

Interagency
Coalition on AIDS
and Development



Coalition
interagence sida
et développement

HIV/AIDS as an Episodic Disability in the Workplace: Employment Information

*ICAD's mission is to lessen the spread and impact of HIV/AIDS in resource-poor communities and countries by providing leadership and actively contributing to the Canadian and international response.
La mission de la CISA est de réduire la propagation du VIH et l'impact du VIH/sida dans les communautés et pays pauvres en ressources, en apportant son leadership et sa contribution active à la réponse canadienne et internationale.*

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While this project has taken all reasonable steps to ensure the accuracy of the information sheets, it makes no representations or warranties concerning the same. The information sheets should not be used as a substitute for independent legal advice in connection with a particular problem or concern that you may have. Although ICAD has carefully prepared these information sheets as a resource, it cannot accept any legal responsibility for its contents or for any consequences arising from its use.

For advice and/or information regarding a specific employment-related situation, please contact one or more of the following in your province or territory:

- The local Human Rights Office.
- The Employment Standards Branch and/or Ministry of Labour.
- An employment lawyer.
- A human resources consultant.

HIV/AIDS as an Episodic Disability in the Workplace

Background

In October 2004 the Interagency Coalition on AIDS and Development (ICAD), in partnership with the Coalition des organismes communautaires Québécois de lutte contre le sida (COCQ-Sida), received funding from the Public Health Agency of Canada (PHAC) via the National HIV/AIDS Capacity Building Fund. This funding was aimed at implementing a project to assist ICAD members, and others, with policy development and training in the Canadian workplace.

A significant challenge in the development and implementation of workplace policy is to understand and address the episodic nature of HIV/AIDS and other disabilities. As an episodic disability, HIV/AIDS can be characterized by a number of factors including unpredictable, intermittent and varying degrees of illness and wellness. In the workplace, episodic disabilities affect both the employee and employer. Human rights, income replacement options, flexibility in hours, remaining productive and contributing to the workplace are key concerns for individuals. Workload management, re-distribution of duties, unpredictable absenteeism, equity and the provision of reasonable accommodation are key concerns for employers. An important feature of this project has been to address the episodic nature of HIV/AIDS and the challenges it poses.

A second important feature of this project is the focus on incorporating a rights-based approach to policy development and the practical considerations for implementing employee rights and employer obligations as well as shared responsibilities in the workplace.

In addition to delivering a number of workshops across Canada, a variety of resource material was developed to provide both employers and employees with valuable information about human rights and employment related legislation and how this relates specifically to HIV/AIDS as well as other life threatening, chronic and/or episodic disabilities.

ICAD would like to thank Mary Alderwood, the project consultant, for her enormous contribution to the research, development and writing of these information sheets, and the members of the Advisory Committee for their review and input.



Benchmarking Organizational Policy Development and Implementation

This information sheet is the first in a series aimed at providing employers with information about the importance of developing and implementing a workplace policy that responds to life threatening, chronic and/or episodic disabilities in the Canadian context.

All employers, whether a small, mid-sized or larger organization, have the responsibility of upholding human rights and employment legislation in the Canadian workplace. The following is an excerpt from the preamble of the *Ontario Human Rights Code*. Similar codes exist in provinces across Canada.

"Recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations;

It is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community".

ICAD, through the Health Canada National HIV/AIDS Capacity Building Fund is committed to assisting employers and employees who are facing challenges and questions associated with managing life threatening, chronic and/or episodic disabilities in the Canadian workplace today.

As an introduction, this fact sheet will provide information that has been compiled from a variety of ICAD members who attended our pilot workshops including AIDS Service Organizations, International Development Organizations, Health Care Providers, Front-Line Workers, Faith-Based Organizations, Educational Institutions and Federal Government Departments.

The following lists are by no means exhaustive. There may be some points here that you can identify with and still others not listed that you may currently be experiencing. The information is provided as an opportunity for you to begin to reflect on your policies for Canada based employees and to begin to benchmark your organization in the three sections listed below.

- Benefits of developing and implementing a workplace policy
- Status of policy development
- Challenges and/or barriers to policy development at your organization

All workshop participants agreed that this area of policy development is of importance and should be an organizational priority. That said, in some organizations, policy development has been stalled as

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2. A Rights Based Approach to Workplace Policy Development
3. HIV/AIDS and Human Rights in the Workplace
4. Discriminatory Business Practices
5. Privacy Protection in the Workplace
6. Employment Standards in the Workplace
7. Case Study
8. Practical Steps for Implementing Policies and Procedures
9. HIV/AIDS and the Duty to Accommodate
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12. Policy Template
13. Frequently Asked Questions

analysis and/or discussions continue about the type of policy to develop, the policy components that are required, the financial resources available to support the policy and who will be responsible for implementation and monitoring. These considerations are all important. In some organizations Human Resources support for policy development and implementation is not available. Moreover, because this policy deals specifically with human rights and employment legislation, many employers expressed a need to have this policy reviewed by an employment lawyer, an expense that many organizations do not have a budget for.

This feedback provided us with valuable insight into some of the discussions that are taking place at organizations today. If you find yourself in a similar circumstance, this series of fact sheets will be of interest to you. You may echo some of the concerns and challenges expressed herein. From limited human and financial resources, to questions about legal requirements and human rights, many employers continue to grapple with the development of responsive workplace policies in this important area.

During the workshop, participants identified a number of successful policies. These policies and their critical components will be highlighted in an information sheet that will be posted on our website as part of this project.

As we continue with this project, comprehensive results of our environmental scan, determining the status of policy development and what we can do to assist our membership will be posted on our website.

Benefits of Policy Development

What are the benefits of developing a policy in this area?

- Combating stigmatization and discrimination and providing equity throughout the organization
- Demonstrating commitment to employees
- Providing a framework for Managers and Supervisors

- Being proactive not reactive
- Raising awareness throughout the organization/having informed employees
- Improving morale within the organization
- Providing consistency by: Ensuring that all people are treated the same and so that one illness is not treated differently from another with respect to human rights
- Addressing health and safety issues
- Defining and promoting privacy of information and confidentiality
- Promoting openness and confidence
- Promoting well-being of employee
- Promoting fair and consistent treatment
- Promoting equality
- Avoiding potential lawsuits

Status of Policy Development

What is the current status of policy development at your organization?

