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# HIV AND AIDS AND THE WORLD OF WORK

JORDAN

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Research Series



Regional Office for Arab States



# HIV and AIDS and the World of Work: Legislative Framework Review for Jordan

“Analysis and Priority-Setting  
in relation to Law and Practice  
on HIV and AIDS and the  
World of Work in Jordan”

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&  
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# Preface

HIV/AIDS is a pandemic that has far-reaching effects. Not only is it a public health challenge intertwined with complex social issues, AIDS has also become a global crisis affecting all levels of society. The business world is being increasingly affected and suffering not only from the human cost to the workforce but also from the lost profits and productivity that create new challenges for both employers and workers.

As early as the 1980s, many governments realized that the fight against the epidemic needed a legislative framework that addressed the issue of discrimination. The UN system reacted in a number of ways. The 1996 International Guidelines on HIV/AIDS and Human Rights exhort states to “enact or strengthen anti-discrimination and other protective laws that protect vulnerable groups, people living with HIV/AIDS and people with disabilities from discrimination in both the public and private sectors, ensure privacy and confidentiality and ethics in research involving human subjects, emphasize education and conciliation, and provide for speedy and effective administrative and civil remedies.”

The importance of a legislative framework for establishing and defending basic principles concerning HIV/AIDS in the workplace was recognized in the UNGASS Declaration of Commitment adopted by the UN General Assembly’s Special Session on AIDS (UNGASS) in June 2001. The Declaration includes the following: “By 2003, develop a

national legal and policy framework that protects in the workplace the rights and dignity of persons living with and affected by HIV/AIDS and those at the greatest risk of HIV/AIDS, in consultation with representatives of employers and workers, taking account of established international guidelines on HIV/AIDS in the workplace.”

In 2006, after a review of progress since the 2001 special session, the General Assembly which reconfirmed the afore-mentioned commitment through the adoption of the “Political Declaration on HIV/AIDS”, which reaffirmed members support for combating the disease.

In 2010, the ILO adopted the first international labour standard Recommendation concerning HIV and AIDS and the World of Work, 2010 (No.200). Recommendation 200 establishes that the workplace should play a role in responding to the HIV crisis and calls for the adoption of national workplace policies and programmes on HIV and AIDS to facilitate access to HIV prevention, treatment, care and support services. The Recommendation No.200 is based on the ILO code of practices on HIV/AIDS and the Workplace adopted in 2000.

In the high level meeting that was held in New York in June 2011, one year after the HIV and AIDS Recommendation No. 200 was adopted, the “UN Political Declaration on HIV/AIDS: Intensifying Our Efforts to Eliminate HIV/AIDS (2011)” was adopted to reinforce a global commitment to HIV and AIDS. This last UN declaration calls on governments, employers and workers organizations to collaborate in taking action against HIV and AIDS discrimination in the world of work and is guided by the ILO’s conventions and recommendations, particularly Recommendation No. 200. It states that they should:

... Commit to mitigate the impact of the epidemic on workers, their families, their dependents, workplaces and economies, including by taking action into account all relevant ILO conventions.... Including ILO Recommendation No. 200 calls on employers, trade unions, employees and volunteers to eliminate stigma and discrimination, protect human rights and facilitate access to HIV prevention, treatment, care and support. (para 85)

The ILO recognized that laws concerning the world of work provide an ideal channel to help reduce a further spread of HIV and to combat damaging myths surrounding the disease. All countries, whatever their infection rate, can benefit from a legal framework that brings workplace problems into the open, protects against employment discrimination, prevents infection risks in the workplace and ensures the participation of stakeholders in any mechanisms and institutions that might be created.

One of the missions of the ILO is to draw up and oversee the application of the international labour standards. In this respect, the ILO offers its technical advice to governments, employers' and workers' representatives, civil society and the relevant stakeholders in this field.

With this study, the ILO aims to identifying gaps in Jordanian legislation and discrepancies in the ILO's legal instruments and to provide relevant guidance.

This report was elaborated through a desk review of laws and information provided by the Ministry of Labor (MOL), Ministry of Public Health, and the National AIDS Control Program, NGOs, Civil Service Board, and workers and employers representatives. We would like to thank them all, because without their cooperation, this report would not have been possible.

This study is part of the research collection on HIV and AIDS and the World of Work in the Middle East promoted by the ILO Regional Office for Arab States.

“We hope that the findings of this report will inspire action to protect workers living with HIV, their families and their communities, and to respond to HIV in the workplace without discrimination and stigmatization.”

# Executive Summary

## Background

The HIV epidemic has a low prevalence in the Middle East and North Africa (MENA) region, particularly when compared to Africa or other parts of Asia. Within the MENA region, Jordan has a particularly low level of HIV. According to the Ministry of Health, 782 HIV cases were reported between 1986 and 2010, of which 552 (71 per cent) were foreigners and 230 (29 per cent) were Jordanians. In 2010, the Ministry of Health had registered 72 cases of persons living with HIV.

Despite the low incidence of HIV in Jordan, there are a number of factors which could contribute to the spread of the epidemic in the future. In the world of work, poverty and unemployment contribute to the spread of HIV, with a large number of men seeking employment outside Jordan, where they are more likely to have extramarital contacts which expose them to sexually transmitted diseases. Indeed, about 72 per cent (165 out of 230) of the reported Jordanian HIV cases, mostly men, were infected while working abroad.

Some sectors are place workers at a higher risk of contracting HIV. These are: sectors employing young people in unskilled jobs, where workers are more

vulnerable to sexual abuse or drug use; male-dominated work environments, such as factories, where women are more likely to be sexually assaulted; and sectors employing labour migrants who are at the mercy of their superiors and employers. There is a growing need to raise awareness of the root causes of HIV, and to sensitize all stakeholders of the need to improve the living and working conditions of workers, particularly from the most vulnerable groups, namely youth, women and migrant workers.

Against this backdrop, delegates representing the Hashemite Kingdom of Jordan participated in the 99th Session of the International Labour Conference in June 2010, during which the Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200) was adopted. The Recommendation sets out an international standard pertain to the workplace, with the aim of strengthening prevention efforts, facilitating access to treatment, and care and support measures for persons living with HIV (PLHIV) and calling for respect for the fundamental human rights of all workers. Jordan voted in favour of the adoption of the Recommendation and is currently preparing to endorse the National Strategic Plan (NSP) on HIV/AIDS 2012-2016. Ahead of the national meeting to finalize the NSP, the International Labour Organization (ILO) decided to undertake a study to assess the extent to which current Jordanian legislation and policies are in line with international standards pertaining to HIV and AIDS in the workplace.

Results from this study will provide governments with evidence-based guidance to take action toward the implementation of the Recommendation No.200. This will help protect the rights of people living with HIV and mitigate the impact of HIV on the workplace in Jordan.

## **Scope and Methodology**

The scope of this study is limited geographically to Jordan and thematically to a strictly legal analysis of the policies and practices affecting people living with HIV and the workplace in Jordan. There was no attempt to collect statistical data on the number of people living with HIV in Jordan, nor does the study examine their socio-economic

status and means of survival. The study focuses solely on the main relevant laws, regulations and instructions pertaining to the world of work in Jordan, namely the Labour Code, the Public Service Employment Regulations and the Social Security Act. It seeks to determine whether the rights of people living with HIV are sufficiently protected under these laws, or whether they are subject to discrimination in relation to employment and termination of employment, HIV testing and confidentiality, occupational health and safety, and in accessing work permits in the case of migrant workers.

The methodology used to draft the legal analysis consisted of both desk research and in-depth interviews. Relevant legislation was analyzed and compared with the new ILO international labour standard on HIV and AIDS in the workplace with a view to identifying gaps between local laws and international standards. The author also met with lawyers at the Ministry of Health, the Ministry of Labor, the Social Security Corporation and from local civil society organizations to discuss the various laws and regulations.

## Results

The study revealed that Jordanian legislation does not explicitly discriminate against PLHIV. There are, however, some significant discrepancies between ILO Recommendation No. 200 and the legal requirements under Jordanian law, particularly with regard to HIV testing prior to recruitment. Indeed, Article 19 of Jordan's Labour Code provides that employees shall have a medical check-up prior to the commencement of their work in order to ensure that they are free of occupational or "contagious diseases", which would presumably include HIV. Furthermore, under Article 3(g) of the Instructions on the Preliminary Medical Examination for Work in Companies, 1999, individuals working in the medical sector are explicitly required to undergo HIV testing. Employees working in the public sector are also required to have an HIV test prior to recruitment. In practice, mandatory HIV testing rarely appears to be imposed on

new employees working in the private sector, with the exception of the medical sector. It is, however, required of workers in the public sector. This requirement contradicts the provisions of Recommendation No. 200, which stipulates HIV testing should be genuinely voluntary and should not be required of workers or job seekers.

Recommendation No. 200 also provides that HIV testing should not be required of migrant workers, whether by their countries of origin, transit or destination. However, migrant workers in Jordan are required to undergo HIV testing in order to obtain a work and residence permit. Domestic workers are also expected to be tested for HIV in their countries of origin and again upon arrival in Jordan. In order to comply more fully with Recommendation No. 200, Jordanian law should be amended to prohibit HIV testing prior to recruitment, whether for Jordanian nationals or migrant workers.

Another issue of concern is compensation for occupational injuries. Although only workers employed in very specific types of occupation are likely to be exposed to HIV transmission at work, such as those working in the health sector, neither the Jordanian Labour Code nor the Social Security Act explicitly lists HIV or tuberculosis (TB) as occupational diseases or injuries. The tables of occupational diseases or injuries should therefore be updated to include HIV, AIDS and TB in order to protect the rights of workers who contract HIV or TB at work, and to ensure that they are treated no less favourably than workers with other injuries or illnesses. Since 2010, the ILO List of Occupational Diseases Recommendation, 2002 (No. 194) has included a reference to AIDS, HIV and tuberculosis (TB).

According to a source at the Social Security Corporation, although there are no specific provisions in the Social Security Act pertaining to HIV, and workers living with HIV are considered to have a “natural permanent total disability”. If a person was already HIV-positive when they enrolled in social security insurance, if their health deteriorates while working and they are eventually unable to continue working, they would not be eligible to receive a disability pension upon termination of employment.

