

Strengthening the HIV/AIDS response: Towards a new international labour standard - ILO constituents strengthen their leadership in the HIV/AIDS response

The ILO will reach a major milestone in the global response to HIV/AIDS when the International Labour Conference votes on the adoption of an international standard on HIV/AIDS and the world of work in June 2010, almost a decade after the launching of the ILO Code of Practice on HIV/AIDS. Once the standard is adopted by the representatives of governments, employers and workers of ILO member States, it will be the first international human rights instrument entirely dedicated to HIV/AIDS and applicable to all workers in all sectors, formal and informal, as well as to jobseekers, laid-off workers and persons in vocational training.

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Governments, employers' and workers' organizations of the 183 member States of the International Labour Organization (ILO) are working on the development of the first international human rights instrument focusing on HIV/AIDS. The process began in 2007 with a decision of the ILO Governing Body to include a standard-setting item on HIV/AIDS on the agenda of the International Labour Conference (ILC). One of the main motivating factors for the new international labour standard was the stigma and discrimination that resulted in many jobs lost. It was decided that it was necessary to adopt an standard in order to increase the attention devoted to the subject at the national and international levels, to promote united action among the key actors on HIV/AIDS, and to increase the impact of the *ILO Code of Practice on HIV/AIDS and the world of work* developed by a tripartite group of experts and adopted by the ILO Governing Body in 2001.

Since the beginning of the epidemic, almost 60 million people have been infected with HIV and 25 million have died of HIV-related causes. Today, more than 33 million people around the world are living with HIV. Significant progress has been made in expanding access to treatment, so that by the end of 2008 more than 4.7 million people had access to HIV treatment. While there is no cure for the HIV virus, early treatment and continued adherence to antiretroviral treatment can halt its progression, permitting people living with HIV to continue to work and live productive lives for an indefinite period of time. Nevertheless, efforts to prevent and reverse the spread of the pandemic must continue to be strengthened and expanded. The number of new HIV infections continues to outstrip the number of people in treatment – for every two people starting treatment, another five become infected with the virus.

More than 90 per cent of people living with HIV are youth and adults in their productive and reproductive prime. If they lose their livelihoods as a result of HIV infection, they risk losing their access to treatment as well as their ability to support their families. Enterprises are also negatively affected, suffering the loss of trained workers and loss of productivity. The workplace is an optimal entry point for reaching the working-age population and providing information on HIV prevention, treatment, care and support.

Policies and strategies for prevention and treatment must reach all workers where they work, including in the informal and rural economy - Juan Somavia, ILO Director-General, on the occasion of World AIDS Day, 1 December 2009

Building on a strong foundation

Developed through an extensive tripartite consultation process, the *ILO Code of practice on HIV/AIDS and the world of work* (2001) provides ILO constituents with the framework to build a strong national HIV response and has been translated into 57 languages to date. The Code establishes ten key principles as the basis for the development of comprehensive rights-based national HIV/AIDS

workplace policies and programmes. The principles of the Code have been successfully applied in many countries around the world.

Why is a new standard necessary?

Building on the strong foundation established by the *ILO Code of Practice*, the new instrument will promote more uniform, coordinated action on HIV/AIDS to replace the varied patchwork of different types of measures taken at the country level. Also, the Code is a voluntary instrument for which uptake is optional. It does not give rise to any obligation on the part of constituents to give effect to its principles. In contrast, a new international labour standard will strengthen the impact of the Code, giving its principles greater force and visibility. Moreover, following adoption of the instrument, each member State will be required under the ILO Constitution to determine what measures it should take to implement the new instrument, including the adoption of national laws and policies.

The standard will promote the development and adoption of HIV workplace policy frameworks in countries that have none. It will promote the establishment of synergies at the national level and facilitate the distribution of roles and responsibilities between public, private and civil society actors. As an international labour standard, the instrument would also be adaptable to the specific circumstances and needs of each member State.