- No policy in place
- Reviewing current policy
- In the process of developing a policy
- Combined policy addressing Life Threatening or Chronic Illness with a specific section devoted to HIV/AIDS in the Workplace
- Separate and specific HIV/AIDS in the Workplace policy - no other policy in place to respond to other illnesses
- Policy developed but is outdated
- Policy developed but had not been circulated or communicated to supervisors, senior managers or employees

- Policy developed but believed not comprehensive enough
- Previously developed HIV/AIDS workplace policies now being revised to Life Threatening or Chronic Illness policies

Challenges and/or Barriers

What are the challenges and/or barriers that you are experiencing?

- The level of staff participation required (research and policy development, implementation, communication, monitoring and adjustments)
- Perceived costs involved in training, the duty to accommodate, altered work schedules
- Legal input and associated costs
- Possible costs for consultant to research and develop policy
- Regular review necessary - who will do this, when and who is responsible for tracking legislative or human rights up-dates?
- Different codes and standards between provinces or territories, union and non-union requirements, considerations for parity
- Stigma and/or discrimination
- General lack of awareness of the benefits of policy development and implementation
- Education - because this is new to the organization, not certain where to go for information
- Limitations due to disability benefits
- Lack of awareness about the needs
- Lack of resources (human and financial)
- Not certain about legal or human rights requirements
- Attitude issues around willingness to develop policy
- Financial issues including potential staffing requirements and benefits packages
- Locating appropriate insurance benefit package
- Perception that must have all of the various pieces identified and researched before policy can be developed

Subsequent information sheets in this series are aimed at addressing some of the concerns you may have and, in the end, will provide relevant and concrete information that will assist in advancing workplace policy development and implementation.



HIV/AIDS and the Workplace Information Sheets



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A Rights Based Approach to Workplace Policy Development

Employment Related Challenges: Discussions and Decisions

Are You Prepared?

Many organizations have human resources policies or personnel manuals providing information, standards and guidelines on a broad range of topics. In general policy development reflects a pro-active approach to providing employees with current and relevant details about organizational human resources and/or operational practices. With the many employment related decisions required on a regular basis today, comprehensive workplace policies provide a framework for both the employee and the employer to work within. This is especially true when an employee is facing a life threatening, chronic and/or episodic disability.

At the 2004 CWGHR National Forum on AIDS and Rehabilitation it was highlighted that the workplace is one of the keys to effective rehabilitation for individuals with HIV or AIDS. Our workshops have also highlighted a number of employment challenges related specifically to life threatening, chronic and/or episodic disability including:

- Income replacement
- Lack of policies in the workplace today
- Insufficient clarity and/or information contained in existing policies
- Availability of insurance benefits
- On-going management of health challenges

- Concerns about privacy and confidentiality
- Uncertainty in the workplace about who to approach for information regarding employee rights and employer obligations, and
- Continued issues around stigma and/or discrimination

When an employee from your workplace is required to make critical employment related decisions, do you have a policy that ensures individual human rights are upheld in this situation? Are you aware of the steps that you must take as an employer to meet your legal and human rights obligations? You may find yourself asking what you can do to best support your employee and at the same time how you can work with others to ensure any operational requirements of the department and/or the organization are met. In short, are you prepared to respond to the range of issues related to life threatening, chronic and/or episodic disability at your workplace?

The following checklist is provided to help you make this assessment. As each individual case will present its own unique set of conditions, this list is not exhaustive. It provides a sampling of some of the considerations and details that will require meaningful discussion between the employer and any employee

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1. Benchmarking Organizational Policy Development and Implementation
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3. HIV/AIDS and Human Rights in the Workplace
4. Discriminatory Business Practices
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7. Case Study
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13. Frequently Asked Questions

facing the challenge of a life threatening, chronic and/or episodic disability.

Meeting with the Employee

Status of Policy Development:

- Do we have a life threatening or chronic illness and/or HIV/AIDS workplace policy?
- Is the policy current?
- Has the policy been distributed to employees and their supervisors?
- Has any policy training taken place?
- Does our organization have in writing the obligations of the employer?
- Does our organization have in writing the rights of the employee?
- If we do not have something in writing what steps must be taken?

Preparedness:

- Am I familiar with and do I fully understand our policy?
- Am I confident in reviewing the policy with the employee?
- What human rights and employment legislation is the employee protected by in this circumstance?
- What information can I anticipate that the employee may want from me?
- How will I react to receiving difficult health information from the employee?
- Do I understand what the Duty to Accommodate is and what it may involve? Am I confident that I can explain the requirements to the employee?
- Are there any health and safety issues that I must take into consideration?

- Are there any other policies that may apply to this situation?
- What precedents, if any, have been set in our workplace?
- Am I the appropriate person for the employee to be speaking to?
- If applicable, should I be including anyone else in the meeting?
- What could happen if I do not handle this appropriately?

Leave and Benefits:

- Am I familiar enough with our leave entitlements to discuss these with the employee?
- If applicable, do I understand the provisions of our health insurance plan sufficiently to advise on the best next steps for the employee to take?
- Do we have any other time off work or flexible work arrangements and/or income replacement benefits that may be available to the employee?
- Are there any federal or provincial benefits available that I can refer to?
- Do we have an Employee Assistance Program?

Privacy & Confidentiality:

- What can I say and do to best support the employee?
- Is there anything that I should not say or do?
- Do I feel comfortable discussing personal health details with an employee?
- What if the employee divulges something that they do not have to or I am really not comfortable with?
- What medical information/documentation can I legally ask for?
- Should I keep notes and document the meeting?
- How must I store/retain this documentation?
- Are there any privacy laws that I should be aware of?

- Can I tell anyone else about the information I have received?

Reflection on the Above Assessment

1. What were you aware of when you carried out this assessment?
2. How is this significant to your workplace?
3. What does this suggest to you about policy development and training at your organization?

