

2012

TECHNICAL  
ASSISTANCE GUIDELINES  
ON HIV AND AIDS AND  
THE WORLD OF WORK

**Technical Assistance Guidelines on HIV and AIDS and the World of Work**

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**2012**



**labour**

Department:  
Labour  
REPUBLIC OF SOUTH AFRICA

# TECHNICAL ASSISTANCE GUIDELINES

## ON HIV AND AIDS AND THE WORLD OF WORK

### **Publisher**

Department of Labour  
Chief Directorate of Communication  
Private Bag X117  
Pretoria  
0001

### **Text**

Commission for Employment Equity

### **Editing, Layout and Design, photography and distribution**

Sub-directorate of Media Production, Design Studio  
Chief Directorate of Communication, Department of Labour

### **Printer**

Government Printers

**[www.labour.gov.za](http://www.labour.gov.za)**

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## GLOSSARY OF TERMS

<b>AIDS</b>	Acquired Immune Deficiency Syndrome - a syndrome that results from infection with HIV
<b>ASO</b>	AIDS Service Organisation is a nonGovernmental, non-profit group that provides services such as medical care, counselling, legal and housing assistance, and access to food banks to people infected with HIV
<b>Antibodies</b>	Substances produced by cells in the human body's immune system in response to foreign substances that have entered the body
<b>Asymptomatic care</b>	Infected by a disease agent but exhibiting no medical symptoms. Steps taken to promote a person's well-being through medical psychosocial, spiritual and other means
<b>CCMA</b>	Commission for Conciliation, Mediation and Arbitration is a dispute resolution body established in terms of the Labour Relations Act, 66 of 1995 (LRA) as amended
<b>COIDA</b>	Compensation for Occupational Injuries and Diseases Act, 61 of 1997 as amended provides for compensation for disablement caused by occupational injuries or diseases sustained or contracted by employees in the course of their employment, or for death resulting from such injuries or diseases
<b>Confidentiality</b>	Right of every person, employee or job applicant to have their medical information, including HIV status, kept private
<b>Counselling</b>	Counselling is defined as a confidential dialogue between a client and a trained counsellor aimed at enabling the client to cope with stress and take personal decisions related to HIV and AIDS. Counselling may be provided by a professional or a lay counsellor
<b>DOTS</b>	Directly Observed Treatment Short-course is a strategy used to reduce the number of tuberculosis (TB) and health care workers observe patients as they take medicine.
<b>ELISA Test</b>	Enzyme Linked Immuno-Sorbent Assay: the test used to identify the presence or absence of HIV antibodies
<b>EAP</b>	Employee Assistance Programme is an employee benefit programme that is intended to help employees deal with personal challenges that might adversely impact their work performance, health and wellbeing
<b>EEA</b>	Employment Equity Act, No 55 of 1998 as amended
<b>EMTCT</b>	Elimination of Mother to Child Transmission
<b>Epidemic</b>	A disease, usually infectious, that spreads quickly through a population
<b>Epidemiology</b>	The study of the distribution and determinants of disease in human populations
<b>Evaluation</b>	An assessment of progress towards and the achievement of an objective. Generally carried out at a specific point, or points in time
<b>GIPA</b>	Greater involvement of people living with HIV and AIDS is a principle that aims to realise the rights and responsibilities of people living with HIV, including their right to self-determination and participation in decision-making process that affect their lives
<b>HCT</b>	HIV Counselling and Testing is a programme that serves as an entry point to a comprehensive continuum of care which seeks to facilitate provision of care, good quality, uniform and equitable HIV counselling and services in the country
<b>HIV</b>	Human immunodeficiency virus - the name of the virus which weakness the immune system and leads to AIDS
<b>HIV testing</b>	Any form of testing designated to identify the HIV status of a person, including blood tests, saliva tests or medical questionnaires
<b>ILO</b>	International Labour Organisation: is a UN specialised agency responsible for drawing up and overseeing international labour standards

<b>Immune system</b>	A complex system of cells and cell substances that protects the body from infection and disease
<b>Incidence of HIV</b>	The number of new cases of HIV in a given time period, often expressed as a percentage of the susceptible population
<b>Indicator</b>	A direct or indirect measure of change
<b>KAPB</b>	Knowledge, Attitudes, Practices and Behaviour - a survey is normally conducted as part of an evaluation of intervention activities conducted on behalf of the National HIV, AIDS and TB control programmes
<b>LRA</b>	Labour Relations Act, No. 66 of 1995 as amended regulates the organisational rights of workers and their representatives, promotes and facilitates collective bargaining at the workplace and at sectoral level
<b>Monitoring</b>	Monitoring is an on-going assessment or measurement of a programme that aims to provide early indications of progress or lack of progress in the achievement of the programme's objectives
<b>NEDLAC</b>	National Economic Development and Labour Council is the vehicle by which Government, labour, business and community organisations seek to cooperate, through problem-solving and negotiation, on economic, labour and development issues, and related challenges facing the country
<b>Occupational Exposure</b>	Exposure to blood other body fluids, which may be HIV infected, during the course of carrying out working duties
<b>Opportunistic Infections (OI)</b>	Infections that occur because of a person's immune system is so weak that it cannot fight the infections. Opportunistic infections are illnesses caused by various organisms, many of which usually do not cause disease in persons with healthy immune systems
<b>Pandemic</b>	An epidemic occurring simultaneously in many countries
<b>Partnerships</b>	Relationships that are built with other organisations to support existing initiatives within the workplace and the community
<b>PLHIV</b>	Means people living with HIV
<b>Policy</b>	Written document that aims at setting out an organisation's position and practices on HIV and AIDS
<b>Positive living</b>	A way of living with HIV or AIDS which enables people to cope with the difficulties and challenges they might face, and to live a long and fulfilling life
<b>PEP</b>	Means antiretroviral, including medicines that are taken after exposure or possible exposure to HIV. The exposure may be occupational, as in a needle stick injury, or non-occupational, as in unprotected sex with a person with HIV infection. The latter is sometimes referred to as Non Occupational-Post Exposure Prophylaxis
<b>PreP</b>	Pre-exposure prophylaxis (PreP) refers to antiretroviral medicines prescribed before exposure or possible exposure to HIV. PreP strategies under evaluation increasingly involve the addition of a post-exposure dosage
<b>Prevalence of HIV</b>	The number of people with HIV at a point in time, often expressed as a percentage of the total population
<b>Prevention programme</b>	A programme designed to prevent HIV transmission, including components such as awareness, education and training, condom distribution, treatment of sexually transmitted infections, occupational infection control
<b>Risk</b>	Probability of a person acquiring HIV
<b>Risky behaviour</b>	Individual, or group behaviour, that increases the risk of becoming infected with HIV
<b>Risk assessments</b>	Identify factors that may make a particular workforce, workplace or surrounding communities more vulnerable to infection with HIV

<b>Sero-conversion</b>	The point at which the immune system produces antibodies and at which time the HIV antibody test can register an HIV infection
<b>SANAC</b>	South African AIDS Council is a mechanism comprised of Government and civil society organisations aimed to oversee and advise Government on HIV and AIDS
<b>STI</b>	Means Sexually Transmitted Infections which are spread by the transfer of organism from person to person during sexual contact e.g. syphilis
<b>Support</b>	Services and assistance that could be provided to help a person deal with difficult situations and challenges
<b>Susceptibility</b>	Factors determining rate at which the HIV epidemic is propagated at an individual, group or societal level
<b>TB</b>	Means tuberculosis which is an infectious disease characterised by the growth of nodules (tubercles) in the tissues, especially the lungs. Tuberculosis is more common in persons with immune system problems such as HIV and AIDS
<b>Treatment</b>	Steps taken to care for and manage an illness
<b>Unfair discrimination</b>	An employee is treated differently due to their real or perceived HIV status, in a way that impairs their fundamental dignity. Discrimination is not unfair if it is based on the inherent requirements of a job
<b>UNAIDS</b>	Joint United Nations Programme on HIV and AIDS
<b>VCT</b>	Voluntary Counselling and Testing
<b>Vulnerability</b>	External factors that place a person at risk of HIV infection vulnerability factors include for example, age, gender, and income level
<b>Wellness programme</b>	A programme designed to promote the physical and mental health as well as the well-being of employees, including components such as counselling, support groups, nutritional supplements, provision of treatment for opportunistic infections, provision of antiretroviral therapy
<b>Window period</b>	The incubation period between infection and detection of HIV
<b>Workplace programme</b>	An intervention to address a specific issue within the workplace (for example, providing staff access to a voluntary HIV counselling and testing service).

## FOREWORD

This Technical Assistance Guidelines (TAG) is intended to complement the recently adopted 'Code of Good Practice on HIV and AIDS and the World of Work' of 2012 within the framework of the policy options indicated in the 'Employment Equity Act' of 1998 as amended. The TAG will equip employers, workers and their organisations in the public and private sectors and informal economies, including other key stakeholders, with practical tools to take action in HIV and AIDS response and eliminate unfair discrimination in the workplace.

One of the most serious public health problems facing South Africa is HIV, AIDS and TB. These diseases do not only threaten the lives of individual employees and employers, but have a significant impact on each and every workplace, the effective functioning of the labour market and the national economy as a whole.

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

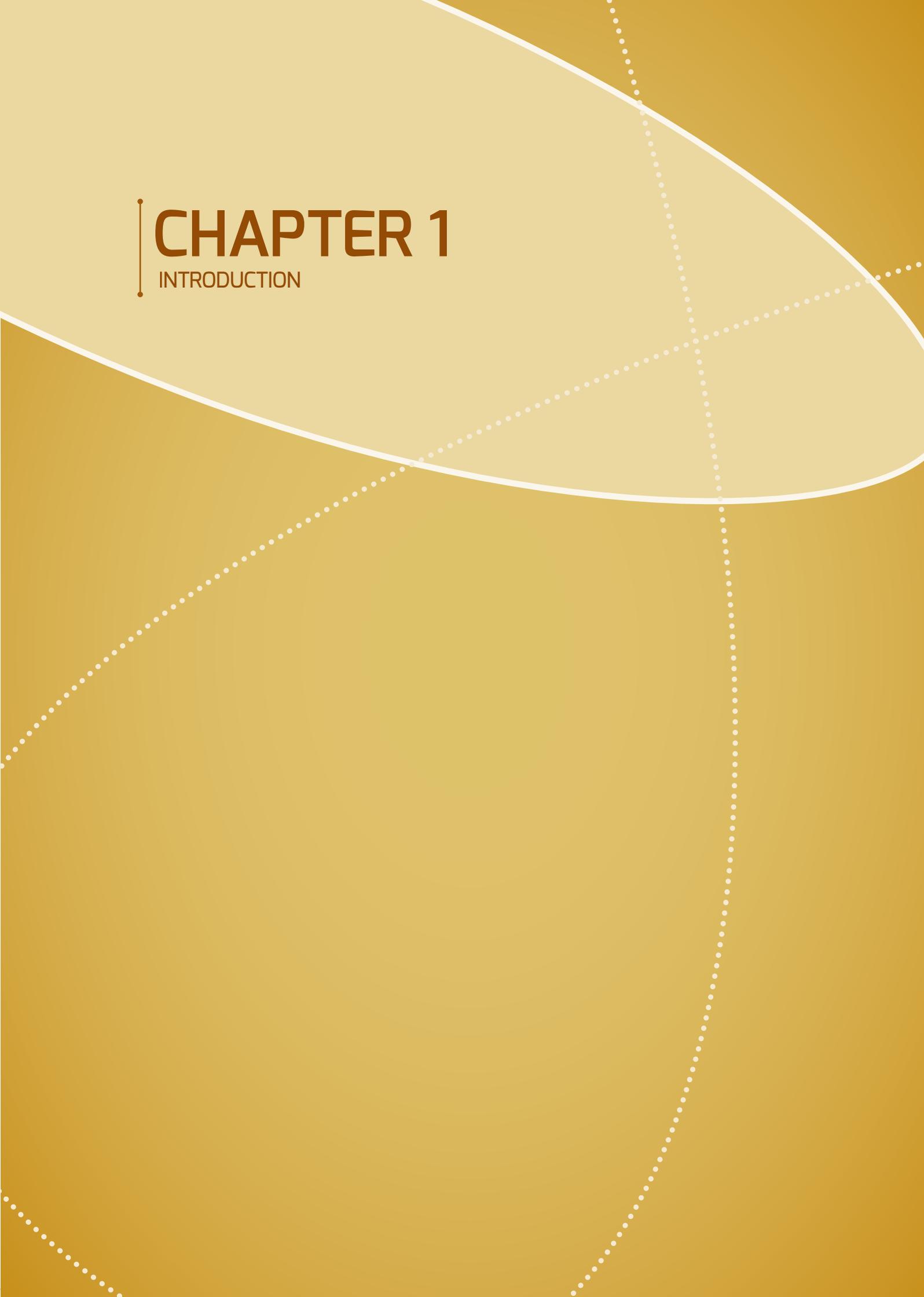
In re-affirming the Government's commitment to intensify its comprehensive programme to fight HIV, STIs and TB in partnership with all sectors of the economy, my Department maintains specific provisions in the Employment Equity Act (1998) as amended, which specifically prohibit unfair discrimination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

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

In conclusion, I wish to express my sincere gratitude to the Commission for Employment Equity for the significant role it played in reviewing and developing both the Code and the TAG. My special word of thanks goes to the International Labour Organisation (ILO) for their unwavering technical and financial support. My sincere appreciation also goes to the NEDLAC social partners, i.e. Organised Labour, Organised Business and Community Constituencies for their valuable contributions during this process.