Meeting the challenges through an unfolding process

The standard has been developed following the double-discussion process provided for in the ILO Constitution. Report IV (1) on *HIV/AIDS and the World of Work* was issued in 2008. It provided a global overview of the HIV response in the different ILO member States, showing that 169 out of the 183 ILO member States have provided for some measures on HIV.

Report IV (1) laid the basis for the first discussion on the standard at the 98th Session of the International Labour Conference in June 2009, which took place within the Committee on HIV/AIDS and the World of Work composed of 148 members (79 government members, 27 employer members and 42 worker members). Discussions in the Committee were lively and the first draft text of the instrument was the subject of almost 300 amendments. Broad consensus was ultimately reached on the substantive provisions of the draft instrument, which addresses a range of fundamental human rights issues.

The draft instrument envisages a broad scope of application, covering all workers in any employment or occupation, persons in vocational training, volunteers, jobseekers and job applicants, laid-off workers in all sectors of economic activity, including the private and public sectors and the formal and informal economies, as well as persons in the armed forces and uniformed services.

Principles of the *ILO Code of practice on HIV/AIDS and the world of work*

- Recognition of HIV/AIDS as a workplace issue
- Non-discrimination on the basis of HIV status
- Gender equality
- Healthy work environment
- Social dialogue (between employers, workers and government), with inclusion of persons living with HIV
- No screening for purposes of exclusion from employment
- Confidentiality
- Continuation of employment relationship and prohibition of termination due to HIV status

- Importance of prevention
- Need for treatment, care and support, including access or referral to services.

It highlights the importance of the principle of non-discrimination, providing that a job applicant should not be denied access to employment on the basis of HIV status, whether real or perceived. Similarly, the instrument establishes that HIV status is not a valid justification for termination of employment. The instrument also safeguards workers' rights to privacy. The principle of continuation in employment is established, according to which workers living with HIV/AIDS should be allowed to continue to work – with reasonable accommodation if necessary – for as long as they are fit to do so.

Prevention is a central theme in the draft instrument, which calls for the development and implementation of comprehensive workplace education programmes and campaigns promoting voluntary counselling and testing. Indeed, finding out one's HIV status frequently empowers workers, enabling them to access treatment early and dramatically increasing their prospects of remaining healthy and fit for work indefinitely.

The instrument focuses on measures to mitigate the impact of the epidemic and improve the quality of life for people living with HIV, and on ensuring mechanisms whereby there is on-going access to treatment. To further this end, the instrument calls for public health services to be strengthened. Examples of measures to support people living with HIV include, among others, those ensuring that workers living with HIV, and their dependants, have equal access to health care and social security benefits, as well as the development of income-generating opportunities for people living with or persons affected by HIV/AIDS.

HIV/AIDS and ILO member States

- Of the 183 ILO member States, 169 have adopted a national HIV/AIDS strategy.
- More than 70 ILO member States have, or are in the process of adopting, national legislation on HIV/AIDS.
- A total of 30 countries have adopted or are in the process of adopting specific HIV workplace rules.
- Countries have addressed HIV/AIDS in different ways, some dealing with HIV/AIDS under equal opportunity or public health legislation, whereas others have also integrated HIV/AIDS into general labour legislation.

The draft instrument also contains provisions focusing on specific groups, including children and young persons, migrant workers and persons in vocational training.

Member States may give effect to the Recommendation through a range of measures, including through the adoption of national laws and regulations, collective agreements, national and workplace policies and programmes, and sectoral strategies with particular attention to sectors in which workers are the most vulnerable to HIV.

The second tripartite committee discussion will take place at the 99th Session of the ILC in June 2010, at which time the new standard is expected to be adopted by the required two-thirds majority vote of the ILC.

Almost a decade after the launching of the *ILO Code of Practice on HIV/AIDS and the world of work* at the UN General Assembly Special Session on HIV/AIDS (UNGASS, 2001), a new international labour standard on HIV/AIDS and the world of work will set a key milestone in the global HIV/AIDS response.