

HIV/AIDS Policy

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1. INTRODUCTION

It is known that employees with life threatening illnesses, which may include, for example, cancer, heart disease and HIV/AIDS, often wish to continue in as many of their normal activities as their condition allows.

Nonetheless one must consider, in the context of HIV/AIDS for example, the socio economic, employment and human rights implications of the disease. It is clear from medical and scientific research that HIV/AIDS will affect every work place, with prolonged staff illness, absenteeism and even death impacting on occupational health and safety, costs and work place morale. While HIV/AIDS knows no social, gender or racial boundaries, it is a disease surrounded by ignorance and prejudice. In the workplace discrimination has been perpetuated through widespread practices such as pre- employment HIV/ AIDS testing, denial of benefits and dismissal for being HIV/ AIDS positive.

One of the most effective ways of reducing and managing the impact of HIV/AIDS in the workplace is through the implementation of an HIV/AIDS policy and programme. In addressing aspects of HIV/AIDS in the workplace will enable the employer, trade unions and government to actively contribute towards local, national and international efforts to prevent and control HIV/AIDS. This policy therefore to serve as a guideline for all current employees.

2. LEGAL FRAMEWORK

The new legal order has now provided a framework to deal with HIV/AIDS and life threatening illnesses and this is evident in numerous pieces of legislation including. This policy shall also be read in conjunction with the Constitution of South Africa Act No. 108 of 1996, together with the following:

- **The Employment Equity Act No 55 of 1998**, which, prohibits unfair discrimination against employees on the basis of their HIV/AIDS status and further prohibits HIV/AIDS testing without the permission of the Labour Court. The Employment Equity Act also prohibits any medical testing unless legislation permits or requires it, or it is justifiable in light of medical facts, employment conditions, social policy, the fair distribution of employee benefits or the inherent requirements of the job.
- **The Labour Relations Act No 66 of 1995**, which prohibits the dismissal of an employee simply due to the employees HIV/ AIDS status.

- **The Occupational Health and Safety Act No 85 of 1993** and Mine Health and Safety Act which states clearly that the employer is obliged to provide, as far as reasonable practicable, a safe working environment.
- **The Compensation for Occupational Injuries and Diseases Act No. 130 of 1993**, which permits employees who have been infected with HIV/AIDS in the workplace to apply for benefits.
- **The Basic Conditions of Employment Act No 75 of 1997**, which details certain basic standards of employment which every employee is entitled to receive, such as sick leave entitlements and the fact that employees who work night work may request a medical test and such test will be for the employer's account.
- **The Medical Schemes Act No 131 of 1998**, which prohibits any medical scheme which unfairly discriminates against its members on the basis of their "state of health"
- Our **Constitution** which states that all persons with HIV/AIDS have the right to privacy

In light of this new order, it is in the Municipality's best interest to develop a policy and procedures to deal with these situations and ensure that employees are fully informed and managers trained to handle the employee-relations implications of such illnesses.

3. POLICY STATEMENT.

The policy of the Municipality is to give guidelines to Management, employees and Trade Union shop stewards on the following:

- To encourage employees with HIV/AIDS or other life-threatening illnesses, to notify the Municipality when there is an impact on job performance or a threat to the their health and safety and/or to the health and safety of other employees
- To respect the dignity and privacy of employees who have HIV/AIDS or other life threatening illnesses
- To eliminate unfair discrimination based on HIV/AIDS status or other life threatening illnesses in respect of any and all employment policies, procedures and practices
- To properly manage HIV/AIDS in the workplace through awareness and education measures in order to create openness, acceptance and a balance between the rights and responsibilities of all parties.
- To provide a safe work environment as far as is reasonably practicable

- To ensure that employees with HIV/AIDS or other life threatening illnesses, who are able to meet acceptable working standards, are treated consistently and allowed to continue work as long as their conditions are not a threat to themselves or others.

4. SCOPE OF POLICY

This policy shall be applicable to all currently paid employees of the Municipality.

