

**DEPARTMENT OF LABOUR
DEPARTEMENT VAN ARBEID**

No. 451

15 June 2012

**EMPLOYMENT EQUITY ACT, 1998 (ACT NO. 55 OF 1998)
Code of Good Practice on HIV and AIDS and the World of Work**

I, Mildred Nelisiwe Oliphant, Minister of Labour, hereby give notice that the Code of Good Practice on HIV and AIDS and the World of Work set out in this schedule is issued on the advice of the Commission for Employment Equity in terms of Section 54 (1)(a) of the Employment Equity Act, 1998 (Act No. 55 of 1998).


MN OLIPHANT
MINISTER OF LABOUR

23/04/2012

Department of Labour
Employment Equity Act, No. 55 of 1998

South African
Code of Good Practice on HIV and AIDS
and the World of Work

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PREAMBLE

HIV and AIDS continue to negatively impact on the livelihoods of millions of persons living with or affected by the epidemic in South Africa. Within the world of work, HIV and AIDS impact severely on productivity as a consequence of ill health resulting in increased absenteeism, low morale, and increased staff turnover due to early deaths and possibly a change in markets and demands for services.

In 2000, South Africa published a Code of Good Practice on Key Aspects of HIV and AIDS and Employment (the Code) in line with the Employment Equity Act. The Code's primary objective was to guide employers, workers and trade unions to develop and implement HIV and AIDS workplace policies and programmes. The Code was intended to protect and promote mutual respect, dignity and the workers' rights through the elimination of unfair discrimination against people living with or affected by HIV and AIDS.

This Code has been utilised and referred to extensively in the development and implementation of HIV and AIDS workplace *Policies* and *Programmes*. It has also been taken into account in some of the judgments by the Courts in cases of unfair discrimination in relation to HIV.

Subsequent to the adoption of the International Labour Organization (ILO) Recommendation concerning HIV and AIDS and the World of Work, 2010 (No.200), South Africa as a member state took a decision to review its Code and align it to the ILO Recommendation. The revised Code seeks to assist employers, workers and their organizations in developing appropriate responses in order to manage HIV and AIDS, TB and STIs in the world of work within the framework of decent work in both the formal and informal sectors and in the public and the private sectors.

In line with the ILO Recommendation No.200, this Code provides for further emphasis on the fundamental human rights of all workers, including the principle of gender equality and the broadening of the scope to cover all those involved in the world of work.

1. DEFINITIONS

In this Code, unless the context indicates otherwise:

- "Affected Persons"** : means persons whose lives are changed by HIV and AIDS owing to the broader impact of the pandemic;
- "AIDS"** : means Acquired Immunodeficiency Syndrome which results from advanced stages of HIV infection and is characterized by opportunistic infections or HIV-related cancers, or both;
- "CCMA"** : means the Commission for Conciliation, Mediation and Arbitration;

- “Confidentiality”** : means the right of every person, worker, job applicant, jobseekers, interns, apprentices, volunteers and laid-off and suspended workers to have their information, including medical records and HIV status kept private;
- “Counseling”** : means a confidential interactive session between a professional and a client aimed to explore and identify the risks of the client to HIV and AIDS;
- “EAP”** : means Employee Assistance Programme offered by many employers which is intended to help workers deal with personal problems that might adversely impact their work performance, health, and well-being;
- “the Act”** : means the Employment Equity Act, 1998 (Act No. 55 of 1998);
- “HIV”** : means the Human Immunodeficiency Virus, a virus that weakens the human immune system;
- “Informed consent”** : means a process of obtaining consent from a patient/worker to ensure that the person fully understands the nature, implications and future consequences of the HIV test before such person consents to take the test;
- “PLHIV”** : means persons living with HIV;
- “Post Exposure Prophylaxis”** : means antiretroviral, including medicines that are taken after exposure or possible exposure to HIV. The exposure may be occupational, as in a needle stick injury, or non-occupational, as in unprotected sex with a person with HIV infection. The latter is sometimes referred to as Non Occupational-Post Exposure Prophylaxis;
- “Reasonable Accommodation”** : means any modification or adjustment to a job or to the working environment that enables a person living with HIV and AIDS to have access to or participate or advance in employment;
- “STIs”** : means Sexually Transmitted Infections which are spread by the transfer of organism from person to person during sexual contact e.g. syphilis;
- “Stigma”** : means the social mark which, when associated with a person, usually causes marginalisation or presents an obstacle to the full enjoyment of social life by the person living with or affected by HIV and AIDS;
- “TB”** : means tuberculosis which is an infectious disease characterised by the growth of nodules (tubercles) in the tissues, especially the lungs. Tuberculosis is more common in persons with immune system problems such as HIV and AIDS;