NM Oliphant, MP  
Minister of Labour - South Africa



**CHAPTER 1**  
INTRODUCTION

## CHAPTER 1: INTRODUCTION

### 1.1 IMPACT OF HIV and AIDS ON THE WORLD OF WORK

HIV and AIDS and TB have a significant impact on South African workplaces and the economy. The epidemic primarily affects working age adults, as infected employees become ill they will take additional sick leave and this will disrupt operational activities. This disruption is amplified when more qualified and experienced employees are absent, as finding a temporary replacement becomes more difficult.

The HIV epidemic has contributed to the increase in the incidences of Tuberculosis (TB) in SA, studies have demonstrated a strong correlation between HIV and TB. TB is the leading cause of death in South Africa, a trend that needs to be seen in the context of the HIV epidemic. People living with HIV are at a far higher risk of developing active tuberculosis as a weakened immune system will facilitate the development of the disease. TB can accelerate the progression from HIV to AIDS. In countries with high HIV prevalence, TB has tripled in the past two decades, which clearly illustrates the link between the two diseases.

South Africa has one of the highest co-infection rates with an HIV prevalence of almost three-quarters among people with incident tuberculosis. In 2010, the UNAIDS Global Report estimated that South Africa accounts for 49.5% (5.6 million) of people living with HIV in the Southern Africa Development Community region. The country also accounts for 62% of the region's people living with both HIV and TB.

In reaffirming the country's commitment to addressing the impact of HIV and TB in the workplace and the high levels of unfair discrimination faced by people affected by HIV and AIDS, the Government of South Africa through the Department of Labour, in consultation with all the stakeholders, has revised the Code of Good Practice on Key Aspects of HIV and AIDS and Employment to bring it in line with the ILO Recommendation, concerning HIV and AIDS and the World of Work 2010 (No.200).

In recognition of the need to assist employers, workers and their organisations in both the public and private sectors, including the informal economies, the TAG has been reviewed to provide practical guidance on the implementation of the Code of Good Practice on HIV and AIDS and the World of Work.

### 1.2 OBJECTIVES OF THE TECHNICAL ASSISTANCE GUIDELINES

The primary objective of the TAG is to provide policy guidelines to assist employers, workers and their organisations to develop and implement comprehensive gender sensitive HIV and AIDS workplace policies and programmes. These policies and programmes must be developed within the framework of decent work in the formal and informal sectors in both the public and private sectors in order to:

- a) Eliminate unfair discrimination and stigma in the workplace based on real or perceived HIV status, including dealing with HIV testing, confidentiality and disclosure
- b) Promote access to equitable employee benefits, employment protection; and management grievance procedures
- c) Create a safe and healthy working environment
- d) Promote appropriate and effective ways of managing HIV in the workplace: and
- e) Give effect to the international and regional obligations of the Republic on HIV and AIDS, TB and the World of Work.

In order to give effect to the Code, the TAG has been revised to realise the following objectives:

- Guide employers, workers and their organisations to implement the Code
- Provide practical information on the implementation of HIV and TB co-infection workplace policies and programmes; and
- Provide examples of good practices on how to respond to the impact of HIV, AIDS and TB in the workplace.

This Technical Assistance Guidelines further unpacks the following key focus areas covered in the Code:

- Scope of the Code and Key principles
- Legal framework

- Elimination of unfair discrimination and promotion of equal opportunity and treatment
- Promoting a healthy and safe working environment
- Management of HIV and AIDS in the workplace
- Monitoring and evaluation.

The TAG is designed as an accessible, user-friendly manual for employers, workers and their organisations on how to deal with fundamental human rights, freedoms and responsibilities of all workers, including principles of gender equality, right to be free from compulsory testing and disclosure of HIV status, non-discrimination in response to the impact of HIV, AIDS and TB in the workplace.

### 1.3 SCOPE OF THE TAG

The TAG covers all persons in a working environment, formal and informal workplaces under all forms of working arrangements, including:

- a) All sectors of economic activity, in both the private and public sectors, including informal economy
- b) Persons in any employment or occupation
- c) Those in training, including interns and apprentices
- d) Volunteers
- e) Jobseekers and job applicants
- f) Laid-off and suspended workers
- g) Armed forces and uniformed services.

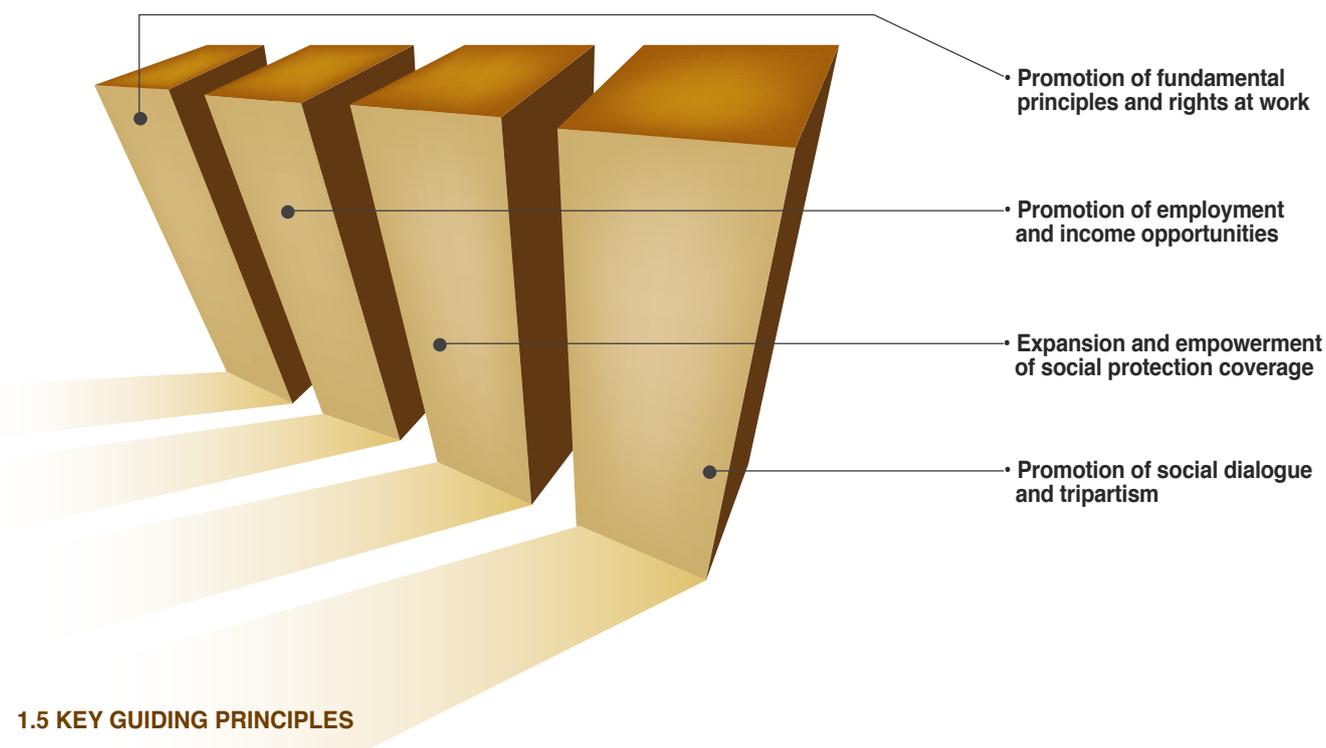
### 1.4 LEGAL FRAMEWORK

This TAG must be read in conjunction with the Code and the Constitution of the Republic of South Africa, 1996 (Act, No. 108 of 1996) and all relevant legislation as amended, which includes:

- a) Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);
- b) Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993);
- c) Employment Equity Act, 1998 (Act No. 55 of 1998);
- d) Labour Relations Act, 1995 (Act No. 66 of 1995);
- e) Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);
- f) Unemployment Insurance Act, 2001 (Act No. 63 of 2001);
- g) Children's Act, 2005 (Act No. 38 of 2005);
- h) Medical Schemes Act, 1998 (Act No. 131 of 1998);
- i) Mine Health and Safety Act, 1996 (Act No. 29 of 1996);
- j) National Health Act, 2003 (Act No. 61 of 2003);
- k) Occupational Diseases in Mines and Works Act, 1973 (Act No. 78 of 1973);
- l) Promotion of Access to Information Act, 2000 (Act No. 2 of 2000); and
- m) Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000).

**NB: Appendix A: Detailed Legislative Framework**

## South Africa Descent Work Country Programme 2010 – 2014 (four pillars)



### 1.5 KEY GUIDING PRINCIPLES

The guiding principles in this TAG are based on the HIV and AIDS Code, International Conventions and Recommendations and the Constitution of the Republic of South Africa, which include:

#### 1. Respect for human rights, fundamental freedoms and equality

The response to HIV and AIDS must be recognised as a contributing factor to the realisation of human rights, dignity, fundamental freedoms, responsibility and equality for all, including workers, and their dependants.

#### 2. HIV and AIDS is a workplace issue

HIV and AIDS is a workplace issue and must be treated like any other serious illness or condition in the workplace. HIV and AIDS must be included among the essential elements of the national, provincial, local and sectoral response to the pandemic with full participation of all stakeholders.

#### 3. Reduce HIV-related stigma and unfair-discrimination, promote equality of opportunity and fair treatment

Elimination of unfair discrimination remains a key principle for protection of the rights of individuals. There must be no unfair discrimination against or stigmatisation of workers on the grounds of real or perceived HIV status. It is the responsibility of every worker and employer to eliminate unfair discrimination in the workplace.

#### 4. Gender equality

Women and girls are at greater risk and more vulnerable to HIV infection and are disproportionately affected by HIV compared to men as a result of gender inequality. Women's empowerment is a key factor in responding to HIV and AIDS and the world of work. Measures must be taken in the world of work to ensure gender equality, prevent violence and harassment, protect sexual and reproductive health and rights and involve men and women workers, regardless of their sexual orientation, in the HIV response.

#### 5. The right to access and continue in employment

Real or perceived HIV status is not a valid cause for termination of employment. Workers with an HIV-related illness must not be denied the possibility of continuing to carry out their work, unless proven medically unfit to do so. As with many other conditions, workers with HIV and AIDS must be reasonably accommodated and be able to work for as long as medically fit. Medical examination should be limited to the capacity of a worker to perform the task(s) of a particular job.

**6. Prevention**

Prevention of all modes of HIV transmission and TB is a fundamental priority for the country. In keeping with this principle the workplace must facilitate access to comprehensive information and education to reduce the risk of HIV transmission and HIV-TB co-infection and STI's.

**7. Treatment, care and support**

Treatment, care and support services on HIV and AIDS must be accessible to all workers and their dependants. All workers must have access to affordable health services, social security, insurance schemes or other employment-related benefits either through the employer, the State or Non-Governmental Organisations. Programmes of care and support must include measures of reasonable accommodation in the workplace for persons living with HIV and HIV-related illnesses.

**8. Social dialogue/consultations**

Implementation of policies and programmes on HIV and AIDS should be based on cooperation and trust amongst Government, employers and workers and their representatives. Employers and workers should engage in the design, implementation and evaluation of national and workplace programmes, with the active involvement of persons living with HIV and AIDS.

**9. Occupational health and safety**

The workplace must be safe and healthy for all workers, and they must benefit from programmes to prevent specific risks of occupational transmission of HIV and related transmissible diseases, such as TB, especially in jobs most at risk, including the health care sector.

**10. Testing, confidentiality, and disclosure**

Workers and their dependants must enjoy protection of their privacy, including confidentiality relating to their own HIV status or that of their co-workers. Workers must not be required to undergo HIV testing or other forms of screening for HIV unless found to be justified by the Labour Court. The results of HIV testing must be confidential and not endanger access to jobs, tenure, job security or opportunities for advancement.

# CHAPTER 2

ELIMINATION OF UNFAIR-DISCRIMINATION AND  
PROMOTION OF EQUAL OPPORTUNITY AND TREATMENT

## CHAPTER 2: ELIMINATION OF UNFAIR-DISCRIMINATION AND PROMOTION OF EQUAL OPPORTUNITY AND TREATMENT

Section 9(2) of the Constitution states that “Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons or categories of persons, disadvantaged by unfair discrimination may be taken.”