Policy Development

Practical Considerations and Human Rights in the Workplace

In practical terms, as an employer, you are familiar with any number of factors that may require policy development and/or support in the workplace due to health reasons.

If an employee is managing a life threatening, chronic and/or episodic disability in your workplace, a number of the considerations above may become an integral part of the discussions and support program.

In addition to the above, policy development also provides an opportunity to engage in discussions on a range of practical considerations and human rights in the workplace, including but not limited to:

- How to create a responsive and supportive working environment
- Identification and protection of individual human rights and dignity
- Ensuring that all who are responsible for employee management have an opportunity to proactively discuss the requirements in the workplace
- Policy implementation and communication
- Training and education
- Supervisory responsibilities and obligations
- Organizational preparedness and risk management

- Specific awareness about episodic illnesses
- Flexibility in the application of policy with respect to episodic illnesses
- Staff planning
- Disability awareness and management programs including income replacement options

A rights-based approach to policy development and training will:

- Open the dialogue for the consideration of critical employment related issues, challenges and decisions
- Provide guidelines to respond to questions about employee rights and employer obligations
- Develop standards for managing the practical considerations and challenges of life threatening, chronic and/or episodic illnesses in the workplace
- Simplify the process for human resources management, and
- Establish the foundation from which employees and employers can begin to work from

It is important to note that developing or reviewing a workplace policy is a first step. The policy itself will be brought to life through the discussions that will continue to take place between the employee and the employer and the actions, grounded in human rights, that will be taken to identify the best possible options for all concerned.

Given the information you have obtained from this information sheet and the assessment, what steps might you take to assist with policy development and training or policy review at your organization? Please contact us if there is anything that we can do to assist with your efforts.

Human Rights Web Links in Canada

Alberta:

<http://www.albertahumanrights.ab.ca>

British Columbia:

<http://www.bchrt.bc.ca>

<http://www.bchrcoalition.org>

Manitoba:

<http://www.gov.mb.ca/hrc>

New Brunswick:

<http://www.gnb.ca/hrc-cdp/e/index.htm>

Newfoundland and Labrador:

<http://www.justice.gov.nl.ca/hrc>

Northwest Territories:

<http://www.assembly.gov.nt.ca/HumanRightsAct.htm>

Nova Scotia :

<http://www.gov.ns.ca/humanrights/default.htm>

Ontario :

<http://www.ohrc.on.ca>

Prince Edward Island:

<http://www.gov.pe.ca/humanrights>

Québec:

<http://www.cdpcj.qc.ca/en/home>

Saskatchewan:

<http://www.gov.sk.ca/shrc>

Yukon Territory:

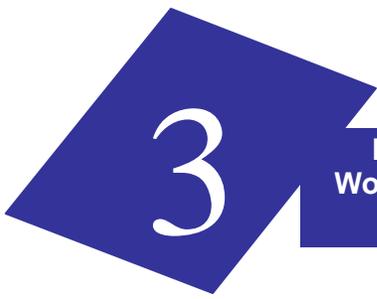
<http://www.yhrc.yk.ca>

Canadian Human Rights Commission:

<http://www.chrc-ccdp.ca>

A Place for All: A Guide to Creating an Inclusive Workplace Canadian Human Rights Commission:

http://www.chrc-ccdp.ca/discrimination/place_for_all-en.asp



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HIV/AIDS and Human Rights in the Workplace

What do you think of when you think of human rights? Perhaps you think about hiring practices and the questions that can be asked during an interview, or perhaps you think about accessibility for persons with disabilities. When we talk about human rights in the workplace, a number of questions can come to mind.

Human rights laws are in place to create a work environment that promotes respect for the dignity and worth of all Canadians, mutual respect and understanding, and equal opportunity to participate in and contribute to the community. But where do these rights come from? Whom do they protect and what are your legal obligations and responsibilities?

The following information sheet provides an introduction to human rights in Canada and basic details about human rights principles and concepts in the workplace.

The United Nations Universal Declaration of Human Rights - Preamble to the Declaration

"Recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the universal declaration of human rights as proclaimed by the United Nations".

- The United Nations Universal Declaration of Human Rights was signed by member countries in 1948. Since then the Canadian government has been working towards making universal human rights a part of Canadian law.

- The Universal Declaration of Human Rights is important for Canadians because it has provided us with a framework of human rights goals and standards to which Canadian legislation, institutions, and society can aspire.
- It is the basis for many of our human rights protections in Canada and around the world.
- The Universal Declaration of Human Rights does not include a description of practical steps governments can take to ensure that human rights are protected. It provides guiding principles. It does not provide instructions on how each country should implement them.

Protecting and Upholding Human Rights in the Workplace

There are four key mechanisms to protect and uphold human rights in the Canadian workplace, they are:

The Canadian Charter of Rights and Freedoms:

- This is a binding legal document that protects the basic human rights of all Canadians. It describes the Government's responsibility in upholding those rights. It is often cited in legal cases pertaining to

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4. Discriminatory Business Practices
5. Privacy Protection in the Workplace
6. Employment Standards in the Workplace
7. Case Study
8. Practical Steps for Implementing Policies and Procedures
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11. How to Use the Policy Template Package
12. Policy Template
13. Frequently Asked Questions

human rights issues and guarantees that our laws and the justice system operate in accordance with fundamental rights and freedoms.

The Canadian Human Rights Act and The Canadian Human Rights Commission:

- Applies to workplaces that are integral to a federal undertaking or the operation of which falls within federal legislative authority.
- Covers workplaces such as federal departments and agencies, crown corporations, the post office, airlines, buses and railways which travel between provinces, chartered banks, telephone companies, radio or television stations, places of business where labour issues are governed by the Canada Labour Code and other federally-regulated industries.

Provincial Human Rights Laws and Legislation:

- Each province has its own human rights law, usually called a Code or a Charter, that covers other types of organizations not included under federal legislation. Most not-for-profits are covered under provincial or territorial human rights legislation.

