

SABPP FACT SHEET

NUMBER 10: November 2013

HIV/AIDS IN THE WORKPLACE

1. Introduction

The HIV/AIDS pandemic has been with us for several decades and, with effective treatment now more readily available and research into vaccines proceeding apace, organisations may be lulled into a sense of complacency that the problem is now being managed, and the risks to employees and to the organisation have been mitigated.

This is not in fact the case. Many organisations still do not have a good understanding of the prevalence of HIV/AIDS amongst their employees; many individuals continue with highly risky behaviour and do not present themselves for testing; and people living with HIV/AIDS are often still stigmatised in the workplace.

It is thus important that HR practitioners keep the topic on their agenda and revisit from time to time what they are doing to manage the issue in their organisation.

“[South Africa is] in the grip of four simultaneous epidemics aptly referred to as the “quadruple burden of disease”. The first burden is the HIV/AIDS pandemic; the second is that of injury, both accidental and non-accidental; the third consists of infectious diseases such as tuberculosis, diarrhoea and pneumonia, which interact in vicious negative feedback loops with malnutrition and HIV; and the fourth is the growing incidence of lifestyle diseases related to relative affluence.

Despite the quadruple burden of disease, in 2010 HIV and AIDS was still likely to account for about 75 percent of premature deaths in South Africa.”

National Planning Commission Diagnostic Report 2011



This Fact Sheet will cover prevalence statistics and the impact of HIV/AIDS, the legal framework, strategies and policies.

2. HIV/AIDS Prevalence

The total number of persons living with HIV/AIDS in South Africa increased from an estimated 4.21 million in 2001 to 5.38 million by 2011. Statistics South Africa 2011 estimates that 10.6% of the total population is HIV/AIDS positive.

Year	Prevalence		Incidence		HIV/AIDS population (millions)
	Women 15-49	Adult 15-49	Total population	Adult 15-49	
2001	17,4	16,0	9,4	1,72	4,21
2005	18,3	16,2	9,9	1,73	4,69
2010	19,3	16,5	10,5	1,43	5,26
2011	19,4	16,6	10,6	1,38	5,38

The AIDS epidemic has a tendency to target the working-age population, affecting people in their most productive years of life leading to reduced earnings, whilst increasing care demands higher expenditure on health care and premature death. Savings and disposable income decline. In the long term the consumer market is reduced, leading to a drop in resources available for production and investment. For employers, HIV/AIDS has a negative impact on both the business environment (macro-economic impact) and on the enterprise directly (microeconomic impact).

3. Impact of HIV/AIDS on the workplace

The impact of HIV/AIDS on organisations is experienced in declining levels of productivity due to increased absenteeism and organisational disruption which leads to declining profits. Declining and fluctuating productivity makes it difficult for a company to meet supply demands from consumers, thus influencing its overall growth and development.

Absenteeism resulting from HIV/AIDS-related illness and care for sick family members leads to disruption of the production cycle, the under-utilisation of equipment and use of temporary staff. This can directly affect the quality of products and services. Increased absenteeism due to illness and deaths of loved ones lead to increased disorganisation within the company workforce as a result of rising staff turnover, loss of skills, loss of tacit knowledge, declining morale and replacement costs.

These costs are not immediately obvious and are difficult to quantify accurately without undertaking a comprehensive impact assessment, which in itself can be costly. One of the simpler ways of mitigating increased disorganisation is through the dissemination of HIV/AIDS information. The lack of accurate information has the potential of disrupting the smooth functioning of an organisation through:

- fears of becoming infected, which may lead to refusal to work with an employee who is known, or is rumoured, to have HIV or AIDS;
- false beliefs and stigmatisation, which can lead to the employee being mistreated; and
- discrimination in management decisions affecting people —for example, the unjustified discharge of an employee who has HIV/AIDS.