Section 2(a) of the Employment Equity Act requires employers to promote equal opportunities and fair treatment in employment through the elimination of unfair discrimination.

Section 6 of the Act prohibits unfair discrimination<sup>1</sup> against employees or job applicants on one or more grounds of personal or physical characteristics like race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth.

### Direct and indirect discrimination

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

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

### 2.1 RATIONALE FOR THE ELIMINATION OF UNFAIR DISCRIMINATION

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

<sup>1</sup> Unfair discrimination can take place by means of an action or an omission.

## 2.2 EMPLOYMENT POLICIES AND PRACTICES:

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

### 2.2.1 Inherent requirements of a job:

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

#### HIV status not an inherent requirement of a job

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

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

### Elimination of unfair discrimination and promotion of equal opportunities

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

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

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

#### Common problems

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

#### Key points for trade unions

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

### Key points for small business and the informal sector:

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

#### Checklist: Prohibition and elimination of unfair discrimination

- Develop a policy on the elimination of unfair discrimination on the basis of HIV status and include the elimination of harassment on the grounds of HIV status
- Ensure that other policies and procedures that promote non-discrimination in your work environment include HIV status or AIDS as a ground for non-discrimination
- Evaluate and review your employment policies and practices to ensure that they do not discriminate, either directly or indirectly, on the basis of HIV and AIDS
- Take discrimination seriously: ensure that disciplinary procedures are in place, or that existing grievance procedures can be utilised, to deal with disputes relating to unfair discrimination on the basis of HIV and AIDS
- Make your commitment to non-discrimination on the basis of HIV and AIDS known in the work environment
- Create an awareness of the rights of employees living with HIV and AIDS through education, training and media activities
- Be seen to provide programmatic support for employees living with HIV and AIDS
- Consider involving people living openly with HIV in your awareness and support services for affected employees; and
- Determine and address the fears, prejudices and misconceptions around HIV and AIDS in your working environment in order to build understanding and support for employees living with HIV.

#### Gary Shane Allpass vs. Mooikloof Estates (PTY) LTD/Mooikloof Equestrian Centre, 2012 (Case No. JS178/091)

Mr Allpass was appointed by Mooikloof Estates as a Stable Yard Manager and horse riding instructor for Mooikloof Equestrian Centre. Mr Allpass has been living with HIV for almost twenty years. Before he was offered the position of a horse riding instructor and stable manager, he was interviewed and asked about his state of health. He stated that he was in 'good health', which, in terms of medical evidence presented, was a true reflection of the situation.

During the course of his employment, the employer required Mr Allpass and two other employees (out of a staff of 30) to fill in a form that required them to disclose if they were on any chronic medication. Mr Allpass complied with the instruction and, amongst other things, listed the medicines that he takes daily to manage his HIV infection. During this process Mr Allpass' HIV status became known to the employer (supervisor) and his employment was immediately terminated. Without any medical justification, his subsequent letter of dismissal stated that the ground of dismissal was that Mr Allpass was "severely ill".

The court declared Mr Allpass's dismissal as automatically unfair in terms of section 187(1)(f) of the Labour Relations Act, 1995 (LRA). The employer was ordered to pay Mr Allpass compensation of twelve months' remuneration "reflecting both restitution as well a punitive element for unfair discrimination on the grounds of his HIV status." The employer was also ordered to pay all Mr Allpass's legal costs.

## ROLES AND RESPONSIBILITIES

Employers	Employer's organisation	Individual employees	Trade unions and employees	Social partners
Showing a commitment to addressing HIV and AIDS in the workplace, through taking a strong stand on unfair discrimination in relation to HIV and AIDS, developing non-discriminatory workplace HIV and AIDS policies, and setting aside resources (both financial and human) for their implementation	Initiating and supporting educational and awareness programmes on the rights of employees living with HIV and AIDS, in consultation with workers and their unions	Participating in awareness, education and training opportunities	Assist in determining the needs of employees living with HIV and AIDS in order to ensure that these needs are accommodated within workplace HIV and AIDS policies	Entering into collective partnerships with Government Departments, and key non-Governmental agencies in order to share information and expertise in HIV and AIDS and unfair discrimination
Assisting in creating a climate of non-discrimination by ensuring that employees with HIV are given the necessary acceptance and support, and by dealing fairly with HIV related discrimination and disputes	Encouraging and supporting fellow employers, Government and labour, to contribute towards addressing HIV related discrimination within the working environment through key partnerships	Confronting and addressing their own underlying fears and prejudices	Assist in creating an enabling environment of non-discrimination, acceptance and support for affected employees through awareness, education, and training programmes	
		Making their needs known	Using their bargaining power to ensure that HIV and AIDS workplace policies receive adequate resource allocation, and are implemented in an effective and efficient manner in the working environment	

### 2.3 KEY IMPLEMENTATION GUIDELINES ON ELIMINATING UNFAIR DISCRIMINATION AND PROMOTING A NONDISCRIMINATORY WORKPLACE

In order to eliminate unfair-discrimination and promote equality and fair treatment in the workplace, the TAG provides practical guidelines to address the following:

- Counselling and informed consent
- HIV testing
- Confidentiality and disclosure
- Reasonable accommodation
- Employee benefits
- Grievance procedures; and
- Termination of employment.

### 2.3.1 Counselling and informed consent

#### Counselling

Counselling helps people to understand the disease and explore what it means to manage their lives. It also helps to prepare people mentally to deal with the result of the test. Talking to a health professional or counsellor can help to reduce the stress and anxiety of getting tested for HIV. All HIV testing should be voluntary and accompanied by both pre- and post-test counselling sessions by a health-care professional and/or a trained counsellor. During the counselling session the person should be sensitised on the process and benefits of counselling. The counselling process will explore, amongst others, the following key issues:

- Past sexual activities may place them at risk
- The meaning of positive and negative test results
- Who can be relied on for support in case the test result is positive
- The plan of action, ahead of time in case the result is positive
- How important it is to have a personal strategy to cope with the result; and
- Whether they want to go ahead and have the test.

Counselling and support should be made accessible to all workers and adapted to the different needs and circumstances of women and men. To ensure access to counselling and support, employers should consider the following key actions:

- Identify professionals, self-help groups and services within the local community or region which specialise in HIV and AIDS-related counselling and the treatment of AIDS and other opportunistic infections
- Identify community-based organisations that may be useful as resource facilities to workers with HIV and AIDS
- Advise workers to contact qualified health-care providers or refer them for initial assessment and treatment if not already being treated; and
- Advise all workers on established procedures to follow in case of exposure to HIV.

#### Informed consent

Informed consent means that the individual has been provided with information, and they understand the implications of the procedure, and based on this information, the individual has agreed to undertake the HIV test. Informed consent also implies that the individual understands what the HIV test is, why it is necessary, the benefits, risks, alternatives and is mentally capable of understanding the choices and any possible social implications of the outcome.

#### HIV Testing

HIV testing or other forms of screening for HIV should not be required of workers, including migrant workers, jobseekers and job applicants.

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

All testing should be conducted in accordance with the Department of Health’s National Policy on Testing for HIV issued in terms of the National Policy for Health Act, No. 116 of 1990 as amended.



#### Provider Initiated Counselling and Testing

Provider-initiated HIV counselling and testing refers to HIV testing and counselling which is recommended by health care providers to persons attending health care facilities as a standard component of medical care. The main purpose of such testing and counselling is to enable specific clinical decisions to be made and/or specific medical services to be offered that would not be possible without knowledge of the person’s HIV status. Health facilities represent a key point of contact with people with HIV who are in need of HIV prevention, treatment, care and support.

The National Strategic Plan on HIV, STI and TB (2012 - 2016) states that provider-initiated counselling and testing (PICT) should be offered to all clients accessing health care services.

### **Anonymous, unlinked surveillance or epidemiological**

HIV testing in the workplace may occur provided it is undertaken in accordance with ethical and legal principles regarding such research.<sup>2</sup> Where such research is done, the information obtained may not be used to unfairly discriminate against individuals or groups of persons. Testing will not be considered anonymous if there is a reasonable possibility that a person's HIV status can be deduced from the results.

### **Authorisation of HIV testing**

The Code recommends instances in the work environment where HIV testing should only take place with Labour Court authorisation, and instances where HIV testing at the request of an employee may not be permissible within the working environment in the absence of Labour Court authorisation. Authorisation for mandatory HIV testing of workers may only be obtained from the Labour Court in terms of Section 7(2) of the Employment Equity Act. Mandatory testing for HIV is not a requirement in the world of work, including the following circumstances:

- a) During an application for employment
- b) As a condition of employment
- c) During procedures related to termination of employment; and
- d) As an eligibility requirement for training or staff development programmes.

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

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

## **2.4 KEY ISSUES FOR HIV TESTING, CONFIDENTIALITY AND DISCLOSURE**

### **Common problems**

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

### **Key points for noting by trade unions**

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

<sup>2</sup> See amongst others the Department of Health's National Policy for Testing for HIV and the Biological Hazardous Agents Regulations.

**Key points for noting by Employers and their organisations**

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

**Checklist: Implementation guidelines on HIV testing, confidentiality and disclosure**

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

Employers and their organisation	Workers and their organisations
Ensuring HIV testing practices are lawful	Ensure that employers are only undertaking HIV testing in terms of the Employment Equity Act and the Code
Developing and coordinating protocols and policies on HIV testing, confidentiality and disclosure	Assist employees to take up grievances where breaches of confidentiality have occurred
Allocating resources towards voluntary HIV testing and counselling programmes	Support efforts of members to be open about their HIV status or about the HIV status of family members
Encouraging other employers to embark on voluntary HIV testing and counselling programmes through raising such issues at employer organisation meetings	

**Small business and the informal economy**

It is important to link with voluntary counselling and testing resources within the community in order to refer employees to such services if they are not available at the workplace.

**2.5 CONFIDENTIALITY AND DISCLOSURE**

Confidentiality means the right of every person, worker, job applicant, jobseeker, intern, apprentice, volunteer and laid-off and suspended workers to have their information, including medical records and HIV status kept private. Confidentiality is also an essential requirement for the preservation of trust among employers, workers and health care providers and is subject to legal and ethical safeguards. Workers should be able to expect that information about their health which they give in confidence will be kept confidential unless there is a compelling reason why it should not. There is also a strong public interest in maintaining confidentiality so that individuals will be encouraged to seek appropriate treatment and share information relevant to it.

The Constitution provides that every person has the right to privacy and bodily integrity. An employee is therefore not legally required to disclose his or her HIV status to their employer or to other employees. Where an employee chooses to voluntarily disclose his or her HIV status to the employer or to other employees, this information may not be disclosed to others without the employee's express written consent. Where written consent is not possible, steps must be taken to confirm that the employee wishes to disclose his or her status.

The results of HIV testing must be confidential and not endanger access to jobs, tenure, job security or opportunities for advancement. Access to personal data relating to a worker's HIV status and related medical data must be bound by the rules of confidentiality that are consistent with the relevant national laws.

Mechanisms should be created to encourage openness, acceptance and support for those employers and employees that voluntarily disclose their HIV status within the workplace, including:

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

### Points to consider when dealing with confidentiality and disclosure

#### Defining the channels of communication can facilitate confidentiality and disclosure processes

- Confidential, voluntary HIV counselling and testing form an important part of an HIV and AIDS and the workplace-programme, steps should be taken to promote such testing
- All employees have a legal right to privacy
- All workplaces need to work towards an environment in which openness and disclosure of HIV status is promoted, steps should be taken to create such an environment
- Process and impact assessments can be used to monitor HIV testing within the workplace
- Workers must be properly informed as to how identifiable information about them is used
- Data should be confidential
- Explicit consent should be sought for the use or disclosure of personal health information, unless it is clearly implied the information should be disclosed; and
- When it is not practicable to obtain consent, information may be disclosed where the law requires or where there is an overriding public interest, e.g. where child abuse is suspected or sexual assault.

## 2.6 REASONABLE ACCOMMODATION

“Section 15(2)(c) of the Employment Equity Act requires employers to provide reasonable accommodation for all workers, including persons living with HIV and AIDS, in order for them to access and enjoy equal employment opportunities.”

Programmes of care and support should include measures of reasonable accommodation in the workplace for persons living with HIV or HIV-related illnesses, with due regard to national conditions. Work should be organised in such a way as to accommodate the episodic nature of HIV and AIDS, as well as possible side effects of treatment. Employers should take the following key issues into consideration when providing reasonable accommodation:

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

**ILO, Code of Practice on HIV and AIDS and the World of Work states that reasonable accommodation includes but is not limited to:**

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

### **Reasonable Accommodation**

In its Employee HIV and AIDS Handbook, the Corporate Council on Africa states that **“an employee with a chronic or life threatening illness is expected to meet the same performance requirements applicable to other employees, with reasonable accommodation if necessary.”** The managers will work to provide reasonable accommodation, as determined by management and in compliance with relevant regulations, to employees who have a chronic or life threatening illness, as with any other employee with a disability, to enable the employee to meet established performance criteria. Reasonable accommodation may include, but is not limited to, flexible or part-time work schedules, leave of absence, work restructuring or job reassignment.”