Human Rights Commissions, Tribunals and Offices:

- Oversee the application of provincial human rights law and are also responsible for investigating complaints, providing legal channels to hear the complaints, finding solutions and working to educate us about human rights and promoting equality for groups in society that are frequently the target of discrimination.

In addition, each province has Employment Standards that set out in law, certain minimum rights to which employees are entitled in the workplace covering many aspects of employment including, but not limited to: minimum wage, overtime, termination and severance pay, hours of work, public holidays and leave from work.

Note: The Employment Standards Act and Human Rights legislation may apply at the same time. These two laws are not mutually exclusive.

In Canada there are also federal and provincial labour laws that cover unionized workplaces, ensuring the right to organize, encourage collective bargaining, promote harmonious labour relations and provide for effective and fair dispute resolution.

Human Rights Principles and Concepts in the Workplace

Every person has a right to equal treatment with respect to employment without discrimination and every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of the following protected grounds (from the Ontario Human Rights Code): race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex (includes pregnancy), sexual orientation, age, record of offences, marital status, same-sex partnership status, family status, disability and/or perceived disability

Note: Protected grounds can vary between provinces or territories. Please consult the Human Rights Office in your location.

The right to "equal treatment with respect to employment" covers every aspect of the workplace environment and employment relationship including job applications, recruitment, training, transfers, promotion, terms of apprenticeship, dismissal and layoffs. It also covers rate of pay, overtime, hours of work, holidays, benefits, shift-work, discipline, performance evaluations and any other terms and conditions that may apply.

Who is Protected By Human Rights Legislation at Work?

The protection extends to employees, temporary, casual and contract staff, including sub-contractors, as well as other persons in a work context including but not limited to employees from employment agencies and persons hired as medical or personal attendants. The

Ontario Code does not refer specifically to volunteers but the Commission takes the position that the phrase "equal treatment with respect to employment" in section 5 can be interpreted to protect anyone in a work-like context including individuals who work without a salary to gain experience, such as those on a practicum or being mentored and persons providing volunteer services. While there have been no Ontario decisions on these issues, some British Columbia decisions found that the province's human rights law applied to discrimination against a volunteer, under the areas of employment and services.

If you are in doubt about the interpretation of "persons in a work context", or for further information please contact your local human rights office.

Who is Responsible for Upholding Human Rights in the Workplace?

Complaints can be filed against employers, contractors, unions, and directors or individuals such as other employees and supervisors. An employer's liability for harassment and/or discrimination committed by its employees and agents is not necessarily limited to the workplace or work hours.

Human rights law includes the notion of the "extended workplace". Liability could attach to behavior or actions that occur away from the physical workplace but that have implications or repercussions in the workplace. For example, staff may be held liable for discriminatory incidents taking place during business meetings or trips, company parties, or other company-related functions.

Disability is a Protected Ground

HIV/AIDS as well as other episodic disabilities is a protected ground. The Ontario Human Rights Code, section 10, defines disability to include:

- a) Any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness
- b) A condition of mental impairment or developmental disability
- c) Learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language
- d) A mental disorder, or
- e) An injury or disability for which benefits were claimed or received under the Workplace Safety and Insurance Act

Comparable provincial and territorial human rights laws are in place across Canada. All define disability as a protected ground.

Human Rights and Disability

Accommodation is a means of removing barriers preventing persons with disabilities from full participation in the workplace in a way that is responsive to their individual circumstances.

People with a disability have the right to have their individual needs accommodated, up to the point of undue hardship, in order to allow them to perform the essential duties of their job.

4

HIV/AIDS and the Workplace Information Sheets

Discriminatory Business Practices

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Section 1. Definitions

Discrimination is usually described as the result (impact) of treating a person unequally by imposing unequal burdens or denying benefits, rather than treating the person fairly on the basis of individual merit.

Discrimination in employment is defined as treating people differently, negatively or adversely, in the course of their employment, because of a protected ground under human rights law. Human rights law states that disability is a protected ground. HIV/AIDS is defined as a disability.

Discrimination can affect employees and employers and has very real consequences in the workplace. It is usually based upon personal prejudices and stereotypical assumptions related to at least one of the protected grounds set out in human rights law. It is important from a human rights perspective to address both *acts of discrimination* and also *attitudes that exist in society*.

Section 2. Human Rights

Human Rights law states that every person has a right to equal treatment with respect to employment without discrimination and every person who is an employee has a right to freedom from harassment in the

workplace by the employer or agent of the employer or by another employee because of the following protected grounds: race, ancestry, national or ethnic origin, colour, citizenship, religion, age, sex (including pregnancy and childbirth), sexual orientation, marital or family status, disability or perceived disability or conviction for which a pardon has been granted.

The right to "equal treatment with respect to employment" covers every aspect of the workplace environment and employment relationship including but not limited to:

- Job application forms
- The process of applying for a job
- Recruitment and hiring
- Training
- Transfers
- Promotions
- Terms of apprenticeship
- Dismissal and layoffs
- Compensation
- Leave
- Benefits
- Discipline
- Performance evaluation, and/or
- Other terms and conditions of employment as may be applicable in each individual circumstance

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3. HIV/AIDS and Human Rights in the Workplace

4. Discriminatory Business Practices

5. Privacy Protection in the Workplace
6. Employment Standards in the Workplace
7. Case Study
8. Practical Steps for Implementing Policies and Procedures
9. HIV/AIDS and the Duty to Accommodate
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11. How to Use the Policy Template Package
12. Policy Template
13. Frequently Asked Questions

Section 3. Examples of Discriminatory Business Practices

Some examples of discriminatory business practices include:

- Directly or indirectly refusing to employ someone based on a protected ground (in this case, disability)
- Asking someone's HIV status on a job application form
- Terminating someone's employment based on a protected ground
- An employer pressuring an employee to resign after learning about a disability
- An employer that lays-off an employee without a valid, non-discriminatory reason
- An employer refuses to consider a medically supported request for accommodation
- Requesting an employee to disclose their medical status as part of the accommodation process
- The employer or others in the workplace harassing an employee based on a real or perceived disability
- An employer suddenly and/or unexpectedly reducing the number of work hours
- Requesting medical information, HIV status, information about other disabilities or health problems and/or medications that are being taken
- Verbal or physical harassment
- Unauthorized disclosure of confidential/private health related information
- Establishing or following any policy or practice which deprives persons of career opportunities based on the protected grounds, and
- Making adverse distinctions between employees based on the protected grounds

Section 4. Some Practical Effects of Discrimination

Discrimination can affect both the individual and the organization in different ways. The following are some examples of the practical affects of discrimination in the workplace.

