



“People’s power in action”

HIV/AIDS POLICY FOR **THE WORKPLACE**

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MOQHAKA MUNICIPALITY HIV/AIDS WORKPLACE POLICY

1. **Introduction**

Moqhaka Local Municipality recognized that the HIV/AIDS epidemic will affect every workplace, with prolonged staff illness, absenteeism, and death impacting on productivity, employee benefits, occupational health and safety, production costs and workplace morale. Endless efforts in addressing aspects of HIV/AIDS in the workplace will enable employees, trade unions and government to actively contribute towards local, national efforts to prevent and control HIV/AIDS. One of the most effective ways of reducing and managing the impact of HIV/AIDS in the workplace, is through the implementation of an HIV/AIDS policy and programmes.

2. **Purpose**

The purpose of the HIV / AIDS policy is to reassure employees that HIV / AIDS is not spread through casual contact during normal work practices and to reduce unrealistic fears about contracting an HIV/AIDS virus related condition.

This policy also protects the legal right to work of employees who are diagnosed with an HIV / AIDS virus related condition and provides guidelines for situations where infection with the HIV/AIDS virus is suspected.

Our policy is to encourage sensitivity to and understanding for employees affected with a condition of the HIV / AIDS virus and further provide guidelines for employers, employees and trade unions on how to manage HIV / AIDS within the workplace.

To encourage HIV negative employees to remain negative.

3. **Background and the Intention of the Policy**

Moqhaka Local Municipality;-

- is committed to maintaining a healthy work environment by protecting the physical and emotional health and well being of all employees in the workplace.

- maintains a continuing commitment to provide employment for people with physical disabilities who are able to work.

- is committed to providing leadership and resources to implement the HIV / AIDS/Sexual Transmitted Infections Programme, e.g. establishment of the Employee Wellness Unit

- Ensures that employees who are diagnosed with an HIV / AIDS virus related condition continue to work should they be deemed medically able to work and can meet acceptable performance standards.

- Provides reasonable performance standards to enable these employees to continue working.

-Provides AIDS education for all employees to help them understand how the AIDS virus is spread and to reduce unrealistic fears of contracting an AIDS virus related condition.

-Policy development and implementation is a dynamic process, so the workplace policy should be:

- Communicated to all concerned
- Routinely reviewed in light of epidemiological and scientific information
- Monitored for its successful implementation
- Evaluated for its effectiveness

4. Legal Frame Work

- 4.1 This Policy is derived from the Principles of Code of Good Practice that was issued terms of Section 54(1)(a) of the Employment Equity Act No. 55 of 1998 and is based on the principle that no person may be unfairly discriminated against on the basis of their HIV status. In order to assist the employer and employees to apply the principle consistently in the workplace the Policy makes reference to other pieces of legislation.
- 4.2 Section 6.1 of the Employment Equity Act provides that no person may unfairly discriminate against an employee, or an applicant for employment, in any employment policy or practice, on the basis of his or her HIV status. In any legal proceedings in which it is alleged that any employer has discriminated unfairly, the employer must prove that any discrimination of differentiation was fair.
- 4.3 No employee, or applicant for employment may be required by the employer to undergo an HIV test in order to ascertain their HIV status. HIV testing by or on behalf of the employer may only take place where the Labour Court has declared such testing to be justifiable in accordance with Section 7(2) of the Employment Equity Act.
- 4.4 In accordance with Section 187(1)(f) of the Labour Relations Act, No 66 of 1995, an employee with HIV / AIDS may not be dismissed simply because he or she is HIV positive or has AIDS. However where there are valid reasons related to their capacity to continue working and fair procedures have been followed, their services may be terminated in accordance with Section 188(1)(a)(i).
- 4.5 In terms of Section 8(1) of the Occupational Health and Safety Act, No 85 of 1993, an employer is obliged to provide, as far as is reasonably practicable, a safe working environment. This may include ensuring that the risk of occupational exposure to HIV is minimized.
- 4.6 An employee who is infected with HIV as a result of an occupational exposure to infected bleed or bodily fluids, may apply for benefits in terms of Section 22 (1) of the Compensation for Occupational Injuries and Diseases Act, No. 30 of 1993.
- 4.7 In accordance with the Basic Conditions of Employment Act, No. 75 of 1997 every employer is obligated to ensure that all employees receive certain basic standards of employment, including a minimum number of sick days (section 22(2)).
- 4.8 In accordance with Section 24 of the Medical Schemes Act, No. 75 of 1998, a registered medical aid scheme may not unfairly discriminate directly or indirectly against its