*Corporate Council on Africa (CCA) Employee Handbook HIV and AIDS Policy*

## **2.7 EMPLOYEE BENEFITS**

The Code of Good Practice on HIV and AIDS and the World of Work emphasises the prohibition unfair discrimination in the allocation of employee benefits, such as death benefits, disability benefits, pensions and retirement funds.

There should be no unfair discrimination against workers or their dependants based on real or perceived HIV status to access social security systems and occupational insurance schemes or in relation to benefits under such schemes. Employees with HIV and AIDS are entitled to have access to employee benefits. Benefit schemes should treat employees with HIV and AIDS in the same way as employees with other life-threatening illness.

Employees may not be required to take an HIV test as an admission requirement for employee benefit schemes. Labour Court authorisation should be sought in order to conduct HIV testing in this circumstance. Medical schemes must offer minimum benefits, as prescribed from time to time by the Minister, to employees living with HIV and AIDS.

### **Key points for noting when dealing with employee benefits**

- Ensuring the wellness of workers
- Participating in discussions and processes around the restructuring of employee benefit schemes and funds
- Ensuring that the provisions of the Labour Relations Act, as set out in the Code of Good Practice on Disability, are met in relation to the ill-health of persons with HIV and AIDS
- Creating awareness amongst all employees of public health care and welfare services available to assist employees infected with and affected by HIV and AIDS, such as the disability grant, and health care services particularly in small businesses and informal economy.

## Roles and responsibilities

Employers and their organisation	Individual employees	Trade Unions	Trustees
Analysis of all employees benefit funds and schemes, in the context of HIV and AIDS	Contributing to employee benefit schemes and funds	Establishing and administering pension, provident and medical funds is a non-discriminatory and sustainable way, in terms of powers given to Bargaining Councils by S28 of the Labour Relations Act	Basing decisions on sound actuarial principles
	Adopting preventive health care measures to minimise further HIV infections and AIDS		Balancing the interests of all members irrespective of the member's HIV status

## 2.8 GRIEVANCE PROCEDURES

A grievance procedure is an internal process that allows employees to raise issues or concerns for discussion and resolution with their employer. Workers should be able to resolve HIV and AIDS related issues by using existing grievance procedures. The Code provides that Employers should:

- Ensure that grievance procedures are confidential and do not result in the disclosure of a person's HIV status. This means that if an employee is required to disclose his or her HIV status in order to effectively deal with a grievance, the information should not be used outside of the grievance proceedings
- Ensure that the rights of workers with regard to HIV and AIDS, TB and other illnesses and the remedies available to them in the event of a breach of such rights become integrated into existing grievance procedures
- Create an awareness and understanding of the grievance procedures and how employees can utilise them
- Develop special measures to ensure the confidentiality of the complaint during such proceedings, including ensuring that such proceedings are held in private.

### Steps to deal with HIV-related grievances

- Deal with any dispute as quickly as possible
- Use ordinary grievance procedures but ensure that all parties are protected by confidentiality clauses
- Give employees various options for resolving the dispute i.e. using the set procedures, going for joint counselling moving to an alternative position within the company, etc.
- Where possible, offer to arrange for an external or outside facilitator to assist with resolving the dispute. This will help to ensure that confidentiality is maintained
- If the particular offender has breached the workers' rights to privacy, for example, make them aware of their rights e.g. instituting a civil claim, etc.
- Integrate courses on attitudes and discrimination into HIV and AIDS awareness programmes so that all staff can begin to work through their own fears and prejudices
- Ensure the programmes are well known within the working environment
- Display the procedures in general areas within the workplace; and
- Provide support to employees who try to resolve disputes using these procedures. See for example the Codes of Good Practice on Handling of Sexual Harassment Cases and the Integration of employment equity into human resources policies and practices. Copies of these codes may be obtained from [www.labour.gov.za](http://www.labour.gov.za)

The Code states that "Where all internal dispute resolution processes have been exhausted and the grievance remains unresolved, any party to the dispute may refer the dispute to the CCMA within six months in terms of section 10(2) of the Employment Equity Act."

## 2.9 TERMINATION OF EMPLOYMENT AND DISMISSALS

Employees with HIV may not be dismissed solely on the basis of their real or perceived HIV status. A dismissal is defined in the Labour Relations Act in section 186(1) (a) as amended “termination of a contract with or without notice.” It includes circumstances where the employee resigns because the employer has made the employment relationship “intolerable”.

According to Section 7.7 of the Code, an employee with HIV and AIDS may not be dismissed on the basis of his or her HIV status. Before any contract is terminated, the following should be considered:

- Where an employee has become too ill to perform their current work, an employer is obliged to explore alternatives, including reasonable accommodation and redeployment
- Real or perceived HIV status is not a valid cause for termination of employment
- Persons with HIV-related illness should not be denied the opportunity of continuing to carry out their work
- Where an employee has become too ill to perform their current work, an employer is obliged to follow accepted guidelines regarding dismissal for incapacity before terminating an employee’s services, as set out in the Code of Good Practice on Dismissal contained in Schedule 8 of the Labour Relations Act, as amended
- The employer should ensure that as far as possible the employee’s right to confidentiality regarding his or her HIV status is maintained during any incapacity proceedings; and
- An employee cannot be compelled to undergo an HIV test or to disclose his or her HIV status as part of such proceedings unless the Labour Court authorised such a test.

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

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

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

### 2.9.1 Key issues on dismissals and grievances

#### Common problems

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

### 2.9.2 Steps to be taken in effecting a termination for incapacity:

<b>Step 1</b>	Determine the employee's capacity to perform their core (inherent requirements of the job) functions by: <ul style="list-style-type: none"> <li>• Requesting them to submit to a medical examination or</li> <li>• Asking them to attend an interview about their health status</li> </ul>
<b>Step 2</b>	Advise the employee of their rights which include: <ul style="list-style-type: none"> <li>• The right to representation at the hearing</li> <li>• The right to bring their own medical evidence (if available)</li> <li>• The right to a confidential process</li> </ul>
<b>Step 3</b>	Investigate the possibility of adapting the employee's working environment, accommodating their disability or finding alternative work for them, involve the employee and their representative in these discussions.
<b>Step 4</b>	Hold a hearing to determine the employee's capacity to perform their job functions (inherent requirements of the job)
<b>Step 5</b>	If an employee's contract is terminated due to incapacity, assist them to access any employee benefits due to them and other forms of community based support

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

- Nature of the incapacity
- Whether the employee is capable of performing the work
- Extent to which the employee is capable of performing the work
- Extent to which the employee work duties can be adapted
- Availability of alternative work
- Likelihood of recovery or improvement
- Effect of the employee's absence on the employer's operations
- The size of the business
- Length of service; and
- Cause of the incapacity.

#### Steps to be taken to prevent unfair dismissals

- Develop clear guidelines on the procedures that must be followed in dismissals, particularly dismissals for incapacity
- Employers to ensure that all managers and supervisors are aware of the law and how to apply it within the particular workplace; and
- HR policies to include clear policy statements on dismissals setting out what steps the company will take to adapt an employees working environment, how it could accommodate ill employees and what alternatives, if any exist.

#### Some main issues for trade unions and employees:

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

### Some main issues for employers

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

# CHAPTER 3

PROMOTING A SAFE WORKING ENVIRONMENT

## CHAPTER 3: PROMOTING A SAFE WORKING ENVIRONMENT

All employers are obligated to provide and maintain a workplace that is safe and without risk to the health of its workers. In accordance with the provisions of the Occupational Safety and Health Convention, 1981 (No. 155), the work environment should be healthy and safe for all concerned parties in order to prevent transmission of HIV.

Although the risk of HIV transmission in the workplace may be minimal, occupational accidents involving bodily fluids may occur, and therefore, every workplace should ensure that it complies with provisions of the Occupational Health and Safety Act, including the Regulations on Hazardous Biological Agents. The Regulations set out measures for dealing with hazardous biological agents, including HIV, which may create a hazard to human health in the workplace. It also sets out Standard Precautions to be followed for the prevention and control of HIV and AIDS and other opportunistic infections.

The National Strategic Plan on HIV, TB and STIs 2012 - 2016 (NSP) has adopted combination prevention as the strategic approach to curb new infections in the population. Combination prevention is a mix of biomedical, behavioural, social and structural interventions that have a greater impact on reducing transmission and mitigating susceptibility and vulnerability to HIV, STIs and TB. Combination prevention interventions are designed to maximise opportunities of different interventions, including testing and screening implementing wellness programmes, treatment, and care and support programmes targeting different population groups. The interventions are meant to reach out to people living with HIV, young people and key population groups utilising evidence based strategies, such as male circumcision, condoms, and prevention of mother to child transmission. It also includes TB screening, treatment of opportunistic infections, health systems and community systems strengthening.

The NSP calls for all employers, in both public and private sectors and labour unions to ensure that all employees, including those in the informal economy, are tested and screened annually and have equitable access to prevention, treatment and wellness services. Special attention should be given to high-risk workplaces and trades (e.g. mines and truck drivers).

Screening and testing programmes that focus on people with disabilities must use tailored interventions according to the specific needs of people with disabilities. Physical access to facilities and accessible communication are imperative and must be designed and implemented in partnership with organisations that focus on the needs of people with disabilities.

It is also designed to ensuring that systems and services remain responsive to the needs of people living with HIV and TB. This includes integrating HIV and TB care with an efficient chronic-care delivery system; expanding of operating hours of service delivery points; ensuring a continuum of care across service delivery points; strengthening quality standards; and adequate monitoring of drug resistance.

The Occupational Health and Safety Act, No.85 of 1993 (OHSA) and the Mine Health and Safety Act, 1996 (Act No. 29 of 1996) state that an employer must provide and maintain as reasonably practicable a working environment that is safe and without risk to the health of its employees. These general provisions apply to the situation of HIV, STIs and TB.

## Occupational Health

### The Occupational Health and Safety Act defines reasonably practicable as having regard to:

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

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

Government, employers and workers, including their organisations, must adopt appropriate measures to combat child labour and child trafficking that may result from the death or illness of family members or caregivers due to HIV and AIDS and to reduce the vulnerability of children to HIV and AIDS and TB. This is considered in view of the relevant International, Regional and National standards on Fundamental and Rights of children and young persons. Special measures must be taken to protect these children from sexual abuse and sexual exploitation.

Measures must be taken to protect children and young workers against HIV and TB infection. Such measures must include the special needs of children and young persons in the response to HIV and AIDS in national, provincial, local, sectoral and workplace policies and programmes. These should include objective sexual and reproductive health education, in particular the dissemination of information on HIV and AIDS through vocational training and in youth employment programmes and services.

In order to create a safe and healthy working environment, the TAG provides practical guidelines to address the following:

- Prevention
- Treatment, care and support
- Occupational health and safety
- Children and young persons; and
- Wellness at work.

### 3.1 PREVENTION

Prevention programmes include awareness programmes; education; male and female condom promotion; universal precautions and STI management. For effective prevention of HIV, TB and other STIs, it is important to implement a mix of prevention interventions that target all populations at risk. Increased risk of HIV transmission occurs in situations characterised by poor living conditions, poor access to information, high unemployment, exploitation of women and other poverty related factors.

Education, information, developing skills and building confidence in people will enable them to protect themselves against risk of transmission and change attitudes towards existing sexual practices.

Workplace prevention programmes are one of the cornerstones of a comprehensive workplace wellness response to HIV and AIDS and TB.

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

The key components of a comprehensive workplace HIV, AIDS and TB prevention programme include:

- **Awareness raising activities** include education and training, campaigns, use of print and electronic media, such as distribution of pamphlets, industrial theatre, events on World AIDS Day, etc
- **Voluntary counselling and testing programmes** either as an on-site service or as a referral to a service in the community
- **Peer Education** activities such as group discussions on a range of topics
- **Condom use and distribution both for male and female condoms**
- **Optimal management of STIs**, as part of a workplace health service delivery or referral; and
- **An infection control programme**, specifically focusing on health care providers.

The close link between HIV and AIDS and such diseases as TB and STIs suggest that HIV and AIDS prevention programmes should also include these diseases. The benefits of an HIV, TB and STIs workplace prevention programme are multiple and include, but are not limited to:

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

Item 8 of the Code recommends establishment of workplace HIV and AIDS programmes suited to the needs and capacity of each workplace.