HIV/AIDS increases costs in a number of ways:

- **Recruitment and Training.**
Increased staff turnover and loss of skilled employees raise recruitment and training costs. Companies may have to employ extra labour to cope with staff fluctuations and losses. Newer staff members often need to be trained and inducted thus increasing training costs. Scarcity of skilled labour not only increases training costs but also results in demand for higher wages.
- **Insurance cover and pensions**
Company life insurance premiums and pension fund commitments increase as a result of early retirement or death. This is particularly problematic where such benefits are provided on a comprehensive basis.
- **Funeral costs**
Considerable costs are incurred by businesses that meet the funeral costs of employees. Traditional or cultural funerals increase the rate of absenteeism, as colleagues often feel the need to attend funeral services. Services tend to expand over several days often impacting on designated working hours.
- **Wellness**
In cases where companies provide health care, the costs of these services increase significantly with rising HIV/AIDS prevalence rates. Despite government provision of ARV's, access to such service is sometimes difficult, and then the strain of providing ARV's can be considerable as in most instances there is an expectation that the spouse or partner of the infected employee should benefit from the programme.

Early intervention such as in HIV/AIDS education and prevention campaigns can considerably help reduce the spread of the epidemic among employees, their families and communities.

In-house healthcare provision, such as treatment of sexually transmitted infections (STI's) can help reduce infection rates. HIV/AIDS awareness and management programme would further enable information dissemination.

When attempting to maintain or mitigate possible HIV/AIDS incidences within the organisation, the practitioner is advised to handle the challenge by relying on facts. Facts derived through verifiable evidence-based research. Such facts are provided in a full Practitioners' Guide, available on www.sabpp.co.za on the Research pages.

4. Legislation

People living with HIV/AIDS, face many forms of unfair discrimination in the work environment. There are several pieces of South African legislation which seek to prevent this.

The Constitution of the Republic of South Africa No 108 of 1996

Section 23 of the Constitution of the Republic of South Africa states that, 'Everyone has the right to fair labour practices'. This means that in the private and public sector employer cannot unfairly discriminate against the

employee for example, the employer cannot treat an employee unfairly due to gender, disability or HIV/AIDS status.

In the controversial case of Hoffman v South African Airways (SAA) (2000), the Constitutional Court was asked to decide if SAA had violated Hoffman's constitutional right to equality, dignity and fair labour practices. Hoffman applied for a job with SAA as a cabin attendant. He was asked to go for an HIV/AIDS test, and was refused the job because he was HIV/AIDS positive. The Court decided: SAA had discriminated against Hoffman. The discrimination was unfair, based on the medical evidence. The denial of employment to the appellant because he was living with HIV/AIDS impaired his dignity and constituted unfair discrimination.

Labour Relations Act No 66 of 1995 (LRA)

The LRA protects employees from unfair labour practices example a worker being unfairly dismissed because of his or her HIV/AIDS status.

The LRA states that some dismissals are "automatically unfair dismissals". An 'automatically unfair dismissal' is where the reasons for the dismissal are based on unfair discrimination, for example: where an employee is dismissed as a result of unfair discrimination due to HIV/AIDS status, pregnancy or race.

An 'automatically unfair dismissal' is easier for an employee to prove. The employee simply has to show that there was a dismissal, and the employer has to give evidence to show that the dismissal was in fact fair.

Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000 (Equality Act)

Section 6 of the Equality Act prohibits unfair discrimination against any person, and this will include employees living with HIV or AIDS. Section 34(1) of the Equality Act recognises HIV/AIDS as a serious issue and recommends that the Equality Review Committee investigate and make recommendations to the Minister of Justice on whether HIV/AIDS should be specifically included in the Act as prohibited grounds of unfair discrimination.

Employment Equity Act, No. 55 of 1998 (EEA)

The Employment Equity Act was the first piece of legislation to specifically prohibit unfair discrimination against an employee or job applicant on the basis of HIV/AIDS status. Section 6 (1) states that: "No person may unfairly discriminate directly or indirectly against an employee, in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV/AIDS status, conscience, belief, political opinion, culture, language and birth".

It should be noted that the Employment Equity Act includes a job applicant in the definition of an employee for purposes of section 6(1). This means that both employees and job applicants are protected against unfair discrimination on the basis of HIV/AIDS status in the workplace. Furthermore the Act prohibits harassment on the basis of HIV/AIDS status, as well as direct and indirect unfair discrimination.

According to section 6(2) (b) of the EEA, it is not unfair discrimination to distinguish, exclude or prefer any person on the basis of an inherent requirement of a job. This means that if a person is treated differently, or excluded from an employment opportunity because of an 'inherent requirement of a job', this will not be considered unfair discrimination.

