



Rhodes University

III-Health Incapacity and Occupational Health Policy

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PREAMBLE : Policy Declaration

1. Current realities and impending health issues facing the University prompt the development of this policy and a planned strategy to cope with these. The policy seeks to emphasise the University Mission which undertakes to embrace basic human rights and rejects unfair discrimination.
2. Policy must advocate a humanitarian perspective on the part of the employer which treats employees with dignity creating a culture where employees trust that they will not be punished for declaring any adverse health condition or disability status. These concerns require a clear and distinct policy and guideline structure which allows the organisation, supervisory staff and employees to deal with chronic, debilitating or life-threatening illnesses appropriately.
3. Parallel with this are a category of health issues relating to the working function of employees within the workplace. The various workplaces ranging from kitchen and garden to workshop and sophisticated laboratory present potential for occupational hazard, disease and adverse health effects.
4. The University concerns itself with the wellbeing of all employees and recognises that all recurring, ***progressive***¹ and life-threatening diseases or impairments present challenges that require appropriate action.
5. The University and the unions will develop programmes to assess the impact of HIV and AIDS on the workplace in order to develop a risk profile and to assess the direct and indirect costs of HIV and AIDS both on staff income and workplace productivity.²
6. The policy should respond to, and balance, the needs of employer and employee alike. It is important for the University community to acknowledge that living with a life-threatening disease relies on positive support structures, and, that, continued employment has beneficial effects during remission and recovery periods or may create positive life-prolonging effects.

¹ Words in bold italics within the text are listed in the definitions

² Code of Good Practice on Aspects of HIV/AIDS in the Workplace (S14)

7. This policy must be read in conjunction with the published *Institutional HIV and AIDS Policy* and the *Staff Disability Policy*. In addition a number of legal instruments affect policy perspectives, for instance : *Occupational Health and Safety Act 85 (1993)*, *Labour Relations Act 65 (1996)*, *Employment Equity Act 55 (1998)*; and, readers should note additional information amongst *Sources for this Policy Document* listed on page 10.

Policy Objectives

8. This policy strives to meet the University's responsibilities and roles with regard to the employer-employee relationship in the context of
 - "correctable", manageable or treatable conditions
 - short-term chronic or recurring conditions
 - progressive / long-term impairment / life-threatening disease
 - occupational health and safetyand,
 - promoting positive wellbeing of all university employees.

8.1. "correctable", manageable or treatable conditions

Conditions which can be corrected through rehabilitation, managed through medically controlled programmes of treatment, for instance: alcohol or illegal substance abuse, substance misuse, hypertension, diabetes, epilepsy, stress, depression.

8.2. short-term chronic or recurring conditions

Conditions which are recognised symptomatically to create short term debilitation, impairment, or loss of optimum health status which is ***substantially limiting*** including a constant underlying condition even if its effects on a person fluctuate, for instance: hepatitis A, glandular fever, tuberculosis.

8.3. ***progressive*** / long-term impairment / life-threatening

Conditions which may be managed or controlled through medical treatment or which are recognised as terminal in effect, or have lasted or are likely to persist for at least 12 months, for instance: HIV and AIDS (and related opportunistic diseases), cancer, hepatitis B, amputation, organ transplant.



8.4. occupational health and safety

To implement and give effect to the University's responsibilities as defined in the *Occupational Health and Safety Act*.

8.5. positive wellbeing of university employees

The University recognises that the workplace is a primary social environment and it can play a role in promoting and supporting a better quality of work-life and positive wellbeing amongst its employees.

8.6. limitations

While some "everyday" illnesses are related to longer term health status, this policy does not include illness categories such as immediately contagious and everyday acute illnesses (for instance, influenza, colds, gastro-enteritis, measles etc.).