5. RELEVANT PROCEDURES AND PROGRAMMES

5.1 HIV/AIDS TESTING AND CONFIDENTIALITY

No employee, or applicant for employment, will be tested for HIV/AIDS by or on behalf of the Municipality during the implementation of any employment policies, procedures or practices including, but not limited to:

- An application for employment.
- As a condition of employment.
- As an access requirement for benefits.
- During procedures related to termination of services.
- As an eligibility requirement for training or development programs.

The Employer has to make an application to the Labour Court to have an HIV/AIDS tests done on an employee and such test may only be done once that the Labour Court made a ruling. Where permission has been obtained by the Labour Court to conduct such tests, the Municipality will:

- Maintain the confidentiality of such information.
- Provide pre and post – test counselling for the employee/s.
- Test only those employees or categories of employees in respect of which authorisation have been obtained.
- Test only for the duration for which the authorisation has been obtained.

Where an employee voluntarily supplies information in respect of his/her HIV/AIDS status:

- The confidentiality of the information will be maintained unless the employee gives express consent that his/her status can be disclosed.
- The Municipality will arrange counselling.

All employees with HIV/AIDS have the legal right to privacy. An employee is thus under no obligation to disclose their status to their employer or fellow employees. Help and assistance must be available and created to encourage openness, acceptance and support for those employees who have voluntarily disclose their HIV/ AIDS status in the workplace. Mechanisms introduced must include *inter alia* the following:

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

5.2 OTHER MEDICAL TESTING AND CONFIDENTIALITY.

The Municipality will not require an employee to undergo any other medical test unless:

- Legislation permits or requires it, or
- It is justifiable in light of medical facts, employment conditions, social policy, the fair distribution of employee benefits or the inherent requirements of the job.

When an employee has undergone a medical test as required by the employer or has provided medical information voluntarily, such information will be kept confidential.

THE MUNICIPALITY SHOULD ENCOURAGE EMPLOYEES TO TAKE TESTS ON THE FOLLOWING DEFINED AND EXPLICIT CONDITIONS.

- At the sole initiative of an employee.
- The employee has made the request in writing and fully understands the contents and outcomes of such request.
- Within a fully trained health care worker and employee-patient relationship;
- As been afforded the opportunity to pre-test counseling.
- As been afforded post test counseling.
- With strict procedures relating to confidentiality of an employee's HIV/AIDS status and test results as defined in this policy.

Emphasis must be placed on informed consent which means the employee has been provided with information, fully understands it and based on this has agreed to undertake the test. It implies that the employee understands what the test is, why it is necessary, the benefits, risks, alternatives and any possible social implications of the outcome.

5.3 CREATION OF A NON DISCRIMINATORY WORK ENVIRONMENT

The Municipality will not use a persons HIV/AIDS/ill health status as a criterion for decision making or treat any person with HIV/AIDS/ ill health any differently from other employees in respect of the policies, procedures or practices listed below, provided that such HIV/AIDS/ ill status health does not affect the employee/ applicant's ability to meet the inherent requirements of the job and the health and safety of the employee or fellow employees is not effected:

- Recruitment.
- Advertising.
- Selection criteria.
- Appointments.
- Job grading.
- Remuneration.
- Benefits.
- Terms and conditions of employment.
- Job assignments.
- Work environment and facilities.
- Training and development.
- Performance evaluations.
- Promotions, transfers, demotions.
- Disciplinary measures.

The Municipality will specifically not utilise a medical aid scheme or pension/ provident fund scheme, which, directly or indirectly discriminates against a person based on his/her HIV/AIDS status.