HIV/AIDS testing

The EEA says that an employer may not force an employee to take an HIV/AIDS test. The employer is not allowed to ask a job applicant to take an HIV/AIDS test when applying for a job, ask existing employees to test for HIV/AIDS every year or to take an HIV/AIDS test before being promoted or offered special training.

If an employer wants to test employees for HIV/AIDS and the employer thinks that HIV/AIDS testing may be important and reasonable for whatever reason, the employer must ask the Labour Court to allow for HIV/AIDS testing. The Labour Court will then have to decide whether HIV/AIDS testing is justified in the employer's workplace.

Conditions the Labour Court can set for HIV/AIDS testing

The Court will also take note of the following factors

- Pre- and post-test counselling.
- The prohibition of unfair discrimination.
- The need for the HIV/AIDS testing.
- The purpose of the test.
- The medical facts.
- Employment conditions.
- Social policy.
- Fair distribution of employee benefits.
- Inherent requirements of the job.
- Categories of employees concerned.
- Procedures to make sure the results are confidential.
- The length of time that the employer is allowed to do testing (example 1 year).
- The kinds of employees who can be tested.

The Court will also take note of the following factors even though they do not relate directly to the justifiability inquiry:

- Attitude of employees.
- Whether the test will be voluntary or compulsory.
- Financing of the test.
- Employee preparedness for the testing.
- Pre-test counselling.
- Nature of the proposed test and procedure.
- Post-test counselling.

All HIV/AIDS testing, whether it is 'authorised' HIV/AIDS testing or 'permissible' HIV/AIDS testing, should only take place:

- With informed consent;
- Within a health care worker and employee-patient relationship;
- With informed consent and pre- and post-test counselling; and

- With strict procedures relating to confidentiality.
- With regard to 'permissible' testing, the testing may only take place at the initiative of an employee.
- In accordance with the Department of Health's National Policy on Testing for HIV.

Informed consent

Informed consent is defined in the Code as a circumstance where the individual has been provided with information, understands it and based on this has agreed to undertake the HIV/AIDS test or treatment. It implies that the individual understands what the test is, why it is necessary, the benefits, risks, alternatives and any possible social implications of the outcome.

If the employer does not have an order of court saying that HIV/AIDS testing is allowed, then as an employee, you can take steps against the employer when you are asked to have an HIV/AIDS test.

Surveillance testing

Surveillance testing often used to determine impact is expected is defined in the Code as anonymous and unlinked surveillance or epidemiological testing. This type of testing undertaken to determine the incidence and prevalence of disease within a particular community or group to provide information to control, prevent and manage the disease. The Code states further that such testing will not be considered anonymous if there is a reasonable possibility that a person's HIV/AIDS status could be deduced from the results. Therefore HR practitioners are advised not to undertake such testing with the pretence of deducing the HIV/AIDS status of employees within the organisation.

Confidentiality

Confidentiality means keeping personal information about an employee from others unless the employee has consented to the disclosure. Disclosure occurs when employees voluntarily declare their HIV/AIDS status either to a limited number of persons or the entire workforce. The Code provides for confidentiality of an employee's HIV/AIDS status. This means that an employee is under no obligation to disclose his or her HIV/AIDS status to an employer or to other employees.

Promoting a safe working environment

The Code provides that every employer is obliged to provide and maintain, as far as reasonably practicable, a workplace that is safe and without risk to the health of its employees.

Although the risk of HIV/AIDS transmission in the workplace is minimal, occupational accidents involving bodily fluids may occur, and therefore every workplace should ensure that it complies with provisions of the Occupational Health and Safety Act, including the Regulations on Hazardous Biological Agents.

The workplace policy should deal with, the risk, if any, of occupational transmission within the particular workplace. Appropriate training, awareness, education on the use of universal infection control measures so as to identify, deal with and reduce the risk of HIV/AIDS transmission in the workplace.

Occupational Health and Safety Act, No. 85 of 1993 (OHSA)

The OHSA covers all employees, except those in the mining industry, who fall under the Mine Health and Safety Act 29 of 1996. In terms of OHSA and the Mine Health and Safety Act, an employer must provide and

maintain as far as is reasonably practicable, a working environment that is safe and without risk to the health of its employees. These general provisions apply equally to the situation of HIV/AIDS.