9. This policy's purpose is to

- inform employees of their rights, responsibilities and benefits;
- ensure fair and valid assessment of the effect of working conditions on employees in order to prevent occupational incidents and accidents and health deterioration in employees;
- ensure fair and valid assessment of the compensation claims of an employee;
- clarify the University's responsibilities with regard to managing and assisting employees who fall within one of the three broad categories of health condition outlined (S8.1, S8.2, S8.3) or have suffered negative health effects due to adverse occupational workplace conditions; and, *inter alia*, to
 - identify staff falling into any of the three health categories;
 - provide a means of recognising and managing the impact of these conditions on the employer-employee relationship as a process which may reach the point of performance breakdown;
 - provide protection for, and ensure fair and consistent treatment of, employees with disabilities and / or life-threatening diseases;
 - support managers with guidelines for consistent management of performance and attendance in the context of health conditions of individual employees;

- allow **reasonable accommodation** in order to enable individuals to work productively for a long as possible, including considering all alternatives to dismissal on grounds of incapacity due to ill-health;
- identify sub-optimal working conditions;
- foster programmes which promote positive wellbeing and quality of work-life;
- reinforce the educational framework of the *Institutional HIV and AIDS Policy*.

Principles and Procedures

- *Reporting of identified concerns by supervisors*

10. Normal reporting of identified Ill-Health Incapacity and Occupational Health concerns is via the supervisory chain through to the relevant staff member in the Human Resources Division.

11. In cases where an individual indicates, and confidentiality is required or requested, reporting shall be directly to the relevant staff member in the Human Resources Division.

- *Consistent treatment*

12. Notwithstanding the fact that some life-threatening conditions are the result of an individual's own behaviours, these individuals should be treated on a similar basis to any other employee suffering from a life-threatening condition. Employees who are HIV positive, or in AIDS or emphysema, conversion, for instance, cannot be subjected to discrimination or victimisation.

13. This policy makes it unacceptable to refuse to work with an HIV positive person unless that person acts in a threatening manner, and, makes such discrimination subject to disciplinary action.

- *Protection of co-workers, students and visitors*

14. The University is obliged to ensure safe working conditions and environment to protect its employees, students and visitors. This includes ensuring an employee's condition does not create a health or safety



hazard for employees, students and visitors. The University will meet this obligation through provision of protective equipment, first-aid boxes and educational programmes on occupational health and safety and the application of **Universal Measures**.

14.1. This implies that when there is danger of exposure, such as when dealing with open wound injuries, or similar situations, on university premises, all persons should be considered as potentially infected and their blood and body fluids treated as such.

- *First Aid and body fluid contaminations in the workplace*

14.2. Individuals attending to first aid and accident incidents are responsible for applying appropriate infection control measures and adaptations in order to protect themselves and other individuals regardless of the known or unknown health status of themselves or any victims of the incident.

- *Adherence to Universal Precautions*

15. Strict adherence to **universal precautions** is advised under all circumstances as the University will be liable for any damage, or loss, caused as a result of any act or omission in connection with any work activity conducted by the institution³.

- *Confidentiality*

16. Employees may anticipate “qualified” confidentiality as outlined in S16.3 and below regarding the status of their health (includes impairment and disability) as follows.

16.1. In the case of **notifiable diseases** the nature of confidentiality will be managed in conjunction with the provisions of the prevailing legislation and instructions of the Department of Health.

16.2. In accordance with this policy, and subject to S16 above, no confidentiality may be broken, or transferred, without the express written permission of the **affected employee**. Where this permission is given, the matter must be dealt with in a sensitive and respectful manner in order to protect the **affected employee's** integrity.

16.3. Notwithstanding this, the University recognises that it cannot control confidentiality outside of the immediate workplace nor in the context of social relationships between individuals. In this context the following is provided for.

16.3.1. Where an individual points out a negative change in their own personal health status to a colleague, supervisor or university authority and verbally requests the matter be kept confidential, full confidentiality must be maintained without exception. This information will not be reduced into writing. Anyone told this information and who repeats it to another person may be held liable for breach of confidentiality.

16.3.2. Where an individual calls attention to a negative change in their own personal health status to a colleague, supervisor or university authority a letter noting that they voluntarily, openly, declare this should be provided in order to protect third parties against breach of confidentiality suits. Until such letter is provided full confidentiality shall be maintained.

16.3.3. Where a colleague, supervisor or university authority suspects that the health status of an individual has changed to the extent of deterioration of performance, these suspicions may not be made public nor discussed outside of the context of managing that workplace.

