

NAMIBIA

NAMIBIA MINISTRY OF LABOUR

No. 78, 1998

**GUIDELINES FOR IMPLEMENTATION OF NATIONAL CODE ON
HIV/AIDS IN EMPLOYMENT**

In terms of section 112 of the Labour Act, 1992 (Act No.6 of 1992) I hereby, in the Schedule to this notice, publish guidelines and instructions to be followed and adhered to by all employers and employees for the purpose of the application of the relevant provisions of the Act in respect of HIV/AIDS in employment.

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1. INTRODUCTION

1.1 With the world-wide marked increase in number of persons infected with the human immunodeficiency virus (HIV) and suffering from acquired immunodeficiency syndrome (AIDS) mainly in the economically active part of the population, the 20 to 50 years age group, the employers, employees and their organizations show a high level of anxiety in regard to the impact of the pandemic on the work environment.

1.2 From an initial response of denial, to a perception of AIDS as a medical problem, AIDS is progressively being recast as a development problem and an issue for all sectors.

1.3 Loss of employment and individual income, loss of employees without adequate availability of replacement, and a subsequent decline in production and national income can post a severe and detrimental effect on the social and economic stability and the growth of a country. This is so in view of the fact that HIV/AIDS will affect economic growth and production through the illness and death of productive people and through the diversion of resources from savings (and eventually investment) to care.

2. OPTIONS AND RESPONSES

2.1 In response to the Aids pandemic and its volatile and dynamic nature, the Ministry of Labour, in conjunction with the Ministry of Health and Social Services and with the wide tripartite consultation through the Labour Advisory Council, has formulated the National Code on HIV/AIDS and Employment for HIV prevention and AIDS management. This Code is proposed as an integral part of the government's commitment to address most of the major issues related notably to the prevention of new infections as well as to the provision of optimal care and support for the workforce.

2.2 Workplace based activities that locate HIV prevention and AIDS management in a sustained and comprehensive programme of health promotion have demonstrated gains in general health indicators.

2.3 This implies a need for stronger public health approaches in the productive sectors.

3. POLICY PRINCIPLES

3.1 The same ethical principles that govern all health/medical conditions in the employment context should apply equally to HIV/AIDS.

3.2 The gravity and impact of the HIV/AIDS epidemic and the potential for discrimination created the need for this "National Code on HIV/AIDS and Employment" to be based on the fundamental principles of human rights embodied in the Constitution of the Republic of Namibia, the provisions of the Labour Act (Act No.6 of 1992), occupational health principles, sound epidemiological data, prudent business practice and a humane and compassionate attitude to individuals.

3.3 The interdependency of SADC countries and people, nowhere more evident than in the spread of HIV, demands equity and a shared approach to the challenges of HIV/AIDS. The Regional (SADC) nature and implications of the epidemic and the desire to harmonise national standards in dealing with HIV/AIDS motivate this Code.

4. SCOPE

4.1 Subject to the provisions of the Labour Act (Act No.6 of 1992) this Code applies to:-

4.1.1 all employees and prospective employees,

4.1.2 all workplaces and contracts of employment,

4.1.3 all human resources practices forming part of policy component of any organisation.

5. POLICY DEVELOPMENT AND IMPLEMENTATION

5.1 As policy development and implementation is a dynamic process, this Code shall be:-

5.1.1 communicated to all concerned,

5.1.2 routinely reviewed in the light of new epidemiological and scientific information,

5.1.3 monitored for its successful implementation and evaluated for its' effectiveness in the workplace.

6. POLICY COMPONENTS

6.1 Education, awareness and prevention

6.1.1 Information, education and prevention programmes should be developed jointly by employers and employees and should be accessible to all at the workplace. Education on HIV/AIDS should, where possible, incorporate employee families.

6.1.2 Essential components of prevention programmes are information provision, education, prevention and management of sexual transmitted diseases (STD's), condom promotion and distribution and counselling on high risk behaviour. Workplace AIDS programmes should co-operate with and have access to resources of the National AIDS Programme.

6.2 Job Access

6.2.1 There should be neither direct nor indirect pre-employment test for HIV. Employees should be given the normal medical tests of current fitness for work and these tests should not include testing for HIV.

6.3 Workplace testing and confidentiality

6.3.1 There should be no compulsory workplace testing for HIV. Voluntary testing for HIV on the request of the employee should be done by a suitably qualified person in a health facility with informed consent of the employee in accordance with normal medical ethical rules and with pre- and post-test counselling.