members on the basis that their “state of health”. Further in terms of Section 67(1)(9) regulations may be drafted stipulating that all schemes must offer a minimum level of benefit to their members.

- 4.9 In accordance with both the common law and Section 14 of the Constitution of South Africa Act, No 108 of 1996, all persons with HIV or AIDS have the right to privacy, including privacy concerning their HIV or AIDS status. Accordingly there is no general duty on an employee to disclose his or her HIV status to other employees.

5. Infected Staff

- 5.1 Infected employees should be treated empathetically and in exactly the same way as other terminally ill staff or other staff who have serious injury or health problems.
- 5.2 Infected employees can report to identified persons for treatment, or / and utilize the Employee Wellness Unit.
- 5.3 If a situation arises where an employee is found to be HIV positive and where his performance is affected, it is management’s duty to ensure that they are not simply discharged. This would be an unfair labour practice.
- 5.4 AIDS will be treated like any other life threatening disease and employees may continue to work for as long as their condition allows, provided that they meet required performance standards and are not a threat to their own safety of that of others.
- 5.5 Management has a duty nevertheless to ensure that productivity and morale is not disrupted, and should take one of the following alternatives into consideration when it becomes clear that the employee is no longer able to carry out his / her present function or where it would be insensitive to colleagues or clients of the Council to leave the employee in his / her present position.
- Place the person in an alternative position if he / she is able to perform the function.
 - Adjust salary and benefits in accordance with an alternative function offered to the employee through negotiations.
 - Consider adjusting the work schedule (hours) or place of work, to provide for more convenient circumstances for the employee.
 - Where alternative positions are not available or acceptable to the employer an application for ill health retirement benefits may be considered.
 - HIV infected staff are entitled to the same benefits as all staff, including Medical Aids.
- 5.6 HIV positive staff members should be encouraged to use their private Medical practitioners and also Primary Health Care Clinics for treatment of opportunistic diseases and sexually transmitted infections.

NB! – Confidentiality and Disclosure

- Employees have legal right to privacy no employee is legally required to disclose his or her HIV status
- If elects voluntarily disclose – information may not be disclosed to others without the employee's **express written consent**
- If written consent is not possible – steps must be taken to confirm that the employee wishes to disclose his or her status

6. Other Staff

- Should there be negative reactions from colleagues of infected staff each situation will be assessed and dealt with appropriately as arises by identified person.
- It may also be necessary to arrange for an informed professional to educate the staff.
- If an effected employee is being victimized or harassed at work, making life intolerable or impossible, the Council has a duty to support the employee in order that he / she may work without disruption or harassment from fellow workers.
- Provision of personal protective equipment for staff who may potentially be exposed to blood products.
- Provision of barrier methods (condoms) for both infected and non-infected personnel who may need them.

7. Recruitment: Pre-Testing

- The Council does not require applicants for employment to be tested for life threatening diseases or HIV.
- The criterion to use is “suitability to fulfill the job requirements”.

8. Testing of Employees

- Testing will only be undertaken on a voluntary basis when requested by the employee with his informed consent and accompanied by counseling and will be for the employee's own consent.
- Professional voluntary confidential counseling services should be made available.
- This counseling service should also be used when a job performance problem indicates that testing for HIV is necessary.