- *Voluntary declaration of a life-threatening disease*

17. Employees must feel confident that their choice to declare their health status is seen as a positive step towards the management of their condition.

³ Refer Paragraph 14.4 *National Policy on HIV/AIDS, for Learners and Educators in Public Schools and Students and Educators in Further Education and Training Institutions. (Department of Education / National Education Policy Act, 1996 (No 27)*



18. An employee is not obliged to declare health status regardless of the nature.
19. An employee questioned directly about a health specific condition (S8.1, S8.2, S8.3) is not obliged to volunteer information. However
 - 19.1. in order to protect the interests of other workers, and productivity, in the workplace an employee may be directly approached in the limited range of immediately contagious and everyday acute illnesses. (For instance: influenza, colds, gastro-enteritis, measles etc..)
20. When medical evidence supports the voluntary declarations of an individual employee, and notwithstanding the obligation to treat all employees fairly and equally as to conditions of service, the University may, with Council's approval, provide extended paid sick-leave, or alternative sick leave allocations.

MANAGEMENT of Ill-health issues

- *Attendance and performance*

21. Performance and attendance should not be unduly disrupted and the University is entitled to bring these matters to the attention of any individual employee.
 - 21.1. This policy advocates that
 - 21.1.1. employees must be made aware that any available information that might give background to their position is important;
 - 21.1.2. reasonable and adequate steps be taken to counsel staff on poor performance and attendance which may affect job security;
 - 21.1.3. all employees have the right to be informed as soon as possible that they are not meeting the performance and / or attendance standards;

- 21.1.4. employees are ultimately responsible for managing their own condition but the employer will endeavour to support them in order to achieve this goal;
- 21.1.5. the responsibility to manage productivity and employee morale in the workplace lies with supervisors and their actions towards HIV and AIDS and other life-threatening conditions must take this into account;
- 21.1.6. supervisors and managers must demonstrate that reasonable attempts have been made to assist and advise or direct the staff member to a source of advice, before action towards ill-health incapacity dismissal is undertaken;
- 21.1.7. a balance must be sought between reasonable accommodations and associated costs, and the use of replacement staffing against absentee staff.

22. Supervisors and managers are obliged to reassure employees that full confidentiality will be maintained with regard to information arising from ill-health incapacity investigations.
23. Counselling of employees with life-threatening diseases, and their co-workers who are not ill, is a positive step towards maintaining morale and productivity. Supervisors and managers are encouraged to inform their staff on the advantages of coming forward, in confidence or openly, and seeking support.
 - *Investigation of occurrences of ill-health*
24. A consistent process must be applied to the investigation of the performance and attendance of all employees at all times in order to ensure fair and consistent treatment in differing circumstances. However, where these investigations appear to relate to the health status of an individual greater sensitivity and confidentiality is expected.
25. Ill-health, as fitted to any of the categories noted above, carries a number of technical difficulties for supervisors. Proactive treatment of absentee and poor performance cases suggests, in the first instance, that these



cases are investigated because the cause may lie in a “*correctable*”, *manageable or treatable condition*.

26. The individual enjoys the right to fair treatment and due consideration of their case.

- *Reasonable accommodation for persistent ill-health conditions*

27. When an individual’s attendance and work performance are affected due to ill-health, or, the disease, impairment or disability becomes **substantially limiting**, not yet indicating that ill-health retirement be considered, the following principles will apply.

- Normal sick leave allocations apply as according to, at least, the *Basic Conditions of Employment Act*.
- Sick leave entitlement will be subject to the University’s allocation in this regard as published from time-to-time.
- Additional sick leave arrangements may be made available in accordance with the *Special Sick Leave* protocols.
- An employee may be referred for assessment by an appropriate professional appointed by the University.
- The specifics of the examination will be determined by the appointed professional and the diagnosis will be confidential.
- The appointed professional will be asked to give an opinion as to the employee’s ability to meet the current job requirements and any **reasonable accommodation** that could be made in order to allow the employee to meet the job requirements.
- An employee no longer able to meet the job requirements or the requirements for any other suitable alternative post, may be placed on ill-health retirement and the benefits attendant upon such retirement.
- *Ill-health retirement*

28. Ill-health retirement is subject to the Rules of the Pension and Provident Funds and reinsurers of these benefits. Sections 26, 27, and 38 provide mechanisms for dealing with ill-health retirement in the context of persons living with life-threatening diseases. The University undertakes to regularly review the provisions of the reinsurance in order to provide the best opportunities for sustaining life quality and quality of living conditions for ill-health retirees.

