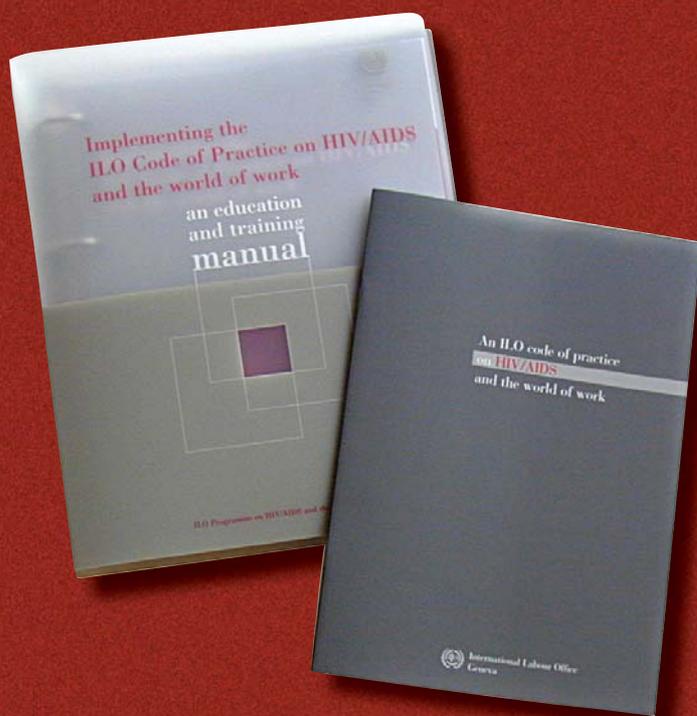


Using the ILO Code of Practice
and training manual:

Guidelines for labour judges and magistrates



These guidelines aim to contribute to a fuller understanding of ILO standards and principles relevant to HIV/AIDS.

They focus on the *ILO Code of Practice on HIV/AIDS and the world of work*, and provide examples of the ways in which the key principles of the Code have been applied through national legislation and jurisprudence.

Copyright © International Labour Organization 2005
First published January 2005

Publications by the International Labour Office enjoy copyright under Protocol 2 of the Universal Copyright Convention. Nevertheless, short excerpts from them may be reproduced without authorization on condition that the source is indicated. For rights of reproduction or translation, application should be made to the Publications Bureau (Rights and Permissions), International Labour Office, CH-1211 Geneva 22, Switzerland. The International Labour Office welcomes such applications.

ISBN 92-2-116855-7 (print version)
ISBN 92-2-117047-0 (web pdf version)

The designations employed in ILO publications, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Office concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

Reference to names of firms and commercial products and processes does not imply their endorsement by the International Labour Office, and any failure to mention a particular firm, commercial product or process is not a sign of disapproval.

ILO publications can be obtained through major booksellers or ILO local offices in many countries, or direct from ILO Publications, International Labour Office, CH-1211 Geneva 22, Switzerland. Catalogues or lists of new publications are available free of charge from the above address.

Printed by the International Labour Office, Geneva, Switzerland

These guidelines aim to contribute to a fuller understanding among labour judges and magistrates of ILO standards and principles relevant to HIV/AIDS, and how they can integrate them into their work. The guidelines focus on the ILO Code of Practice on HIV/AIDS and the world of work, which was developed through a widespread process of tripartite consultation, and provide examples of the ways in which the key principles of the Code have been applied through national legislation and jurisprudence. They do not refer to non-binding national codes and policies.

Acknowledgements

These guidelines were prepared by Michaela Clayton and are based on two main documents: *Legal initiatives that can help fight HIV/AIDS in the world of work*, Marie-Claude Chartier, ILO Programme on HIV/AIDS and the World of Work (ILOAIDS), September 2003; and *Guidelines on addressing HIV/AIDS in the workplace through employment and labour law*, Jane Hodges, InFocus Programme on Social Dialogue, Labour Law and Labour Administration (IFP/DIALOGUE), ILO, January 2004.