They would, however, be entitled to a lump sum as compensation for disability, provided they have worked for at least 12 months (whether consecutively or cumulatively). This differential treatment of HIV-positive workers is not in line with paragraph 20 of the Recommendation, which explicitly provides that there should be no discrimination against workers or their dependents based on real or perceived HIV status in access to social security systems and occupational insurance schemes

As for sick leave, employees in the public sector benefit from longer sick leave than those working in the private sector. Notwithstanding the entitlement to longer sick leave, no special consideration is given under the law for employees living with HIV and their caregivers, who may need to take more time off for rest and treatment before being able to resume their work. Moreover, according to the ILO labour standard, individuals with HIV should not be dismissed from their work as long as they are medically fit to carry out their work. If they are no longer physically able to perform the work for which they were initially hired, employers should provide reasonable accommodation or redeploy them to work that is reasonably adapted to their abilities. The first option should be reasonable accommodation that would allow the person to remain in their work, however, if the worker's limitations will not allow this, but they are still fit to work, redeployment or retraining should be considered.

While interviews carried out with persons at the Ministry of Health suggest that this is indeed done in practice, discussions with individuals in the private sector or with persons living with HIV reveal a different picture. Employers in the private sector do not seem willing to keep an employee when they discover that they have HIV or AIDS. Sufficient legal guarantees should therefore be provided to ensure that workers are not dismissed because of an HIV-related illness, when they are fit to work.

## Conclusion

Analysis of the Jordanian legislation revealed some significant gaps between local norms and the ILO's Recommendation. Suggested amendments to the existing laws are given in the chapter dedicated to the issue in this report

While it may be possible to bridge these gaps by amending or updating some of the laws, or issuing instructions to clarify provisions that are vague and open to misinterpretation, a more efficient way of addressing them would be by adopting a separate policy dedicated entirely to the world of work and people living with HIV and AIDS. This policy should act as guidance. Although this study focused solely on the rights of people living with HIV in the world of work, there are other rights to which PLHIV should be entitled, such as the right to health care, and the right to education in the case of children infected with or affected by HIV, who may be forced to leave school because of their parent's or caregiver's illness or their own or due to a lack of confidentiality and any consequent stigma and discrimination. Interviews with public officials reveal a sincere willingness to address this situation and provide people living with HIV with equal rights in the workplace and access to treatment, care and support measures through the workplace. Jordan has indeed given this matter considerable attention in recent years. Delegates representing Jordan participated in the 99th session of the International Labour Conference in June 2010, voted in favour of the adoption of the Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200). In this regards a statement of commitment giving effect to Recommendation No.200 was endorsed by the Jordanian delegation in June 2011 during the technical consultation meeting "Towards the development of a World of Work response in Mashreq countries" in Beirut June 2012 . This statement recognized HIV and AIDS as workplace concerns and called on the world of work for prompt and timely action in response to HIV/AIDS. Seminars were organized at a national level to mobilize a national AIDS response in the world of work.

The new National Strategic Plan (NSP) on HIV and AIDS referring to 2012-2016 calls for the close involvement of the Ministry of Labor, and the role of HIV/AIDS workplace initiatives is clearly defined in accordance with Recommendation No.200.

ILO constituents, with assistance from the ILO office, can play a key role in supporting the National AIDS response in Jordan based on the guidelines of the new international labour standard on HIV/AIDS, R. 200 and the new NSP 2012-2016.

While these efforts are praiseworthy, perhaps the greatest challenge for policy makers, activists and officials working with HIV and AIDS in Jordan is the need to raise the level of awareness of HIV and AIDS among the general population, and dispel HIV-related stigma and discrimination. Interviews with PLHIV, made it clear that legislative efforts, while helpful, are not sufficient to safeguard the rights of people infected with HIV and related illnesses. In order to deliver the best results, these efforts must go hand-in-hand with initiatives aimed at changing people's perceptions of HIV and its causes, and providing its victims with the chance to lead a long, healthy and productive life in dignity.

## **Suggested Recommendations**

The following recommendations have been made based on this study's findings:

1. Finalize and submit the draft policy on HIV and AIDS and the World of Work to the Ministry of Labor and the competent authorities for their formal endorsement.
2. Establish a technical committee on HIV/AIDS and the World of Work to evaluate the National Policy and ensure that it is properly implemented.
3. Provide the necessary training and orientation to members of the afore-mentioned technical committee and to the Ministry of Labor to enable them to

effectively endorse and implement the draft policy. At the same time, labour inspection officials should be trained on how to apply Jordanian law regarding HIV and AIDS in the workplace.

4. Consultations with national and international experts should be initiated to start a review of data relating to HIV testing policies in Jordan. Tailored seminars should take place that include data analysis of Jordan and other relevant countries in collaboration with the ILO and UNAIDS.
5. The role of worker representatives and NGOs dealing with PLHIV should be given appropriate training to enable them to advocate for the rights of PLHIV.
6. Startups should take place in conjunction with social partners and associations of PLHIV. They should include a workplace programme aimed at promoting behavioral change in the workplace towards eliminating the stigmatization and discrimination of PLHIV by co-workers and employers.

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# Introduction

## HIV/AIDS and the World of Work in Jordan

*Annual new infections have almost doubled in the Middle East and North Africa (from 47 000 to 84 000).*

*Globally, this has made it one of the top two regions globally with the fastest growing HIV epidemics.*

The human immunodeficiency virus (HIV) is a virus that weakens the human body's immune system, making it difficult to fight infection. "AIDS" refers to the acquired immunodeficiency syndrome due to advanced stages of HIV infection, and is characterized by opportunistic infections and/or HIV-related cancers. By the end of 2010, half a million people were living with HIV in the Middle East and North Africa (MENA) (470 000 [350 000 – 570 000] in the UNAIDS MENA region). The HIV epidemic has been growing within the region for the past decade. Globally, this has made it one of the top two regions with the fastest growing HIV epidemics. Annual new infections have almost doubled in the Middle East and North Africa (from 47 000 to 84 000).

The HIV pandemic is one of the most significant challenges to health and development and to economic and social progress that the world is facing today. In addition to the suffering it imposes on individuals and their families, the epidemic poses a significant obstacle to those seeking decent work.

Jordan, irrespective of its infection rate, would benefit from a legal framework that brings workplace issues into the mainstream; protects PLHIV from employment-related stigma and discrimination; promotes access to prevention, treatment and care measures through the workplace for those in need; and that ensures the full participation of all stakeholders. The development and implementation of workplace policies and programmes on HIV and AIDS improves access to prevention, treatment, care and support services for workers and their families and dependents. Indeed, laws concerning the world of work provide an ideal channel for building national response to HIV and for countering the damaging myths surrounding the disease.

*Jordan, irrespective of its infection rate, can benefit from a legal framework that brings workplace issues into the mainstream, protects against employment-related stigma and discrimination, promotes access to prevention, treatment and care measures through the workplace.*

In order to provide countries with guidelines and support for the development, adoption and effective implementation of policies and programmes on HIV and AIDS in the world of work, the ILO developed a Code of Practice on HIV/AIDS and the World of Work in 2001 [hereinafter “Code of Practice”] and, more recently, the Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200) [hereinafter “Recommendation No. 200”], which was adopted in June 2010. In this context, delegates representing the government, employers’ and workers’ in Jordan participated in the 99th session of the International Labour Conference and all three parties (Government, employers’ and workers’ representatives) supported adopting the HIV and AIDS Recommendation.

Each member state of the ILO has a constitutional obligation (article 19(6) of the ILO Constitution) to submit Recommendation No. 200 to the national competent authority within one year of its adoption (i.e. June 2011) or, in exceptional circumstances, within 18 months (i.e. by December 2011). Each member state also has a constitutional obligation to report back to the ILO

indicating: (1) the competent national authority to which the Recommendation has been submitted; and (2) what action the competent authority has decided to take in order to bring it into effect.

Jordan has not yet adopted special legal policies or instruments related to the protection of the HIV infected workers, even though the country is affected by the global HIV/AIDS epidemic. However, the Ministry of Health has developed the National Plan (NSP) on HIV/AIDS 2012-2016, which takes into consideration Recommendation No. 200.

## Scope and Objective

The scope of this study is to establish a national baseline analysing national laws and practices concerning HIV and AIDS in the world of work in Jordan in order to give effect to Recommendation No. 200. It will also contribute to a more thorough understanding of the roles of ILO's local tripartite partners (the Ministry of Labor and employers' and workers' organizations) in responding to the epidemic.

*The objective of this study is to carry out a legal review and conformity assessment on HIV and AIDS and the workplace in order to identify gaps in the national legislation and any discrepancies between it and Recommendation No. 200.*

The objective of this study is to carry out a legal review and conformity assessment on HIV and AIDS and the workplace in order to identify gaps in the national legislation and any discrepancies between it and Recommendation No. 200. This includes: the right not to suffer discrimination or stigma on the grounds of real or perceived HIV status for employment purposes; the right to have a safe and healthy workplace; the right to privacy and confidentiality regarding all HIV-related information; no mandatory HIV testing or screening for employment purposes; no mandatory disclosure of HIV status.

Chapter I of this study provides an overview of the ILO's various legal instruments pertaining to HIV and AIDS in the workplace, with special emphasis on the Code of Practice and Recommendation No. 200. Chapter II will examine the various national laws and regulations in Jordan that deal either directly or indirectly with HIV and/or AIDS in the workplace. Finally, Chapter III will provide some final

recommendations on how national laws and regulations in Jordan could be amended so that they are more in line with the Code of Practice and Recommendation No. 200. This study will therefore provide a strictly legal analysis of HIV and AIDS in the workplace in Jordan. Its purpose is not to provide statistical data on the number of workers affected by HIV and AIDS.

## Methodology

The information gathered in this report relies mainly on primary research and desk review.

Interviews were also conducted with key stakeholders, such as government officials, representatives from civil society organizations working on HIV and AIDS or labour issues, with members of employers' and workers' organizations, as well as with employers and workers. During these interviews, the information was verified pertaining to the various laws covered by this study, and additional relevant material was collected, such as instructions or regulations which were not available online.

The second chapter looks at national laws and regulations in Jordan with a view to answering the following questions:

What are the national laws and regulations in Jordan with regards to unfair dismissal, HIV testing, the issuance of work permits, occupational safety and health and sick leave?

What are the differences between national laws and regulations in Jordan and the ILO labour standard on HIV and AIDS in the workplace? Are national laws in Jordan inconsistent with Recommendation No. 200 and, if so, to what extent?

# Chapter 1:

# ILO Instruments Pertaining to HIV and AIDS and the World of Work

The impact of the HIV epidemic cuts across all sectors of economic activity. Primarily, it affects working men and women and limits their ability to fully engage in economic activities and reach their full earning potential. In addition, HIV and AIDS impose a great burden on enterprises in all sectors through declining productivity, increased labour costs and the loss of skills and experience. The epidemic also affects fundamental rights at work, and may be the cause of direct or indirect discrimination against people living with and affected by HIV and AIDS.