29. Where ill-health is identified by a supervisor as a possible route to be followed, this will be notified to the Human Resources Division which will conduct the process of assessment and investigation.

30. Where ill-health is used to evaluate the continued employment of an individual resulting in dismissal, (ref 9 and 24) procedural review shall be subject to the conditions of relevant legislation and codes of practice governing occupational health and operational requirements of the employer.

- *Reasonable accommodation for people with disabilities*⁴

31. The University will make all reasonable modifications, in accordance with its *Staff Disability Policy*, for the needs of employees with impairments or disabilities, in order to reduce the impact of the impairment on the employee’s capacity to fulfil the essentials of the job functions. Modifications must be taken into consideration to accommodate new job applicants and employees and to meet the University’s obligation under the *Employment Equity Act*.

32. The University is entitled to use objective criteria to assess the effect of accommodations and whether this would cause unjustifiable cost to itself.

33. The assessment of an employee’s position must follow the *Code of Good Practice on Disability in the Workplace* and *Code of Good Practice on Occupational Requirements*.

- *Preventing occurrence of, and education about, ill-health*

34. A commitment is made to offer

- advice on the rights of afflicted employees and their colleagues;
- education to employees and management on life-threatening diseases;
- referral to medical and other counselling resources, whether internal or external to the University;
- advice to afflicted employees regarding appropriate and acceptable resources to assist them in managing their illness;
- where viable, health related resources and to inform the staff thereof;

⁴ Refer : Code of Good Practice on Disability in the Workplace (draft) (S6)



35. Training must be provided to supervisors and university authorities enabling them to: handle voluntary disclosures by employees; and, provide support for handling confidentiality issues.

MANAGEMENT of Occupational Health and Safety issues

- *Provision of safe working environment*
36. In accordance with the *Occupational Health and Safety Act* supervisors should make every effort to create a working environment which avoids occupational health problems developing and strive
- towards complete safety of all employees;
 - to avoid creating adverse occupational health conditions (for instance, making workers stand when seating would not hinder the work task; redesigning lifting tasks to avoid lower back injuries);
 - to avoid worsening an individual's condition (for instance, redesigning workstations for **impaired** or **disabled** workers);
- and, also,
- to assist where disabilities or temporary physical injury suggests alleviation is required.
- *Investigation of occupational health and safety incidents*
37. If occupational health and safety has been compromised, or a claim is made that it has been compromised, the first level of investigation shall be the University Safety Officer⁵, in conjunction with the Area Safety Officer, reporting to the Central Safety Committee. Since occupational health and safety are governed by the *Occupational Health and Safety Act* and the *Compensation for Occupational Injuries and Diseases Act*, the last point of review will be the Department of Labour as legislation may provide.
38. When the health of an employee is adversely affected by the working environment the circumstances will be investigated in terms of the *Occupational Health and Safety Act* provisions.

⁵ Assumes the University Safety Officer reports to Director: Estates

- 38.1. The principles incorporated in S9 above (bullets two and three specifically) will apply in assessing the employee's ability to continue employment.

- 38.2. All measures and options to avoid ill-health retirement must be explored in order to keep the employee in active employment for as long as possible.

- *Injury on Duty*

39. All Injury on Duty cases are subject to legislation governing compensation⁶ which makes it unlawful not to report them. IOD cases, however small, must therefore be reported to the University Safety Officer in the Human Resources Division. It is a failure of the supervisor and the employer not to report incidents categorised in legislation.

- *Training and preventative measures relating to occupational health and safety*

40. It will be the responsibility of the University Safety Officer to conduct and facilitate the provision of relevant, current, training of Area Safety Officers and staff in general, and, to ensure reasonable measures are in place aimed at prevention of workplace injuries and deterioration of quality of working environments.