Contents

The impact of HIV/AIDS on employment practices	1
The role of labour judges and magistrates	2
Good practice in national legislation and jurisprudence	3
ILO standards and principles relevant to HIV/AIDS	5
<i>The ILO Code of Practice on HIV/AIDS and the world of work</i>	<i>5</i>
Using international instruments	6
Applying the Code of Practice	7
Basic information about HIV/AIDS	7
Common human rights issues	8
Further information	9

The impact of HIV/AIDS on employment practices

The ILO is the UN agency with special responsibility for the world of work. Its primary goal is to promote decent work and productive employment for all, based on principles of social justice and equality. Because AIDS threatens the health and livelihoods of its constituents, and compromises the achievement of its strategic objectives, the ILO created a global programme on HIV/AIDS and the world of work in the year 2000.

The programme's objectives are:

- to raise awareness of the economic and social impact of HIV/AIDS in the world of work
- to help governments, employers and workers address HIV/AIDS through technical cooperation, training, and policy guidance on prevention, care and social protection
- to fight discrimination and stigma related to HIV status.

The ILO is a cosponsor of UNAIDS and works closely with other United Nations agencies and non-governmental organizations (NGOs).

The ILO estimates that of the approximately 38 million people living with HIV today, at least 26 million are workers aged between 15 and 49. Many of them suffer discrimination at the workplace, on the basis of suspected as well as actual HIV status. Some are denied promotion, training and access to medical and sickness benefits. Others are subjected to testing for HIV without their consent, and the results are communicated to others without regard for their right to confidentiality. Employees living with HIV may also be ostracized and isolated by colleagues, and some are ultimately dismissed because of their HIV status. When they become sick with AIDS, they are often denied reasonable accommodation in the workplace to help them manage their illness. Many individuals never get the opportunity to work as they are subjected to pre-employment testing for HIV and are excluded from jobs solely on the basis of their HIV status.

Stigma and discrimination are largely caused by fear and ignorance about how HIV is transmitted and about the natural progression of the disease. They are grounded in myths and prejudices about who does and who does not contract HIV.

Employers are increasingly realizing that stigma and discrimination not only violate the fundamental human rights of employees but are also counter-productive as they hinder prevention efforts. Many companies have thus declared 'zero tolerance' for discrimination in the workplace and ensure that HIV status is not a factor for consideration in employment, promotion, training or access to benefits. In some workplaces innovative practices such as job-sharing and pooling of sick-leave have been put in place to accommodate employees living with HIV. Workplace information and education programmes have also been initiated, which are essential in combating the spread of the epidemic, fostering greater tolerance for workers with HIV/AIDS, addressing gender-related issues, and significantly reducing HIV-related anxiety and stigmatization.

The role of labour judges and magistrates

“The impact of discrimination on HIV positive people is devastating. It is even more so when it occurs in the context of employment. It denies them the right to earn a living. For this reason, they enjoy special protection in our law”.

(Per Ngcobo J, Hoffman v South African Airways, South African Constitutional Court).

In spite of employers’ growing awareness of the human rights and other issues associated with HIV/AIDS in the workplace, labour judges and magistrates worldwide are increasingly required to adjudicate on unfair labour practices based on HIV-related stigma and discrimination. With the increased availability of antiretroviral drugs (ARVs), the legal framework of many countries is also likely to cover provision of treatment for employees living with HIV/AIDS, which will effectively enable them to continue working.

The role of labour judges and magistrates in ensuring non-discrimination and a supportive working environment is crucial. Policies and legislation that outlaw discrimination in the workplace and provide prevention measures and social protection will have little effect unless they are strenuously enforced in labour courts that are accessible to employees living with HIV/AIDS.

Labour judges and magistrates can take action on three levels¹. They can:

1. **Make labour courts and legal processes accessible to people living with HIV/AIDS:** because of the stigma and discrimination associated with the disease, there is often a need to protect the confidentiality and personal privacy of men and women seeking redress in the labour courts. Judicial officers should be sensitive to the need to issue name suppression orders, particularly where the aggrieved employee would otherwise elect not to approach the court in order to enforce his or her right to non-discrimination. Judicial officers should also be sensitive to the urgency of cases involving people living with HIV/AIDS.

Protracted delays in the adjudication of cases can mean that the complainant may not survive long enough to benefit from a judgment.

2. **Acquire and apply relevant technical and legal knowledge:** all responses to HIV/AIDS should be based on sound information. As members of the community, judicial officers cannot be entirely free of the prejudices, fears and attitudes of the societies in which they live. It is, therefore, critical that all judicial officers equip themselves with accurate information about the disease so that they have a good understanding of HIV/AIDS. When adjudicating on a problem related to HIV in the workplace knowledge of the applicable legislation and common law principles is essential. In addition, familiarity with relevant international instruments and comparative national jurisprudence, and the ways in which they can be used in domestic judicial fora can make a positive contribution.