9. Key Performance – Employee Assistant Unit / EAP UNIT

Measures to deal with the transfer of infections within the Workplace	The impact of HIV / AIDS within the workplace to individuals at different levels requires a logistic response to:-
<ul style="list-style-type: none"> - Promote condom distribution and use - Encourage health seeking behavior for STD's / Sexually transmitted infections - Enforce the use of universal infection control measures - Create an environment that is conducive to openness, disclosure and acceptance amongst all staff - Establish a wellness programme for affected employees - Provide access to counseling and other forms of social support for affected people • Universal hygiene precautions are required to prevent disease. Include <ul style="list-style-type: none"> - High standards of personal hygiene - Surveillance of staff in high-risk areas - Appropriate sterilization and disinfecting procedures - Designation of person to be responsible for H&S - Use of protective clothing and gloves - Avoidance of eating or smoking in laboratories or other risk areas 	<ul style="list-style-type: none"> - Create safe working environment for all employers and employees - Develop procedures to manage occupational incidents and claims for compensation - Introduce measures to prevent the spread of HIV - Develop strategies to assess and reduce the impact on the workplace - Support individuals infected or affected by HIV / AIDS so that they may continue to work productively for as long as possible

10. Education

- Currently the best way of preventing the spread of the HIV virus (in view of the lack on an antidote or vaccine) is through education.
- Professional services are available in most centers. These involve the use of talks, videos, discussion groups. On the job training is provided through the EAP.
- Community facilities should be used for this purpose, e.g. municipality halls
- Peer educators can be nominated or elected from each Department and be given training on HIV / AIDS issues so as to enable them to offer support to their fellow colleagues.

11. The Employer's responsibility

- The physical and emotional health and well being of all employees must be protected, If it is deemed medically necessary, based upon current physical impairment.
- Arrange any reasonable job modification or job transfer of the employee with a diagnose condition of AIDS, when the need arise.
- Confidentiality regarding the HIV status of any member of staff shall be maintained at all times.
- Monitor compliance to the law as described above.
- Conduct a regular impact analysis in order to understand the evolving epidemic and how it will impact on the future of the Municipality, its structure and functions.
- Allocate an adequate budget to implement the HIV / AIDS program within the work place e.g. for training of personnel.
- Shall be involved in the activities of the HIV / AIDS workplace programs to ensure a uniform and concerted response by Government to the epidemic.
- Promote use of standard precautions for the prevention of the transmission in the workplace of
 - HIV
 - Hepatitis B
 - Any other blood-borne pathogens
- Ensure EE receive adequate training
 - In the use of standard precautions
 - For the prevention of the transmission of the HIV, hepatitis B and any other blood-borne pathogens
 - In the workplace

12. Definitions

Affected employee: An employee who is affected in any way by HIV / AIDS e.g. if they have a partner or a family member who is positive.

AIDS: AIDS is the acronym for “Acquired Immune Deficiency Syndrome”. AIDS is the clinical definition given to the onset of certain life threatening infections in persons whose immune systems have ceased to function properly as a result of infection with HIV.

HIV: HIV is the acronym for Human Immune deficiency Virus. HIV is a virus, which attaches and may ultimately destroy the body's natural immune systems.

HIV positive: having tested positive for HIV infection.

HIV testing: taking a medical test to determine a persons HIV status. This may include written or verbal questions inquiring about previous HIV tests, questions related to the assessment risk behavior (for example questions regarding sexual practices, the number of sexual partners or sexual orientation), and any other direct methods designed to ascertain an employee’s or job applicant’s HIV status.

Infected employee: an employee who has tested positive for HIV or who has been diagnosed as having AIDS.

Informed consent: a process of obtaining consent from a patient, which ensures that the person fully understands the nature and implications of the test before giving his or her agreement to it.

Policy: a document setting out an organization’s position on a particular issue.

Pre and Post test Counseling: A process of counseling, which facilitates understanding of the nature and purpose of the HIV test. It examines what advantages and disadvantages the test holds for the person and the influence the result, positive or negative, will have on them.

STD: acronym for Sexual Transmitted Disease. These are infections passed from one person to another during sexual intercourse, including syphilis, gonorrhoea and HIV.

13. RECORD KEEPING

All documentation and correspondence emanating from or related to this policy will be kept on either personal and/or record files as dictated by the nature.

14. Authority

Formulation Policy : Director : Corporate Services

Authorization Policy : Council

Ownership & Maintenance Manager : Director: Corporate Services