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

#### **Characteristics of a successful HIV, STIs and TB prevention programme:**

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

#### **Good practice example of a prevention programme policy (National Union of Metal Workers of South Africa)**

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

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

### 3.2 WORKPLACE HIV AND TB PREVENTION AND WELLNESS PROGRAMMES

Every workplace should develop a workplace HIV and AIDS programme aimed at preventing new infections, providing care and support for employees who are infected or affected, and managing the impact of HIV in the organisation.

Workplace prevention programmes are one of the cornerstones of a comprehensive workplace response to HIV and AIDS. HIV prevention through behaviour change is a complex issue that needs to be well understood if prevention programmes are to have any chance of success. Minimum components of a prevention programme, whilst recognising the nature and extent of a workplace programme will be guided by the needs and capacity of each individual workplace should at least include the following:

- Awareness raising activities: displays, distribution of pamphlets, industrial theatre, events on World AIDS Day, etc.
- Voluntary counseling and testing programmes: either as an on-site service or as a referral to a service
- Peer education activities such as group discussions on alternative versions of masculinity range of topics such as risk reduction
- Encourage men to take a more active role in providing care for persons living with AIDS
- Develop prevention programmes which do not just target men or women but assist with developing communication skills between the sexes
- Introduce and promote use of the female condom
- Education and training on HIV and AIDS
- Promote condom distribution and use
- Optimal management health-seeking behaviour for STIs; and
- Enforce the use of universal infection control measures

The close link between HIV and AIDS and such diseases as TB and STIs suggest that HIV and AIDS prevention programmes should also include these diseases, which is why they are often referred to as HIV and AIDS, STD and TB programmes. The benefits of such a programme are multiple and include:

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

#### An example of strategies for formulating an HIV prevention programme

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

Workplace prevention programmes are essential to combat the spread of HIV and to foster greater tolerance towards persons living with HIV and AIDS. The following key issues should be considered in the development of a prevention programme:

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

## Prevention programme evaluation tool

Elements	Overall Assessment			Areas For Action	Prompts
	Good	Average	Poor		
Programme implementation document					<ul style="list-style-type: none"> <li>● How was the document developed?</li> <li>● Who is responsible for implementation?</li> <li>● What is the budget for the programme?</li> </ul>
Awareness Activities on HIV & AIDS, STDs and TB					<ul style="list-style-type: none"> <li>● How often and how are these activities conducted?</li> <li>● What resources are used to support the activities?</li> </ul>
Testing and counselling					<ul style="list-style-type: none"> <li>● Is voluntary HIV counselling and testing available and used?</li> <li>● Is there evidence of an increase or decrease in VCT use?</li> <li>● Is other or on-going counselling available?</li> <li>● What training was provided and what on-going support is available to counsellors?</li> </ul>
Peer education					<ul style="list-style-type: none"> <li>● What initial training do peer educators receive?</li> <li>● What on-going training and/or support do peer educators receive?</li> <li>● What activities do they undertake, how often and with whom?</li> </ul>
Training of trainers					Have trainers been trained to run <ul style="list-style-type: none"> <li>● HIV &amp; AIDS/STD/TB training?</li> <li>● Is HIV &amp; AIDS/STD/TB training integrated into the company-training programme?</li> </ul>
Condom promotion					<ul style="list-style-type: none"> <li>● How often condom promotion activities run?</li> <li>● What do these activities consist of?</li> </ul>
Condom distribution					<ul style="list-style-type: none"> <li>● Where and when are condoms available?</li> <li>● What is condom uptake?</li> <li>● Is there evidence of an increase or decrease in condom use?</li> </ul>
STD management					<ul style="list-style-type: none"> <li>● Are there STD services on site?</li> <li>● Are HCWs trained in syndrome management?</li> <li>● Is there evidence of increased or decreased use of STD services?</li> </ul>
<b>Infection Control Programme on:</b> <ul style="list-style-type: none"> <li>● Equipment</li> <li>● Training</li> <li>● Procedures for occupational exposure</li> <li>● PEP</li> </ul>					<ul style="list-style-type: none"> <li>● How is infection control integrated into First Aid training?</li> <li>● What controls are in place to ensure universal infection control measures?</li> <li>● How many occupational exposures have occurred?</li> <li>● What procedures were followed?</li> </ul>

### **Voluntary HIV counselling and testing programme (VCT)**

Research shows that HIV counselling and testing are an integral part of the prevention interventions and of any programme on HIV and AIDS prevention:

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

#### **Pre-test counselling:**

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

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

#### **Post-test counselling:**

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

##### ***If the result is negative:***

- Strategies for risk reduction
- Possibility of infection in the window period

##### ***If result is positive:***

- Immediate emotional reaction and concerns
- Personal, family and social implications
- Difficulties a patient may foresee and possible coping strategies
- Who the patient wants to share the results with, including responsibilities to sexual partners
- Immediate needs and social support identification
- Follow-up supportive counselling; and
- Follow-up medical care.

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

### 3.3 TREATMENT, CARE AND SUPPORT

Providing workplace treatment, care and support helps to ensure that employees with HIV and AIDS remain healthy and productive at work. In addition, care and support programmes can boost workforce morale by showing that the employer is truly concerned about the health and well-being of its employees.

The treatment of HIV is now recognised as a critical HIV and TB prevention intervention. ART can reduce a person's risk of TB, thus early ART for all eligible people living with HIV will have a significant impact on TB incidence and will reduce mortality in people living with HIV and TB.

Many employers have their own health services in place which can offer counselling and care in relation to HIV and AIDS. Programmes should be cost-effective through collaboration with community health centres, hospitals and specialised NGOs, including self-help groups of people with HIV and AIDS.

Employers must ensure that all workers and their dependants living with HIV and AIDS-related illnesses have access to treatment, care and support services, whether this is provided under public health, social security systems or private insurance or other schemes.

All persons covered by the Code and this TAG, including workers and their dependants living with HIV and AIDS, must be entitled to health services, including access to free or affordable:

- a) Voluntary counselling and testing
- b) Antiretroviral treatment and adherence education, information and support
- c) Nutrition consistent with treatment requirements
- d) Treatment for opportunistic infections and STIs, and any HIV-related illnesses, in particular tuberculosis; and
- e) Support and prevention programmes including psychosocial support.

Programmes of care and support must include measures of reasonable accommodation in the workplace for workers living with HIV or HIV-related illnesses. Workers with HIV and AIDS must be treated no less favourably than workers with other serious illnesses in terms of benefits, workers' compensation and reasonable accommodation.

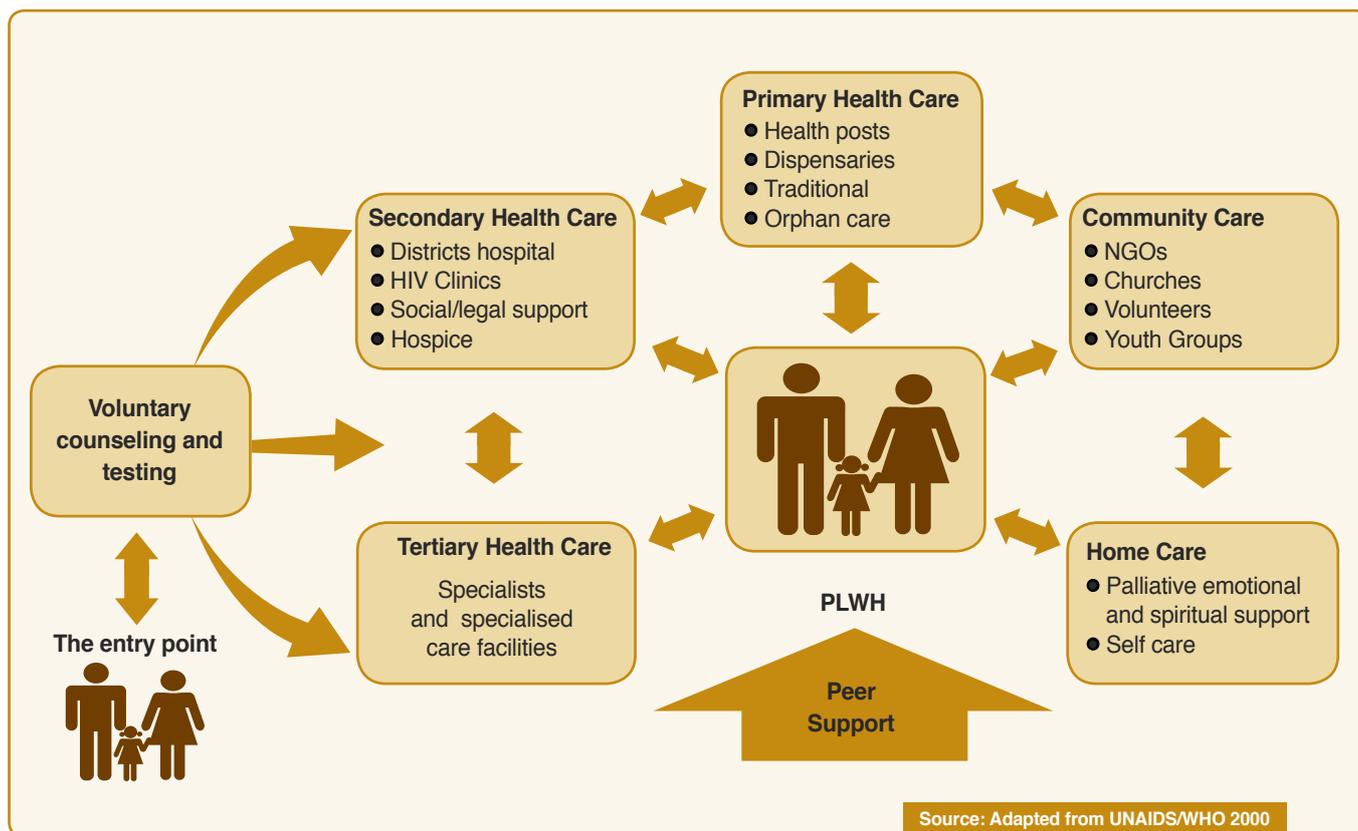
Care and support are critical elements that must guide a workplace in responding to HIV and AIDS. Mechanisms must be created to encourage openness, acceptance and support for workers infected and affected by HIV and AIDS and to ensure that they are not unfairly discriminated against nor stigmatised.

#### **ELRC/PCTA HIV and AIDS Intervention Programme**

The Education Labour Relations Council (ELRC) programme is a comprehensive union HIV and AIDS project which caters for South Africa's Government school educators living with and affected by HIV and AIDS. This programme provides resources to implement union HIV and AIDS workplace policies as well as the recommendations of the ELRC comprehensive research on the impact of HIV and AIDS on the education sector.

The programme is under the leadership of the ELRC, governed by the ELRC-PCTA Governing Committee with other key-players. Four national South African teacher unions are implementing partners and are responsible in reaching their respective membership and mobilising educators in prevention, care and treatment access. The goal of the programme is to expand access to voluntary counselling and testing; antiretroviral therapy; and care and support for those living with and affected by HIV and AIDS. The principal activities of the ELRC-PCTA programme are to reduce the number of new HIV infections among educators and their families and to mitigate the impact of HIV and AIDS on educators and their families.

By 2008 the programme had reached more than 15 745 educators, plus 2 368 educators and their families received HIV counselling and testing.



### 3.4 OCCUPATIONAL HEALTH AND SAFETY

The Code encourages measures aimed at identifying and including employees living with HIV and AIDS as a means of ensuring a safe work place. Rather, it recommends an approach based on:

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

The Code recommended that all organisations take the following steps:

#### Identify the risk of occupational transmission

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

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

#### Providing appropriate equipment and materials

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

The standard precautions for preventing and controlling HIV and AIDS in health set out in Annexure C of the Regulations for Hazardous Biological Agents include:

- Hand washing after touching blood, body fluids, secretions, excretions, and contaminated items, whether gloves are worn or not

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

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

### Management of occupational exposure to HIV

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

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

### Post Exposure Prophylaxis (PEP)

Post-exposure prophylaxis (PEP) is a short-term anti-retroviral (ARV) treatment that reduces the likelihood of HIV infection after exposure to HIV-infected blood or sexual contact with an HIV-positive person. The drug regimen for PEP consists of a combination of ARV medications that are taken a period of four weeks. It is very important to take all of these medicines exactly as the doctor or nurse tells you, or they may not work properly. The following tips can help with various pills:

- Ask a health-care worker to write down all the instructions for taking the medicine so that you are not confused about anything later
- Anti-retroviral medicine must be taken for the full 28 days. Try your very best not to skip a dose
- Try to plan your pill schedule according to your daily activities, so that you don't forget
- If you forget to take your pills, don't take a double-dose next time, ARV-medicine is very strong and you might feel very sick
- Anti-retroviral medicines for children under 12 are usually syrups and are taken according to a child's bodyweight
- Pills need to be taken at the same time every day. Take your pills with meals, not on an empty stomach
- It can be easier if you set an alarm on your cell-phone to ring to remind you when to take the pills
- Keep a diary or calendar and tick off when you have taken your pills
- Eating yoghurt can help with nausea
- Avoid alcohol and drink lots of water
- If you vomit up pills directly after taking them, you need to take a new dose, and get more pills from the clinic to replace those that were lost; and
- Most clinics give enough pills for seven days and expect you to return for more. If this is too difficult, ask them to give you enough medicine for the full 28 days.

