDS become integrated into existing grievance procedures. Employers should also develop special measures to ensure the confidentiality of the complainant during such proceedings, including ensuring that such proceedings are held in private.

#### **2.6 Assessing the Impact of HIV / AIDS on the Workplace**

Employers and trade unions should develop appropriate strategies to understand, assess and respond to the impact of HIV / AIDS in the workplace.

#### **2.7 Workplace HIV Policies and Programmes**

The Code sets out that every workplace should develop a HIV / AIDS policy and HIV / AIDS programmes, aimed at preventing new infections, providing care and support for employees who are infected or affected, and managing the impact of the epidemic in the organisation.

The Code recommends that every workplace programme should attempt to address the following:

- 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 STD's
- Enforce the use of universal infection control measures
- Create an environment that is conducive to openness, disclosure and acceptance amongst all staff
- Endeavour to establish a wellness programme for employees affected by HIV / AIDS
- Provide access to counselling and other forms of social support for people affected by HIV / AIDS
- Maximise the performance of affected employees through reasonable accommodation, such as investigations into alternative sick leave allocation
- Develop strategies to address direct and indirect costs associated with HIV / AIDS in the workplace
- Regularly monitor, evaluate and review the programme

### **3. HIV / AIDS Policy and Pamphlet**

A copy of a draft Employment Policy for HIV / AIDS for Municipalities is attached as Annexure A. Municipalities should use this as a basis for drafting their own policies.

A copy of a pamphlet which may be handed to employees and prospective employees, outlining Council's AIDS policy, is attached as Annexure B.

### **4. Conclusion**

HIV / AIDS is still a disease surrounded by ignorance, prejudice, discrimination and stigma. In the workplace unfair discrimination against people living with HIV / AIDS has been perpetuated through practices such as pre-employment HIV testing, dismissals for being HIV positive and the denial of employee benefits. By implementing an HIV / AIDS policy and programme within a Municipality, this will go a long way to overcoming these negative behaviours.

## **SECTION 28**

### **EMPLOYMENT POLICY FOR HIV AND AIDS**

#### **ANNEXURE A**

### **DFAT EMPLOYMENT POLICY FOR HIV AND AIDS**

#### **1. Introduction**

It is necessary for the Municipality to implement a policy in order to:

- Provide for the fair and non-discriminatory treatment of employees and applicants for employment with HIV / AIDS
- Provide a means of educating employees and management in order to prevent unfair discrimination and a harmonious labour force
- Prevent unfair labour practices and any labour unrest
- Minimise the physical, psychological, social and financial implications of AIDS for employees and their families

#### **2. Recruitment and Selection of New Employees**

In terms of this policy, the Council undertakes not to:

- Deny employment to any prospective employee on the grounds that the employee is HIV positive (should this information be voluntarily given) provided that the employee is medically fit enough to undertake the work.
- Require any prospective employee to undertake an HIV test or to victimise any applicant for employment who refuses to take such a test.
- Deny any employee the right to join any of Council's approved medical aid schemes on the basis of their HIV status (if this information is voluntarily given)
- Disclose any information to any other parties on the HIV / AIDS status of any applicant who voluntarily provides this information to a Council employee.

#### **3. Dealing with HIV / AIDS: Existing Employees**

- 3.1 All employees, irrespective of their HIV / AIDS status, have the same rights, duties and obligations.

- 3.2 Testing for HIV, with informed consent (as required by the health Professions Council) and pr-test as well as post-test counselling, will be offered to any employee who feels he may be at risk.
- 3.3 No employee will be required to divulge their HIV status and the HIV status of all employees will be regarded as confidential.
- 3.4 No information must be recorded on the employee's medical or personnel records to indicate their HIV status.
- 3.5 Any employee to whom an HIV positive person discloses their HIV status, may not disclose such information to any other party without the HIV status employee's written consent.
- 3.6 Managers are required to ensure that all steps are taken to ensure that no employee or member of the public is placed at risk if an HIV positive employee is working in a high risk work environment. The status of the infected employee should not be disclosed without the employee's informed consent.
- 3.7 All employees known to have HIV / AIDS will remain in their normal employment position as far as is practicable, without endangering fellow workers. Managers must ensure a safe working environment through the promotion of universal precautions.
- 3.8 Employees with HIV / AIDS are entitled to the same sick leave benefits as any other employee and their HIV status will not be used as a justification for refusing to perform normal duties.
- 3.9 HIV positive employees may seek recourse in the event of discrimination, in terms of Council's grievance procedure.
- 3.10 The reason for death of an employee, whether due to AIDS or not, does not legally have to appear on the Death Certificate and the employer therefore has no right to know whether the employee has died of an AIDS related illness.