What is meant by 'reasonably practicable'? The Act defines reasonably practicable as having regard to:

- The severity and scope of the hazard or risk;
- The state of knowledge reasonably available concerning the hazard or risk and any means of removing or mitigating the hazard or risk;
- The availability and suitability of means to remove the hazard or risk; and
- The cost of removing or mitigating the hazard or risk in relation to benefits derived there from.

Each organisation should assess its environment and conditions to identify the risk, if any, of occupational transmission of HIV. Occupational accidents involving body fluids may occur in a variety of work environments, and not simply health related or research laboratory environments.

Employers and employees should receive training awareness and education on the use of universal infection control measures so as to identify, deal with and reduce the risk of HIV/AIDS transmission in the workplace.

Employees should be provided with appropriate equipment and materials. Employers should ensure that appropriate equipment and materials are available to protect employees from risk of exposure to HIV, and should implement universal infection control procedures.

The Compensation for Occupational Injuries Act, No. 130 of 1993

The Compensation for Occupational Injuries Act gives every employee the right to apply for compensation if injured in the course and scope of their employment. This would include compensation for HIV infection if it can be shown that the employee was infected in the course and scope of their employment.

The Medical Schemes Act, No. 131 of 1998,

The Medical Schemes Act, No. 131 of 1998 provides that a medical scheme may not unfairly discriminate, directly or indirectly, against any person on the basis of their HIV status. This Act also allows the Minister of Health to gazette a minimum standard of benefits to be provided to members of the medical scheme.

5. Management strategies to deal with the impact of HIV/AIDS

Management needs to implement a number of strategies to deal with the impact of HIV/AIDS in the workplace. These include:

- Creation of an HIV/AIDS Committee.
- Development of a database of information to enhance planning.
- Development of an HIV/AIDS policy.
- Succession planning strategies and skills development plans.
- Management of employee benefits.
- Compliance with legal obligations.
- Demonstration of management commitment.
- Workplace HIV/AIDS prevention and wellness programmes.
- Monitoring and evaluation.

Key Principles when devising HIV/AIDS strategy

When devising a HIV/AIDS strategy the HR practitioner has to consider various key principles prior to establishing strategy based on outcome of impact analysis. The following principle should be considered during the planning phase.

Recognition of HIV/AIDS as a workplace issue

Recognition of HIV/AIDS as a workplace issue is the first step to acknowledging that the epidemic has the potential of being disruptive. The epidemic should be treated like any other serious condition that may afflict the organisation. The impact analysis is therefore relevant for the recognition process. An accurate impact analysis would allow the process. Recognition of HIV/AIDS allows for responsible action.

Non-discrimination

Discrimination is a human rights violation. Discrimination based on HIV/AIDS is contrary to the South African Constitution. Legislation disallows discrimination based on an employee's HIV/AIDS status. In the spirit of decent work and respect for the human rights and dignity of persons infected or affected by HIV/AIDS, there should be no discrimination against employees on the basis of real or perceived HIV/AIDS status.

Gender equality

Gender inequality remains one of the main HIV/AIDS social drivers. The gender dimensions of HIV/AIDS should be recognized. Women are more likely to become infected and are more often adversely affected by the HIV/AIDS epidemic than men due to biological, socio-cultural and economic reasons. The greater the gender discrimination in societies and the lower the position of women, the more negatively they are affected by HIV. Therefore, more equal gender relations and the empowerment of women are vital to successfully prevent the spread of HIV/AIDS infection and enable women to cope with HIV/AIDS.

Healthy work environment

The work environment should be healthy and safe, so far as is practicable, for all concerned parties, in order to prevent transmission of HIV. A healthy work environment facilitates optimal physical and mental health in relation to work and adaptation of work to the capabilities of employees in light of their state of physical and mental health.

Healthy Work Environment is a commitment to maintaining a safe and healthy work environment for all staff, recognising that HIV/AIDS is not transmitted by casual contact. Gatekeepers of a healthy work environment should ensure that Clinic staffs attend training on HIV/AIDS. Designing and implementing awareness and education programs should include management, employees, trade unions, NGOs, faith-based organisations and/or governmental organisations with expertise in HIV/AIDS.