These factors prompted the ILO to establish a programme focusing on HIV/AIDS and the World of Work (ILO/AIDS). Although there are several norms and guidelines in the ILO's conventions and recommendation pertaining to discrimination in the workplace, unfair dismissal, industrial injury, and other relevant matters, the ILO has adopted two instruments to deal specifically with HIV and AIDS and the world of work. These are the Code of Practice on HIV/AIDS and the World of Work which was adopted in 2001 [hereinafter "Code of Practice"] and the Recommendation concerning HIV and AIDS and the

World of Work (No. 200) [hereinafter “Recommendation No. 200”], which was adopted in June 2010. This chapter will shed light on some of the key norms and provisions contained in these two instruments.

## An ILO Code of Practice on HIV/AIDS and the World of Work (2001)

Drafted by a tripartite group of experts in 2001, the ILO Code of Practice was the result of collaboration between the ILO and its tripartite constituents the Ministry of Labor, employers’ and workers’ organizations, as well as in cooperation with its international partners. According to section 3.1, the Code applies to “(a) all employers and workers (including applicants for work) in the public and private sectors; and (b) all aspects of work, formal and informal”. The Code begins by outlining key principles pertaining to HIV/AIDS and the workplace. These concerns:

*The key responsibilities of governments include ensuring that labour laws and other legislation do not discriminate against workers on the basis of their real or perceived HIV status.*

- Recognition of HIV and AIDS as a workplace issue
- Non-discrimination
- Gender equality
- A healthy working environment
- Social dialogue
- Screening for purposes of exclusion from work or work processes
- Confidentiality
- Continuation of employment
- Prevention
- Care and support

The Code also sets out the general rights and responsibilities of governments and their competent authorities, employers and their organizations as well as workers and their organizations. The key responsibilities of governments include ensuring that labour laws and

other legislation do not discriminate against workers on the basis of their real or perceived HIV status, and that benefits under national laws and regulations are applied to them in the same way that they are applied to workers with other serious illnesses.

As for employers, they are encouraged “to implement an appropriate policy for their workplace, designed to prevent the spread of the infection and protect all workers from discrimination related to HIV/AIDS”. This policy should include appropriate programmes to educate and train workers about HIV prevention. In addition, section 5.2 (e) stipulates that employers should:

- not require HIV screening or testing unless otherwise specified in section 8 of this code;
- ensure that work is performed free of discrimination or stigmatization based on perceived or real HIV status;
- encourage persons with HIV-related illnesses to work as long as they are medically fit for work; and
- provide that, where a worker with an HIV-related condition is too ill to continue to work and where alternative working arrangements including extended sick leave have been exhausted, the employment relationship may cease in accordance with anti-discrimination and labour laws and respect for general procedures and full benefits.”

The Code further imposes an obligation for employers to maintain the confidentiality of HIV-related information about workers unless they are legally required to do otherwise or with the consent of the person concerned.

Similarly, workers’ organizations should not have access to personnel data relating to a workers’ HIV status. They should also engage in advocacy work to raise awareness of HIV prevention and management as well as regularly updating workers on their rights and benefits. The importance of information and education programmes is highlighted in section 6 of the Code, while section 7 focuses on the various type of HIV-related training.

*As for employers, they are encouraged “to implement an appropriate policy for their workplace, designed to prevent the spread of the infection and protect all workers from discrimination related to HIV/AIDS”.*

Section 8 of the Code is perhaps the most important section as it examines the issue of testing for HIV. The Code clearly indicates that testing for HIV in and out of the workplace should not be carried out in the absence of voluntary informed consent. Testing should be performed by suitably qualified personnel under conditions of the strictest confidentiality and it should be accompanied by counselling. In particular, “HIV testing should not be required at the time of recruitment or as a condition of continued employment. Any routine medical testing such as testing for fitness carried out prior to the commencement of employment or on a regular basis for workers, should not include mandatory HIV testing”. HIV testing should not be carried out for insurance purposes and hence should not be required as a condition of eligibility for national social security schemes, general insurance policies, occupational schemes and health insurance, nor should it be required by insurance companies as a precondition providing coverage for any given workplace. Special attention should be given to workers who are at risk of exposure to human blood and bodily fluids or tissues, such as training, counselling, access to post-exposure prophylaxis and guidance regarding their legal rights, and the procedures they should follow to receive including eligibility.

Finally, section 9 of the Code provides additional guidelines on care and support for workers with HIV/AIDS. Section 9.5 reiterates the obligation of governments, in consultation with social partners, to “ensure that benefits under national laws and regulations apply to workers with HIV/AIDS no less favourably than to workers with other serious illnesses”. Similarly, section 9.6 requires that governments, employers and workers’ organizations take all the necessary steps to ensure that workers with HIV/AIDS and their families are not excluded from the full protection and benefits of social security programmes and occupational schemes, and that these programmes provide the same benefits for workers living with HIV as they do for workers with other serious illnesses. The need to respect the privacy of workers and to ensure that all HIV-related information is kept confidential is further affirmed in section 9.7 of the Code.

## Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200)

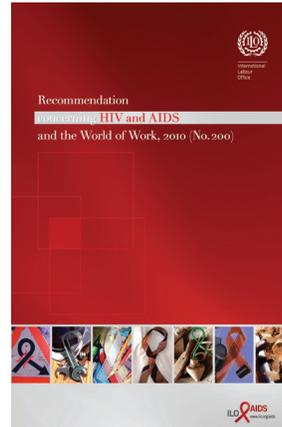
In 2007, the ILO's constituents decided that the time had come to enhance the response of the world of work to HIV and AIDS through the development and adoption of an international labour standard. The resulting Recommendation No. 200 was adopted with the aim of strengthening workplace prevention efforts, facilitating access to treatment, care and support for persons infected with or affected by HIV/AIDS and calling for respect for the fundamental human rights of all workers. This included observing principles of gender equality and the right to freedom from compulsory testing and the disclosure of HIV status.

Recommendation No. 200 was adopted at the International Labour Conference by an overwhelming majority (439 votes in favour or 96.6 per cent of the votes cast). In this context, Jordanian delegates representing the government, employers and workers who participated in the 99th session of the International Labour Conference and all supported the adoption of the HIV and AIDS Recommendation.

The Recommendation calls on member states to adopt national policies and programmes on HIV and AIDS and the world of work and on occupational safety and health, and to integrate their policies and programmes on HIV and AIDS and the world of work into development plans and poverty reduction strategies.

The Recommendation establishes that real or perceived HIV status should not be grounds for discrimination preventing the recruitment or continued employment, or the pursuit of equal opportunities. Neither should it be used as a reason for terminating employment.

Furthermore, once hired, persons with HIV-related illness should be able to carry out their work with reasonable accommodation, if necessary, for as long as they are medically fit to do so.



*Delegates in Jordan representing the government, employers and workers participated in the 99th Session of the International Labour Conference and all three parties those representing government, employers and workers supported the adoption of the HIV and AIDS Recommendation.*

Measures should also be taken to prevent and reduce the occupational transmission of HIV and to alleviate its impact.

In addition, workers living with HIV and their dependents should be able to benefit from full access to health care, social security systems and occupational insurance schemes. Persons living with HIV or HIV-related illnesses should also benefit from programmes of care and support in the workplace.

Occupational health services and workplace mechanisms concerning occupational safety and health should also address HIV and AIDS.

Furthermore, “[w]here a direct link can be established between an occupation and the risk of infection, AIDS and infection by HIV should be recognized as an occupational disease or accident”.

*Recommendation No. 200 devotes several paragraphs to the issue of testing, privacy and confidentiality. It reiterates the need to ensure that HIV testing for workers, including migrant workers, jobseekers and job applicants, is done voluntarily and in strict confidence*

This is of particular importance to individuals working in the health sector, such as doctors, dentists and nurses. Special measures should also be taken to protect young workers against HIV infection.

Recommendation No. 200 devotes several paragraphs to the issue of testing, privacy and confidentiality. It reiterates the need to ensure that HIV testing for workers, including migrant workers, jobseekers and job applicants, is done voluntarily and in strict confidence and should not jeopardize access to jobs, tenure, job security or opportunities for advancement.

The Recommendation also promotes social dialogue and other forms of cooperation among government authorities, public and private employers and workers and other relevant actors, including organizations for persons living with HIV.

International cooperation between and among ILO members, their national structures on HIV and AIDS and relevant international organizations are also encouraged.

Recommendation No. 200 is not a convention and is not open to ratification. It nevertheless gives rise to

certain obligations. Pursuant to Article 19(6) of the ILO Constitution, each Member State of the ILO has an obligation to submit Recommendation No. 200 to the competent national authority which is often the national parliament or legislative within one year of its adoption (i.e. June 2011), or in exceptional circumstances, within 18 months (i.e. by December 2011).

Article 19 (6) imposes the obligation on each member state to report back to the ILO and indicate the competent national authority to which the Recommendation has been submitted. They also need to detail the action that the competent national authority has decided to take to give effect to the new standard. In Jordan, the Ministry of Health is working on a draft National Strategic Framework (NSF) on HIV/AIDS 2012-2016, which should be finalized by December 2011. It is expected that the NSF will take into consideration the provisions of Recommendation No. 200.

## Regional Dialogue on HIV and AIDS and the World of work in Mashreq Countries

One year after Recommendation No. 200 was adopted, the ILO Regional Office for Arab States organized a regional consultation meeting on “Integrating World of Work responses into a National AIDS response in Mashreq countries” Beirut (Lebanon), held from 19 to 20 June 2011. The aim of the meeting was to launch a platform for informed discussion on the role of the workplace in national and regional response to HIV/AIDS with regards to Recommendation 200.



Participants in the meeting emphasized the direct and serious effect of HIV/AIDS on the world of work and the unique role that the world of work can play in effectively contributing to national and regional responses to HIV in Mashreq countries. The participants discussed the framework of the HIV and AIDS national strategy and Recommendation No. 200. They expressed their commitment to working on the implementation of this recommendation, and to promoting research and capacities in order to respond effectively to HIV/AIDS and the world of work. A final statement of commitment was adopted in this regard. The delegation from Jordan that was made up of representatives from the Ministry of Labor, the Ministry of Health, as well as employers and workers attended the meeting and adopted the final statement.

As a follow-up to this commitment, the Ministry of Labor, the Ministry of Health, the Jordan Chamber of Industry and the General Federation of Trade Unions have:

- 1) Appointed a focal point on HIV and the World of Work (September 2011)
- 2) Promoted and held an HIV/AIDS awareness and advocacy seminar for employers and workers (November 2011)
- 3) Organized the national workshop “Towards the development of a National Policy on HIV and AIDS and the World of Work” (December 2011)
- 4) Drafted a national policy on HIV and AIDS and World of Work (December 2011)



# Chapter 2:

# Jordanian Legislation and HIV and AIDS

This chapter looks at the differences between Jordanian legislation and ILO norms on HIV/AIDS in the workplace.