- “Unfair Discrimination”** : means any distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;
- “VCT”** : means Voluntary Counseling and Testing, which provides the opportunity for the client to confidentially explore and understand his or her HIV risks and to learn his or her HIV status with the support of a counselor;
- “Vulnerability”** : means the unequal opportunities, social exclusion, unemployment or precarious employment, resulting from the social, cultural, political and economic factors that make a person more susceptible to HIV infection and to developing AIDS;
- “Worker”** : means any person working under any form or arrangement;
- “Workplace”** : means any place where workers work;
- “World of Work”** : means a working environment in which persons are in some way or another associated with and also includes persons as reflected in Clause 4 of this Code.

2. INTRODUCTION

- 2.1 HIV and AIDS are a serious public health challenge which has socio economic, employment and human rights implications.
- 2.2 HIV poses a significant obstacle to the attainment of decent work and sustainable development. It has led to the loss of the livelihoods of millions of persons living with or affected by HIV and AIDS. Its effects are concentrated among the most productive age groups and it imposes huge costs on enterprises through falling productivity, increased labour costs and the loss of skills and experience.
- 2.3 HIV and AIDS affect every workplace, with prolonged staff illness, absenteeism, and death, which impacts on productivity, employee benefits, occupational health and safety, production costs, workplace morale and escalating HIV associated with TB and STIs.
- 2.4 HIV thrives in an environment of poverty, rapid urbanisation, violence and destabilisation. Transmission is exacerbated by disparities in resources and patterns of migration from rural to urban areas. Women are particularly more vulnerable to infection in cultures and economic circumstances where they have limited sexual reproductive choices and rights.
- 2.5 Through this Code, the country commits to mitigate the impact of the epidemic in the world of work taking into account all relevant Conventions of the International Labour Organization, including Recommendation No. 200.
- 2.6 One of the most effective ways of reducing and managing the impact of HIV and AIDS in the workplace is through the implementation of workplace HIV and AIDS policies and programmes.

Addressing aspects of HIV and AIDS in the workplace will enable employers, workers and their organisations and government to actively contribute towards local, national and international efforts to prevent and control HIV and AIDS.

- 2.7 Every person should take personal responsibility in relation to HIV and AIDS to educate themselves, prevent transmission, seek available treatment and treat others with dignity and respect. All persons have the responsibility to support the achievement of the objectives of this Code.
- 2.8 Partnerships between government, employers, workers and their organisations and other relevant stakeholders are encouraged to ensure effective delivery of services and increased coverage.

3. OBJECTIVES OF THE CODE

The primary objective of this Code is to provide guidelines to assist employers, workers and their organisations to develop and implement comprehensive gender sensitive HIV and AIDS workplace policies and programmes. These policies and programmes must be developed within the framework of decent work in the formal and informal sectors in both the public and private sectors to:

- a) eliminate unfair discrimination and stigma in the workplace based on real or perceived HIV status, including dealing with HIV testing, confidentiality and disclosure;
- b) promote access to education, equitable employee benefits and employment protection;
- c) manage grievance procedures in relation to HIV and AIDS;
- d) create a safe and healthy working environment;
- e) promote appropriate and effective ways of managing HIV and AIDS and TB in the workplace; and
- f) give effect to the international and regional obligations of the Republic of South Africa on HIV and AIDS and TB in the world of work.