3. **Promote social change:** labour judges and magistrates should assess the effectiveness and relevance of current laws to the epidemic and add their voices to calls for law reform where necessary and possible. They can work with parliamentarians, government authorities, the social partners, and HIV/AIDS experts to help ensure that an effective regulatory framework is in place to eliminate workplace discrimination, and that workplace prevention and social protection programmes are in accordance with the ILO *Code of Practice on HIV/AIDS and the world of work* (para. 5.1(i)). The judiciary itself could take measures to ensure that it is a model employer in this regard.

“In the face of HIV/AIDS, judicial officers everywhere must give a measure of leadership. The epidemic presents many problems of a legal character; but still more problems of prejudice, ignorance and discriminatory attitudes.”

(Justice Michael Kirby)

1. This section benefits from insights given by Justice Michael Kirby in “Courts and Justice in the Era of HIV/AIDS”, Judges’ Workshop on HIV/AIDS, organized by the Lawyers Collective, 10 January 2002, New Delhi. Full text of the presentation can be seen at: http://www.lawfoundation.net.au/resources/kirby/papers/19990107_HIV.html

Good practice in national legislation and jurisprudence

No fewer than 189 States agreed a collection of time-bound goals at the UN General Assembly Special Session on HIV/AIDS in June 2001, and thus committed themselves to:

“By 2003, develop a national and legal and policy framework that protects in the workplace the rights and dignity of persons living with and affected by HIV/AIDS and those at greater risk of HIV/AIDS, in consultation with representatives of employers and workers, taking account of established international guidelines on HIV/AIDS in the workplace.” (UN Declaration of Commitment on HIV/AIDS, 2001, Para. 69.)

An increasing number of countries include strategies for the world of work in national and sub-regional policies and guidelines on HIV/AIDS, for example the Southern African Development Community’s Code on HIV/AIDS and employment and the Caribbean Platform of Action on HIV/AIDS and the world of work. Countries have also adopted, or are in the process of revising, legislation to protect the rights of persons affected by HIV and AIDS. National legislative provisions relating to HIV/AIDS in the workplace are found in:

- AIDS-specific laws
- Labour laws
- Laws and constitutional provisions on human rights and non-discrimination
- Disability laws
- Common law principles of privacy and confidentiality

If HIV-related legislation is to be effective in creating an enabling environment for an effective response to HIV/AIDS, it must outlaw all forms of discrimination on the basis of real or perceived HIV status in the workplace and elsewhere and protect the rights of people living with HIV/AIDS. This is necessary because:

- governments have a duty to respect, protect and promote the human rights of all, regardless of their HIV status;
- in practice, discrimination on the basis of HIV and the violation of other human rights hinder prevention, treatment, care and support efforts.

In **Mozambique**, Act 5 of February 2002 specifically addresses HIV in the workplace. It prohibits discrimination on the basis of HIV

2003 Progress report on the Global response to HIV/AIDS Epidemic

Despite important progress in developing national strategic frameworks for an effective response, 38% of countries - including almost one-half of those in Sub-Saharan Africa - have yet to adopt legislation to prevent discrimination against people living with HIV/AIDS.

status in access to and continued employment, training, promotion and career opportunities as well as HIV testing without consent. It also provides for confidentiality regarding information about an employee’s HIV status.

Costa Rica enacted the General Act on HIV/AIDS No. 7771 in 1998 and regulations pursuant to the Act in 1999 (Regulations No 27894–S). This legislation covers a number of HIV prevention, treatment, and care and support issues, and contains specific provisions on HIV in the workplace. Discrimination in any aspect of employment is prohibited not only against people living with HIV/AIDS but also their relatives and persons closely related to them. The need for speedy resolution of grievances in the context of HIV is specifically addressed in this legislation. Under the regulations, the Minister of Labour and Social Security is obliged to undertake an inquiry within 15 days of receiving a complaint regarding HIV testing or discrimination.