## The Jordanian Constitution

Chapter two of the Jordanian Constitution which was adopted in 1952 outlines the rights and duties of Jordanian citizens, and consists of 19 articles, two of which are relevant to the issue of HIV and AIDS in the workplace.

### Right to Equality

Article 6 underscores Jordanians' right to equality before the law:

- الأردنيون أمام القانون سواء لا تمييز بينهم في الحقوق والواجبات وإن اختلفوا في العرق أو اللغة أو الدين.

- تكفل الدولة العمل والتعليم ضمن حدود إمكانياتها وتكفل الطمأنينة وتكافؤ الفرص لجميع الأردنيين .

- Jordanians shall be equal before the law. There shall be no discrimination between them in regard to their rights and duties on grounds of race, language or religion.
- The Government shall ensure work and education within the limits of its possibilities, and shall ensure a state of tranquility and equal opportunities to all Jordanians.

The first paragraph of this Article explicitly prohibits against discrimination on grounds of race, language or religion. It could, therefore, be inferred that discrimination could be permitted on the grounds of physical fitness. However, the second paragraph affirms the Government's commitment to providing all Jordanians with equal opportunities, presumably without distinguishing between them on the grounds of their health or physical fitness.

### Right to Fair Labour Practices

Article 23 of the Constitution strengthens the State's commitment to provide all citizens with the opportunity to work and spells out additional rights concerning fair labour practices:

١. العمل حق لجميع المواطنين وعلى الدولة أن توفره للأردنيين بتوجيه الإقتصاد الوطني والنهوض به .
٢. تحمي الدولة العمل وتضع له تشريعاً يقوم على المبادئ الآتية:
  - أ- إعطاء العامل أجراً يتناسب مع كمية عمله وكيفيته .
  - ب- تحديد ساعات العمل الأسبوعية ومنح العمال أيام راحة اسبوعية وسنوية مع الأجر .
  - ج- تقرير تعويض خاص للعمال المعيلين. وفي أحوال التسريح والعجز والطوارئ الناشئة عن العمل .
  - د- تعيين الشروط الخاصة بعمل النساء والأحداث.
  - هـ- خضوع المعامل للقواعد الصحية .
  - و- تنظيم نقابي حر ضمن حدود القانون .

1. Work is the right of every citizen and the State shall provide all citizens with the opportunity to work by properly managing the national economy.
2. The State shall protect labour market and enact legislation based on the following principles:
  - Every worker shall receive wages commensurate with the quantity and quality of his work
  - The number of hours that workers are expected to work per week shall be defined and workers shall receive weekly and annual days of paid leave.
  - Special compensation shall be given to workers supporting families and in the event of dismissal, illness, old age and emergencies resulting from the nature of their work.
  - Special conditions shall be laid down for the employment of women and juveniles.
  - Factories and workshops shall be subject to health safeguards.
  - Free trade unions may be formed within the limits of the law.

Besides calling on the State to provide work for all its citizens without distinction, Article 9.1(b) provides special compensation for workers with an illness. According to this Article 9.1(b) of the ILO Code of Practice, “[W]orkers with HIV/AIDS should be treated no less favourably than workers with other serious illnesses in terms of benefits, workers’ compensation and reasonable accommodation”. Thus, if Jordanian workers have a constitutional right to compensation in case of illness, workers living with HIV should be entitled to the same compensation as workers with other illnesses.

Article 9.1 also requires that special conditions are made for the employment of women and juvenile workers. Indeed, section 4.3 of the ILO Code and paragraph 14 of Recommendation No. 200 stress the importance of increasing gender equality in the workplace and of

*Thus, if Jordanian workers have a constitutional right to compensation in case of illness, workers living with HIV should be entitled to the same compensation as workers with other illnesses.*

empowering women in order to successfully prevent the spread of HIV infection and to enable women to cope with HIV and AIDS. Appendix I of the ILO Code further clarify the gender dimension of the HIV epidemic and outlines some of the reasons why women are more vulnerable to infection than men, or more severely affected by it. Children and youth are also considered an at-risk group. The dangers of child labour and child trafficking are thus highlighted in paragraph 35 of Recommendation No. 200, while paragraph 36 urges States to “take measures to combat child labour and child trafficking that may result from the death or illness of family members or caregivers due to AIDS and to reduce children’s vulnerability to HIV”.

*Articles 6 and 23 of the Jordanian Constitution affirm in general terms the rights of Jordanians to equality and fair labour practices.*

In accordance with ILO standards, a safe and healthy work environment is also essential to prevent the transmission of HIV. Article 23 of the Constitution therefore conforms to ILO standards in this regard by subjecting factories and workshops to proper health safeguards.

Articles 6 and 23 of the Jordanian Constitution affirm in general terms the rights of Jordanians to equality and fair labour practices. Jordanian labour laws and regulations, which will be discussed in detail in the next section, provide further detail on these and other rights of workers, including migrant workers in Jordan.

## **Jordan’s Labour Laws, Regulations and Instructions**

The main legislation governing employment in the private sector is the Jordanian Labour Code, Law No. 8 of 1996 and the amendments thereto [hereinafter “Labour Code”]. According to Article 3, the provisions of this law do not apply to employees in the public sector and municipalities. Employment in the public service is governed instead by the Public Service Employment Regulation (No.30) of 2007, which will be discussed later in more detail.

The Labour Code contains several provisions relevant to HIV and AIDS in the workplace. These will be divided

into five main themes: (1) discrimination and unfair dismissal; (2) HIV-testing and confidentiality; (3) occupational safety and health; (4) migrant workers and work permits; (5) sick leave.

## 1- Discrimination and Unfair Dismissal

According to Article 21 of the Labour Code the work contract shall be terminated “[i]f the employee has died, or is no longer able to work as a result of disease or disability certified by a medical authority”. Therefore, by itself an HIV-related illness is not valid grounds for terminating an employment contract, unless the illness prevents the worker from performing the tasks attributed to the job. The Recommendation provides that workers with an HIV-related illness should be allowed to carry on working. Furthermore, as long as they remain medically fit to work, employers should provide such workers with the necessary means to allow them to continue to do so. Alternatively, employers should retrain or redeploy such workers to enable them to do other available work that is adapted to their abilities. For example, if a worker was initially hired to do manual labour and, upon contracting HIV, is no longer able to perform this type of work, they should not be dismissed automatically. Instead, the employer should first attempt to reasonably accommodate the worker by assigning them to lighter duties if this is possible and such work is available.

*HIV-related illness alone should not be a valid ground for termination of an employment contract, unless the illness prevents the worker from performing the tasks attributed to the job.*

According to interviews conducted with officials at the Ministry of Health, such measures are practiced, at least in the public sector. Workers who are found to be living with HIV are not automatically dismissed. Suitable arrangements are found to accommodate their physical needs and they remain employed until they are no longer medically fit for work. However, discussions with individuals working in the private sector and with a source from the Chamber of Industry suggest that the opposite occurs in private companies and factories. Employers in the private sector seem less inclined to keep an employee who is living with HIV; such employees

are likely to be dismissed when they are found to have contracted the disease. This could give rise to claims for wrongful dismissal, in which case the employee is entitled to compensation under Article 25 of the Labour Code.

On the other hand, if an employer insists on maintaining an employee in a position that jeopardizes his/her health, the employee has a right to leave their job without notice, keeping their legal rights pertaining to end of service and compensation for damages, as long as they provide a medical report issued by a medical authority certifying that their work will jeopardize their health or safety. Similarly, trainees may terminate their vocational training contracts if the work threatens their safety or health. In case of the death of an employee, all his/her rights accrue to their legal heirs.

## **2- HIV Testing and Confidentiality**

Article 19 of the Labour Code stipulates that the “employee shall: [...] (d) Undergo the medical examination required by the nature of the work before the commencement of work in order to ascertain that he or she is free of occupational or contagious diseases [emphasis added]”. While the law does not explicitly require HIV testing prior to employment, an employee may be asked to undergo certain medical examination in order to establish that they are free of contagious diseases. Since HIV is a contagious disease, it could be inferred that the required medical examination may include a blood test to determine whether or not the job applicant is HIV-positive.

The provisions of the Labour Code regarding medical examination are complemented by the Regulation on Preventive and Therapeutic Medical Care for Workers in Private Companies (Regulation No. 42) of 1998 [hereinafter “Regulation No. 42”]. According to Article 3 of this Regulation, “the employer or the director in charge of a company shall verify the worker’s fitness to work before he/she starts to work in the company. This may be accomplished by medical examination using clinical, laboratory and radial tests, or any other necessary medical

examination of the worker, pursuant to the instructions issued by the Minister for that purpose [emphasis added]”.

Like Article 19 of the Labour Code, this Article does not explicitly mention HIV testing, although it does state that an employer may request the job applicant to undergo a medical examination, which may include laboratory tests, prior to employment. The Regulation is not clear as to whether or not these laboratory tests or blood tests should include testing for HIV. Instructions were therefore issued in 1999 to provide additional clarification on the types of tests required of job applicants. According to Article 3(g) of the Instructions on the Preliminary Medical Examination for Work in Private Companies, 1999, individuals working in the medical sector are required to take an HIV test. It can therefore be reasonably inferred that such tests are not required of applicants in other sectors. Sources at the Ministry of Labour confirmed that Jordanian labour legislation only requires individuals working in the medical sector to take an HIV test. Nevertheless, an employer can rely on Article 19 of the Labour Code to request that an employee takes an HIV test as it is a contagious disease. In other words, nothing in the Labour Code precludes an employer from discriminating against a job applicant by requiring that they take an HIV test as a precondition of employment.

Employees may also be expected to undergo regular medical examinations during their employment. Article 4 of Regulation No. 42 stipulates that: “The employer or director in charge of a company shall make the arrangements required to carry out regular medical examinations in order to keep a record of the fitness of workers, as well as to diagnose any diseases in their early stages, in accordance with the instructions issued by the Minister for that purpose, which will define the frequency of examination for each occupation”. The Instructions on the Regular Medical Examination of Workers in Private Companies, 1999, were subsequently issued to clarify how often regular examinations were required. Neither the Regulation nor the Instructions provide additional details on the type of medical or laboratory tests that employees are expected to undergo on a regular basis.