4. SCOPE OF THE CODE

This Code applies to:

4.1 All workers working under all forms or arrangements, and at all workplaces, including:

- a) persons in any employment or occupation;
- b) those in training, including interns and apprentices;
- c) volunteers;
- d) jobseekers and job applicants; and
- e) laid-off and suspended workers.

4.2 All sectors of economic activity, including the private and public sectors and the formal and informal economies.

4.3 Armed forces and uniformed services.

5. KEY PRINCIPLES

The guiding principles in this Code are based on International Conventions and Recommendations, The Constitution of the Republic of South Africa and national laws, which include:

5.1 Respect for human rights, fundamental freedoms and equality

The response to HIV and AIDS must be recognised as a contributing factor to the realization of human rights, dignity, fundamental freedoms, responsibility and equality for all, including workers and their dependants.

5.2 HIV and AIDS is a workplace issue

HIV and AIDS is a workplace issue and must be treated like any other serious illness or condition in the workplace. HIV and AIDS must be included among the essential elements of the national, provincial, local and sectoral response to the pandemic with full participation of all stakeholders.

5.3 Reduce HIV-related stigma and unfair discrimination and promote equality of opportunity and fair treatment

Elimination of unfair discrimination remains a key principle for protection of the rights of individuals. There must be no unfair discrimination against or stigmatisation of workers on the grounds of real or perceived HIV status. It is the responsibility of every worker and employer to eliminate unfair discrimination in the workplace.

5.4 Gender Equality

Women and girls are at greater risk and more vulnerable to HIV infection and are disproportionately affected by HIV compared to men as a result of gender inequality. Women's empowerment is a key factor in responding to HIV and AIDS and the world of work. Measures must be taken in the world of work to ensure gender equality, prevent violence and harassment, protect sexual and reproductive health and rights and involve men and women workers, regardless of their sexual orientation, in the HIV response.

5.5 The right to access and continuation of employment

Real or perceived HIV status is not a valid cause for termination of employment. Workers with HIV-related illness must not be denied the possibility of continuing to carry out their work unless proven medically unfit to do so. As with many other conditions, workers with HIV and AIDS must be reasonably accommodated and be able to work for as long as medically fit. Medical examination should be limited to the capacity of a worker to perform the task(s) of a particular job.

5.6 Prevention

Prevention of all modes of HIV transmission and TB is a fundamental priority for the country. In keeping with this principle the workplace must facilitate access to comprehensive information and education to reduce the risk of HIV transmission and HIV-TB co-infection and STI's.

5.7 Treatment, Care and Support

Treatment, care and support services on HIV and AIDS must be accessible to all workers and their dependants. All workers must have access to affordable health services, social security, insurance schemes or other employment-related benefits either through the employer, the State or non-governmental organisations. Programmes of care and support must include measures of reasonable accommodation in the workplace for persons living with HIV or HIV-related illnesses.

5.8 Social Dialogue/Consultations

Implementation of policies and programmes on HIV and AIDS should be based on cooperation and trust amongst government, employers and workers and their representatives. Employers and workers should engage in the design, implementation and evaluation of national and workplace programmes, with the active involvement of persons living with HIV and AIDS.

5.9 Occupational Health and Safety

The workplace must be safe and healthy for all workers, and they must benefit from programmes to prevent specific risks of occupational transmission of HIV and related transmissible diseases, such as TB, especially in jobs most at risk, including the health care sector.

5.10 Testing, Confidentiality and Disclosure

Workers and their dependants must enjoy protection of their privacy, including confidentiality relating to their own HIV status or that of their co-workers. Workers must not be required to undergo HIV testing or other forms of screening for HIV unless found to be justified by the Labour Court. The results of HIV testing must be confidential and not endanger access to jobs, tenure, job security or opportunities for advancement.