In **Cambodia**, the Law on the Prevention and Control of HIV/AIDS, 2002, prohibits discrimination based on actual, perceived or suspected HIV status of an individual or his or her family members. It also prohibits testing for HIV without informed consent. The penalties provided for in this legislation are weighty and include imprisonment of up to six months for violations of the provisions on discrimination. In the case of a repeated offence, provision is made for the sentence to be doubled.

Several countries have elected to include HIV-specific provisions in their labour legislation. In the **Bahamas**, the Employment Act No. 27 of 2001 prohibits HIV screening and discrimination on the basis of HIV/AIDS against all employees and job applicants. In recognition of the fact that the very nature of the HIV disease means that employees with HIV may not be in a position to work until normal retirement age, provision is made for the payment of non-discriminatory early retirement benefits, placing employees living with HIV in the same position as any other employee who takes early retirement.

The **Zimbabwe** Labour Relations Act, as amended by the Labour Relations Amendment Act of 2002, explicitly prohibits an employer from discriminating against an employee or prospective employee on the basis of HIV status. The Labour Relations (HIV and AIDS) Regulations of 1998 contains a comprehensive set of provisions regulating the response to HIV in the workplace. In addition to prohibiting discrimination in all aspects of employment, the provisions specifically allow for HIV education and information during normal working hours. This provision is decisive because there is a tendency on the part of many employers to arrange information and education activities after working hours so as not to interfere with production, which effectively excludes many employees, especially women, from taking part due to family commitments. Programmes that are held during working hours can be made compulsory for all employees and can help to eliminate stigmatization. They also highlight to the staff the importance that their employer attaches to them. The protection of confidentiality of HIV-related personnel data is another equally important provision given the current levels of stigmatization and discrimination that employees living with HIV and AIDS have to face from colleagues in the workplace.

In other countries, HIV provisions are to be found in anti-discrimination laws. In **Romania**, discrimination on the basis of belonging to a “disfavoured category”, which includes people living with HIV/AIDS, is prohibited under the Emergency Ordinance No. 137/2000 on Preventing and Punishing All Forms of Discrimination. In South Africa, discrimination on the basis of HIV status in employment is prohibited under the Employment Equity Act.

In China, **Hong Kong Special Administrative Region**, HIV is defined as a disability under the Disability Discrimination Ordinance of 1995 which prohibits discrimination, harassment or vilification based on disability in all aspects of employment. Under this Ordinance, the criterion for employment is the ability of the employee to perform the tasks required of the job. In this case, termination of employment on the basis of HIV status alone is unlawful. Furthermore, an employer can be held legally responsible for allowing HIV-related discrimination to occur in the workplace, which is a useful incentive for employers to put effective measures in place.

Jurisprudence

There is a growing body of jurisprudence illustrating the sensitive way in which judicial

officers can apply the law in order to protect the rights of women and men living with HIV/AIDS. Many of these cases have been decided in the absence of specific legislative provisions on HIV/AIDS in the workplace and are good examples of how general legal provisions relating to equality, dignity and privacy can be used to combat infringements of fundamental human rights on the basis of HIV status in the workplace.

In **Haindongo Nanditume v Minister of Defence**, the Namibian Labour Court found in favour of a recruit who had been excluded from employment in the Namibian Defence Force solely on the basis of his HIV status, notwithstanding the fact that the Namibian Labour Act does not specify HIV status as a prohibited ground of discrimination. The court upheld the argument that HIV status alone is not an indication of fitness to work and thus to exclude someone from employment solely on the basis of their HIV status constitutes unfair discrimination as defined by the Labour Act.

In South Africa and Botswana, the question of whether or not a job application may be refused solely on the basis of the applicant’s HIV status has been decided on constitutional grounds. In **Hoffmann v South African Airways**, the South African Constitutional Court (SACC) held that the exclusion of Mr. Hoffmann from employment as a cabin attendant constituted an infringement of his right to dignity. Similarly, in **Diau v Botswana Building Society**, the Industrial Court considered refusal to employ solely on the basis of HIV status to be an infringement of the right to dignity.

In other jurisdictions, termination of employment on the basis of HIV status has been held to be an infringement of the right not to be discriminated against on the basis of disability. In **Thwaites v Canada (Canadian Armed Forces)**, the Canadian Human Rights Commission found that the Canadian Armed Forces had failed in its legal duty to accommodate the complainant on the basis of his disability and to individually assess his capabilities. The Commission stressed the importance of searching for reasonable alternatives or accommodating the individual to permit him or her to do the job. It held that, *“Indeed, without reasonable accommodation, the protection given ... to certain groups, the disabled in particular, would be quite illusory ...”*.