### **Reporting of all accidents**

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

### **Compensation for occupational infection with HIV and TB**

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

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

#### ***The Code provides***

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

### **Monitoring occupational exposure**

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

# CHAPTER 4

MANAGEMENT OF HIV and AIDS IN THE WORLD OF WORK

## CHAPTER 4: MANAGEMENT OF HIV and AIDS IN THE WORLD OF WORK

Employers, trade unions and employees must develop and effectively implement integrated gender sensitive strategies to respond to the impact of HIV and AIDS, including TB and STIs, in the workplace. This must be done as far as possible in cooperation with national, provincial, local and sectoral initiatives, including:

- a) Impact assessment that includes risk profiling, resource implications, environmental assessment, vulnerability and susceptibility to HIV infection
- b) The development and implementation of HIV and AIDS workplace policies and programmes that are free from unfair discrimination and promote human rights
- c) Comprehensive prevention and wellness programme; and
- d) Management strategies to deal with the direct and indirect costs of HIV and AIDS
- e) Partnership strategy.

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

### 4.1 PRINCIPLES UNDERLYING A COMPREHENSIVE RESPONSE TO HIV, AIDS AND TB

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

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

#### 4.1.1 Mainstreaming

Mainstreaming HIV and AIDS is increasingly acknowledged as the optimal means to develop and implement a comprehensive response to HIV, AIDS and TB. A mainstreamed response to HIV and AIDS that is gender sensitive is one in which there is an HIV, TB and STIs policy which is linked to and conceptualised in the light of existing policies, programmes and practices.



The diagram on the left illustrates the difference between mainstreaming and integration. In this case, if you add a pineapple to the other fruits, you are integrating it to others and if you ask someone to take it out, they can easily remove it. Whereas if you were to ask them to blend all the fruits, including the pineapple and you ask them to take out any of the fruits, it will be difficult. The latter represents mainstreaming.

#### 4.1.2 Gender specific response

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

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

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

### Examples of gender specific activities

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

### 4.2 CONCEPTUALISE THE ORGANISATIONS RESPONSE TO TB IN LIGHT OF THE WORKPLACE

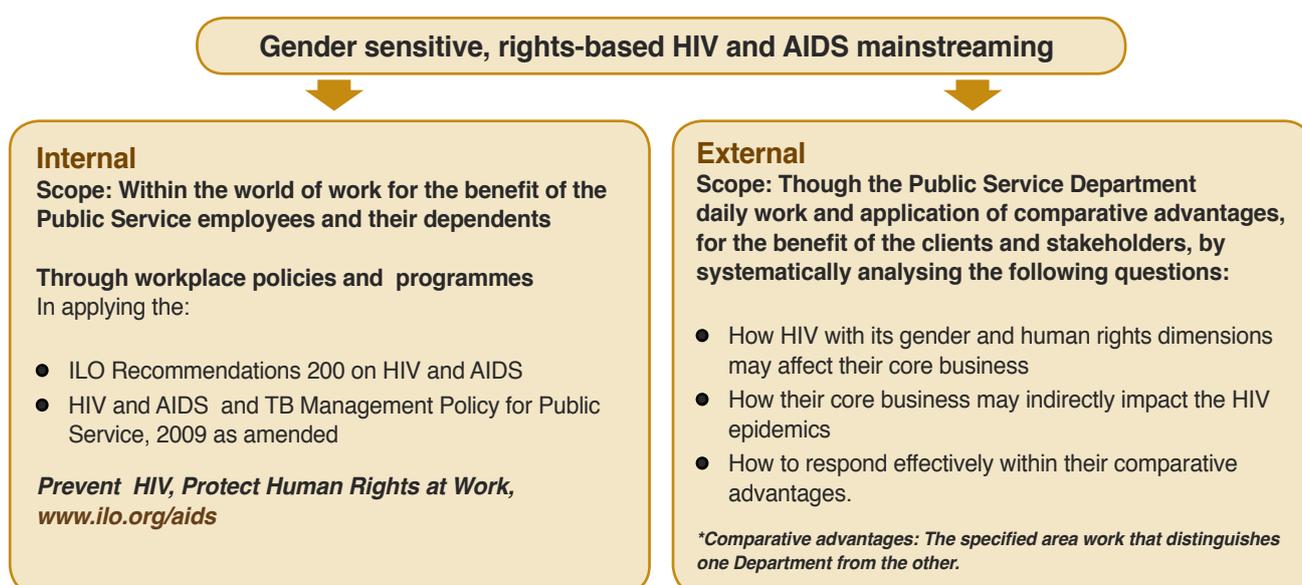
The key strategies to manage the epidemic are:

- To establish a structure responsible for all aspects of the workplace response
- To collect and analyses data to inform integrated planning processes
- To develop systems aligned to existing standards and frameworks
- To integrate HIV and TB into all steps of skills development planning
- To regularly monitor compliance with labour and other legislation; and
- To demonstrate leaderships and management commitment for the workplace HIV and TB response.

Ideally, HIV and AIDS should be managed in the same manner as other long-term threats to an organisation. This implies that organisations should have a management plan to support their workplace HIV and TB response. The table below is an example of the core objectives and actions that could form the basis for a management plan.

### Management Strategies

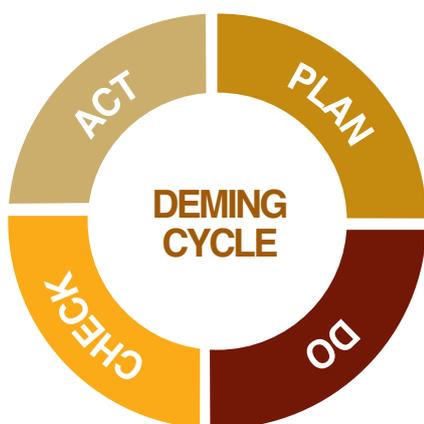
Below is an example sighted in the Department of Public Service Administration Guidelines on Gender sensitive and Rights-Based HIV and AIDS, STIs and TB Mainstreaming into Public Administration and Public Service, 2012 – 2016.



Mainstreaming HIV and AIDS, in a gender sensitive and rights based manner is an interactive process of learning, engagement, action, experimentation and reflection.

Objectives	Actions
To create a mechanism to communicate on policy and programme issues (internally and externally)	<ul style="list-style-type: none"> <li>● Establish a representative HIV and AIDS Committee, comprising of management, workers and their representatives plus additional technical experts who are knowledgeable</li> <li>● Provide terms of reference with clear roles and responsibilities of the committee and its constituents</li> </ul>
To understand the impact of the epidemic and the current response in your sector/industry/company	<p><b>Situational analysis received form risk and impact assessments conducted</b></p> <ul style="list-style-type: none"> <li>● Profiles of the workforce and the community</li> <li>● Impact assessments - be-line and periodically thereafter:- Absenteeism and sick leave; morbidity and reduced productivity; replacement recruitment and retraining; medical costs; and disability and ill-health retirement, pensions, dependent benefits and funeral costs</li> </ul>
To develop a workplace programme that incorporate needs of the informal economy	<ul style="list-style-type: none"> <li>● Capacity development on the use of the system</li> <li>● Periodic systems review (Plan, Do, Check and Act)</li> <li>● Management commitment and resource allocation</li> <li>● Management, worker representatives and workers to lead by example</li> <li>● Provide access to health services</li> <li>● Collaborate with community-based services to facilitate access to services</li> </ul>

This diagram illustrates one of the models that could be used to review systems periodically, the “Deming Cycle”:



**PLAN**

Establish the objectives and processes necessary to deliver results in accordance with the expected output (the target or goals). By establishing output expectations, the completeness and accuracy of the specification is also a part of the targeted improvement. When possible, start on a small scale to test possible effects.

**DO**

Implement the plan, execute the process, and make the product. Collect data for charting and analysis in the following “CHECK” and “ACT” steps.

**CHECK**

Study the actual results (measured and collected in “DO” above) and compare against the expected results (targets or goals from the “PLAN”) to ascertain any differences. Look for deviation in implementation from the plan and also look for the appropriateness/completeness of the plan to enable the execution.

**ACT**

Request corrective action measures to address significant differences between actual and planned results. Analyse the differences to determine their root causes. Determine where to apply changes that will include improvement of the process or product. When a pass through these four steps does not result in the need to improve, the scope to which PDCA is applied may be refined to plan and improve with more detail in the next iteration of the cycle, or attention needs to be placed in a different stage of the process.

**Key Points to Consider**

- Review HR policies and procedures that reduce vulnerability to HIV
- Ensure the protection of human rights and compliance with labour legislation
- Define the roles and responsibilities of the various key players in the programme; and
- Develop a monitoring and evaluation system to track progress and implementation.

### 4.3 MANAGEMENT STRATEGIES TO DEAL WITH THE IMPACT OF HIV AND TB IN THE WORKPLACE

Most of the management strategies proposed in this document are not new, the main challenge is to mainstreaming HIV and AIDS into existing and well-established management practices. Management strategies to deal with the impact of HIV and AIDS in the workplace include:

- Demonstration of management commitment
- Create new or strengthen an existing committee to manage HIV, AIDS and TB
- Develop a database to enhance planning
- Development of an HIV and AIDS policy
- Capacity development and succession planning
- Compliance with legal obligations
- Developing an action or operational plan; and
- Implementation monitoring and evaluation.

#### 4.3.1 Demonstration of management commitment

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

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

#### 4.3.2 Creation of an HIV and AIDS and TB committee

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

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

#### 4.3.3 Development of a database of information to enhance planning

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

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

- Do we have the information/data to measure the impact of the epidemic on our organisation now? If not, what do we need to recognise gender differences and where do we get it?
- Do we have the information/ data to make future predictions about the organisation's potential to contribute to the epidemic and impact on our organisation? If not, what do we need and where do we get it?
- What are the questions we should be asking to respond to such issues in a mainstreamed manner to HIV and AIDS into our planning?

The aim of the organisation's HIV and AIDS response is to mainstream the topic of HIV and AIDS into all aspects of an organisations planning process. The following step-by-step planning process can lay the foundation for sustained mainstreamed planning. At each step, it is critical to ensure full participation of key role player in order to ensure shared ownership of the plan.

### Step 1: Analyse factors that contribute to the risk of HIV and TB infection

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

### Step 2: Analyse your response to HIV and TB

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

### Step 3: Analyse current and potential partners

- Who is involved in policy making?
- Who is involved in coordination in the world of work, local AIDS Council, District AIDS Council, Provincial and National AIDS Council where applicable?
- Who is involved in implementation?
- Who provides technical input?
- How does Government, employers, labour, community other stakeholders collaborate?
- Who else could become involved in these activities?
- How could they be recruited?
- What are the optimal mechanisms for consultation, communication and collaboration?

### Step 4: Planning

- Set objectives in priority areas
- Establish management systems
- Develop action plans to reach objectives
- Examine each for acceptability, technical soundness, feasibility, chance of succeeding and potential impact
- Indicate responsibilities; and
- Identify resources (financial, operational and human).

### Step 5: Implementation, Monitoring and evaluation system

- Define goals and objectives of the response
- Determine achievement of the objective
- Implement resourced and mainstreamed HIV, AIDS, STIS and TB operational plan
- Formulate feedback mechanism (routine monitoring)
- Give feedback to role players in the organisation on the impact of the intervention in the workplace and
- Develop an accountability framework linked to different levels of AIDS councils (local, district, provincial and national)
- Use monitoring evaluation data to review the impact of HIV and AIDS in the workplace; and
- Conduct independent evaluation guided by the national monitoring and evaluation framework through different levels of AIDS councils (local, district, provincial and national).

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

#### 4.3.4 Development of an HIV and AIDS Policy

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

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

A policy sets in place a framework for an organisation's workplace HIV and AIDS response. It must have a clearly stated goal and principles that define rights and responsibilities.

##### Rationale for an organisations HIV and AIDS policy

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

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

##### Policy development process

Policy development should follow the seven step process below:

###### Step ONE: Create an HIV and AIDS committee

- Identify a senior person to lead the process
- Develop the terms of reference for a policy task team; and
- Nominate representatives for the policy task team.

###### Step TWO: Develop committee's capacity

- Provide training for the policy task team on relevant HIV and AIDS facts, on the impact of HIV and AIDS (particularly on workplace) and on the terms of reference; and
- Review past policy and programme if in existence.