Towards the Individual:

- Loss of dignity and self-respect
- Lack of privacy and/or confidentiality of personal health information
- Harmful health impacts
- Fear and/or rejection
- Depression and/or isolation
- Increased stress levels
- Increased number of days away from the job
- Job performance challenges and issues
- Irreparable damage to inter-personal relationships with colleagues and/or manager
- Potential job loss
- Lack of income security resulting in poverty or financial distress, and
- Missed opportunities to fully participate in Canadian society

Towards the Organization:

- Wrongful termination that may result in legal action against the organization
- Human Rights violation that may result in complaint/investigation (against the organization and/or its managers)
- Monetary compensation that may be required to be paid by the organization
- Inconsistent treatment of employees
- Lack of trust from other employees
- Individuals not coming forward to discuss their requirements
- Lost productivity and/or wasted time
- Potential loss of reputation, and
- Inability to attract and retain qualified employees

Section 5. Complaint Resolution

The employer can set the standard for responding to discrimination in the workplace by ensuring an effective complaint resolution process.

It is important to note that internal complaint resolution procedures will vary from employer to employer and will depend on whether it is a unionized or non-unionized workplace. That said, all procedures should ensure that the following obligations are met:

- The complaint must be taken seriously
- It must be acted on promptly when it is received
- Appropriate resources must be applied to resolve the complaint
- A viable complaint mechanism must be in place
- The procedure must ensure that a healthy work environment is created and maintained for the complainant, and
- Decisions/actions taken by the employer must be communicated to the complainant

Section 6. Checklist for Developing an Anti-Discrimination Workplace Policy

The following is a checklist for some recommended practices when developing a policy to address discrimination in the workplace. For an example template of an anti-discrimination workplace policy, please consult your local human rights web-site.

- A statement setting out the employer's commitment to a fair and equitable workplace free of discrimination and harassment and that discrimination will not be tolerated by the employer/organization
- A statement of rights and obligations
- A statement indicating that no reprisals are permitted or will be taken against an individual making a complaint
- A list of the prohibited grounds of discrimination listed in human rights law
- Definitions
- Description/examples of unacceptable behaviour
- How internal complaints will be handled, including to whom is the complaint made; confidentiality; documentation procedures and length of time for complaint to be investigated

- Disciplinary measures that will be applied if a claim of discrimination is proven
- Options and/or corrective actions that will be available if a claim of discrimination is proven, such as: verbal or written apology from the person responsible and the organization; recovery of lost wages, benefits, job or promotion that was denied; and/or compensation for injury to dignity
- A statement reinforcing the right of employees to go to the Human Rights Commission/Office at any time during the internal process, as well as an explanation of any time requirements that are listed in the provincial/territorial human rights law
- Education is an important part of preventing discrimination in the workplace. Training for all staff members ensures that everyone knows the rules and how they will be applied. A human rights tribunal will often look at an employer's education programs to determine the level to which the employer has met its obligations under the Code. Having an effective education/training program could help resolve the matter should a complaint be filed.

Conclusion

Discrimination affects us all. Employers and employees can work together to do the following:

- Develop a workplace policy
- Measure the effectiveness of policies and procedures and make any necessary changes
- Provide and attend training and education workshops for managers and staff
- Take the steps necessary to create a diverse workplace where respect and dignity are practiced and maintained

For further information please consult your local human rights office or an employment lawyer in your province or territory. Further resource material can be obtained from HIV/AIDS and the Workplace at: www.icad-cisd.com.

Note: Some grounds may differ between provinces and territories. Please consult your local Human Rights office for further details.

5 HIV/AIDS and the Workplace Information Sheets



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Privacy Protection in the Workplace

A variety of federal, provincial and/or territorial privacy legislation is currently in place in Canada. As you consider developing a workplace policy, it will be important for you to know what privacy laws apply to your workplace and how your practices comply with and respect those laws. For a comprehensive list of federal, provincial and territorial privacy legislation in Canada please refer to the Office of the Privacy Commissioner of Canada website at: http://www.privcom.gc.ca/legislation/index_e.asp.

Privacy legislation deals with the collection, retention, use and disclosure of:

- Personal information about individual customers, donors or members of the public
- Personal health information
- Personal information and/or personal health information pertaining to an employee, in other words, the privacy and confidentiality of employee records in the workplace

Personal information is any information about an identifiable individual whether recorded or not. Organizations can only collect personal information that is appropriate for the specific transaction and they must explain why they need the information, what it will be used for, and whether they plan to disclose it to anyone else. They must also obtain consent for this use and disclosure. Personal health information is information that identifies an individual and that relates to the physical or mental health of an individual, including the provision of health care.

For the purposes of this information sheet employee

records and personnel files in the workplace and workplace privacy practices will be highlighted.

Employee privacy and confidentiality is currently protected by a variety of legislation, including for example: employment standards, collective agreements and human rights laws. Specific privacy legislation may also, in some cases, apply to personal health information that is gathered and stored in the personnel file.

Many employers have been monitoring developments with privacy legislation in Canada and what it means for them and their employees. Although some privacy laws may not yet apply to the not-for-profit/NGO sector, many employers have been reviewing workplace practices with respect to how personnel files are maintained and how personal information and/or personal health information is gathered and stored. Many employers are developing privacy and confidentiality workplace policies that provide employers and employees with specific details about how their information is gathered and handled.

The following list provides some examples of recommended practices that employers can use as a guideline when reviewing workplace privacy policies and practices. This list is by no means exhaustive.