6. LEGAL FRAMEWORK

6.1 This Code must be read in conjunction with The Constitution of the Republic of South Africa, 1996 (Act, No. 108 of 1996) and all relevant legislation as amended, which includes:

- a) Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);
- b) Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993);
- c) Employment Equity Act, 1998 (Act No. 55 of 1998);
- d) Labour Relations Act, 1995 (Act No. 66 of 1995);
- e) Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);
- f) Unemployment Insurance Act, 2001 (Act No. 63 of 2001);
- g) Children's Act, 2005 (Act No. 38 of 2005);
- h) Medical Schemes Act, 1998 (Act No. 131 of 1998);
- i) Mine Health and Safety Act, 1996 (Act No. 29 of 1996);
- j) National Health Act, 2003 (Act No. 61 of 2003);
- k) Occupational Diseases in Mines and Works Act, 1973 (Act No. 78 of 1973);

- l) Promotion of Access to Information Act, 2000 (Act No. 2 of 2000); and
- m) Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000).

6.2 The contents of this Code must be taken into account when developing, implementing or reviewing any workplace policies or programmes and must be read in conjunction with the following legislative provisions as amended:

- 6.2.1 In accordance with both the common law and Section 14 of The Constitution of the Republic of South Africa, all persons with HIV and AIDS have a right to privacy, including privacy concerning their HIV status. Accordingly, there is no general legal duty on a worker to disclose his or her HIV status to his or her employer or to other workers;
- 6.2.2 This Code is issued in terms of Section 54(1)(a) of the Employment Equity Act and is based on the principle that no person may be unfairly discriminated against on the basis of real or perceived HIV status;
- 6.2.3 Section 6(1) of the Employment Equity Act provides that no person may unfairly discriminate against a worker or an applicant for employment, in any employment policy or practice, on the basis of his or her HIV status;
- 6.2.4 Section 6(3) of the Employment Equity Act prohibits harassment of a worker based on his or her HIV status. Measures must be adopted at the workplace to reduce the transmission of HIV and AIDS to alleviate its impact by ensuring actions to prevent and prohibit violence and harassment in the workplace;
- 6.2.5 Section 7(2) of the Employment Equity Act prohibits testing of a worker to determine that worker's HIV status unless such testing is determined to be justifiable by the Labour Court in terms of section 50(4) of the Employment Equity Act;
- 6.2.6 In accordance with Section 187(1)(f) of the Labour Relations Act, a worker with HIV and AIDS must not be dismissed based on his or her HIV and AIDS status;
- 6.2.7 In terms of Section 8(1) of the Occupational Health and Safety Act, an employer is obliged to provide a safe workplace.;
- 6.2.8 Sections 2(1) and 5(1) of the Mine Health and Safety Act provide that an employer is required to create a safe workplace;
- 6.2.9 A worker who is infected with HIV as a result of an occupational exposure to infected blood or bodily fluids must apply for benefits in terms of Section 22(1) of the Compensation for Occupational Injuries and Diseases Act;
- 6.2.10 In accordance with the Basic Conditions of Employment Act, every employer is obliged to ensure that all workers receive certain basic standards of employment, including the minimum number of sick leave days [Section 22(2)];
- 6.2.11 In accordance with Section 24(2)(e) of the Medical Schemes Act, a registered medical aid scheme must not unfairly discriminate directly or indirectly against its members on the basis of their "state of health";