In India, both the Bombay (**MX v ZY AUR 1997 (Bom 406)**) and Gujarat High Courts (**Chotulai Shambahi Salve v State of Gujarat (2001)**) have held that exclusion from employment solely on the basis of HIV status constitutes an infringement of Article 14 (Equality before the law, and Article 16 (Equality of opportunity in matters of public employment) of the Indian Constitution.

ILO standards and principles relevant to HIV/AIDS

A number of international instruments may be drawn upon to support measures against discrimination on the basis of HIV status and help protect the fundamental rights of workers.

International human rights instruments include the **Universal Declaration of Human Rights**, the **International Covenant on Civil and Political Rights**, the **International Covenant on Social, Economic and Cultural Rights** and the **Convention on the Elimination of All Forms of Discrimination Against Women**.

Several ILO Conventions and Recommendations can also be invoked to support the efforts of countries to combat human rights violations in the HIV/AIDS context. Although no Conventions or Recommendations deal specifically with HIV/AIDS, several cover relevant areas, including protection against employment and occupational discrimination, social protection, the prevention of accidents at work, and the adaptation of the work environment for workers affected by ill-health.

The **Discrimination (Employment and Occupation) Convention, 1958 (No. 111)** is the most significant in the context of HIV in the workplace. This Convention prohibits discrimination in access to or continued employment and in terms and conditions of employment. Although HIV is not specified as a prohibited ground of discrimination, the Convention does provide for States to add additional grounds, such as HIV or health status.

The ILO Code of Practice on HIV/AIDS and the world of work

The ILO has, however, produced a Code of Practice dealing specifically with HIV/AIDS which was developed in consultation with representatives of governments, employers and workers in all regions. Finalized by a tripartite meeting of experts and adopted by the ILO Governing Body in June 2001, it was launched the same month at the UN General Assembly 26th Special Session on HIV/AIDS in New York. The Code sets out fundamental principles for policy development and practical guidelines from which concrete responses to HIV/AIDS can be developed at enterprise, community and national levels. It promotes a comprehensive approach to workplace programmes, including:

ILO Conventions

Many instruments exist which cover both protection against discrimination and the prevention of infection, and these can be and have been used in domestic courts. The Conventions which are particularly relevant in the context of HIV/AIDS at work include:

Discrimination (Employment and Occupation) Convention, 1958 (No. 111);

Occupational Safety and Health Convention, 1981 (No. 155);

Occupational Health Services Convention, 1985 (No. 161);

Termination of Employment Convention, 1982 (No. 158);

Vocational Rehabilitation and Employment (Disabled persons) Convention, 1983 (No. 159);

Social Security (Minimum Standards) Convention, 1952 (No. 102); and

Labour Inspection Convention 1947, (No. 81) and Labour Inspection (Agriculture) Convention 1969, (No. 129).

- the protection of workers' rights, including employment protection, gender equality, entitlement to benefits, and non-discrimination;
- prevention through education, gender-aware programmes, and practical support for behaviour change;
- care and support, including entitlement to reasonable accommodation, affordable health services, and statutory social security programmes and occupational schemes, as well as treatment where possible.

The separate and joint rights and responsibilities of the tripartite partners are clearly set out.

The Code forms the cornerstone of the ILO's efforts against HIV/AIDS and is now being used by policy-makers and workplace partners in over 60 countries. It has been translated into 30 languages. To complement and guide the application of the Code, the ILO has produced *Implementing the ILO Code of Practice on HIV/AIDS and the world of work: an education and training manual*. This serves as an information and reference document and provides guidelines, technical information, case studies, learning activities, model training courses, and examples of legislation and policies, to help users apply the Code to national strategic plans and workplace policies and programmes. It covers the role of government and the social partners, human rights and legal issues, workplace policies, programmes for prevention and care, the gender dimension of HIV/AIDS, and reaching out to the informal economy.