*According to Article 3(g) of the Instructions on the Preliminary Medical Examination for Work in Private Companies, 1999, individuals working in the medical sector are required take an HIV test.*

In conclusion, it seems that only workers in the medical sector are explicitly required by Jordanian law to undergo HIV testing prior to employment. However, job applicants in other sectors may also be asked to undergo medical examination prior to employment, including tests to establish that they are fit to perform their work duties and that they are free of contagious diseases. Since HIV is a contagious disease, this requirement could be used by employers to request HIV testing and hence discriminate against applicants living with HIV. Once hired, workers also have to undergo regular medical examinations, though the exact nature of these examinations is not explicitly defined under Jordanian law. The Ministry of Labor confirmed that the nature of these examinations varies according to the job. For instance, workers employed in textile factories may be expected to have their hearing abilities tested, as their hearing may be affected by the noise of the machinery they use on a daily basis. Workers in other sectors may be working in environments that affect other faculties.

In terms of what is done in practice, a source at the Chamber of Industry stated that some employers do not actually enforce Article 19 and often hire employees without asking them to undergo any medical tests.

However, according to sources at the Ministry of Labor, Article 19 applies to all employers. If a labour inspector discovers that the employer has failed to implement this Article by hiring employees without requiring them to undergo a medical examination to establish that they are free of occupational or contagious diseases, a penalty may be imposed on the employer according to the provisions of Article 139 of the Labour Code.

As for employers who ask job applicants to take an HIV test, the source at the Chamber of Industry also stated that these employers are unlikely to hire the applicant if they are found to have the illness. In other words, employers are likely to discriminate against job applicants who, upon testing, are confirmed to be living with HIV. This statement was confirmed by discussions with professional associations, as well as with the human resources manager of a private hospital in Jordan. According to the latter, in

order not to put patients at risk of being infected with HIV, the hospital does not hire workers with HIV. Fearing such discrimination, PLHIV avoid applying for jobs in the private sector in order not to be asked to have an HIV test. As a result, they end up working in the informal sector, where they do not have proper employment rights or privileges (such as social security or medical insurance).

As discussed in Chapter 2, Recommendation No. 200 provides that there should be no mandatory HIV testing or screening at the time of recruitment or as a condition of continued employment, regardless of the type of job the applicant is applying for. This means that even medical professionals should not be required to undergo HIV testing during the recruitment process, or in order to help their position. Therefore, the fact that Jordanian law asks employees in the medical sectors to take HIV test contravenes ILO standards and should be reviewed.

Furthermore, the lack of clarity under Jordanian law regarding the type of medical examination and blood tests that are required during the recruitment process and during regular medical check-ups opens the door to misinterpretation and misuse by employers. Employers can ask employees to undergo an HIV test when they are being recruited or during regular check-ups to ensure they are free from contagious diseases. Jordanian law should, therefore, be amended to explicitly state that HIV testing should not be required during the recruitment process or during regular medical check-ups.

As for the issue of confidentiality which, as discussed in Chapter 2 of this report, is one of the key principles pertaining to HIV and AIDS in the workplace, Jordanian labour law appears to be in line with the relevant ILO standards. Article 5 of Regulation No. 42 stipulates that the results of a medical check-up should be kept in the medical file of each worker. The physician in charge is required to disclose the results of the medical check-up to the employer or to the competent authorities at the Ministry of Health only when the illness is considered an occupational disease. Since Article 23 of ILO Recommendation No. 200 stipulates that both HIV and AIDS should be recognized as occupational diseases or accidents where there is a direct

*Fearing such discrimination, PLHIV avoid applying for jobs in the private sector in order not to be asked to have an HIV test. As a result, they end up working in the informal sector, where they do not receive proper employment rights or privileges (such as social security or medical insurance).*

link between an occupation and the infection, it can be argued that Jordanian law requires physicians to disclose HIV-related illnesses only when they are contracted in the workplace. This requirement does not contravene the Recommendation or standards on confidentiality. Furthermore, since only the relevant authorities should be informed of the worker's illness, it should not be disclosed to co-workers or to the general public.

### 3- Occupational Safety and Health

The ILO Code and Recommendation No. 200 have both underlined the importance of maintaining a safe and healthy work environment, particularly where there is a risk of exposure to human blood, and bodily fluids or tissues, for example in hospitals or medical clinics. In order to maintain a safe and healthy work environment and to protect employees from occupational injury, the Jordanian Labour Code imposes the following obligations on the employer to provide the necessary safeguards and precautions:

#### **Article 78**

##### ***(1) Every employer shall:***

*(a) take the necessary precautions and measures to protect workers against hazards and diseases that may result from the work or machines used;*

*(b) provide workers with the necessary personal materials, such as special clothing, glasses, gloves or shoes, to protect them from work hazards and occupational diseases, and shall instruct them in the use and maintenance.*

*(c) inform workers, before they take up work, of any occupational hazards and precautionary measures to be taken, and display, in clear view, instructions and guidelines about occupational hazards and protection methods, in accordance with the relevant regulations and decisions;*

*(e) provide workers with first-aid material and equipment in the establishment in accordance with standards prescribed by a decision to be adopted by the Minister after consultation with the competent official bodies.*

*(2) Workers shall not be liable for any costs resulting from the implementation of paragraph (1) of this article.*

Employers are also expected to inform workers of occupational hazards and provide appropriate training. Article 6 of Regulation No. 42 provides that “[T]he employer or the director in charge shall guide the worker when he/she is appointed on the dangers of his/her occupation and to the precautionary measures that should be taken”.

Furthermore, Article 6(g) of the Regulations on Occupational Safety and Health Committees and Supervisors (Regulation No.7) of 1998 [hereinafter “Regulation No.7”] stipulates that: “The supervisor shall be responsible for [...] setting up training programmes for the workers of the establishment to protect them from occupational hazards, accidents, injuries and diseases, in addition to verifying that they have passed the relevant special tests adequately”. These measures are particularly vital in the medical sector and other sectors in which employees may be at risk of contracting HIV through their work. Indeed, the ILO standard affirms the importance of offering education and training on all modes of HIV transmission and on how to protect workers who may be exposed to HIV at work.

According to the human resources manager of a private hospital in Jordan, when they are recruited all employees are given general guidance on safety, infection control and quality and standards of service, which includes information on the transmission of HIV. Once they are assigned to a specific department, they are also given departmental guidance during which safety issues are discussed in further detail. However, according to a report prepared by Labor Watch, which is a joint programme of the Phoenix Center for Economics and Informatics and the Friedrich-Ebert-Stiftung Foundation, on workers in the health sector, “large numbers of workers in this

sector stated that they had not been given any type of instructions or trainings related to the work risks or how to deal with them". Further research is required to determine whether all public and private hospitals in Jordan, provide sufficient training to their employees on the risks of HIV transmission at work.

In case of injury at work, the law provides that the employee should receive compensation. It is important to note, however, that the provisions of the Labour Code pertaining to work injuries and occupational diseases are only applicable to employees who are not subject to the applicable provisions of the Social Security Act. The relevant provisions of the Social Security Act will be discussed in further detail later in this report. For now it can be said that the Act does not apply to the following individuals: (i) those who are paying pension contributions under the provisions of the Civil Retirement Act or the Military Retirement Act; (ii) non-Jordanian who are working in any regional or international missions, or political or military missions based in Jordan, as well as those working in liaison offices and cultural or educational centres affiliated to these missions; (iii) workers who have not received a clear outline of their employment conditions.

Since such individuals do not fall within the scope of the Social Security Act, they benefit from the provisions of the Labour Code on work injuries and occupational diseases. Under Article 88 of the Labour Code, "[T]he employer shall be responsible for paying the compensation stated in this law for the employee who has been infected with an occupational disease resulting from his/her work on the basis of a report by the medical authority". Under Article 90, if the work injury results in the employee's death, "the employer shall compensate the employee with the wage of one thousand two hundred working days, provided that the compensation does not exceed five thousand JDs and not less than two thousand JDs". Although these provisions provide for some form of compensation for infection or death as a result of an occupational injury, HIV or AIDS is not explicitly listed among the diseases or occupational injuries that give should receive compensation. This issue was discussed at a meeting with sources from the Ministry of Labor, who acknowledged that the tables of diseases

and occupational injuries giving rise to compensation are outdated and should be amended to include both HIV and AIDS. As for employees who benefit from the provisions of the Social Security Act, Section 3.2.4 examines whether they are entitled to compensation for an injury at work which results in them being infected with HIV. It seems that employees who are infected with HIV as a result of an injury at work do not benefit from compensation under the provisions of the Labour Code.

Furthermore, Article 14 of the Labour Code stipulates that “if the employee’s work-related injury results in partial permanent disability that does not hinder him/her from performing work other than his/her previous work, then the employer shall employ him/her in another position that suits his/her condition, if such work is available and in return for the wage stipulated for it [...]”. This article complies with the ILO standard, which requires that employees affected by HIV-illnesses are redeployed to work that is better suited to their state of health.

*HIV or AIDS is not explicitly listed among the diseases or occupational injuries that give rise to compensation.*

#### **4- Migrant Workers and Work Permits**

Until 2008, the Labour Code did not apply to domestic and agricultural workers. It has since been amended. Under Article 12, migrant workers need work permits to be able to work lawfully in Jordan. In order to obtain a work permit, Article 4 (b)(6) of the Instructions on the Conditions and Procedures for the Recruitment and Employment of non-Jordanian Workers and the Amendments thereto, 2009, provides that any employer wishing to hire a non-Jordanian worker should submit a recruitment application accompanied by, among other documents, a valid medical certificate issued by a medical centre approved by the Ministry of Health. It does not define what this medical certificate should contain. However, according to one of the health centres and sources from the Ministry of Health, the medical examination consists of a blood test to check if the person is free from any contagious diseases, including HIV. In addition, on 24 April 2005, a committee composed of the Secretaries-General of the Ministries of Interior, Foreign

*On 24 April 2005, a Committee composed of the Secretaries-General of the Ministries of Interior, Foreign Affairs and Labour and chaired by the Secretary-General of the Ministry of Health issued recommendations which explicitly require migrant workers to undergo HIV testing in order to work and reside in Jordan:*

Affairs and Labour and chaired by the Secretary-General of the Ministry of Health issued recommendations which explicitly require migrant workers to undergo HIV testing in order to work and reside in Jordan:

- يتم إجراء الفحوصات للأمراض التالية لغايات الإقامة والعمل في الأردن:
- مرض الإيدز/الجميع الجنسيات
- (...)
- مرض الإيدز، ومرض السل، ومرض التهاب الكبد نوع B للعاملين في المنازل

Unofficial translation:

- Individuals who wish to work or live in Jordan are required to take medical tests for the following diseases:
- Test for AIDS / required of all nationalities
- [...]
- AIDS, tuberculosis and Hepatitis B should be done for all domestic workers.

If an individual is free from contagious diseases, the Ministry of Labour and the Ministry of Interior then issue a work and residence permit that is renewable on an annual basis. Migrant workers are required to undergo a medical examination to renew their work permits.