HIV/AIDS screening of employees should be voluntary. HIV/AIDS testing should not be seen as a prerequisite for recruitment. HIV/AIDS status when revealed should have no bearing on access to training or promotion. Pre-employment medical examination - or any other test required for employment purposes should not include an HIV/AIDS test.

Confidentiality

An employee with HIV/AIDS has no obligation to inform his/her employer or other employees of their status. Where a person chooses to inform another employee that he/she has HIV/AIDS, this information should not be disclosed to any other person, including the HR Manager or medical personnel, without the consent of the person who has given the information. Where the company doctors have confirmation that an employee has

HIV/AIDS, that information should be disclosed only under strictest confidentiality to the concerned employee followed by counselling.

Prevention

HIV/AIDS prevention is the responsibility of all employees, including senior management and supervisors. Employees and other relevant people should be involved in the planning and implementation of awareness, education and counselling programs; especially as peer educators, counsellors and home based care providers.

Care, Support and Counselling

Employees who are infected or affected by HIV/AIDS should be treated with empathy and care, whilst providing reasonable assistance, which may include: counselling, time off, sick leave, and information regarding the virus and its effects.

HIV/AIDS Committee

HIV/AIDS Committees may be established to coordinate and implement HIV/AIDS policies and programmes.

Social dialogue

The successful implementation of an HIV/AIDS strategy requires cooperation and trust between employers, employees, their representatives and government, where appropriate, with the active involvement of employees infected and affected by HIV/AIDS.

6. HIV/AIDS POLICY

An HIV/AIDS policy outlines the company's position and practices for preventing the transmission of HIV/AIDS and for handling HIV/AIDS infection among employees. It is usually designed to establish consistency within the company and compliance with local and national laws, as well as setting standards of expected behaviour for all employees. In addition, the policy aims to provide guidance to employees on how to address HIV/AIDS and where to go for assistance.

An HIV/AIDS policy:

- Sends a strong message that HIV/AIDS is a serious issue in the organisation;
- Indicates commitment to dealing with HIV/AIDS;
- Sets a foundation for the HIV/AIDS programme;
- Provides a framework for consistency of practice;
- Expresses standards of behaviour expected of employees, supervisors and management.
- Sets standards for communication about HIV/AIDS; and
- Let employees know what assistance is available.

TOTAL(SA) WORKPLACE POLICY ON HIV/AIDS

“Total South Africa (Proprietary) Limited and its subsidiary companies based in South Africa, Namibia, Botswana, Lesotho and Swaziland (“TOTAL”), acknowledges the seriousness of the HIV/AIDS epidemic and seeks to minimize the social, economic and developmental consequences to the company and its employees through comprehensive, proactive HIV/AIDS workplace programs, therefore committing itself to providing leadership in implementing such programs. TOTAL is fully committed to protect its employees, create awareness, encourage behaviour changes where necessary as well as ensure that all employees are treated with the necessary dignity, fairness and equality.”

www.total.co.za

The workplace policy on HIV/AIDS should address essential issues, including:

- compliance with the laws and culture of the country;
- prevention of discrimination against people with HIV/AIDS or AIDS;
- behaviour expected of staff towards a HIV-positive co-worker;
- medical and educational services;
- confidentiality and privacy;
- benefits that can be expected by an employee (health benefits, sick leave etc.);
- accommodation of employees with HIV/AIDS and acceptable work performance standards;
- first aid practices and ‘universal precautions’;
- conformity with other current policies and practices within the organization;
- balance in the needs of the company, management, co-employees and the individual; and resources, both within and outside the company, for information and services and HIV/AIDS prevention and education in the workplace.

Conclusion

HIV/AIDS needs to be dealt with as part of any organisation’s wellness strategy. The “quadruple burden of disease” referred to by the National Planning Commission has major adverse effects on productivity and on the quality of life of employees. Careful planning and the implementation of practical programmes of awareness-building, education and support can make HIV/AIDS a problem which is manageable.

HR practitioners must be the experts on the subject in the organisation, able to advise management and all levels on strategy and programmes, and able to offer empathic support to employees living with HIV/AIDS or with family members in that situation.

THIS FACT SHEET IS BASED ON THE WORK OF JENNI GOBIND OF THE UNIVERSITY OF JOHANNESBURG. HER CONTRIBUTION IS GRATEFULLY ACKNOWLEDGED.

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