- 40.1. This may be done through providing, *inter alia*

- advice on the rights of employees;
- advice regarding appropriate and acceptable measures and resources to assist in meeting occupational health and safety objectives;
- identification of appropriate services and relevant, current, training and education programmes for employees and management;
- referral, when necessary, to relevant expert opinion, whether internal or external to the University;

⁶ Compensation for Occupational Injuries and Diseases Act 130 (1993) The Act allows for compensation in occupationally acquired HIV.



RELATED HEALTH AND GENERAL ISSUES

- *Social and workplace community responsibilities*

41. The University, in accordance with its *Institutional HIV and AIDS Policy*, may employ a counsellor with specific skills in counselling persons living with HIV or AIDS. This forms part of the University's commitment to its social responsibilities in the workplace community and the dependants upon the workplace. Community and workplace specific programmes may be funded through this policy, including education of staff around the possibilities attached to obtaining counselling at any time they are worried about their own condition or that of those closely related to themselves.

- *Testing*

42. Testing may only be undertaken when relevant to the job profile and requirements. (For instance, colour blindness related to some laboratory tasks, assessing vertigo risk for high level window cleaners.)

43. The University may, at its own expense, conduct voluntary **screening** programmes in order to establish its condition specific risk profile within the workplace. This means that screening only gives information about the prevalence of a condition, like HIV (ref S44 below) or asthma, in the workforce, not about the tested individuals' health conditions. These programmes will be conducted through

- voluntary and informed, written consent obtained prior to testing;
- anonymous tests;
- procedures which are unlinked and untraceable back to a particular person through any identifying mark or list;
- protocols in which no employee may voluntarily request to receive results of their individual test result, nor that their test sample be identifiable in any way;
- pre-test and post-test counselling, contextual to the type of screening, and, available at the employer's expense;
- assured and ensured anonymity of test results and reporting;
- processes in which publications will only reflect broad statistics and recommendations with due consideration for the sensitivity of the information.

- *HIV and AIDS testing*⁷

44. HIV and AIDS testing is subject to application to and approval of the Labour Court. Tests should not generally be undertaken in the workplace. However, if a **surveillance** or **epidemiological** programme is agreed to by management and the unions the principles and conditions contained in S43 above, and any set by the Labour Court, must be satisfied.

PROMOTION OF POSITIVE QUALITY OF WORK-LIFE AND PERSONAL WELLBEING

45. The employer's role in this regard includes promoting, *inter alia*, the following

- suitable working conditions and physical environment;
- workplace integration;
- work and life balance;
- employee recognition, involvement and empowerment;
- quality of relationship with co-workers and supervisors;
- fairness of their supervisor;
- employee recognition and award;
- effectiveness of their union;
- quality of relationship with the administration;
- quality of relationship between ethnic and cultural groups;

and,

- quality of relationship between Rhodes University and the City of Grahamstown.

46. The University in maintaining its advocacy of quality of work-life, will

- advocate the importance of quality of work-life issues to staff and management;
- endeavour to conceptualise services which promote quality of work-life and identify gaps in service;
- identify current university and community resources to provide support for staff health issues (mental, physical, emotional) impacting on their quality of work-life;
- provide support for managers to promote quality of work-life amongst staff;

⁷ Refer Workplace Guidelines : Produced by the National Department of Health Code of Good Practice on Aspects of HIV / AIDS Employment (S7)



- identify programmes which promote quality of work-life;
- determine service level agreements with providers where appropriate;
- provide for monitoring of the effectiveness of programmes and providers through feedback from staff;
- ensure provision of relevant training programmes to support the quality of work-life strategy.



DEFINITIONS

affected employee an employee who is affected in any way eg if they have a partner or family member who is affected by a life-threatening disease.

disabled / impaired only people who satisfy all the criteria in the definition : (A) long-term or recurring; (B) having a physical or mental impairment; (C) which substantially limits, are considered as persons with disabilities. An impairment may be physical or mental. (ref progressive conditions)

epidemiological the study of disease patterns, causes, distribution and mechanisms of control in society.

notifiable diseases those illnesses which due to the social implications of their contagious or, life-threatening, nature, are by legislation required to be notified to the State District Surgeon by any person with knowledge about infected persons.