- 6.2.12 In accordance with Section 20 of the Unemployment Insurance Act, every employer is obliged to ensure that all workers are able to exercise their right to illness benefits;
- 6.2.13 Section 20(1) of the National Health Act states that Health Care personnel must not be unfairly discriminated against on account of their health status. However, the head of the health establishment concerned, subject to any applicable law and in accordance with any guidelines determined by the Minister, may impose conditions on the service that may be referred by a health care provider or health care worker on the basis of his or her health status;
- 6.2.14 In terms of section 13(1)(b) of the Children's Act, every child has the right to have access to information regarding his or her HIV Status;
- 6.2.15 In accordance with section 16(5) of the Labour Relations Act an employer is not required to disclose the HIV status of a worker unless that worker consents to the disclosure of his or her HIV status;
- 6.2.16 Sections 37(1) and 63(1) of the Promotion of Access to Information Act provide that employers must not disclose the HIV status of a worker unless that worker agrees to or consents to the disclosure of his or her HIV status;
- 6.2.17 In terms of section 1(c) of the Occupational Diseases in Mines and Works Act, TB is a compensable disease where it is found, in the opinion of the certification committee, that a person contracted such disease while the person was performing risk work or where such person was already affected at any time within the twelve month period immediately following the date on which that person performed such work for the last time; and
- 6.2.18 According to section 99(3) of the Occupational Diseases in Mines and Works Act, where the certification committee has found that a person is suffering from TB which is attributable partly to HIV but not mainly to work at a mine or works and where such person is not in receipt of full benefits for the TB in terms of the Compensation for Occupational Injuries and Diseases Act, or any other law, such person may receive benefits not exceeding one half of the benefits provided for in terms of the Occupational Diseases in Mines and Works Act..

7. ELIMINATION OF UNFAIR DISCRIMINATION AND PROMOTION OF EQUAL OPPORTUNITY AND TREATMENT

Policies and programmes must respect national guidelines on Counseling, HIV Testing, Confidentiality and Disclosure.

7.1 Counseling and Informed Consent

- 7.1.1 HIV testing of workers must be provided with informed consent and proper counseling. Where employers or workers facilitate provision of HIV testing facilities, they must ensure a conducive environment for counseling.
- 7.1.2 Pre-Test counseling should take place prior to a worker being tested to determine his or her HIV status.

7.1.3 Post-Test counseling should take place to determine whether a worker has tested negative or positive. Proper procedures should be followed in advising the worker on the next steps, depending on the HIV test results.

7.1.4 No employer may require a worker or an applicant for employment to undertake an HIV test in order to ascertain that worker's HIV status. Testing must be with consent and voluntary.

7.2 HIV Testing

7.2.1 Authorisation for mandatory HIV testing of workers may only be obtained from the Labour Court in terms of Section 7(2) of the Employment Equity Act.

7.2.2 Mandatory Testing for HIV is not a requirement in the world of work, including the following circumstances:

- a) during an application for employment;
- b) as a condition of employment;
- c) during procedures related to termination of employment; and
- d) as an eligibility requirement for training or staff development programmes.

7.2.3 Anonymous, unlinked surveillance or epidemiological HIV testing in the workplace may occur provided it is undertaken in accordance with ethical and legal principles. The information obtained must not be used to unfairly discriminate against workers. Testing will not be considered anonymous if there is a reasonable possibility that a worker's HIV status can be deduced from the results.

7.3 Confidentiality and Disclosure

7.3.1 All persons, including those with HIV and AIDS have the legal right to privacy. A worker is therefore not legally required to disclose his or her HIV status or related medical information to his or her employer or to other workers.

7.3.2 The results of HIV testing must be confidential and not endanger access to jobs, tenure, job security or opportunities for advancement.

7.3.3 Where a worker chooses to voluntarily disclose his or her HIV status to the employer or to other workers, this information must not be disclosed to others without the worker's express written consent. Where written consent is not possible, steps must be taken to confirm that the worker wishes to disclose his or her HIV status.

7.3.4 Mechanisms must be created to encourage openness, acceptance and support for those employers and workers who wish to voluntarily disclose their HIV status within the workplace.

7.3.5 Access to personal data relating to a worker's HIV status and related medical data must be bound by the rules of confidentiality consistent with the relevant national laws.

