The National Code on HIV/AIDS in Employment was approved by the Cabinet and adopted by the National Assembly in 2002. The Code is based on the principles set forth in the Constitution of Namibia, the SADC Code on HIV/AIDS and Employment and is subject to the Labour Act (Act No 6 of 1992). The Code is informed by sound epidemiological data, prudent business practice and a humane and compassionate attitude to individuals.

Excerpts

Preamble
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 year age group, the employers, employees and their organisations show a high level of anxiety in regard to the impact of the pandemic on the work environment. Loss of employment and individual income, loss of employees without adequate availability of replacement, and a subsequent decline in production and national income can pose a severe and detrimental effect on the social and economic stability and the growth of a country.

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 HIV/AIDS and Employment for HIV prevention and control. These policies and guidelines address most of major issues related notably to the prevention of new infections as well as to the provisions of optimal care.

Aims
This National Code is aiming to provide all employers and employees and their organisations with the information required to introduce and sustain basic, uniform practices in regard to the relevant relations between employers and employees, employees inter se, and the state and employers and employees. They outline the basic requirements for the promotion and maintenance of proper and consistent employment relationship and social security in regard to HIV-infection and AIDS in the work environment.

More favourable conditions may be laid down in registered collective agreements between employers or their organisations and trade unions.

The conditions laid down in such agreements are enforceable as stipulated in the Labour Act 1992 (6 of 1992).

Screening for HIV
(1) The “Official HIV and AIDS Policies and Guidelines of the Republic of Namibia” (see Appendix 5.2), are explicit on indications for screening and testing. Section 4.1.2, subsections 4.1.2.1 through 4.1.2.3, state that
(a) with the exception of mandatory screening of blood and other tissue and organ donors, differential diagnosis in a patient, assessment of potential risks to patients of specific interventions such as immunosuppressive therapy, after accidental exposure and gathering epidemiological data to monitor the spread of HIV, there is no justification for the systematic screening of groups, or indiscriminate testing of individuals;
(b) determination of an individual’s HIV status should not be a pre-requisite of entry into work, continuation of work, transfer, promotion prospects or training opportunities;
(c) principally, any direct testing or any indirect means that oblige individuals to declare their HIV status as a condition of employment is discouraged. The only medical criterion for recruitment should be fitness to work. 
As an employer, the Government of Namibia will not require such test and will see to it that all other sectors of employment do likewise.
(2) Therefore, compulsory routine pre-employment and follow-up screening for HIV as part of the assessment of fitness to work vocational training or any other training is unnecessary and should not be required, since:
(a) HIV-infection by itself does not affect an employee’s ability to perform the functions for which he will be or has been employed;
(b) HIV with commonly applied testing methods can only be detected after a period between 3 to 6 months post infection;
(c) an infected person cannot transmit infection to co-workers casually.
(3) Indirect screening methods such as questions in verbal or written form inquiring about previous HIV tests and/or questions related to the assessments of risk behaviour should be considered in the same context as subsection 2 and must not be required.
(4) a) Participation in pre-employment and follow-up HIV-testing requested by the employer for insurance purpose should be left to the discretion of the applicant/employee.
b) Should the applicant or employee refuse the HIV-test, this should not by itself deny employment or continuation of employment.
(5) The participation in certain benefit schemes provided by the employer under the conditions of prior HIV-testing should be left to the discretion of the applicant or employee.
Voluntary testing however should be promoted in general and specially for workers at risk under the condition that pre-and post-counselling, confidentiality and non-discrimination is guaranteed.

Guiding fundamental principles
In line with WHO/ILO recommendations the following fundamental principles should be applied to workers with HIV-infection and AIDS.
(1) Workers with HIV-infection who are medically fit for work should be treated the same way as other workers. They should be enabled to contribute their creativity and productivity in a supportive occupational setting.
(2) Workers with AIDS should be treated the same as other workers with a serious, chronic and terminal illness.
(3) Confidentially regarding all medical information, including HIV and AIDS status, must be maintained at all times. This applies also to health professionals under contract with the employer.
(4) Employees affected by or believed to be affected by HIV or AIDS must be guaranteed protection from stigmatisation and discrimination by co-workers employers or clients.
Adherence to this fundamental principle could be best achieved by providing adequate information and education about HIV and AIDS to all parties concerned for better mutual understanding.

Informing the employer
(1) It is generally considered unreasonable; that an employee keeps the employer informed of his health status in detail. Therefore, there should be no obligation on
the employee to inform the employer regarding his HIV and AIDS status, if it is not constituting a health threat in the work situation.