###### Step THREE: Gather information

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

###### Step FOUR: Reach consensus

- The type of policy (stand alone, integrated)
- The goals of the policy
- Guiding principles
- Elements of the policy; and
- Identify any areas where expertise is required (legal and medical status).

###### Step FIVE: Formulating the policy

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

### Step SIX: Negotiate policy

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

### Step SEVEN: Develop implementation strategy

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

### STEPS in developing a workplace policy (ILO)

Step	Description	No	Yes
1	Enterprise take the initiative		✓
2	Consultation with management and employees		✓
3	Establish a workplace committee/group		✓
4	Assess the situation in the enterprise (impact)		✓
5	Draft the workplace policy		✓
6	Circulate the draft and continue discussions if needed		✓
7	Approve and adopt (employer, workers and their representatives)		✓
8	Disseminate to all in the workplace		✓
9	Implement		✓
10	Monitor and evaluate		✓

*Adapted from the ILO Guidance Note: How Best to Develop A Policy on HIV and AIDS and the World of Work, 2011*

## Good practice example of a generic company workplace HIV and AIDS policy

### 1. Scope

This policy applies to all employees employed by the company.

### 2. Objective

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

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

### 3. Responsibility

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

#### 4. Principal

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

##### i. Awareness

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

##### ii. Pre-employment testing

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

##### iii. Special circumstances requiring HIV testing

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

##### iv. Disclosure of HIV test results

HIV test results will not be disclosed to management without the employee's written consent and such disclosure will be treated as strictly confidential. It is however the employee's prerogative to disclose such test results to any party he/she wishes to. The employee reserves the right to disclose the results of his/her HIV test at any given time.

##### v. Pre-test counselling

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

##### vi. Post-test counselling

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

##### v. Discrimination

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

##### vii. Protection against HIV infection in the workplace

Every employee must take the appropriate precautions and a transparent approach to the management of HIV and AIDS.

##### viii. Transparency

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

##### x. Grievances

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

**xi. Access to training, promotion and benefits**

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

**xii. Budget**

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

**5. Implementation and monitoring**

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

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

The following checklist provides a guide against which an existing workplace HIV and AIDS policy can be evaluated.

#### Checklist for a workplace HIV Policy

No	Description	No	Yes
1	Policy clearly states the organisations position on HIV and AIDS		✓
2	Policy formulated around principles, non-discrimination, equity and confidentiality, rights and responsibilities		✓
3	Policy process was consultative and communicated to all existing and all new staff members		✓
4	Policy addresses the needs and concerns of the relevant role players in the organisation		✓
5	Key elements of a workplace HIV and AIDS programme are present, including TB and STDs		✓
6	Details of employment policies (such as HIV testing, employee benefits, performance management) HIV and AIDS are included		✓
7	Standards of behaviour expected of employers and employees relating to HIV and AIDS are out		✓
8	Grievance procedures for HIV-related complaints are detailed		✓
9	Complies with the laws relating to HIV and AIDS in the workplace		✓
10	Consistent with the current technical, medical and scientific understanding and best practice on HIV and AIDS in the workplace		✓
11	Makes provision for meaningful participation by people infected with and affected by HIV and AIDS (GIPA)		✓
12	Responsibilities are assigned and resources are allocated		✓
13	Policy is dynamic and able to adapt to changing situations		✓
14	Provides for monitoring, evaluation and review		✓

#### 4.3.5 Capacity development and succession planning

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

- Research and describe the business case for creating a succession plan that includes trends in the economy, demographic changes in the profile of the working population, an analysis of recruiting costs and the need to change from succession planning for top management positions to succession planning for all key positions
- Conduct a gap analysis of core competences that relate to organisational needs
- Define the strategies to guide succession planning. These need to be developmental and consultative; they should include assessment techniques (e.g. of the talent of employees) and a plan for regular review
- Benchmark the strategies against best practices in successful companies
- Agree on the process for identifying between the position identified as corporate critical roles, and the positions/roles earmarked needing continuity
- Assess training needs relating to the pool
- Integrate skills succession process into other organisational processes, particularly HR processes such as employee development
- Implementation of the succession planning process; and
- Audit the process.

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

#### 4.3.6 Compliance with legal obligations

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

**Step 1:** Review the situations in which HIV testing is being done; the policy on occupational exposure and post-exposure prophylaxis; and confidentiality of medical information

**Step 2:** Review all workplace policies, procedures and protocols and include appropriate references to HIV and AIDS

**Step 3:** Nominate an official to monitor compliance with the legislation from the time and particularly following the promulgation of any new legislation with employment implications.

#### 4.3.7 Developing an action or operational plan

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

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

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

**Example of an operational plan**

Policy statement	Activities	Process details	Outputs	Responsibility
Conduct training of peer educators	Identify one peer educator per 50 employees	Ensure representivity according to: <ul style="list-style-type: none"> <li>● Shift</li> <li>● Language/ethnic group</li> </ul> Budget: Time frame:	Register of peer educators	Team leaders Partners:
	Conduct initial five-day training	Include information on: <ul style="list-style-type: none"> <li>● HIV and AIDS/STDs/TB</li> <li>● Human sexuality</li> <li>● Risk reduction and condom use</li> <li>● Universal precautions and infection control</li> <li>● Testing and counselling</li> <li>● Legal and ethical issues and women's rights</li> <li>● Communication and motivation skills</li> <li>● Company policy; and</li> <li>● Internal and external resources/referrals/ support.</li> </ul> Budget: Time frame:	Workshops Participant and trainer reports	Training Department Partners:
	Monitor peer education meetings	<ul style="list-style-type: none"> <li>● How often do they take place?</li> <li>● How many people participate?</li> <li>● What is discussed?</li> <li>● What problems do peer educators report?</li> </ul> Budget: Time frame:	Feedback reports from peer educators	Nominated trainer Partners:
	Conduct two-day annual in-service training	<ul style="list-style-type: none"> <li>● Conduct a needs assessment to inform programme for in-service training</li> <li>● Develop appropriate modules</li> <li>● Conduct training</li> </ul> Budget: Time frame:	Needs assessment Training modules Workshop	Training Department Partners:

### 4.3.8 Education and training and health promotion

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

#### Checklist of topics to be included in a peer education training programme:

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

#### Management training

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

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

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

### 4.4 HIV and AIDS PARTNERSHIPS

The purpose of fostering partnerships is to allow the public, private, NGO and community organisations to achieve common goals and to utilise comparative advantages to contribute to the country's HIV and AIDS goals, and maximise on use scarce resources optimally to facilitate the on-going, meaningful participation of people living with HIV and AIDS. The Code emphasises the importance of fostering cooperation between the relevant role-players, including: employers, employees and trade unions in the workplace; and other stakeholders at a sectoral, local, provincial and national level.

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

#### Partnerships

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

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

The elements of an HIV and AIDS partnership programme should support greater involvement of people living with HIV and AIDS (GIPA) assess partners and resources that can be shared and set up or participate in a multi sector HIV and AIDS network.

### Rationale for building partnerships

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

### Objectives and actions pertaining to partnerships

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

### Conducting a partner analysis

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

#### 1. Identity current partners/role players and potential future partners/role players

- From within Government – different spheres/levels and departments
- Parastatals
- Agencies (including donors)
- Networks
- Associations (professional e.g. medical and voluntary)
- Labour
- Training institutions

- Research institutions
- NGOs and civil society structures

**2. Determine roles (who is involved in):**

- Policy making
- Coordination
- Implementation
- Technical input; and
- How they work together.

**3. Then describe future relationships or opportunities**

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

**The US Centre’s for Disease Control suggest a six step evaluation process**

1. Engage Stakeholders/Identify Primary Users	2. Describe the Partnership/Construct the Logic Model	3. Focus the Evaluation/Develop a Design Plan
4. Gather Credible Evidence/Select Methods, Measure, Indicators	5. Analyse Data/Justify Conclusions	6. Ensure Use of Findings/Lessons Learned Whose Responsibility?

*Adapted from US CDC: Partnership Evaluation - Guidebook and Resources*

# CHAPTER 5

IMPLEMENTATION MONITORING AND EVALUATION

## CHAPTER 5: IMPLEMENTATION MONITORING AND EVALUATION

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

**Employers and workers, including their organisations, should:**

- a) Design and implement a HIV and AIDS workplace M and E plan that includes strategies to address TB and STIs in the world of work
- b) Identify the key elements needed to make the M and E system work
- c) Select and make use of indicators that are specific, measurable, attainable, relevant and time-bound
- d) Gather and analyse qualitative/quantitative information, and communicate it effectively.

Every organisation should develop monitoring and evaluation strategies; assess monitoring and evaluation needs-based on the planned programme outcomes; develop appropriate monitoring indicators, tools and mechanisms; monitor both the effectiveness and on-going impact of an HIV and AIDS workplace programme; use the information to continually review the HIV and AIDS policy and programme to minimise the impact of HIV and AIDS in the workplace in planning; and make special consideration when monitoring employee benefits.

Employers in collaboration with the workers must establish monitoring and evaluation mechanisms for workplace programmes in order to track implementation and strategically respond to the epidemic. The monitoring mechanism strategies should take into account and support the national monitoring and evaluation efforts that relates to curbing HIV and AIDS, TB and STIs.

Small businesses that are not in a position to have sophisticated monitoring and evaluating mechanisms in place must adopt simple strategies to monitor and evaluate the HIV and AIDS, TB and STIs programmes in order to track implementation and respond to the epidemic.

**Minimum standard checklist**

No	Minimum Standards	Yes	No
1	An organisation's position on HIV and AIDS	✓	
2	An outline on the HIV and AIDS programme	✓	
3	Details on employment policies	✓	
4	Express standards of behavior expected of all employees, employees an trade unions	✓	
5	Grievance procedures (Dispute resolution)	✓	
6	Communication strategies (Awareness)	✓	
7	Employee assistance programme	✓	
8	Roles and responsibilities of participating role players (Partnership)	✓	
9	Resource allocation (Budget)	✓	
10	Monitoring and evaluation mechanisms	✓	

## Partnership Evaluation Tool

Use the following checklist to identify what has been accomplished and what is outstanding in your partnership development process. Some items are applicable to an individual organisation while others pertain to both partner organisations.

Mission and Vision Statements and Core Values		✓
1.	The mission statements of each partner organisation have been reviewed	
2.	Common elements of the mission statements have been identified	
3.	The vision statements of each partner organisation have been reviewed	
4.	Common elements of the vision statements have been identified	
5.	The core values of each partner organisation have been reviewed	
6.	Common core values have been identified	
7.	A partnership statement of purpose has been developed collaboratively	
Partnership Goals and Objectives		✓
8.	The organisation has conducted a Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis	
9.	The organisation has developed a list of 'wants'	
10.	The organisation has developed a list of 'needs'	
11.	The organisation has examined its current goals for potential partnership conflicts	
12.	The partners have mutually defined goals for the partnership	
13.	The partners have developed objectives for reaching partnership goals	
Organisational Structure		✓
14.	The organisation has reviewed its program agreements for potential partnership conflicts	
15.	The organisation has a clearly articulated management structure	
16.	The organisation has a defined decision-making process	
17.	The partners have identified roles and responsibilities for the partnership	
18.	The partners have approved a decision-making process	
19.	The partners have approved a dispute resolution process	
Partnership Agreement		✓
<b>The partnership agreement contains:</b>		
20.	A statement of purpose	
21.	Goals (intended outcomes)	
22.	Role descriptions for each partner organisation	
23.	Role descriptions for individual representatives from each partner organisation	
24.	Role descriptions for individual representatives from each partner organisation	
25.	Financial commitments for each partner	
26.	An internal communications plan for each partner	
27.	Measurable evaluation criteria	
28.	A decision-making process	
29.	A dispute resolution process	
30.	A partnership termination process	

*Adapted from BC Non-Profit: Guide for Building Effective Partnership*

### Partnership evaluation tool

Elements	Overall assessment			Areas for action	Prompts
	Good	Average	Poor		
Support GIPA (greater involvement of PLWHA)					Does the organisation work with PLWHAs?
Assessment of potential partners - Public sector - Private sector - NOGs and CBOs - Development and community projects					How does the organisation interact with potential partners?
Assessment of available organisational resources Preliminary checklist: marketing, advertising and PR, IT, market research					Who is responsible for identifying resources that can be shared and for liaison with community based projects?
Participation in a multisectoral network					What role does the organisation play in the network?
Participation in community projects?					How does the organisation participate in community projects?
Initiation of community projects					What community projects does the organisation support? What is the potential for these to include HV and AIDS prevention and or care elements? Has the organisation initiated any HIV and AIDS specific projects?
Support for NGOs and ASOs					Who is responsible for identifying NGOs and ASOs for support? What could that support entail?