7.4 Reasonable Accommodation

- 7.4.1 Section 15(2)(c) of the Employment Equity Act requires employers to provide reasonable accommodation for all workers, including persons living with HIV and AIDS, in order for them to access and enjoy equal employment opportunities.
- 7.4.2 The obligation to make reasonable accommodation may arise when a worker voluntarily discloses his or her HIV status.
- 7.4.3 Employers must also accommodate workers when the work or the work environment changes or impairment varies which affects the worker's ability to perform the essential functions of the job.
- 7.4.4 Reasonable accommodation includes but is not limited to:
- a) adapting existing facilities to make them accessible;
 - b) adapting existing equipment or acquiring new equipment including computer hardware and software;
 - c) re-organizing workstations;
 - d) changing training and assessment materials and systems;
 - e) restructuring jobs so that non-essential functions are re-assigned;
 - f) adjusting working time and leave; and
 - g) providing specialised supervision, training and support in the workplace.

7.5 Employee Benefits

- 7.5.1 Workers with HIV and AIDS must not be unfairly discriminated against in the allocation of employee benefits.
- 7.5.2 Where an employer offers a medical benefit, that employer must ensure that this benefit does not unfairly discriminate, directly or indirectly, against any worker on the basis of his or her real or perceived HIV status.
- 7.5.2.1 There should be no unfair discrimination against workers or their dependants based on real or perceived HIV status to access social security systems and occupational insurance schemes or in relation to benefits under such schemes, including health care and disability, death and survivor's benefits.

7.6 Grievance Procedures

- 7.6.1 Grievance mechanisms and procedures must be easily accessible to ensure effective redress in cases of violation.
- 7.6.2 Employers must make workers aware of the grievance procedures, particularly to address unfair discrimination relating to HIV in the workplace.

- 7.6.3 Employers should ensure that the rights of workers with regard to HIV and AIDS, TB and other illnesses and the remedies available to them in the event of a breach of such rights become integrated into existing grievance procedures.
- 7.6.4 Where all internal dispute resolution process has been exhausted and the grievance remains unresolved, any party to the dispute may refer the dispute to the CCMA for the unfair discrimination within six months in terms of section 10(2) of the Employment Equity Act.

7.7 Termination of Employment

- 7.7.1 Real or perceived HIV status in itself is not a valid cause for termination of employment. Workers with HIV-related illness must not be denied the opportunity of continuing to carry out their work.
- 7.7.2 Where a worker has become too ill to perform his or her current work, an employer is obliged to explore alternatives, including reasonable accommodation and redeployment.
- 7.7.3 Where a worker has become too ill to perform his or her current work, an employer is obliged to follow accepted guidelines regarding dismissal for incapacity before terminating a worker's services, as set out in the Code of Good Practice on Dismissal contained in Schedule 8 of the Labour Relations Act.
- 7.7.4 The employer must ensure that as far as possible, the worker's right to confidentiality regarding his or her HIV status is maintained during any incapacity proceedings. A worker must not be compelled to undergo an HIV test or to disclose his or her HIV status as part of such proceedings unless the Labour Court has authorized such a test.
- 7.7.5 Where a worker alleges unfair dismissal for HIV and AIDS, he or she should refer the matter to the CCMA for unfair dismissal in terms of sections 185 or 187 of the Labour Relations Act within 30 days of the dismissal.

8. PROMOTING A HEALTHY AND SAFE WORKING ENVIRONMENT

Prevention strategies must be adapted to national conditions and the type of workplace and must take into account gender, cultural, vulnerable populations, social and economic concerns.