(2) If the health of an employee deteriorates to the extent that he becomes unable to partially or fully perform his work, there is a duty upon the employee to inform the employer of this impairment. The extent of the impairment should then be confirmed by means of a medical certificate of fitness, to be paid by the employer.

**Continuity of employment**

(1) HIV infection is not a reason for terminating employment since HIV-infection by itself does not limit fitness to work.

In Namibia, the dismissal of an employee merely because of their HIV-positive status, would be regarded as an unfair dismissal, if at the stage of dismissal he was physically fit and capable of performing his duties, and possibly going to remain that way for an indefinite period.

(2) Where the employee is incapable of carrying out the functions for which he was employed especially for an unreasonable length of time, the common law regards the contract as having become impossible which may lead to the termination of the contract.

The employer may end the contract by giving due notice. However, persons with HIV-related illness should be able to work as long as they are medically declared fit. If medically indicated and certified, alternative work arrangements or workplaces should be facilitated.

**Alternative working arrangements**

Employees, suffering from HIV-infection may request a transfer to workplace offering reasonable alternative working arrangements where work environment related hazards could aggravate the HIV status. It should be left to the discretion of the infected person to apply for changes in the work arrangement and to disclose his HIV status.

However, every employee working in a environment, that could increase the risk to develop AIDS or transmit the virus, should be informed by the employer about this risk and should be encouraged to assess his HIV status.

Requests for transfer by known HIV carriers should be processed by the employer without undue delay in view of the specific nature of the infection.

**Benefits**

All HIV infected employees, including agricultural and domestic workers and seafarers, should be entitled to the same work related remuneration, allowances, social security and insurance benefits as all other employees.

**Transmission of HIV in the workplace**

**Preventative measures**

(1) Infection with the human immunodeficiency virus in the course of employment is transmitted in the same way as any other infection by a blood-transmitted virus, for instance such as hepatitis B, haemorrhagic fever or cytomegaly. It can be prevented through the consistent adherence of universal infection control methods. Therefore, there is at present no sound justification for mandatory HIV testing or screening of health workers patients at hospitals, and clinics, including antenatal clinics.

(2) Certain circumstances may justify the exclusion of some health workers from the duty of caring for HIV-infected patients in order to protect the patient or to protect themselves. They include medical conditions such as a compromised
immune status, the presence of infections such as herpes simplex, varicella-zoster and extensive skin lesions.

(3) It shall be the obligation of the employer to provide any employee in an occupation, where there may be a risk of acquiring and transmitting an infectious disease, including HIV-infection, clear and accurate information non the hazards, adequate training to minimize the hazards and personal protective devices/measures, free of charge to the employee.

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

(4) Relevant policies and strategies in regard to communicable diseases, including HIV and AIDS, should be formulated, implemented, monitored and reviewed on a periodic basis by the employer in co-operation with the workers and their organisations.

(5) In consideration of occupational first-aid attendants, first aid procedures and first aid kits are to be reviewed and revised on a periodic basis to ensure optimal hygienic precautions against infectious diseases, including HIV.

Every employee has the obligation to adhere to the principles of universal precautions, which include preventative measures provided and implemented by the employer in order to minimize as far as possible the risk to acquire or transmit communicable diseases, including HIV in the workplace.

**Compensation for employees at occupation risk**

1. An employee, at risk to acquire HIV in the workplace and infected accidentally during or in the course of his work, is entitled to “Employee’s Compensation Act,” (Act 30 of 1941) or comparable private insurance bearers.

In nearly all cases of occupational HIV infection, the virus was transmitted by accidental injuries with contaminated articles.

Therefore a health professional not previously infected by HIV, who for example injured or pricked him/herself with a sharp object, or where patients, blood or body fluids came into contact with mucous membranes of the health professional, should report the incident immediately to the supervisor as an injury on duty. The supervisor then must immediately document the incident in writing according to prescribed procedures relating to occupational accidents.

The health worker, if so indicated, should then undergo immediately and HIV test, including a confirmatory test, to document that he was not an HIV carrier at the time of the accident.

In case of a negative test result of the health worker and a positive HIV test of the patient, the health worker should undergo a second test after 6 months. The second test is required to establish if the accident resulted in a transmission of HIV as commonly applied testing methods can only detect the infection after a period between 3 to 6 months post infection.

The patient/person whose blood/body fluids caused the contamination or contaminated the object causing an injury, should be obliged to undergo relevant tests after having received appropriated counselling.

Should the health worker’s second HIV test be positive, the incident and the test results have to be reported to the Employee’s Compensation Commission National Code on HIV/AIDS and Employment.

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