5.4 SPECIFICALLY MANAGING HIV/AIDS IN THE WORK PLACE

5.4.1 EDUCATION

In order to create awareness of HIV/AIDS in the workplace the Municipality will engage in HIV/AIDS awareness and education programmes, which will include:

- What HIV/AIDS is.
- How HIV/AIDS can be transmitted.
- How HIV/AIDS transmission can be prevented including condom use, seeking health programmes for STDS (sexually transmitted diseases), the use of clean and unopened syringes and needles when employees are receiving injections at or by medial clinics/ medical practitioners.
- The risks of HIV/AIDS in its workplace.
- Openness, acceptance and support of infected employees.

5.4.2 FELLOW WORKERS AND HIV / AIDS

It is not possible for colleagues of a HIV positive employee to become infected through normal contact at the workplace and unless the HIV positive employee is a threat, either by behaviour or type of job function, it is not acceptable that colleagues refuse to work with that person.

Nonetheless Managers shall be sensitive and responsive to the concerns of co-workers and provide the relevant information and advice regarding the illness, to co-workers.

Should an employee, after education, reassurance and with all relevant safety and health precautions being taken, remain unwilling to work with the HIV positive employee, he/she will be warned that:

- His/her reaction is scientifically unjustified.
- His/her reaction is unreasonable.
- **Disciplinary action** will be taken against him/her.
- His/her own employment may be in jeopardy.

5.4.3 INFECTED EMPLOYEES

Employees who are affected with HIV/AIDS or suffer from life threatening illnesses are urged to utilise the **grievance procedure** in place at the Municipality, in the event of their rights being breached, victimisation by co-workers etc. The confidentiality of the employee's status will be maintained throughout any grievance proceedings.

5.5 MAINTENANCE OF A SAFE WORKING ENVIRONMENT.

The risk of HIV transmission in the work place is minimal. In fact according to medical evidence HIV/AIDS can only be transmitted via:

- Sexual intercourse
- HIV infected blood
- Unborn children of HIV infected mothers.

It cannot be passed on through the sharing of eating utensils, casual kissing, shaking of hands, insects, toilet seats, or air conditioning. Nonetheless the Municipality will take precautionary measures in the work place to ensure the health and safety of employees.

5.5.1 REGULAR ASSESSMENTS, FACILITIES AND TRAINING

The Municipality will conduct regular assessments to identify employees who are at risk in the workplace such as first aiders. The Municipality will provide the necessary equipment and materials to prevent the risk of exposure to HIV/AIDS/ other illnesses and train such employees on the risk of HIV/AIDS/ other illnesses, transmittal and the use of precautionary measures. Such measures will include:

- The provision of waterproof dressings to cover up any open wounds or abrasions before treating any casualty.
- The provision of disposable plastic gloves to be utilised prior to treating any wounds and/ or dealing with any body fluid.
- The provision of medicated soap and hand towels to wash hands after dressing wounds and coming into any contact with another person's body fluid.
- The provision of a resuscitation aid to utilise when undertaking mouth-to-mouth resuscitation.
- Training on, for example, following a needle stick injury or cut, bleeding is encouraged, the wound is washed with cold water and soap and medical advice is sought.

5.5.2 APPOINTMENT OF A DESIGNATED OFFICER

A designated officer will also be appointed to deal with incidents/ illnesses in the workplace. Such appointed official will also be responsible for:

- Reporting the incident to the to the Compensation Board within the required time frames.
- Providing information to the employee on the procedure that needs to be followed to qualify for a compensation claim.
- Assisting in the collection of information required to process claims.
- Ensuring that compensation testing is carried out in accordance with the Employment Equity Act provision, that is, with the permission of the Labour Court in respect of HIV/AIDS.
- Ensuring that the confidentiality of the employees status is maintained and that pre and post- test counseling is given.

5.6 DISMISSALS

Medical evidence shows that for example, even if tested positively, a person with HIV may never develop AIDS-related diseases or it may take up to 15 years to develop.

Nonetheless employees who know they are HIV positive or suffer from life threatening illnesses are urged to inform the Municipality once they become unable to perform their tasks, or they are recommended to do so by a counsellor or a medical practitioner, due to health and safety risks to themselves or fellow workers.