progressive conditions are those that are likely to develop or change or recur. People living with progressive conditions or illnesses are considered as people with disabilities once the impairment starts to be **substantially limiting**. Progressive or recurring conditions which have no overt symptoms or which do not substantially limit a person are not disabilities.

reasonable accommodation means any modification or adjustment to a job or to the workplace that is reasonably practicable and will enable a person living with a life-threatening disease, or an impairment, to have access to or participate or advance in employment.

substantially limiting an impairment is substantially limiting if, in the absence of **reasonable accommodation** by the employer, a person would be either totally unable to do a job or would be significantly limited in doing the job.

surveillance⁸ testing / screening this is anonymous, unlinked testing done in order to determine the incidence and prevalence of disease within a particular community or group to provide information to control, prevent and manage the disease and associated risk.

⁸ Surveillance of disease :The ongoing systematic collection and analysis of data about an infectious disease that can lead to action being taken to control or prevent the disease

universal precautions / measures refers to the concept used worldwide in the context of HIV and AIDS to indicate standardised infection control procedures or precautionary measures aimed at the prevention of HIV transmission from one person to another and includes procedures concerning basic hygiene and the wearing of protective clothing such as latex or rubber gloves or unbroken plastic bags when there is a risk of exposure to blood, blood-borne pathogens or blood-stained body fluids.⁹

SOURCES FOR THIS POLICY DOCUMENT

- National Policy on HIV and AIDS, for Learners and Educators in Public Schools and Students and Educators in Further Education and Training Institutions. (DoE / National Education Policy Act, 1996 (No 27)
- Workplace Guidelines : Produced by the National Department of Health
- A checklist for planning and implementing a workplace policy on HIV and AIDS : Labour Relations Handbook : (Juta and Co Ltd)
- Code of Good Practice on Aspects of HIV and AIDS Employment
- Code of Good Practice on Disability in the Workplace
- Code of Good Practice on Occupational Requirements.
- Employment Equity Act 55 (1998)
- Occupational Health and Safety Act 85 (1993)
- Compensation for Occupational Injuries and Diseases Act 130 (1993)
- Labour Relations Act 66 (1995)
- Promotion of Equality and Prevention of Unfair Discrimination Act 4 (2000)

⁹ Refer Section 1 *National Policy on HIV/AIDS, for Learners and Educators in Public Schools and Students and Educators in Further Education and Training Institutions. (Department of Education / National Education Policy Act, 1996 (No 27)*



APPENDIX A

CONCERNS AND RESPONSIBILITIES

This appendix is reproduced from the National Department of Health: Workplace Guidelines and forms a simplified checklist against which employer and employee can gauge and create perspectives in the context of HIV and AIDS in particular in the workplace. These also will contribute to the educative processes in the workplace with regard to HIV and AIDS and general occupational health issues.

Concerns for Employees

- Ensuring occupational health protection is not compromised
- Ensuring that those with life-threatening conditions receive appropriate support from the institution
- Avoiding infection with HIV
- Ensuring that the people living with HIV are treated fairly by all
- Ensuring that confidentiality is maintained
- Having a safe working environment
- Protection from discrimination
- Protection of employee benefits
- Protection of promotion and training opportunities

Concerns of Employers

- Recruitment of employees who are capable of performing tasks they are required to perform
- Provision of equitable and sustainable employee benefits (including healthcare cover)
- Performance management in relation to, amongst others, productivity losses and absenteeism
- Retaining experienced and trained staff
- Fair and sustainable approach to training, promotion and benefits
- The risk of becoming HIV-positive at work
- The issue of employing people with HIV in high-risk or unhealthy environments

Responsibilities of managers

- Ensure that the process of consultation takes place
- Help develop an HIV and AIDS, life-threatening diseases and occupational health programme
- Show commitment to the HIV and AIDS, life-threatening diseases and occupational health programme
- Allow time for employees to take part in the HIV and AIDS, life-threatening diseases and occupational health programme
- Formalise the job description of anyone who is involved in implementing the programme to facilitate their work and increase their credibility
- Feed comments down from management
- Ensure that resources are made available to the programme
- Participate in collaborative partnerships