The requirement that foreign workers take a mandatory HIV test when they arrive in Jordan and when they renew their work permit is not in line with the relevant ILO standards. In particular, paragraphs 25 and 27 of Recommendation No. 200 stipulates that “HIV testing or other forms of screening for HIV should not be required of workers, including migrant workers, jobseekers or job applicants [emphasis added]”, while paragraph 27 of the Recommendation states that: “[W]orkers, including migrant workers, jobseekers and job applicants, should not be required by countries of origin, of transit or of

destination to disclose HIV-related information about themselves or others [emphasis added]”.

Furthermore, in the case of domestic workers, Article 2 (b) of the Instructions Amending the Terms, Conditions and Procedures for the Licensing of Offices operating in the Recruitment and Employment of non-Jordanian Domestic Workers, 2009, provides that non-Jordanian domestic workers who are found to have a contagious disease (presumably including HIV, although this is not explicitly stated), should be returned to their home countries by the recruitment agency:

إذا تبين وخلال ثلاثة أشهر من تاريخ قدوم العامل الى البلاد انه مصاب بأي مرض معد أو سار أو بأي مرض يمنع من أداء العمل المطلوب منه او يشكل خطرا على الآخرين او غير سليم صحيا او جسديا او عقليا بموجب تقرير طبي صادر عن الجهات الرسمية المختصة. (....) يلتزم المكتب و على نفقته بإعادة العامل الى بلده الأصلي.

Unofficial translation:

If within three months of the worker arriving in the country they are found to be infected with a contagious or common disease or with any disease that prevents them from performing the required work or one that would constitute a threat to others or if the worker is not mentally or physically healthy according to a medical certificate issued by an official authority, the recruitment agency is bound to return the worker to their home country at the own expense.

According to recommendations issued by the Secretaries-General of the Ministries in 2005, recruitment agencies are required to test domestic workers for HIV, tuberculosis and hepatitis B in their countries of origin before they arrive in Jordan to avoid their subsequent deportation, if they are found to have any of these diseases. These tests are carried out again when they arrive in Jordan. If there is any contradiction between the two tests, the test carried out in Jordan is considered accurate.

*According to recommendations issued by the Secretaries-General of the Ministries in 2005, recruitment agencies are actually required to test domestic workers for HIV, tuberculosis and hepatitis B in their countries of origin before they arrive to Jordan.*

*The requirement that foreign workers take a mandatory HIV test when they arrive in Jordan and when they renew their work permit is not in line with the relevant ILO standards. In particular, paragraph 25 and 27 of Recommendation No. 200*

At a meeting with sources from the Ministry of Health, the exact procedure for recruiting foreign workers (domestic or other) was explained in detail. First, foreign workers have a grace period of one month to undergo a medical test (which consists of a blood test) at a health center approved by the Ministry of Health. If the results of the blood test indicate that the worker is HIV-positive, he or she will be informed of these results and the file will be transferred to the National AIDS Programme (NAP) at the Ministry of Health. The NAP then contacts the worker to schedule a meeting to discuss their situation. They are offered information about their medical condition. The migrant worker is then asked to leave the country. If the worker has already been living in the country and is found to have HIV when they are renewing their work permit, they are given reasonable time to settle their affairs (close their bank account, vacate their property, etc.) before they are deported. The NAP then informs the Ministry of Interior, which then checks with the Department of Borders and Residency that the worker has left the country.

*If the worker has already been living in Jordan and is found to have HIV when they are renewing their work permit, they are given reasonable time to settle their affairs (close their bank account, vacate their property, etc.) before they are deported.*

Sources at the Ministry of Health further indicated that foreigners who are found to be living with HIV may, in exceptional circumstances and on humanitarian grounds, be allowed to remain in the country. In this case, they are entitled to the same medical treatment and health benefits as Jordanian citizens.

The practice of deporting foreign workers infected with HIV is not in line with paragraph 28 of Recommendation No. 200, which states that “migrant workers, or those seeking to migrate for employment, should not be excluded from migration by their country of origin, of transit or of destination on the basis of their real or perceived HIV status”. According to the Recommendation, such workers should be able to remain in the country and should not be deprived of their jobs on the basis of their HIV status. Furthermore, they should be able to demand redress through available dispute resolution mechanisms if they are asked to disclose HIV-related information or if they are deported because of their illness. Unfortunately, discussions with civil society organizations based in Jordan who work on migrant rights have confirmed that migrant workers do not have any means of seeking redress if they

are found to be living with HIV. They are usually deported before they are able to file a complaint or ask for assistance.

## **5- Sick Leave**

As discussed in Chapter 2 of this report, the ILO standard provides that workers living with HIV should be able to work for as long as their health allows. They are also allowed to be absent from work because of their illness if need be, as are their caregivers. These absences should be treated in the same way as absences are treated for other health reasons. The ILO standard does not provide additional details on the maximum time that can be taken as temporary sick leave. The length of time, therefore, needs to be defined by national laws or regulations, collective agreements, arbitration awards and court decisions.

### **The Jordanian Labour Code provides some guidance on the duration of sick leave. Under Article 65:**

Each employee is entitled to 14 days fully paid sick leave per year if they have a report from a physician approved by the establishment. This can be renewed for a further 14 days with full pay if they have been hospitalized and with half pay if their sick leave was based on a report by a medical committee approved by the establishment and they have not been hospitalized.

It is not clear whether further leave should be granted to a worker if they remain ill for more than a total of 28 days. According to sources at the Ministry of Labor, the employer may deduct any additional days that the worker is absent from work due to illness from their annual leave. If the worker continues to be ill after that period of time, there is nothing to stop the employer from terminating the employee's contract.

## **Public Service Employment Regulations, 2007**

The previous section examined the provisions of the Labour Code pertaining to HIV and AIDS in the workplace. As explained earlier, the Labour Code regulates

work in the private sector. Employment in the public sector (in the ministries, municipalities and so forth) is governed by the Public Service Employment Regulations, 2007 [hereinafter “PSE Regulations”].

**Under Article 43(a) of the PSE Regulations, only Jordanian nationals may be employed in the public service sector.**

There are, therefore, no provisions in this Regulation regarding the issuance of work permits or the rights of migrant workers. This section will shed light on the provisions of the PSE Regulations relating to the following four themes: (1) discrimination and unfair dismissal; (2) HIV testing and confidentiality; (3) occupational health; and (4) sick leave.

### **1- Discrimination and Unfair Dismissal**

Under Article 166 of the PSE Regulations an employee’s contract is terminated upon death or if they are no longer fit to perform the required work. No provisions in the Regulation provide any further clarification on what makes an employee unfit to carry out the required work.

As discussed in section 3.1, according to the Recommendation, HIV-positive status alone should not be grounds for dismissal. Recommendation No. 200 provides that a person with an HIV-related illness should instead be redeployed to work that is adapted to their health needs, and that they should not be denied the possibility of continuing to carry out their work until they are no longer medically fit to do so. Interviews with officials at the Ministry of Health have confirmed that these measures are enforced in practice. Alternative work arrangements are usually found for workers who are living with HIV and they are allowed to remain in employment until they are too ill to perform any type of work. If the worker is eventually dismissed because of their state of health, they are entitled to compensation in accordance with Article 177 of the PSE Regulations and the related instructions.

Article 177 (b) provides further details on the compensation awarded to the heirs of a worker who dies while employed in the public service.

## 2- HIV Testing and Confidentiality

Article 43 of the PSE Regulations stipulates that a person wishing to work in the public service must be free of any diseases which preclude them from performing their work in accordance with the decision made by a competent medical authority:

المادة ٤٣

يشترط فيمن تعين في أي وظيفة أن يكون (...):

ج. سالما من الأمراض والإعاقات البدنية والعقلية التي تمنعه من القيام بأعمال الوظيفة التي سيعين فيها بموجب قرار من المرجع الطبي المختص (...)

Unofficial translation:

### **Article 43**

*Any employee appointed to any position should fulfill the following conditions:*

[...]

Be free from any diseases or physical and mental disabilities that would prevent them from performing the work for which they have been recruited according to the decision made by the relevant medical authorities [...].

Sources at the Ministry of Health have confirmed that individuals seeking work in the public service must undergo a medical examination and that this examination includes HIV testing. They further stated, however, that the results of the examination are not used to discriminate against the employee. In other words, a person living with HIV is able to work in the public service for as long as they are medically fit enough to perform their work. Suitable work arrangements are also found for the worker in the

event that their health deteriorates and they are no longer able to perform the work for which they were originally recruited.

Sources at the Ministry of Health also explained that they have drafted and are currently in the process of finalizing a regulation that bans mandatory HIV testing for all employees in the public service. They are hoping that the regulation will be adopted by the Council of Ministers in early 2012. This regulation would be the first of its kind in the Arab world and the source at the Ministry of Health is hoping it will serve as a model for other similar legal initiatives in the region. If this regulation is adopted, it would presumably bring Jordanian law into closer alignment with the Recommendation's provisions establishing that workers should not be required to undergo HIV testing.

### 3- Occupational Safety and Health

There are no provisions in the PSE Regulations specifically pertaining to occupational health. If a worker in the public sector is injured at work, the provisions of the Social Security Act, which will be discussed in section 3.2.4 of this report, are applied to determine the compensation

Unofficial Translation

#### **Article 114**

*If the Committee for Workers' Affairs in the directorate, pursuant to a decision by the authorized medical committee, becomes aware that a worker was injured or infected with an illness while performing his/her duties at work, and without him/her being negligent, he/she is granted his/her salary in full with allowances, during the period specified in Article 111 and following a decision by the Minister.*

that the injured worker is entitled to, as well as any other related rights. However, Article 114 of the PSE Regulations provides that any employee who is injured at work is entitled to pay sick leave.

المادة ١١٤

إذا تبين للجنة شؤون الموظفين في

الدائرة وعلى ضوء قرار اللجنة الطبية المختصة أن الموظف أصيب بمرض أو بحادث ناشئ عن طبيعة عمله أثناء قيامه بواجباته الوظيفية دون إهمال منه فيمنح خلال المدد المحددة في المادة (111) وقرار من الوزير راتبه كاملاً مع علاوته.

#### 4- Sick Leave

Under the provisions on sick leave in the PSE Regulations, even employee is entitled to sick leave. The length of leave depends on the employee's medical condition and varies from between one week to several months. Remuneration during this period also varies and diminishes incrementally every four months. For the first four months (whether consecutive or cumulative), the employee is entitled to their full salary. For the next four months (whether consecutive or cumulative), the employee is entitled to three quarters of their salary.

