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Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

HIV AND AIDS POLICY

Compiled by:	**Directorate: Organisational Development**
Authorised by:	**HR POLICY TASK TEAM**
Version:	**01**
Domain:	**HR**

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PREFACE

A: ACRONYMS / ABBREVIATIONS

AIDS:	Acquired Immune Deficiency Syndrome.
DPSA:	Department of Public Service Administration.
EHWP:	Employee Health and Wellness Programme.
HIV:	Human Immune Deficiency Virus.
PSCBC:	Public Service Chamber of Bargaining Council.
STDs/ STI:	Sexually Transmitted Diseases / Sexually Transmitted Infections.
TB:	Tuberculosis.
VCT:	Voluntary Counselling and Testing.

B: DEFINITIONS OF TERMS

Affected employee: An employee who is affected in any way by HIV & AIDS e.g. If they have a partner or a family member who is HIV positive.

HIV negative: The absence of HIV antibodies in the human immune system.

HIV positive: The presence of HIV antibodies in the human immune system.

HIV testing: Any form of testing designed to identify the HIV status of the person including blood tests, saliva tests and questionnaires.

Immediate family member: Family members living with the employee such as partner/spouse and children.

Infected employee: An employee who has tested positive for HIV or who has been diagnosed as having HIV & AIDS.

Informed consent: A process of obtaining consent which ensures that the person fully understands the nature and implications of the test before giving his or her agreement to it.

Pre and post test Counselling: A process of counselling which facilitates an understanding of the nature and purpose of the HIV test. It examines what advantages and disadvantages the test holds for the person and the influence the result, (positive or negative), will have on them.

C: LEGISLATIVE FRAMEWORK

- Basic Conditions of Employment Act
- Compensation for Occupational Injuries and Diseases Act No. 130 of 1993
- Employment Equity Act, No. 55 of 1998
- Labour Relations Act No. 66 of 1995
- Medical Schemes Act, No. 131 of 1998
- Occupational Health and Safety Act No. 29 of 1996
- Public Service Regulations, 2001
- South African Constitution Act No. 108 of 1996, (Section 9, Section 14, Section 23(1))

1. POLICY STATEMENT

The Department of Justice and Constitutional Development, commits itself to the partnership against HIV and AIDS and to ensure equal opportunities in the workplace to minimize the impact thereof. This policy document will also provide a framework within which employees living with HIV and AIDS will be treated within the department.

2. OBJECTIVES

2.1 To protect the rights and dignity of HIV infected and affected employees.

2.2 To promote employment equity.

2.3 To reduce the spread of HIV and AIDS in the workplace through awareness and education, prevention and treatment programmes.

2.4 To avoid discriminatory action and stigmatization of those infected and affected.

2.5 To reduce fears about contracting HIV and AIDS in the workplace.

2.6 To enhance the physical and mental well being of those infected and affected.

2.7 To create a conducive and supportive working environment.

2.8 To give effect to the provisions of Section E of the Public Service Regulations 2002 as amended.

2.9 To follow a structured HIV and AIDS management programme.

3. GUIDING PRINCIPLES

The following core principles will act as guiding responses to HIV and AIDS in the workplace in the Department of Justice and Constitutional Development.

3.1 Non-discrimination

(a) The Department is guided in its approach to HIV and AIDS by the principle of non-discrimination in its policies, practices and regulations.

(b) Employees who develop, disclose or are diagnosed with HIV or AIDS shall not be discriminated against and will be ensured a safe working environment.

3.2 Health and Safety

A safe and healthy work environment shall be established and maintained.

3.3 Occupational Exposure

(a) The Department shall take reasonable steps to reduce the risk of occupational exposure to HIV and where possible provide first-aid kits.

(b) The Department shall facilitate timely access to voluntary counselling and testing and post-exposure prophylaxis.

3.4 HIV Testing

An employee shall not be subjected to HIV testing against his /her will, except when authorised by the Labour Court.

3.5 Confidentiality and Disclosure

(a) All employees shall treat information on an employee's HIV status as confidential and shall not disclose that information to any person without the employee's written consent.

(b) An employee who contracts HIV is under no obligation to inform his/her employer or other employees of his/her HIV status at any stage of the employment period.

(c) All information and records pertaining to the HIV & AIDS issues of employees will be kept separate from their personnel files and placed with the Employee Health and Wellness Programme confidential files.

(d) No indicators, flags, or symbols shall be used on employee files to indicate their HIV status or identify them

3.6 Voluntary Disclosure

Voluntary disclosure by an employee of his or her HIV status to the Employee Health and Wellness Programme in the department should be encouraged and established.

3.7 Universal Infection Control

The department shall provide where possible protective barriers to prevent contact with blood or body fluids in the event of accidents or injuries on duty.

3.8 Health Promotion Programme

The department shall introduce appropriate education, awareness, and prevention programmes on HIV and AIDS and other sexually transmitted infections for the employees, and where possible, their immediate families.