Responsibilities of Employees

- Take responsibility for your own health
- Participate in the HIV and AIDS, life-threatening diseases and occupational health programme
- Own the programme
- Respect the privacy and confidentiality of those living with life-threatening diseases
- Respect the rights of those not HIV-positive or not living with life-threatening diseases
- Take the lessons you learn at the workplace to your home community
- Participate in collaborative partnerships

Responsibilities of supervisors

- Show commitment to the HIV and AIDS, life-threatening diseases and occupational health programme
- Allow time for employees to take part in the HIV and AIDS, life-threatening diseases and occupational health programme including attending clinics, other health services and education and awareness programmes
- Provide a link between management and those you supervise
- Participate in collaborative partnerships



Responsibilities of shop stewards, trade union representatives and trade unions

- Ensure that your union develops an HIV and AIDS, life-threatening diseases and occupational health policy, or, at least a clear position is put forward in discussion with management and supervisors
- Ensure the process of consultation throughout the workplace takes place
- Show commitment to the HIV and AIDS, life-threatening diseases and occupational health programme
- Encourage employees to be involved in the programme
- Feed comments up from the membership
- Participate in collaborative partnerships



APPENDIX B

PERSONNEL ISSUES¹⁰

Performance management

Employees living with life-threatening diseases will be productive for a longer period if they receive the medical, social and psychological support they need. An employee may not be dismissed simply because they are HIV-positive. Employees have the statutory rights specified in the Labour Relations Act No 66 of 1995 (LRA) and other workplace legislation. Dismissing employees purely because they have HIV would, in most cases, expose employers to claims of unfair dismissal. An employee who develops AIDS should be treated in the same ways as any other employees. Methods for dealing with such cases must be developed pro-actively and transparently so that, as the impact of AIDS becomes more apparent, employers are able to respond rationally.

It is advisable to develop procedures for performance assessment and management, so that all supervisors and managers are clear on the criteria for dealing with:

- Absenteeism;
- Sick leave;
- Transfer to lighter duties;
- Ill health;
- Early retirement;
- Employee counselling; and so on.

Employees with HIV may need support in the following areas:

- Facilitating the employee's access to health services outside the workplace if these are not available in the workplace;
- Giving the employee time off to attend clinics or counselling;
- Transferring the employee to lighter duties or less stressful duties, where it is both necessary and possible; and,
- When employees are no longer able to work, they should be offered early retirement with the benefits normally due to those who retire due to ill-health. Employees who take ill-health retirement must be informed in

¹⁰ Refer : Workplace Guidelines : Produced by the National Department of Health and Code of Good Practice on Disability in the Workplace (S7)

advance of the benefits for which they may or may not be eligible (medical aid, life insurance, and so on).

CRITERIA FOR DETERMINING WHEN AN EMPLOYEE IS TOO SICK TO WORK

An employee who is too sick to continue working can be dismissed because they lack the capacity to perform the key aspects of their position. This is called dismissal on the grounds of an employee's incapacity.

Management in consultation with the Health Committee and trade unions, need to decide on the criteria that will be used to determine when an employee is too sick to work. This should be based on objective health criteria.

The Code of Good Practice on Dismissal, which is attached to the LRA, require an employer to:

- Investigate the extent of the incapacity or injury;
- Investigate alternative to dismissal including the possibility of adapting the employee's duties or accommodating their disability;
- To follow a fair procedure in effecting the dismissal.

An employee is not under a legal duty to disclose their HIV status during an incapacity dismissal. However, employers should strive to create an environment of mutual trust within which employees will be able to be open about their HIV status.

Dismissal should be a last resort and the following factors should be taken into account before deciding to terminate the employee's services:

- The ability of employees with life-threatening diseases to continue working satisfactorily in their present position and the possibility of transferring the employee to lighter / less stressful duties;
- The possibility that continued employment is against the employee's interest (for example, the continued stress of working may accelerate their illness).
- The possibility that continued employment is not in the employer's interests (for example, the employee is no longer able to perform their job satisfactorily).
- The presence / absence of care-givers (for example, families, relative, other care facilities) to provide support for employees with life-threatening diseases.