If, at the end of this period the employee is still unable to resume their work and provided that their disease is curable, they are entitled to additional sick leave of up to four months with half their monthly remuneration. If, however, at the end of the first eight months of sick leave (whether consecutive or cumulative), the employee is found to have an incurable disease, their employment can be terminated following a decision made by the competent authority. This provision suggests that if an employee has an HIV-related illness which, by definition is incurable, they can be dismissed from their position without necessarily being granted repeated sick leave. This issue was brought up in a discussion with officials at the Ministry of Health. They clarified that an employee with an HIV-related illness should be granted the same amount of sick leave as employees with other illnesses, until they have reached an advanced stage of the disease and are no longer able to perform the duties required of them at work. Therefore, it seems that there should be no discrimination against workers living with HIV, either in Jordanian law or in practice, and that they should be granted the same amount of sick leave as workers with other illnesses.

Furthermore, Article 18(e) of the Regulation on Health Insurance of Public Service Employees (Regulation No. 83), 2004, stipulates that instructions would be issued

*It therefore seems that there should be no discrimination against workers living with HIV, either in Jordanian law or in practice, and that they should be granted the same amount of sick leave as workers with other illnesses.*

*The insurance covers fees for antiretroviral treatment and any related complications. It does not however, cover the fees for the treatment of any other unrelated diseases that the patient may have.*

clarifying the terms and conditions for non-payment of fees for treatment in a hospital or clinic by patients living with HIV and/or AIDS.

Instructions were indeed issued in 2008 providing further details on the terms and conditions concerning non-payment of these fees.

These instructions apply to Jordanian citizens and, and to the non-Jordanian spouses and children of patients living with HIV.

Article 4 of these instructions explains that all fees pertaining to the treatment of HIV patients, excluding fees for medicine, are covered by the health insurance for workers in the public sector. The insurance covers fees for antiretroviral treatment and any related complications. It does not, however, cover fees for the treatment of any other unrelated diseases the patient may have.

Regarding the cost of medication, a patient living with HIV pays 250 fills for any type of medicine prescribed to them when they are discharged from hospital or after examination at a specialized health clinic. Patients living with HIV who are also drug addicts may be treated free of charge in hospitals or health centers affiliated to the Ministry of Health, provided that they comply with the therapeutic programme prescribed to them by the doctor in charge. If they do not comply and are discharged from the hospital or medical center at their own risk, they will only be re-admitted to hospital or a medical center upon payment of a fee of 100 JODs, and treatment will only be resumed under certain conditions.

## Social Security Act, 2010 (Temporary Law No.7 of 2010)

Under Article 4(a) of the recently adopted Social Security Act, the provisions of the Act apply to the following individuals:

Unofficial translation:

المادة ٤ (أ)

Article 4 (a):

*The provisions of this Act shall apply to the categories [of persons] listed below, provided the persons are not under the age of 16 and irrespective of nationality, the length or type of their contract, or the nature of the remuneration, provided it is not below the minimum wage from which social security contributions are deducted under the Labour Code in force, and irrespective of whether the work is performed inside or outside the Kingdom, provided that it does not contravene international agreements pertaining to double insurance:*

يخضع لأحكام هذا القانون كل من الفئات المبينة تالياً من لا تقل أعمارهم عن ست عشرة سنة دون أي تمييز بسبب الجنسية ومهما كانت مدة العقد أو شكله وأياً كانت طبيعة الأجر شريطة أن لا يقل الأجر الذي تحتسب الاشتراكات على أساسه عن أي منهم عن الحد الأدنى للأجور المعتمد وفقاً لقانون العمل النافذ وسواء أكان أداء العمل بصورة رئيسية داخل المملكة أم خارجها مع عدم الإخلال بأحكام الاتفاقيات الدولية التي تنظم قواعد الأزواج في التأمينات:

1. All workers covered by the provisions of the Labour Code in force.
2. All self-employed workers and employers, and general partners working in their facilities, provided that executive instructions determine their entitlement to social security, including their working hours, vacations, the inspections and the wages covered by the provisions of this law.
3. Workers who have not retired under the provisions of the Civil Retirement Act or the Military Retirement Act.
4. Jordanian employees working in regional or international missions or political or military missions, whether Arab or foreign, based in Jordan, as well as those working in liaison offices and cultural or educational centers affiliated to those missions.

١. جميع العمال الخاضعين لأحكام قانون العمل النافذ.
٢. العاملون لحسابهم الخاص وأصحاب العمل والشركاء المتضامنون العاملون في منشاتهم على أن حدد التعليمات التنفيذية الأحكام المتعلقة بشمولهم بما في ذلك ساعات العمل والإجازات والراحة والتفتيش وأجورهم المشمولة بأحكام هذا القانون.
٣. الموظفون غير التابعين للتقاعد بموجب أحكام قانون التقاعد المدني أو قانون التقاعد العسكري.
٤. الأشخاص الأردنيون العاملون لدى البعثات الإقليمية والدولية والبعثات السياسية أو العسكرية العربية والأجنبية العاملة في المملكة والملحقيات والمراكز الفنية والتعليمية التابعة لها.

Insurance in the Social Security Corporation is compulsory for all individuals who fall within the categories listed above. However, for owners of a facility who are, under the law in force, subject to the provisions of a compulsory pension insurance plan, insurance in the Social Security Corporation is optional under the provisions of Article 7 of this law. This Article provides that Jordanians who are not covered by this law can opt to subscribe to this insurance, regardless of whether they reside inside or outside Jordan, in order to receive a retirement pension or other retirement benefits listed under the Act.

*HIV, workers living with HIV are considered to have a “natural permanent total disability”, which is defined in Article 2 (a) of the Law*

For the categories of workers who are eligible to receive social security, there are three different scenarios for those living with HIV. According to a source at the Social Security Corporation, although there are no specific provisions in the Social Security Act pertaining to HIV, workers living with HIV are considered to have a “natural permanent total disability”, which is defined in Article 2(a) of the Law as: “A disability which is not caused by a work injury, and which permanently and totally prevents the insured person from practicing any profession or paid employment”. The first scenario occurs if a person was already HIV-positive when they enrolled in social security insurance. In that case, if their health deteriorates while working and they are eventually unable to continue working, they would not be eligible to receive a disability pension upon termination of employment. They would, however, be entitled to a lump sum as compensation for disability, provided they have worked for at least 12 months (whether consecutively or cumulatively). This differential treatment of HIV-positive workers is not in line with paragraph 20 of the Recommendation, which explicitly provides that there should be no discrimination against workers or their dependents based on real or perceived HIV status in their capacity to access social security systems and occupational insurance schemes or in relation to benefits under those schemes, including health care, disability and death and survivor’s benefits.

The second and third scenarios apply to workers who become HIV-positive after they enrolled in social security insurance and not because of their work. In this case, Article 67(a) applies. It stipulates the following:

المادة 1٧ (أ):

يستحق المؤمن عليه راتب اعتلال العجز الكلي الطبيعي الدائم أو راتب اعتلال العجز الجزئي الطبيعي الدائم شريطة تحقق ما يلي:

١. انتهاء خدمته.

٢. أن يتقدم بطلب تخصيص راتب الاعتلال خلال مدة لا تتجاوز ستة اشهر من تاريخ انتهاء الخدمة.

٣. أن لا تقل اشتراكاته الفعلية عن (١٠) اشتراكا منها (٣٦) اشتراكا متصلا.

٤. ثبوت حالة العجز بقرار من المرجع الطبي.

Unofficial translation:

*Article 67(a):*

*An insured person shall be entitled to a disability pension for a natural permanent total or partial disability provided the following conditions are fulfilled:*

*1- Termination of employment.*

*2- The insured person applies for the allocation of a disability pension within six months of their employment being terminated.*

*3- The insured person has made a minimum of 60 contributions, of which 36 must have been consecutive. [emphasis added]*

*4- The disability must be certified by the decision of a competent medical authority.*

As can be deduced from this provision, if a worker becomes HIV-positive after enrolling in the social security insurance scheme, and not as a result of their work, they must have made at least 60 contributions, of which 36 must have been consecutive, in order to be eligible to receive a disability pension upon termination of their employment. If they have been working for less than 60 months, they would only be entitled to a lump sum in compensation upon

leaving work. If the worker is dismissed before completing 60 months, they can continue to pay contributions on a voluntary basis until they total 60 in order to be eligible for a disability pension. As noted above, only Jordanian nationals may make voluntary contributions to the social security insurance scheme.

These are the provisions pertaining to compensation for a natural, permanent and total disability, of which HIV infection is one. In addition, for workers who contract HIV through their work, such as medical and health professionals, Section 4 of the Social Security Act contains additional provisions pertaining to occupational injuries. Under Article 25 of the Act, insurance for workers with occupational injuries covers the following:

Unofficial translation:

المادة ٢٥:

*Article 25*

تشمل خدمات تأمين إصابات العمل ما يلي:

*Insurance for occupational injuries shall cover the following:*

أ. العناية الطبية التي تستلزمها الحالة المرضية للمصاب.

*a- Medical care as required by the medical condition of the injured worker;*

ب. البدلات اليومية للعجز المقت عن العمل إذا أصبح المصاب غير قادر على العمل بسبب إصابة العمل على أن تراعى في ذلك أحكام المادة (٣١) من هذا القانون.

*b- Daily allowances for temporary disability from work if the patient is no longer able to work as a result of the work injury, taking into account the provisions of Article 31 of this Act;*

ج. الرواتب الشهرية و تعويضات الدفعة الواحدة المستحقة للمصاب.

*c- Monthly salaries and lump sum compensation owed to the injured worker;*

د. الرواتب الشهرية للمستحقين.

*d- Monthly salaries for those who are eligible to receive them;*

هـ. نفقات الجنازة التي يستحق دفعها في حال وفاة المؤمن عليه نتيجة إصابة العمل و تحدد التعليمات التنفيذية مقدارها ومن تصرف لهم.

*e- Funeral expenses payable in case of the insured person's death as a result of a work-related injury. The amount to be paid and the persons to whom it shall be paid will be determined in accordance with executive instructions.*

These are the general expenses covered by social security insurance in the case of occupational injury. The medical care referred to in Article 25(a) covers hospitalization and medical treatment expenses.

While these provisions provide some form of compensation for workers with an occupational injury, like the Labour Code, HIV and AIDS are not explicitly listed among the diseases or occupational injuries requiring compensation. This issue was discussed with a source at the Social Security Corporation. The source stated that, while AIDS is not explicitly listed in the Annex, workers who contract it as a result of occupational injury (such as nurses or doctors) would still be eligible for compensation. In this case, HIV and AIDS would be assimilated to another disease listed in the Annex and compensation would be calculated accordingly. It seems, therefore, that employees who are infected with HIV as a result of an injury at work do not explicitly benefit from compensation under the provisions of the Social Security Act.