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7. Case Study
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Privacy Protection and Recommended Workplace Practices

1. Appoint a person or a working group responsible for developing and monitoring the privacy policy and activities within the organization.
 2. Conduct a privacy audit (see page 2) and audit how personnel records are stored and maintained. Be sure to include current employees, recent departures and archived records.
 3. Establish organizational standards for all managers to follow consistently (for example what information is provided to a financial institution when they call to verify employment and income information, how are requests for reference checks or for address/telephone numbers of a former employee handled?)
 4. Review all organizational forms that call for the collection of personal information to ensure they are limited to only required details. Include a privacy statement on each form detailing the reason for the information and how it will be used. The forms may include, but are not limited to: application forms, interview templates, new hire information forms, group insurance applications including short and long term disability applications, human resource information system data collection, financial and/or payroll related forms, discipline records, performance appraisals.
 5. Develop a statement of consent to the collection, use and disclosure of employee personal information. One option is for each employee to sign the consent when hired. Information and consent details should also be included in the organizational privacy policy.
 6. Develop an access to information policy advising employees they are permitted to access their personnel file. Highlight in the policy any specific procedures to be followed (for example: nothing to be removed or altered, a person representing the employer must be present).
 7. Keep all files containing medical and/or personal health information separate from regular employee personnel and/or other administrative files. All files must be stored securely at all times, preferably in a central location.
 8. Know who has access to personal information at all times. Ensure that anyone with clerical/filing responsibilities is restricted in terms of access to information.
 9. Anyone with access to personal information and/or personal health information must sign a confidentiality agreement, subject to disciplinary action if breached.
 10. Complimentary policies including, but not limited to: e-mail, internet use, computer systems and confidentiality should be developed and implemented.
 11. A compliance and complaint procedure should be established and monitored regularly.
 12. When lawfully disclosing any information to a third party, ensure that only the specific information required is provided to the third party. In other words data should be stored and/or provided in a form that permits retrieval and disclosure of only those portions that would be required.
 13. Provide a written description of the practices you use to protect personal information, and the name of the person in your organization to contact if you have any questions or concerns.
- If specific privacy legislation does not yet apply to your organization, learning about and implementing recommended practices around privacy in the workplace will ensure that you are well-prepared as well as in compliance with employment and/or human rights legislation.

Objective of a Privacy Audit

A systematic review of the organization's personal information holdings and handling practices to create an organized inventory of personal information.

Why Conduct a Privacy Audit

- To provide the specific information required when developing a customized privacy policy.
- To identify potential gaps in privacy compliance.
- To identify areas of risk to the employer or the employee.
- To provide all employees with clear procedures that must be followed.

Suggestions for Questions - Departmental Privacy Audit Form

- What personal information does your department have?
- What are the purposes for collecting the personal information?
- How do you use the personal information?
- How long do you retain the personal information and why?
- How do you store the personal information?
- What format is the personal information in? Paper? Electronic?
- To whom do you disclose the personal information and why?

6

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Employment Standards in the Workplace

Division of Legislative Powers

Human Resources Skills Development Canada has provided information on their website about the division of legislative powers with respect to employment standards in the workplace. Both the Parliament of Canada and the provincial legislatures have the power to enact labour laws. The jurisdiction of the provincial and federal governments arises from the Constitution Act, 1967, Sections 91 and 92. Please refer to the Department of Justice Canada website at: http://laws.justice.gc.ca/en/const/c1867_e.html.

Judicial interpretation of these sections gives provincial legislatures major jurisdiction, with federal authority limited to a narrow field. Provincial authority is derived from the "property and civil rights" subsection of the Constitution Act, 1867. The right to enter into contracts is a civil right, and since labour laws impose certain restrictions on contracts between employers and employees, they fall within provincial authority as property and civil rights legislation. Provinces also have the right to legislate on "local works and undertakings."

Federal jurisdiction arises from the right to regulate certain subjects expressly assigned to Parliament by Section 91 of the Constitution Act, 1867, or expressly excepted from provincial jurisdiction by Section 92. These subjects are of a national, international or inter-provincial nature. In addition, Parliament has jurisdiction to regulate works wholly within a province which have been declared by Parliament to be works "for the general advantage of Canada or for the advantage of two or more of the provinces", such as grain elevators, feed mills and uranium mines. By virtue of its exclusive power to regulate certain works

and undertakings, Parliament has the incidental power to enact labour laws relating to those works and undertakings.

For further information about employment standards legislation and Federal and Provincial legislative powers, please refer to the Human Resources Skills Development Canada website at: http://www.hrsdc.gc.ca/asp/gateway.asp?hr=/en/lp/spila/cli/eslc/01Employment_Standards_Legislation_in_Canada.shtml&hs=lzl.

Employment Standards in Canada

Employment standards have been established by each province and territory to ensure that:

- A. Employees receive fair treatment, and
- B. Employers have a framework to work from when implementing employment standards in the workplace

For the most part, employment standards apply to most employers and employees. However, in some cases certain exemptions and/or special rules may apply. Minimum standards provide, in law, the rights and responsibilities of employees and employers in the workplace with respect to a number of subjects including, but not limited to:

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- Hours of work
- Eating periods
- Rest periods
- Wages and overtime
- Minimum wage
- Pregnancy and Parental Leave
- Public Holidays
- Vacation
- Termination and severance of employments

Employment standards will vary between provinces and territories. Following are some examples of this:

1. The Ministry of Labour in Ontario has implemented a standard that provides for Emergency Leave for some employees to take up to 10 days of unpaid time off work every calendar year because of illness, injury, certain emergencies or other urgent matters. Eligibility covers employees in companies that regularly employ at least 50 employees. Some rules will apply to a number of job categories for Emergency Leave.
2. Some employment standards provide for sick leave entitlements, while others have left this to the discretion of the employer.
3. Minimum wage standards vary between provinces. Recent up-dates have been posted to a number of provincial employment standards websites.