4. POLICY PROVISIONS

4.1 Compensation for Occupationally Acquired HIV

An employee may be compensated if he or she becomes infected with HIV as a result of an occupational accident.

4.2 Termination of employment

3.2.1. Employees with HIV & AIDS may not be dismissed on the basis of their HIV status.

3.2.2. Termination of employment will only be considered when an employee with HIV and AIDS is unable to perform his or her duties to the required standards as a result of ill health.

3.2.3. Termination of employment will also be considered in case of incapacity, i.e. when the employee is too ill to continue employment or where no position suitable to the employee's state of health is available. In this case the normal ill-health retirement regulations as defined in an employee's provident or pension or benefits fund will apply.

5. GRIEVIANCE PROCEDURE

Employees who are allegedly unfairly discriminated against on the basis of their HIV & AIDS status may seek recourse by following the grievance procedure as provided for in the Rules for Dealing with Grievances of Public Servants, No. R1012 of 2003.

6. ROLES AND RESPONSIBILITIES

6.1 **Head of Department** shall:

(a) Be responsible for the creation of a supportive environment so that HIV infected employees are able to continue working under normal conditions in their current employment for as long as they are medically fit to do so;

(b) Designate a member of the SMS with adequate skills, seniority and support to implement an HIV & AIDS workplace programme and ensure that the member so designated appoint a focal person and is held accountable by means of his or her performance agreement for the implementation of the programme.

Managers and Supervisors shall:

a) Apply principles of this policy and related ethical codes of practise in dealing with HIV & AIDS.

b) Create a non discriminatory, supporting and HIV & AIDS friendly environment in the units.

Directorate Organisational Development shall:

a) Engage in HIV AIDS policy and programme planning, development, implementation, monitoring and evaluation;

b) Establish a Committee that deals with HIV and AIDS Programme.

The Employee Advisory Committee shall:

(a) Advise and implement the HIV & AIDS policy and strategy;

(b) Ensure that the policy is communicated clearly and sufficiently in their regions and units;

(c) Implement the HIV & AIDS workplace programme;

(d) Monitor and evaluate Peer Educators with regard to the implementation of the HIV & AIDS workplace programme.

Peer Educators shall:

(a) Conduct Information and Education sessions;

(b) Create awareness and commemorate national HIV & Aids calendar events

(c) Establish referral networks / database and support structures.

7. WORKPLACE HIV AND AIDS PROGRAMME

7.1 The programme shall address employees' rights to information and information about modes of transmission of HIV and AIDS, how to prevent infection as well as the need for counselling and support.

7.2 The programme shall also aim to address the following:

(a) Hold regular HIV & AIDS awareness programmes;

(b) Conduct education and training on HIV & AIDS;

(c) Promote condom distribution and use;

(d) Encourage positive living;

(e) Create an environment of acceptance and non-discrimination;

(g) Provision of protective equipment and training of employees who are at risk of infection;

(h) Regularly monitor, evaluate and review the programme.

7.3 The programme will provide access through EHWP to various forms of counselling such as supportive, bereavement, death and dying crisis intervention to employees and their immediate families.

7.4 Should an employee wish to disclose that he/she is infected or affected, the Department will, where possible, assist in making counselling available (through the EHWP) to the employee, and where available, local community agencies will be used to provide counselling and support for that employee.

7.5 The HIV and AIDS workplace programme will also train line managers and regional focal persons on lay counselling to provide support to affected employees.

8. DISPUTE RESOLUTION

Should a complain of alleged discrimination not be satisfactory resolved by internal procedures set out in this policy, either party may within 30days of the dispute having risen, refer the matter to the relevant Sectoral Bargaining Council for conciliation in terms of the relevant dispute resolution procedure. Should the dispute remain unresolved, either party may refer the dispute to the Labour Court within 30days of receipt of the certificate issued by the conciliator.

9. POLICY MONITORING

In order to have this policy amended, the following processes must be followed:

9.1. The proposed amendments must be submitted in writing to the Directorate: Organisational Development, which shall investigate the validity, practicality and cost effectiveness of the inputs;

9.2. All amendments must be forwarded to the Director General for approval and

9.3. All amendments made in this Policy must be presented to Labour in the Departmental Bargaining Chamber.

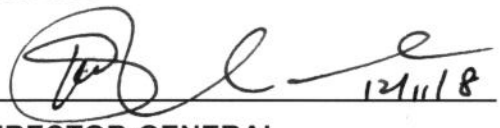
10. COMPLIANCE

The Directorate: Organisational Development shall:

10.1. Remain the custodian of the HIV and AIDS Workplace Programme in the Department;

10.2. Monitor compliance to the policy from time to time;

10.3. In the event of non compliance with any provisions of this policy disciplinary steps shall be taken against responsible officials.

Initiated by:	**Directorate: Organisational Development**
Version:	**1 of 2008**
Approved:	
Signature:	 12/11/18
	DIRECTOR-GENERAL
	Adv. Menzi Simelane
Date:	_____