6.3.2 Persons with HIV/AIDS should have the legal right to confidentiality about their HIV status in any aspect of their employment. An employee is under no obligation to inform an employer of her/his HIV/AIDS status. Information regarding the HIV status of an employee should not be disclosed without the employee's written consent.

6.3.3 Confidentiality regarding all medical information of an employee or prospective

employee should be maintained, unless disclosure is legally required. This applies also to health professionals under contract to the employer, pension fund trustees and any other personnel who obtain such information in ways permitted by the law, ethics, the code or from the employee concerned.

6.4 Job Status

HIV status should not be a factor in job status, promotion or transfer. Any changes in job status should be based on existing criteria of equality of opportunity, merit and capacity to perform the work to a satisfactory standard.

6.5 HIV testing and Training

In general, there should be no compulsory HIV testing for training. HIV testing for training should be governed by the principle of non discrimination between individuals with HIV infection and those without and between HIV/AIDS and other comparable health/medical conditions.

6.6 Managing Illness and Job Security

6.6.1 No employee should be dismissed merely on the basis of HIV status, nor should HIV status influence retrenchment procedures.

6.6.2 Employees with HIV related illness should have access to medical treatment and should be entitled, without discrimination, to agreed existing sick leave provisions.

6.6.3 HIV infected employees should continue to work under normal conditions in their current employment for as long as they are medically fit to do so. When on medical grounds they cannot continue with normal employment, efforts should be made to offer them alternative employment without prejudice to their benefits. When an employee becomes too ill to perform his/her agreed functions, standard procedures for termination of service for comparable life-threatening conditions should apply without discrimination.

6.7 Occupational Benefits

6.7.1 Government, employers and employee representatives should ensure that occupational benefits are non discriminatory and sustainable and provide support to all employees including those with HIV infection. Such occupational benefits schemes should make efforts to protect the rights and benefits of the dependents of deceased and retired employees.

6.7.2 Information from benefits schemes on the medical status of an employee should be kept confidential and should not be used by the employer or any other party to affect any other aspect of the employment contract or relationship.

6.7.3 Medical schemes and health benefits linked to employment should be non discriminatory. Private and public health financing mechanisms should provide standard benefits to all employees regardless of their HIV status.

6.7.4 Counselling and advisory services should be made available to inform all employees on their rights and benefits from medical aid, life insurance, pension and social security funds. This should include information on intended changes to the structure, benefits and premiums to these funds.

6.8 Risk Management, First Aid and Compensation

6.8.1 Where there may be an occupational risk of acquiring or transmitting HIV infection, appropriate precautionary measures should be taken to reduce such risk, including clear and accurate information and training on the hazards and procedures for safe work.

6.8.2 Employees who contract HIV infection during the course of their employment should follow standard compensation benefits.

6.8.3 Under conditions where people move for work, government and organisations should lift restrictions to enable them to move with their families and dependents.

6.8.4 People who are in an occupation that requires routine travel in the course of their duties should be provided with the means to minimise the risk of infection including information, condoms and adequate accommodation.

6.9 Protection Against Victimisation

6.9.1 Persons affected by or believed to be affected by HIV or AIDS should be protected from stigmatisation and discrimination by co-workers, employers or clients. Information and education are essential to maintain the climate of mutual understanding necessary to ensure this protection.

6.9.2 Where employers and employees agree that there has been adequate information and education provisions for safe work, then disciplinary procedures should apply to persons who refuse to work with an employee with HIV/AIDS.

6.10 Grievance Handling

6.10.1 Standard grievance handling procedures in organisations, in labour and civil law, that apply to all workers should apply to HIV related grievances. Personnel dealing with HIV related grievances should protect the confidentiality of the employee's medical information.

6.11 Information

6.11.1 Government should collect, compile and analyze data on HIV/AIDS, sexually transmitted diseases and make it available in the public domain. Stakeholders should cooperate in making available national data for monitoring and planning an effective response to the Regional health, human resource, economic and social impact of the AIDS epidemic.

6.12 Monitoring and Review

6.12.1 Responsibility for monitoring and review of the Code and its implementation should lie with the parties to the tripartite Labour Advisory Council and with the Ministry of Labour.

**JOHN M. SHAETONHODI
ACTING MINISTER OF LABOUR**

Windhoek, 18 March 1998