Employment standards may also change over time and/or new standards will be added. If you do not have a person responsible for monitoring these changes in your organization, it is important to consult with your local Employment Standards office to obtain current information for your province or territory. There you will find a number of valuable resources including for example:

- Employment standards acts and regulation
- A guide to employment standards specific to your province or territory and sector, industry and/or job category
- Frequently asked questions
- Fact sheets providing current information about specific subjects covered under employment standards

- Information about special rules and/or exemptions
- Contact details

Employment Standards Websites

Please refer to the following websites for further information on provincial or territorial Employment Standards in Canada.

Alberta

<http://www.gov.ab.ca/home/index.cfm>

British Columbia

<http://www.labour.gov.bc.ca/esb>

Manitoba

<http://www.gov.mb.ca/labour/standards/index.html>

New Brunswick

<http://www.gnb.ca>

Newfoundland and Labrador

<http://www.gov.nf.ca/lra>

Northwest Territories

<http://www.gov.nt.ca>

Nova Scotia

<http://www.gov.nc.ca/enla/labrstd.htm>

Nunavut

Currently, please contact the Labour Services Officer in the Department of Justice at: (867) 975-7293

Ontario

<http://www.gov.on.ca/LAB/english/es/index.html>

Prince Edward Island

<http://www.gov.pe.ca>

Quebec

<http://www.cnt.gouv.qc.ca/en/index.asp>

Saskatchewan:

<http://www.labour.gov.sk.ca/standards/index.htm>

Yukon Territory

<http://www.gov.yk.ca/depts/community/labour/>

Case Study

Cynthia Johnson was doing well in her new position as Manager of Administration and Human Resources at the Community Resource Centre. Cynthia, one of 38 employees had been working for six years with the Resource Centre. Over the years she has been involved in a variety of roles including front-line support to clients, office manager and most recently, personnel support. When the Manager resigned Cynthia applied for the position.

Two weeks into her new job, one of the managers came to talk to Cynthia about an employee who was taking an increasing amount of time off. In addition, the manager noted that the employee did not seem to have a high degree of motivation and was noticeably withdrawn from the rest of the group.

Cynthia became concerned when she learned more about the history and the challenges being experienced. She learned that the situation had been progressing over the course of the past five months. The employee had been with the Resource Centre for just over four years and up until five months ago, had been doing a satisfactory job as a Project Manager. The employee had missed a deadline three months ago for a funding proposal resulting in a number of his colleagues having to work overtime. Time away had also been on a steady increase and the work group was beginning to complain about their colleague to their manager. Cynthia enquired if the manager had spoken directly to the employee. The manager confirmed that after the situation with the proposal, she had met with the employee to discuss the specific concerns that she had. Cynthia enquired if there was any documentation kept as a record that she could refer to. The manager advised that nothing was in writing.

As it turns out, another project funding proposal was due in three weeks and the manager was concerned that

the work to be done by the employee may not be completed in time. She did not know if she could rely on the employee to get the job done. Cynthia provided some suggestions to the manager who was visibly struggling to manage this situation both with the working group as well as the employee. Cynthia also agreed to meet with the employee and the manager to discuss the situation further. The manager was to set this up within the next two days.

In the meantime, the employee asked to see his manager. He requested time off, to be scheduled precisely at the same time that the work he was expected to do for the proposal was due. The manager, knowing the difficulties that this would create with her other staff whom were already working hard on the proposal, was not able to contain her frustration with the situation. She demanded to know what was wrong and why her employee was taking so much time away from the job. The discussion deteriorated, voices were raised and the employee walked out of the meeting. He went to see Cynthia immediately following the exchange with his manager.

"It really took me by surprise," Cynthia says, "based on what the employee said, it appeared that the manager had asked if there was a medical reason for his recent time away from the job, and it did not end there ..."

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The manager told the employee that if he did not tell her about any medical condition that was keeping him away from the job that his employment with the company could be terminated. She had told the employee that he was required to be at work and with the up-coming project proposal that she could not possibly let him take any time off. The employee informed Cynthia that he did not have a chance to provide the information that he had received from his doctor. This was the reason why he had requested the meeting. His doctor had provided medical evidence advising that he needed time off in order to adjust to new medication that had been prescribed, he may also require further testing. Cynthia knew that she had to take action to respond to this situation.

Here's the problem:

The employee was extremely upset at the threat he had received regarding the possibility of losing his job. He demanded to see the policy that states that a manager has the right to request medical details and moreover to terminate an employees employment if they failed to comply with the demand for information. He made references to his human rights and that he has been an employee in good standing for over four years. He has never abused the system and has never had a poor performance appraisal, how could his manager treat him this way?

The Manager was frustrated that her employee was requesting time off right when another funding proposal was coming due. What was she going to tell her other staff members who were already beginning to complain about the time this employee was taking off and the work that they had done for him to date? When he left her office he slammed the door, clearly others must be aware that something had happened.

The Current Situation:

- The employee, clearly upset, is in the human resource manager's office.
- The employee's manager is in her office, the door remains closed.
- Staff members are beginning to gather and talk about the raised voices and the door being slammed.

Rumours are beginning and a simmering tension is beginning to take hold in the department.

- The HR manager is prioritizing her approach to managing this situation and thinking about what steps she must first take to respond to the concerns being expressed by the employee.

Confusion, uncertainty and the lack of communication have culminated in a potential negative outcome to this situation. Left un-managed, this case could potentially progress to the following:

- Wrongful termination of employment resulting in legal action.
- Human Rights complaint/investigation against the organization and/or its managers.
- Monetary compensation that may be required to be paid by the organization.
- Monetary compensation for pain and anguish suffered by the employee.
- Upsetting a long-term employee and placing him in an extremely difficult situation with his manager and colleagues.
- Irreparable damage to inter-personal relationships with colleagues and/or manager.

This case demonstrates what could potentially occur if a workplace policy is not developed and/or not clearly communicated to employees and managers.

Conclusion

Cynthia was able to ascertain from the personnel manual that in fact there were no policies in place that would respond to this situation. However, based on her experience in personnel support, she was aware of the employer's duty to provide reasonable accommodation up to the point of undue hardship. Any information that would be required should be specific to any limitations that the employee had in performing the essential duties of his job, and any special requirements that he may have. She also knew that the employee was correct, this was potentially an area that was protected under human rights law. Cynthia was also aware that she had to speak with the employee's manager to

ascertain her understanding of the events that transpired in the meeting.