The legal test which will be used to determine whether the employer acted fairly in terminating the employees' services for incapacity is:

“Whether, because of the employees’ absences and incapacity, having regard to the frequency and duration of such absences, and the effect they have on his/her co-workers morale, the employer could not in fairness have been expected to wait any further before considering dismissal.” Hendricks v. Mercantile and General Re-insurance.



APPENDIX C

GENERAL RESOURCE SOURCES

Promotional framework for occupational safety and health

International Labour Conference, 95th Session 2006, Report IV (2A)
2006, 68 pp.
ISBN 92-2-116609-0

Job and work analysis. Guidelines on identifying jobs for persons with disabilities

Robert Heron, 2006, vi+42 pp.,
ISBN 92-2-117864-1

A promotional framework for occupational safety and health

International Labour Conference, 95th Session 2006, Report IV (1)
2005, 128 pp.
ISBN 92-2-116608-2

A Handbook on HIV/AIDS for Labour and Factory Inspectors

2005, 49 pp.
ISBN 92-2-117134-5

Food at Work: Workplace solutions for malnutrition, obesity and chronic diseases

Christopher Wanjek
2005, xv+448 pp.
ISBN 92-2-117015-2

Promotional Framework for Occupational Safety and Health

International Labour Conference, 93rd Session 2005, Report IV (1)
2004, iv+57 pp.
ISBN 92-2-115366-5

Healthy Beginnings: Guidance on safe maternity at work.

Jane Paul
2004, xi+108 pp.
ISBN 92-2-115238-3

Moving Forward. Toward decent work for people with disabilities.

Examples of good practices in vocational training and employment from Asia and the Pacific
2004, 236 pp.
ISBN 92-2-113552-7

Alcohol and Drug Problems at Work. The shift to prevention

2003, xvii+119 pp.
ISBN 92-2-113373-7

Implementing the ILO Code of Practice on HIV/AIDS and the World of Work. An education and training manual

2002, xii+41 pp.
ISBN 92-2-113462-8

Managing Disability in the Workplace

An ILO code of practice
2002, xii+41 pp.
ISBN 92-2-111639-5

***HIV/AIDS and the World of Work**

An ILO code of practice
2002, xiii+63 pp.
ISBN 92-2-111633-6

***Ambient Factors in the Workplace**

An ILO code of practice
2001, xiii+94 pp.
ISBN 92-2-111628-X

***Guidelines on Occupational Safety and Health**

Management Systems, ILO-OSH 2001
2001, x+27 pp.
ISBN 92-2-111634-4

Fundamental Principles of Occupational Health and Safety

Benjamin Alli
2001, ix+154 pp.
ISBN 92-2-110869-4



***Technical and Ethical Guidelines for Workers' Health Surveillance**

Occupational Safety and Health Series No. 72

1998, 41 pp.

ISBN 92-2-110828-7

Work Organization and Ergonomics

Edited by Vittorio Di Martino and Nigel Corlett

1998, 223 pp.

ISBN 92-2-109518-5

Management of Alcohol- and Drug-Related Issues in the Workplace

An ILO code of practice

1996, xii+61 pp.

ISBN 92-2-109455-3

Ergonomic Checkpoints

Practical and easy-to-implement solutions for improving safety, health and working conditions

1996, xxii+273 pp.

ISBN 92-2-109442-1

Safety in the Use of Chemicals at Work

An ILO code of practice

1993, xi+95 pp.

ISBN 92-2-108006-4

Preventing Stress at Work

Conditions of Work Digest 2/92

1993, 288 pp.

ISBN 92-2-108265-2

The Hours We Work: New work schedules in policy and practice

Conditions of Work Digest 2/90

1991, 272 pp.

ISBN 92-2-107738-1

Maximum Weights in Load Lifting and Carrying

Occupational Safety and Health Series 59

1988, 48 pp.

ISBN 92-2-106271-6

Alcohol and Drugs: Programmes of assistance for workers. Conditions of

Work Digest 1/87

1987, 252 pp.

ISBN 92-2-105962-6

Accident Prevention. A workers' educational manual

1986, 192 pp.

ISBN 92-2-103392-9

Protection of Workers Against Noise and Vibration in the Working Environment. Code of practice

1984, 100 pp.

ISBN 92-2-101709-5