Therefore, it seems that there is a gap in both the Labour Code and the Social Security Act regarding compensation for workers who are infected with HIV as a result of an occupational injury. This gap could be addressed by explicitly including HIV-related illnesses in the tables of occupational diseases and injuries annexed to both these Acts. The ILO List of Occupational Diseases Recommendation, 2002 (No. 194) includes HIV, AIDS and TB.

In cases where a worker living with HIV does not benefit from any form of financial assistance, either based on the provisions of the Labour Code or the Social Security Act, a source at the Ministry of Health indicated that the individual could still submit a request for financial assistance to the Ministry of Health. Upon studying the request and evaluating the needs of the applicant, the Ministry of Health could provide some form of financial assistance to the person living with HIV, which would be deducted from the general fund. This financial assistance is determined on a case-by-case basis. There are no provisions in the law pertaining to this issue, so the type and amount of financial assistance is strictly left to the discretion of the Ministry of Health.

# Chapter 3:

# Discussion and Final Recommendations

According to the specific gaps identified and discussed in this document, Jordanian laws should therefore be amended to increase the level of legal protection for workers with HIV in the workplace, ensure that their rights are upheld in accordance with ILO standards and that workers are not subject to discrimination on the grounds of their state of health.

With specific reference to the findings of this study, the key provisions in Jordanian legislation pertaining to HIV and AIDS and the workplace are outlined below. These key provisions should improve the status of individuals living with HIV who are either seeking work or who are currently working in Jordan:

## **Summary of Proposed Amendments**

- Article 19 of the Labour Code and the related Regulations and Instructions, could be amended to ensure that employers no longer require jobseekers to undertake an HIV test before they are recruited. This amendment should be clear and explicit to encourage PLHIV to apply for work in the private sector.

*By the time this study was implemented, it is important to note that dialogue toward the development of a National policy on HIV and AIDS and World of work already started.*

- Article 43 of the PSE Regulations should be amended so that employees in the public service are not required to undergo an HIV test. As stated earlier in this study, the Ministry of Health legal department has already drafted a regulation which, if adopted, would ban mandatory HIV testing for employment purposes in the public sector.
- Instructions should be issued outlining the nature of the regular medical examination employees are required to undergo. The instructions should ensure that HIV testing is not imposed on employees, regardless of the sector that they work in.
- The requirement that all migrant workers undergo HIV testing to obtain a work permit should be removed from the Labour Code and the related Regulations and Instructions.
- The tables of occupational diseases and injuries annexed to the Labour Code and the Social Security Act should be updated to include infection with HIV and HIV-related illnesses, such as tuberculosis (TB), as occupational diseases or injuries.
- Legislation should be enacted to enable workers living with HIV to have disability pension under the provisions of the Social Security Act.
- There is a general perception that workers living with or affected by HIV are stigmatized and discriminated against because of the negative connotations associated with it. There is, therefore, a need to raise awareness in the workplace about all modes of HIV transmission, prevention methods and available treatment.
- Employers should adopt internal written policies on HIV and AIDS in the workplace. Employers, in collaboration with workers should be encouraged to develop, adopt and effectively implement internal policies that would guarantee the rights of workers living with HIV and related illnesses. In order to do so, they should first be made aware of Recommendation No. 200.

By the time this study was implemented, it is important to note that dialogue toward the development of a National policy on HIV and AIDS and world of work had already started. This dialogue is being promoted by the Ministry of Labor in consultation and collaboration with the General Federation of Jordan Trade Union and Jordanian Chamber of Industry and with the support of the ILO Regional Office for Arab States (further details can be found in the discussion chapter). This process should be completed and the policy submitted to competent authorities.

*The law should provide concrete and explicit protection of the rights of people living with HIV in the workplace.*

## Discussion

This study has provided an analysis of the laws and practices affecting individuals living with HIV in the workplace in Jordan. Its aims were to support the Government with evidence-informed recommendations to align national legislation with international standards, in particular with Recommendation No. 200.

The analysis showed that there are significant discrepancies between Jordanian legislations concerning the world of work and international standards. These discrepancies might lead to acts of discrimination in the workplace towards individuals with HIV and/or AIDS. These discrepancies call for the need to amend some of the laws and issue instructions to clarify provisions that are vague and open to misinterpretation. The law should provide concrete and explicit protection concerning the rights of people living with HIV in the workplace. At the same time, an efficient way to address this issue could be by adopting a separate policy dedicated to people living with HIV and AIDS and the world of work. The development of a comprehensive policy covering HIV and AIDS and world of work should also give effect to Recommendation No. 200.

Interviews with public officials revealed that the Jordanian Government is aware of the difficulties facing people living with HIV, and that it is willing to address this situation. In this regards, Jordan has indeed given this matter considerable attention in recent years.

*ILO constituents, with assistance from the ILO office, can play a key role in supporting the National AIDS response in Jordan based on the guidelines of the new international Labour Standard on HIV/AIDS R. 200.*

The first step was made by the Jordanian delegates that participated in the 99th session of the International Labour Conference in June 2010 and who voted in favour of adopting the Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200).

As a follow-up to the adopting of Recommendation No. 200 a statement of commitment giving effect to Recommendation No. 200 was endorsed by the Jordanian delegation in June 2011 during the ILO's technical consultation meeting "Toward the development of a World of Work response in Mashreq countries", Beirut June 2012. This statement recognized that HIV and AIDS are workplace concerns and called on the world of work to take prompt and timely action in response to HIV/AIDS.

It is important to note that the new National Strategic Plan on HIV and AIDS, 2012-2016, calls for the close involvement of the Ministry of Labor, and the role of HIV/AIDS workplace initiatives is clearly defined in accordance with Recommendation No. 200. The role of the Ministry of Labor in conjunction with the social partners is considered to be of crucial importance because they can: (a) develop a clear policy tailored for the workplace; (b) reach workers in specific sectors at higher risk of HIV; and (c) cooperate with the private sector and trade unions in establishing HIV-sensitive workplace programmes. Furthermore, the new Jordan NSP on HIV/AIDS 2012-2016, recognizes and promotes the role of the Ministry of Labor in reaching adolescents who are most at risk for example, those who are out of school and unemployed.

ILO constituents, with assistance from the ILO office, can play a key role in supporting the National AIDS response in Jordan based on the guidelines of the Recommendation No. 200. The preliminary findings of this study, shared confidentially with the Ministry of Labor and social partners have prompted them to take action in response to the AIDS crisis.

Indeed, this process started in 2011 and the Ministry of Labor, the Ministry of Health, Jordan Chamber of Industry and General Federation of Jordan Trade Union has taken the following relevant steps:

- They have appointed focal points on HIV and world of work (September 2011);
- They have promoted and carried out HIV/AIDS awareness and advocacy seminars for employers and workers (November 2011), and organized the national tripartite workshop “Toward the development of a National Policy on HIV and AIDS and the world of work” (December 2011);
- As a result of the aforementioned effort Jordan drafted the National Policy on HIV and AIDS and the world of work (December 2011), endorsed through the workshop mentioned earlier “Towards the development of a National Policy on HIV and AIDS and the world of work”.

Adopting the draft policy was a clear indication of a willingness to change and it is an opening that should be built upon. The development of the National policy on HIV and the world of work mark an important step not only for Jordan but for all Arab states. The policy document is in the process of being finalized and submitted to the competent authorities for endorsement.

*The development of the National policy on HIV and the World of work, marks an important step not only for Jordan but for all Arab states.*

Interviews that took place with officials, CSO representatives and PLHIV make it clear that there is a growing need to draft and adopt this policy in order to regulate the rights of individuals infected or affected by HIV in the workplace and to improve definitions of the role of world of world in mitigating the impact of HIV in the workplace and as a contribution to the national response to AIDS.

It should be noted that, while these efforts are praiseworthy, perhaps the greatest challenge for policymakers, activists and officials working on HIV and AIDS in Jordan is the need to raise the level of awareness of this disease amongst the general population, and dispel the stigma attached to infected individuals especially in the workplace. It was clear from interviews with PLHIV that legislative efforts, while helpful, are not sufficient to safeguard the rights of people infected with HIV-related illnesses. In order to deliver the best results, these efforts must go hand-in-hand

with initiatives aimed at changing perceptions of HIV and its causes, and providing people living with HIV with the chance to lead a long, healthy and productive life in dignity and with equal access to employment opportunities.

In the meantime, civil society must be encouraged to play a greater role in advocating for the rights of this community by helping them to seek formal work in both the private and public sectors, and by providing these individuals and their caregivers with legal and emotional support. In this regard, associations representing people living with HIV need to be strengthened to enable them to advocate for the rights of people living with HIV at work and to promote tailored-training programs.

At present people living with HIV and AIDS in Jordan face enormous challenges entering the labour market. Discriminating against them will push the HIV epidemic underground and force people living with HIV into the black labour market.

## Final Recommendations

This study finding has led to the following recommendations:

1. The draft policy on HIV and AIDS and the world of work should be finalized and submitted to the Ministry of Labor and other relevant authorities for their endorsement.
2. The Ministry of Labor in close collaboration with the social partners and the Ministry of Health should take steps towards establishing a technical committee on HIV/AIDS and the world of work to ensure that the national policy is properly implemented and evaluated and to ensure that the Ministry of Labor begins updating laws concerning HIV/AIDS in the workplace.
3. Necessary training and orientation should be provided to members of the afore-mentioned technical committee and to staff at the Ministry of

Labor to enable them to ensure that the draft policy is properly endorsed and implemented.

4. Consultations should be initiated with national and international experts to start a review of data concerning HIV testing policies in Jordan. Tailored seminars that include data analyses of Jordan and other countries should be encouraged in collaboration with the ILO and UNAIDS.
5. Specific training should be promoted that targets labour inspection officials on how Jordanian law is applied regarding HIV and AIDS in the workplace.
6. The role of and providing training for NGOs dealing with persons living with HIV should be encouraged, strengthened and sustained to enable them to advocate for the rights at work of persons living with HIV and to set up mechanisms to promote workplace activities that reduce stigma and discrimination.
7. A workplace programme should be started in conjunction with the social partners and the association of persons living with HIV to develop sustainable approaches aimed at promoting behavioural change in the workplace that eliminate and stigmatized and discriminate persons living with HIV by co-workers and employers.
8. The private sector and the association promoting HIV promotion and education should be encouraged to start up an education campaign in the workplace that increases knowledge of HIV and prevents new HIV infections amongst workers and their families.
9. The debate surrounding HIV and AIDS should be promoted within existing training activities targeting employers' and workers' representatives.

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