8.1 Prevention Programmes

Workplace prevention programmes must ensure:

- a) That accurate and up to date relevant and timely information is made available and accessible to all in a culturally sensitive format and language through the different channels of communication available;
- b) Comprehensive education programmes to help women and men understand and reduce the risk of all modes of HIV transmission. This must include mother-to-child transmission and to understand the importance of changing risk behaviours related to infection;

- c) Effective occupational safety and health measures, including harm-reduction strategies;
- d) Measures to encourage workers to know their own HIV status through voluntary counseling and testing;
- e) Access to all means of prevention, including male and female condoms, medical male circumcision, elimination of mother-to-child transmission and where appropriate information about correct use and the availability of post-exposure prophylaxis; and
- f) Effective measures to reduce high-risk behaviours, including for the most at-risk groups with a view to decreasing the incidence of HIV and AIDS.

8.2 Treatment, Care and Support

- 8.2.1 Employers must ensure that workplace policies and programmes pertaining to health interventions are determined in consultation with workers and their representatives and should be linked to public health services.
- 8.2.2 Employers must ensure that those workers and their dependants living with HIV and AIDS related illnesses benefit from access to health care, whether this is provided under public health, social security systems or private insurance or other schemes.
- 8.2.3 All persons covered by this Code, including workers and their dependants living with HIV and AIDS, must be entitled to health services in terms of clause 8.2.2 of this Code including access to free or affordable:
 - a) Voluntary counseling and testing;
 - b) Antiretroviral treatment and adherence education, information and support;
 - c) Nutrition consistent with treatment requirements;
 - d) Treatment for opportunistic infections and STIs, and any HIV-related illnesses, in particular tuberculosis; and
 - e) Support and prevention programmes including psychosocial support.
- 8.2.4 Programmes of care and support must include measures of reasonable accommodation in the workplace for workers living with HIV or HIV-related illnesses.
- 8.2.5 Care and support are critical elements that must guide a workplace in responding to HIV and AIDS. Mechanisms must be created to encourage openness, acceptance and support for workers infected and affected by HIV and AIDS and to ensure that they are not unfairly discriminated against nor stigmatised.
- 8.2.6 Workplaces must endeavour to provide counseling and other forms of social support to workers infected and affected by HIV and AIDS. Where health-care services exist at the workplace, appropriate treatment must be provided. Where these services are not possible, workers must be informed about the location of available outside services.
- 8.2.7 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.

- 8.2.8 Workers with HIV and AIDS should be encouraged to use expertise and assistance from within the organisation for counseling. Where this is not available, employers may then acquire the necessary assistance and expertise from the outside.

8.3 Occupational Health and Safety

- 8.3.1 An employer is obligated to provide and maintain a workplace that is safe and without risk to the health of its workers.
- 8.3.2 HIV and AIDS must form an integral part of any workplace Occupational Health and Safety strategy.
- 8.3.3 The working environment must be safe and healthy in order to prevent transmission of HIV and TB in the workplace.
- 8.3.4 Every workplace must ensure that it complies with the provisions of the Occupational Health and Safety Act, including the Regulations on Hazardous Biological Agents and the Mine Health and Safety Act. Every workplace must also ensure that its policy deals with, amongst others, the risk of transmission, appropriate training, awareness, education on the use of universal infection control measures so as to identify, deal with and reduce the risk of HIV transmission in the workplace.
- 8.3.5 All workers must be made aware of the procedures to be followed in applying for compensation for occupational infections and diseases and the reporting of all occupational accidents.
- 8.3.6 Health and safety measures adopted at the workplace to prevent workers' exposure to HIV and TB and to minimise the risk of such workers contracting HIV and TB, must include universal precautions, accident and hazard prevention strategies, work practice control, personal protective equipment, environmental control measures and post exposure prophylaxis.
- 8.3.7 Employers, workers and their organizations must take responsibility for contributing towards a safe and healthy working environment as per the Occupational Health and Safety Act.