### 5.1 REPORTING

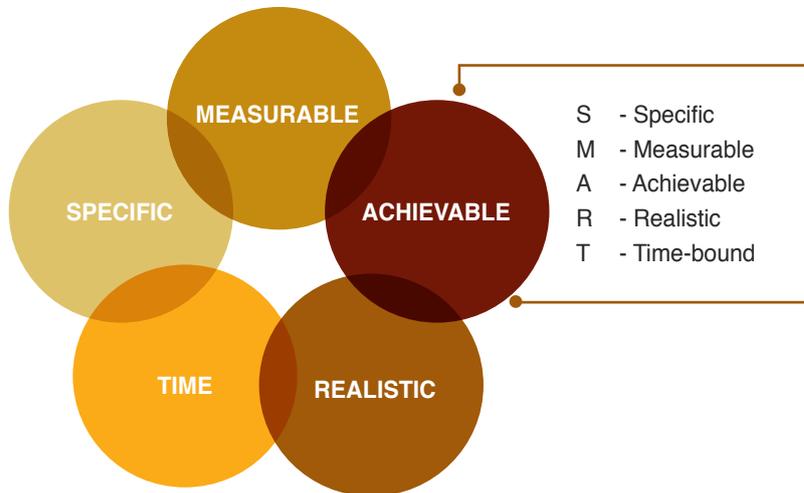
The National Strategic Plan (2012-2016) implementation will be measured through the following impact indicators:

- Percentage of young women and men aged 15–24 years who are HIV-positive
- Percentage of key populations who are HIV-positive
- Number and percentage of HIV-exposed infants testing HIV-positive at six weeks and 18 months post-partum
- Prevalence and incidence of TB
- Percentage of adult mortality due to HIV and TB trends of stigma; and
- Retention on ART.

HIV and AIDS activities implemented by any organisation in the public, private and informal sectors should be aligned to their reporting to the national M and E framework and consider the above-mentioned impact indicators.

## 5.2 IMPLEMENTATION MONITORING

Setting effective objectives to guide implementation of HIV and TB workplace programmes is very important for the workplace. Well formulated objectives will steer an organisation in the right direction. Most organisations use the ‘SMART’ approach in formulating objectives.



### Specific

The first term stresses the need for a specific goal over and against a more general one. This means the goal is clear and unambiguous; without vagaries and platitudes. To make goals specific, they must tell a team exactly what is expected, why is it important, who’s involved, where is it going to happen and which attributes are important.

A specific goal will usually answer the five “W” questions:

- What: What do I want to accomplish?
- Why: Specific reasons, purpose or benefits of accomplishing the goal?
- Who: Who is involved?
- Where: Identify a location?
- Which: Identify requirements and constraints?

### Measurable

The second term stresses the need for concrete criteria for measuring progress toward the attainment of the goal. The thought behind this is that if a goal is not measurable, it is not possible to know whether a team is making progress toward successful completion. Measuring progress is supposed to help a team stay on track, reach its target dates, and experience the exhilaration of achievement that spurs it on to continued effort required to reach the ultimate goal.

A measurable goal will usually answer questions such as:

- How much?
- How many?
- How will I know when it is accomplished?

### Attainable

The third term stresses the importance of goals that are attainable. While an attainable goal may stretch a team in order to achieve it, the goal is not extreme. That is, the goals are neither out of reach nor below standard performance, as these may be considered meaningless. When you identify goals that are most important to you, you begin to figure out ways you can make them come true. You develop the attitudes, abilities, skills, and financial capacity to reach them. The theory states that an attainable goal may cause goal-setters to identify previously overlooked opportunities to bring themselves closer to the achievement of their goals.

An attainable goal will usually answer the question:  
How: How can the goal be accomplished?

### **Realistic**

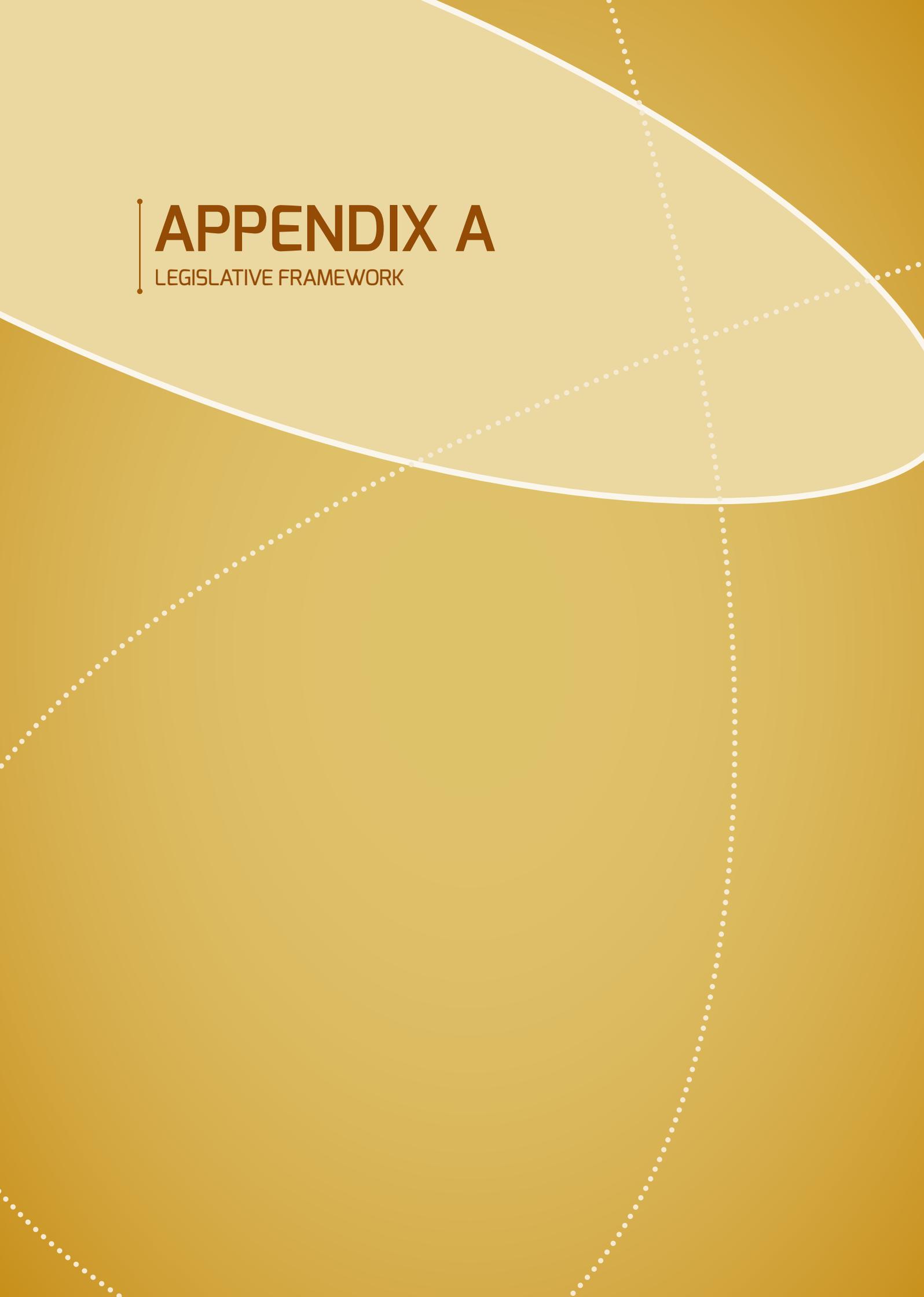
The fourth term stresses the importance of objectives that are realistic and within the availability of resources, knowledge and time.

### **Time-bound**

The fifth term stresses the importance of grounding goals within a time frame, giving them a target date. A commitment to a deadline helps a team focus their efforts on completion of the goal on or before the due date. This part of the S.M.A.R.T. goal criteria is intended to prevent goals from being overtaken by the day-to-day crises that invariably arise in an organisation. A time-bound goal is intended to establish a sense of urgency.

A time-bound goal will usually answer the following questions:

- When?
- What can I do 6 months from now?
- What can I do 6 weeks from now?
- What can I do today?



# APPENDIX A

LEGISLATIVE FRAMEWORK

## APPENDIX A: LEGISLATIVE FRAMEWORK

Legislation	Description
Constitution of the Republic of South Africa, 1996	The Constitution <b>gives all employees the right to “fair labour practices”</b> . The equality clause also states that everyone is entitled to equality and freedom from unfair discrimination, including HIV status and the stigma surrounding the disease
Employment Equity Act, No. 55 of 1998	The EEA is more specific about the rights of people living with HIV or AIDS. The EEA explicitly prohibits unfair discrimination against people at work on grounds of their HIV status. The EEA also prohibits testing for HIV in the workplace unless this is authorised by the Labour Court.  An employer cannot : <ul style="list-style-type: none"> <li>● Force a person who is applying for a job to have an HIV test</li> <li>● Automatically make an HIV test part of a medical examination</li> <li>● Force someone who is already working for them to have an HIV test</li> </ul>
Labour Relations Act, No. 66 of 1995	The Labour Relations Act (LRA) <b>regulates the relationship between employers and employees</b> . It prohibits unfair discrimination and protects employees against arbitrary (unclear or unfair) dismissals. Amongst a range of other potential scenarios, clear boundaries have been established that protects employees from being dismissed simply because they are HIV-positive and from being discriminated against when it comes to employee benefits, promotions, staff training and other work-related opportunities
Occupational Health and Safety Act, No. 85 of 1993	This Act <b>requires employers to take whatever necessary steps to create a safe working environment</b> . In an HIV and AIDS context, this means that employers must ensure that universal precautions are used when responding to an occupational accident. Employers should also ensure that proper equipment needed to protect staff against possible infection and appropriate training in the use of universal precautions is provided.
Mine Health and Safety Act, No. 29 of 1996	Section 2(1) and Section 5(1) of the Mine Health and Safety Act, No. 29 of 1996 provides that an employer is required to create, as far as is reasonably practicable, a safe workplace
Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993	This Act <b>provides compensation for employees who are injured in the “course and scope” of their job</b> . If an employee has been exposed to HIV during an occupational accident then: <ol style="list-style-type: none"> <li>1. An accident report should be completed and forwarded to the Workman’s Compensation Commissioner</li> <li>2. The employee should be tested for HIV to determine their baseline status</li> <li>3. Any other person involved in the accident should be tested with their informed consent (in writing and once they have received the proper counselling)</li> <li>4. The employee, if HIV-negative at the time of the accident, should be re-tested at three and six months after the accident</li> <li>5. If they become positive during this period, an application for compensation may be made</li> </ol>
Basic Conditions of Employment Act, No. 75 of 1997	This Act sets out the minimum employment standards to which every employee is entitled. This includes, amongst others: payment, maximum working hours and the minimum number of days of sick leave every employee is entitled to

<p>Medical Schemes Act, No. 131 of 1998</p>	<p>The Medical Schemes Amendment Act of 1998 prohibits discrimination on the grounds of 'state of health'. This covers a person living with HIV or AIDS. It means that the medical scheme cannot refuse to cover reasonable care that could prolong the health and lives of people living with HIV or AIDS</p> <p>The Medical Schemes Act stops medical schemes from discriminating against people living with HIV or AIDS. It states that all schemes must offer a minimum level of benefits, decided by the Government, to employees with HIV or AIDS. The minimum levels of benefits include:</p> <ul style="list-style-type: none"> <li>● Treating all opportunistic infections for HIV or AIDS</li> <li>● Hospital admissions with treatment</li> <li>● They do not have to provide anti-retroviral drugs</li> </ul>
<p>Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000</p>	<p>The Promotion of Equality and Prevention of Unfair Discrimination Act also sees to it that there is no unfair discrimination in the workplace, especially with things like insurance. This means that an employee with HIV and/or AIDS must be treated in exactly the same way as all the other employees in the organisation in all matters</p>
<p>Unemployment Insurance Act, No. 32 of 2003</p>	<p>In accordance with Section 20 of the Amended Unemployment Insurance Act, No.32 of 2003, every employer is obliged to ensure that all employees are able to exercise their right to illness benefits</p>
<p>National Health Act, No 61 of 2003</p>	<p>Personnel may not be unfairly discriminated against on account of their health status. But subject to any applicable law, the head of the health establishment concerned in accordance with any guidelines determined by the Minister impose conditions on the service that may be referred by a health care provider or health care worker on the basis of his or her health status</p>
<p>Occupational and Diseases in Mines and Works Act, 78 of 1973</p>	<p>Covers Occupational Lung Disease (OLD) in miners. This Act provides the Workers' Compensation framework for those occupational diseases attributable to "risk work" in a mine or works (quarries, etc.). It only covers cardio-respiratory diseases such as pneumoconiosis, tuberculosis, chronic airways obstruction, occupational asthma and progressive systemic sclerosis which, "in the opinion of the Certification Committee (of the Medical Bureau for Occupational Diseases), is attributable to the performance of risk work at a controlled mine or works"</p>

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