The ILO Code of Practice on HIV/AIDS and the world of work (2001):

This internationally recognized guideline stands on 10 key principles:

1. Recognition of HIV/AIDS as a workplace issue;
2. No discrimination against workers on the basis of real or perceived HIV status;
3. Gender equality because more equal gender relations are vital to preventing the spread of HIV/AIDS and managing its impact;
4. Healthy work environment to minimize occupational risk and ensure the workplace is adapted to the capabilities of affected workers;
5. Social dialogue because policies are best implemented through cooperation and trust between employers, workers and governments;
6. No screening for purposes of exclusion from employment or work processes;
7. Confidentiality to protect workers' personal data;
8. Continuation of employment relationship as long as workers are medically fit;
9. Prevention through information, education and support for behaviour change;
10. Care and support including access to social security, occupational benefits and affordable health services.

Source: *Implementing the ILO Code of Practice on HIV/AIDS and the world of work: an education and training manual*, 2001, Module 2: HIV/AIDS and human rights, pages 4-6.

Using international instruments

The Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the *ILO Code of Practice on HIV/AIDS and the world of work* as well as the *ILO Code of Practice on the protection of workers' personal data* have all been used by labour court judges to render decisions in HIV-related cases: **Joy Mining Machinery (SA) v National Union of Metalworkers of SA & others (2002) 23 ILJ 391 (LC)**; **PFG Building Glass (PTY.) LTD. v Chemical Engineering Pulp Paper Wood & Allied Workers' Union & others (2003) 24 ILJ 974 (LC)**.

“Although the ILO Code of Practice on HIV/AIDS and the world of work is not binding on the Labour Court, it is fortifying to note that as an international instrument, it echoes some of the important provisions of our law. Its key principles include an acknowledgment that HIV/AIDS is a workplace issue, promotion of non discrimination against workers on the basis of real or perceived HIV status, prohibition of HIV testing at the time of recruitment or as a condition of continued employment; prohibition of mandatory HIV testing; recommendations about conditions for voluntary testing at the instance of employees and adherence to strict confidentiality and disclosure requirements.

“The Code of Practice on the Protection of Workers' Personal Data² (the Data Code) also has important recommendations for HIV testing. It advocates as a general principle that personal data should, inter alia, be processed lawfully and fairly, and only for reasons directly relevant to the employment of the worker and be used only for the purposes for which they were originally collected. Employers should regularly assess their data processing practices to improve ways of protecting the privacy of workers...”

(Judge Pillay in PFG Building Glass (paragraphs 77 and 78))

2. International Labour Office, Geneva. Meeting of Experts on Workers' Privacy, Geneva, 1-7 October 1996. (1997) 18 ILJ 26.

Applying the Code of Practice

The Code and the manual together provide information that can help labour judges and magistrates to increase their knowledge and understanding of HIV/AIDS and of the legal and human rights issues related to HIV/AIDS in the workplace that they are likely to be called upon to adjudicate. The following pages

identify a number of questions that may arise and indicate which sections of the Code and manual are most relevant in addressing them. For the full text of both documents, see the ILO/AIDS website: <http://www.ilo.org/aids>. Free copies of the Code are available on request.

Basic information about HIV/AIDS

Impact of the disease and how it is transmitted

How does the epidemic impact on the world of work?

See in the Code of Practice

**Section 5
Appendix I**

**General rights and responsibilities
Basic facts about the epidemic and its implications**

See in the manual

Module 1:

The epidemic and its impact on the world of work
*Pages 9-13: The impact of HIV/AIDS on the world of work;
page 15: Responding at the workplace*

Module 2:

HIV/AIDS and human rights
Pages 1-6: HIV/AIDS – a human rights issue

How is HIV transmitted and what are the risks of infection at the workplace?

See in the Code of Practice

Appendix 1:

Basic facts about the epidemic and its implications

See in the manual

Module 1:

The epidemic and its impact on the world of work
Pages 2-4: Facts about HIV/AIDS

The human immunodeficiency virus (HIV) is transmitted through body fluids, typically during unprotected sex, infected blood transfusions, contaminated hypodermic needles, and from an infected mother to her unborn or newborn child.

It is not transmitted through casual contact with an infected person such as shaking hands or hugging, sharing toilets and washing facilities, or through coughing and sneezing.

Once infected, a person can live healthily and work effectively for many years, without presenting a threat to other workers.

Stigma and discrimination encourage fear and denial, and hamper voluntary counselling and testing (VCT), and treatment and prevention programmes.

Common human rights issues

HIV testing and confidentiality

Should employers be permitted to test employees for HIV?