#### **4. Promotion and Training Opportunities**

- 4.1 An employee who is known to have HIV / AIDS is entitled to the same promotion and training opportunities as any other employee.
- 4.2 No employee shall be required to take a HIV test as a pre-requisite for promotion.

## **5. Transfers and Termination of Employment**

- 5.1 No employee may have his employment terminated solely on the basis of his HIV status provided that he is medically fit to continue such employment.
- 5.2 Employees who become medically unfit shall be dealt with in terms of the provisions of the Labour Relations Act which deals with incapacity, each case being dealt with on its own merits.
- 5.3 The HIV status of any employee referred to in paragraph 5.1 and 5.2 above must be kept confidential.

## **6. Benefit Fund Membership**

No HIV positive employee shall be discriminated against in respect of membership and benefits of the Municipality's Medical Aid Fund, Pension / Retirement / Provident Fund or Group Life Assurance Fund. HIV positive employees will enjoy the same benefits as other employees.

## **7. Employees in High Risk Positions**

Employees in high risk positions such as health care workers and staff of emergency services must be provided with appropriate personal protective equipment and be trained in the management of contaminated body fluids and the safe use of injection needles.

Employees infected on duty can claim benefits in terms of the Compensation for Occupational Injuries and Diseases Act.

## **8. HIV / AIDS Education**

Council supports the implementation of ongoing education programmes for all employees so as to reduce the spread of HIV infection and to combat ignorance and discrimination. Such education shall be compulsory for all employees, including management. A pamphlet with answers to common questions about HIV / AIDS will be circulated to all employees during induction.

## **9. Conclusion**

Council agrees that staff resources, time and funding will be made available for the full implementation of the policy across all Council services. The Local Labour Forum will be consulted in the implementation of the policy and in all matters pertaining to policy formulation and revision.

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### **EMPLOYMENT POLICY FOR HIV AND AIDS**

#### **ANNEXURE B**

### **PROPOSED PAMPHLET ON AIDS FOR EMPLOYEES AND PROSPECTIVE EMPLOYEES**

#### **1. Why does Council have an AIDS Policy?**

- To protect employees and prospective employees from discrimination on the grounds of HIV status
- To make provision for ongoing AIDS education for all employees including management
- To minimise the impact of HIV / AIDS for the employee and his family
- To ensure a safe and healthy working environment for all employees

#### **2. What is the Basis of the Council's AIDS Policy?**

Council has pledged to avert discrimination against people with HIV / AIDS and to educate all employees so as to reduce the spread of HIV.

Medical evidence supports the belief that HIV / AIDS is only transmitted in the following ways:

- through sexual intercourse
- through blood and body fluids
- from mother to child

This means that AIDS cannot be spread by:

- coughing, sneezing and spitting
- toilet seats, door handles or telephones
- mosquitoes or bed bugs
- shaking hands, hugging or dry kissing

3. **Can Council ask a Job Applicant to have an HIV Test?**

According to Council's AIDS Policy, employment shall not be denied on the grounds of a job applicant's HIV status (should this information be voluntarily given), provided that he is found medically fit for employment.

This excludes posts where HIV seropositivity is an inherent requirement.

No prospective employee shall be required to take an HIV test

4. **Can the Council Force an Existing Employee to have an HIV Test?**

An HIV test can only be done with the written, informed consent of the employee. The Council cannot force an employee to have the test.

Testing for HIV will, however, be offered to any employee who feels he may be at risk.

5. **What about Confidentiality at Work?**

Employees and prospective employees are not obliged to tell the Council of their HIV status. Should the HIV status become known, this information would be considered confidential.

Counselling would be provided for any employee found to be HIV positive.

6. **What about Sick Leave and Benefits?**

An employee with HIV / AIDS is entitled to the same sick leave as any other employee.

Other benefits would be the same as for any employee with a chronic illness.

7. **Is it Legal to Refuse to Work with a Fellow Employee with HIV / AIDS?**

No, since HIV cannot be spread through contact at work, such refusal would be a breach of contract by the employee.

8. **Is it Legal to Terminate the Services of an Employee based solely on his HIV Status?**

All terminations must be deemed fair in terms of the Labour Relations Act (No. 95 of 1995) and subsequent amendments thereto.

9. **Will Employees be Compensated should they be Infected at Work, as defined by the Occupational Injuries and Diseases Act (1993) as amended?**

Only those employees who come into contact with blood or body fluids through their work are at risk of exposure to HIV.

Such employees are provided with protection against body fluids and would be compensated if it is proven that they contracted the virus at work.

10. **What does the Council do to assist in the AIDS Awareness Programme?**

Council has agreed that all employees and prospective employees will be exposed to ongoing AIDS education in the workplace.