The Municipality shall continue to employ employees who have, or are suspected of having, life threatening illnesses or HIV/AIDS provided that:

- They are able to perform their jobs in accordance with required standards.

If the provisions outlined above are not met, the Municipality will initiate consultations in line with its ill health incapacity procedure. During such procedures the Municipality will seriously consider all alternatives to dismissal such as the adaptation of the employees current duties or the employee moving to a less demanding job, if the Municipality can offer such a position. If no alternatives can be found, the procedure may result in the termination of the employee's services.

During such incapacity procedures the employee will not be compelled to undergo HIV/AIDS tests, but may be required to undergo other medical tests to ascertain:

- His/her ability to meet the inherent requirements of the job.
- The scope of the illness that is partial or total disablement.
- The duration of the illness, that is temporary or permanent disablement.
- The health/safety threat to the employee or fellow employees.

If the employee volunteers to go for HIV/AIDS testing or is required to go for any other medical tests, his/her status will remain confidential during such process. Employees affected with HIV/AIDS or suffering from life threatening illnesses will further be given assistance and encouraged to seek:

- Assistance from established community support group
- Ongoing medical treatment
- Counselling services.

6. GUIDELINES

6.1 WHAT IS HIV/AIDS?

As HIV/AIDS is perhaps the most difficult life threatening illness to deal with, focus has been given to HIV/AIDS in this policy and procedure.

AIDS is caused by the Human Immunodeficiency Virus (HIV). So called because it attacks and destroys the human immune system. The resultant immune deficiency causes a spectrum of clinical diseases of which AIDS is the end stage. HIV infection leads to the following states:

6.1.1 ACUTE HIV INFECTION

About two weeks after infection with HIV, some people will develop flu like or glandular fever type illnesses. The illness is of short duration and recovery is complete. This is also called acute seroconversion illness, meaning that this is the time when HIV anti-bodies will appear in the blood. This stage is most often not diagnosed.

6.1.2 A SYMPTOMATIC CARRIER STATE

After seroconversion, the virus remains dormant in the body and during this time the person is symptom free and able to continue working normally.

6.1.3 AIDS RELATED CONDITIONS

After some time, ranging from a few months to up to fifteen years or more, a percentage of HIV people will develop symptoms such as weight loss, seizures, night sweats, persistent diarrhoea or skin rashes. These are called AIDS related conditions. This is the time when an employee may or may not be fully productive. At this point drugs such as AZT / Zidodudine / ARV's (Anti Retro Viral) would be the most beneficial in preventing further illness and increasing productivity.

6.1.4 AIDS

Without appropriate treatment, most people will deteriorate further and will develop severe, often fatal illnesses. They are then said to have full blown AIDS.

6.2 WHAT IS HIV TESTING?

HIV/AIDS testing includes taking medical tests to determine a person's HIV/AIDS status and also includes:

- Any written or verbal questions inquiring about previous HIV/AIDS tests.
- Questions related to assessment of "risk behaviour", for example, sexual practices, the number of sexual partners, sexual orientation.
- Any other indirect methods designed to determine an employees or applicants HIV/AIDS status.

7. COMPENSATION FOR OCCUPATIONALLY ACQUIRED HIV/AIDS & EMPLOYEE BENEFITS.

An employee may apply for compensation in the event where such employee has become infected as a direct result of an occupational accident, and as defined in the Act. The Municipality will take all reasonable steps to assist employees with the application of benefits, which may include:

- Providing information to affected employees on the procedures that will need to be followed to qualify for a compensational claim.
- Assisting with the collection of information that will assist to substantiate that the employee was occupationally exposed to HIV infected blood.

- No employee will unfairly be discriminated against in the allocation of applicable benefits.
- Employees that become ill with AIDS will be treated like any other employee with a comparable life threatening illness regarding employee benefits. Information from the Medical scheme on the status of employee will be kept confidential and will not be used to unfairly discriminate against such employee.