

EMPLOYMENT ALERT

REGULATING HIV AND AIDS IN THE WORKPLACE

On 15 June 2012, the Minister of Labour issued a revised Code of Good Practice on HIV and AIDS and the World of Work (Code). The Code amends the Code of Good Practice on Key Aspects of HIV and AIDS and Employment, in order to align it to the ILO's recommendations.

The primary objective of the Code is to provide guidelines to assist employers to develop workplace policies and programmes eliminating unfair discrimination, promoting access to education and managing HIV and AIDS in the workplace.

The Code is of wide application and applies to all 'workers' as defined, at all workplaces, in all sectors of economic activity. We highlight some of the principles set out in the Code that are of relevance to employers.

The Code confirms that no employer may require a worker or applicant for employment to undertake an HIV test in order to ascertain that person's HIV status. Testing must be with consent and voluntary. Authorisation for mandatory HIV testing of workers must be sought from the Labour Court.

Where a worker chooses to disclose his or her HIV status to an employer, such information must be kept confidential.

The Code reiterates that s15(2)(c) of the Employment Equity Act requires employers to provide reasonable accommodation to workers living with AIDS and HIV. Such reasonable accommodation includes adapting existing facilities and equipment, restructuring jobs and adjusting working time and leave.

Workers with HIV and AIDS must not be unfairly discriminated against in the allocation of employee benefits. Workers with HIV and AIDS must be treated no less favourably than workers with other serious illnesses in terms of benefits, workers' compensation and reasonable accommodation.

Where a worker is too ill to perform his or her current duties, an employer is obliged to follow the guidelines for dismissal for incapacity.

Employers must provide and maintain a workplace that is safe and without risk to the health and its workers. HIV and AIDS must be included in any workplace Occupational Health and Safety strategy.

Employers should also design and implement a monitoring and evaluation plan that addresses strategies to curb HIV and AIDS.

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