8.4 Children and Young Persons

- 8.4.1 Government, employers and workers, including their organisations, must adopt appropriate measures to combat child labour and child trafficking that may result from the death or illness of family members or caregivers due to HIV and AIDS and to reduce the vulnerability of children to HIV and AIDS and TB. This is considered in view of the relevant International, Regional and National standards on Fundamental Principles and Rights of children and young persons. Special measures must be taken to protect these children from sexual abuse and sexual exploitation.
- 8.4.2 Measures must be taken to protect children and young workers against HIV and TB infection. Such measures must include the special needs of children and young persons

in the response to HIV and AIDS in national, provincial, local, sectoral and workplace policies and programmes. These should include objective sexual and reproductive health education, in particular the dissemination of information on HIV and AIDS through vocational training and in youth employment programmes and services.

9. MANAGEMENT OF HIV AND AIDS IN THE WORKPLACE

9.1 Assess the impact of HIV and AIDS in the Workplace

Employers, trade unions and employees must develop and effectively implement integrated gender sensitive strategies to respond to the impact of HIV and AIDS, including TB and STIs, in the workplace. This must be done as far as possible in cooperation with national, provincial, local and sectoral initiatives, including:

- a) Impact assessment that includes risk profiling, resource implications, environmental assessment, vulnerability and susceptibility to HIV infection, and
- b) The development and implementation of HIV and AIDS workplace policies and programmes that are free from unfair discrimination and promote human rights.

9.2 Developing HIV and AIDS Workplace Programmes

In developing and implementing long and short term measures to deal with and reduce this impact, the following must be taken into account:

- a) Compliance with legal obligations;
- b) Management commitment;
- c) Consultation with relevant stakeholders;
- d) Development and effective implementation of HIV and AIDS and TB Workplace Policies, Prevention and Wellness Programmes;
- e) Resources, including human, financial and operational resources must be allocated for the effective development and implementation of policies and programmes;
- f) Policies and programmes must be informed by the outcomes of research and evidence; and
- g) Monitoring and Evaluation of HIV and AIDS policies and programmes must be put in place.

9.3 Education, Training and Information

All social partners have the responsibility to promote education, training and information about HIV and AIDS in the world of work.

- 9.3.1 Training, safety instructions and any necessary guidance in the workplace related to HIV and AIDS must be provided in a clear and accessible form for all workers.

- 9.3.2 Training, instructions and guidance must be sensitive to gender and cultural concerns and adapted to the characteristics of the workforce, taking into account the risk factors for the workforce.
- 9.3.3 Up to date scientific and socio-economic information and, where appropriate, education and training on HIV and AIDS must be available to employers and workers' representatives, in order to assist such employers and workers' representatives to make informed decisions and take appropriate measures in the workplace.
- 9.3.4 Workers including the most vulnerable must receive awareness raising information and appropriate training on HIV infection control procedures in the context of workplace accidents and first aid. All Workers, including those whose jobs put them at risk of exposure to human blood, blood products and other body fluids must receive additional training in exposure prevention, exposure registration procedures and post-exposure prophylaxis.
- 9.3.5 Workers and their representatives must be informed and consulted on measures taken to implement workplace policies and programmes related to HIV and AIDS, TB and other related illnesses.

10. MONITORING AND EVALUATION (M&E)

- 10.1 Employers and workers, including their organisations, should:
 - a) design and implement a HIV and AIDS workplace M&E plan that includes strategies to address TB and STIs in the world of work;
 - b) identify the key elements needed to make the M&E system work;
 - c) select and make use of indicators that are specific, measurable, attainable, relevant and time-bound; and
 - d) gather and analyse qualitative and/or quantitative information and communicate it effectively.
- 10.2 Employers in collaboration with the workers must establish monitoring and evaluation mechanisms for workplace programmes in order to track implementation and strategically respond to the epidemic.
- 10.3 Data should be disaggregated in order to prioritise targeted intervention measures.
- 10.4 The monitoring mechanism strategies should take into account and support the national monitoring and evaluation efforts that relates to curbing HIV and AIDS, TB and STIs.
- 10.5 Small businesses that are not in a position to have sophisticated monitoring and evaluating mechanisms in place must adopt simple strategies to monitor and evaluate the HIV and AIDS, TB and STIs programmes in order to track implementation.