See in the Code of Practice

Section 4.6:	Screening for purposes of exclusion from employment or work processes
Section 4.7:	Confidentiality
Section 5.2:	Employers and their organizations: (e) Personnel policies and (g) Confidentiality
Section 8:	Testing
Section 9.7:	Privacy and confidentiality

See in the manual

Module 2:	HIV and human rights <i>Pages 13-16: Testing</i>
Module 7:	Care and support <i>Page 5: Voluntary counselling and testing</i>

HIV/AIDS screening should not be required of job applicants or persons in employment. In addition to violating the human rights of workers, the attempt to exclude people living with HIV/AIDS from the workplace hinders efforts to combat the epidemic. It is perfectly possible for people who are HIV-positive to remain in good health for several years despite their infection. Employers and fellow workers need have no fear of infection from routine contact with people who are HIV-positive. In most professions, their presence at work does not place other people at risk of infection.

Compulsory testing creates a climate of fear and hostility and contributes to the propagation of the epidemic because people who are HIV-positive are more likely to hide their condition and even transmit the virus to others for fear of stigmatization or losing their job. It is preferable to approach the reduction of the impact of the epidemic through prevention measures such as education programmes, and the promotion of voluntary and confidential HIV testing, accompanied by appropriate counselling.

Should employers be obliged to treat information relating to an employee's HIV status as confidential?

See in the Code of Practice

Section 4.7:	Confidentiality
Section 5.2:	Employers and their organizations: (e) Personnel policies and (g) Confidentiality
Section 9.7:	Privacy and confidentiality

See in the manual

Module 2:	HIV and human rights <i>Pages 10-12: The right to privacy</i>
Module 7:	Care and support <i>Pages 7-8: Disclosure and confidentiality</i>

An important part of the right to privacy concerns a person's health. When people are facing life-threatening illnesses they have a right to decide who to tell and when to tell them. They may decide to tell their employer or not. There is no justification for asking job applicants or workers to disclose their HIV

status. If they choose to do so, this information, as with any other information relating to the health or other personal circumstances of the worker, must be kept confidential. This is particularly important given the stigma and discrimination associated with HIV/AIDS in many of our societies.

Reasonable accommodation

What obligations does an employer have to continue employing a person living with HIV and to reasonably accommodate such a person?

See in the Code of Practice

Section 3.2:	Definition of reasonable accommodation (see box below)
Section 4.8:	Continuation of employment relationship
Section 5.2:	Employers and their organizations: (e) Personnel policies, and (j) Reasonable accommodation

See in the manual

Module 2:	HIV/AIDS and human rights <i>Page 5: Reasonable accommodation</i>
Module 7:	Care and support <i>Pages 4-9: Care and support at the workplace</i>

HIV status is not a cause for termination of employment. As with any other life-threatening or chronic medical condition, employees living with HIV should be encouraged to continue working in appropriate employment

for as long as they are medically fit to do so. Employers have an obligation to reasonably accommodate such employees to continue in their employment.

Reasonable accommodation

Reasonable accommodation is the name given to practical and realistic adjustments that the employer can make to assist workers with an illness or disability manage their work. Measures will vary with different workplaces but might include:

- Reducing or rescheduling working hours
- Modifying tasks or changing jobs
- Adapting the work environment
- Providing more or longer rest periods
- Granting employees time off for medical appointments, counselling and other services
- Granting flexible sick leave

As with other working conditions, it is best if reasonable accommodation is defined in any particular workplace by agreement between management and unions or workers' representatives. It is important that other workers see reasonable accommodation as providing necessary care and not favourable treatment.

Source: *Implementing the ILO Code of Practice on HIV/AIDS and the world of work: an education and training manual*, 2001, Module 7: Care and support, pages 6-7.

Further information

Websites covering legal issues related to HIV/AIDS and HIV-related court cases include:

AIDS Law Project, South Africa:

www.alp.org.za

Canadian HIV/AIDS Legal Network:

www.aidslaw.ca

ILO/AIDS:

www.ilo.org/aids

Lawyers Collective HIV/AIDS Unit:

www.lawyerscollective.org

ILOAIDS

International Labour Office

4, route des Morillons

CH-1211 Geneva 22

Switzerland.

E-mail: iloaids@ilo.org

Website: www.ilo.org/aids