The immediate priority was to calm down the employee, apologize for the apparent request for specific medical information and reassure the employee that he could not lose his job if he did not disclose his full medical status to the employer.

She invited the employee to sit with her and expressed her concern about his situation and reassured him that they would do what they could to support him both in terms of his immediate requirements and to the extent possible, into the future. She requested to see the information from the doctor and reviewed it with the employee.

She offered an apology for the outcome of the meeting with his manager and explained that there had been a misunderstanding that stemmed primarily from concern and frustration about the situation that had been transpiring over the past five months. She asked the employee if he would be agreeable to a meeting with herself and the manager after lunch or, if he preferred, in the morning, leaving the decision up to him.

The meeting was arranged for after lunch. This provided Cynthia an opportunity to speak with the employee's manager and also do some specific research on the Human Rights Commission website with respect to the employer's duty to provide reasonable accommodation.

Cynthia explained the seriousness of the situation to the manager and asked her to apologize to the employee at the meeting. She noted that they would deal separately themselves with the incident at another time.

In the meeting after lunch, the manager, realizing the seriousness of the situation offered an apology to the employee and expressed her hope that they could use this current meeting as an opportunity to begin a new discussion about the employee's requirements and any short to mid-term planning for the department and the work that needed to be done. She expressed her regret about what had transpired earlier in the day. The employee accepted his managers apology and was

agreeable to working through the requirements with her and Cynthia.

They agreed to take things one stage at a time, dealing first with the immediate need for time away from work and what the workload and/or staffing needs would be while the employee was adjusting to the medication. Using the procedures obtained from the human rights commission, they also reviewed and agreed on the process for accommodation in the workplace.

The employee left the meeting with a clear understanding about his rights as well as the employer's obligations and their respective responsibilities in the process.

The following list provides some other examples of possible consequences in the workplace as a result of not having a policy or procedures to refer to. This list is by no means exhaustive.

Consequences for the Employee

- Respect, dignity and privacy of the employee was not recognized and/or up-held.
- The employee was left feeling alone and uncertain about whom he could trust and/or approach in the workplace.
- The employee was not aware precisely how much information about his health situation he was obligated to provide.
- The employee was not certain what the reaction would be about his need for time away from the job and possibly an altered work schedule. As a result he said nothing.
- The employee worried that his future with the organization might be jeopardized if he discussed his situation with his manager.
- The employee was worried about his financial future and how he would be able to continue to contribute to supporting his family.
- All of the above put needless pressure on the employee that resulted in increased levels of stress and tension both on the job and in his personal life.

This additional stress also had a potential negative impact on his health.

- The employee was feeling discriminated against and stigmatized when the manager demanded to know specific medical details and subsequently followed this up with a threat to possibly terminate his employment.
- The confrontation with his manager left him feeling resentful that things had progressed to this point.
- The confrontation with his manager also left him feeling embarrassed. He had never lost his temper before on the job. He was worried what this would mean to the long-term employee-manager relationship.
- As a result of the medical limitations, the employee could potentially experience on the job performance issues and/or receive a less than satisfactory performance review.
- The employee would potentially leave the HR managers office with no answers, confused, angry and uncertain of his future with his employer.

Consequences for the Employer/Manager

- The employee's manager was uncertain what to say and how to resolve the situation in the short and mid-term. As a result she did not take a proactive approach to addressing this situation and eventually things did get out of hand.
- Increased levels of tension within the working group that had to be addressed.
- The employee's manager handled the situation on her own and in the end, out of sheer frustration, said something and also threatened to take action that is not in accordance with Human Rights and/or Employment law.
- Wasted time.
- The Manager was embarrassed about her behavior and how this would reflect with the rest of the group.
- The HR manager could potentially have been put in a position of needing to respond to the employee but not being aware of what steps she should take, what

she could say or what she should do. This would result in an inevitable delay as time would be required to research and gather appropriate information before speaking again with the employee.

Consequences for the Workplace

- There was confusion over responsibilities with respect to human rights and whom the employee should approach for information and/or to discuss this matter with. As a result, valuable time was wasted that could have been constructively directed towards working with the employee and the manager to review the need for and set up reasonable accommodation for this employee.
- There was evidence of decreasing motivation and morale in both the employee as well as his colleagues as they were increasingly put in the position of covering off his workload. Had an accommodation process been followed, the redistribution of the workload would have taken place in an orderly, agreed upon fashion with timelines, expectations and if applicable, monetary compensation for others being discussed.
- Unexplained increased levels of absenteeism were being noted as the employee was attending doctor appointments and diagnostic procedures.
- Tension within the working group and/or the department and strained inter-personal relationships including increasing levels of conflict and/or resentment were building.
- Lack of trust in the management of the organization prevailed. The perception that senior management did not care about their employees and were not supportive when an employee is managing a life threatening, chronic and/or episodic disability was evident.
- Others in the workplace are now aware that something is wrong.
- Disruption to others as raised voices and doors were being slammed.

- The manager and employee confrontation created the need for intervention from a third party as well as immediate crisis management.

The following list provides some examples of possible outcomes with an effective workplace policy process including communication and implementation. This list is by no means exhaustive.

For the Employee

- Workplace discussion and policy development reinforces dignity, respect and privacy for the employee and provides managers with clear guidelines and procedures to follow.
- The employee will understand that disability is a protected ground and what that means specifically in terms of employment rights. This would enable the employee to discuss the situation from a well-informed position.
- The employee would have had confidence in the workplace environment as being supportive and may have approached the employer to discuss the situation sooner.
- A framework for the discussion regarding the employee's requirements for medical leave and/or accommodation would be available for review.
- Open communication leading to reducing the level of stress and tension.

For the Workplace

- A broader organizational understanding of human rights in the workplace.
- Clear policy statements are provided about non-discriminatory practices in the workplace.
- Managers and employees will have received prior training and education about human rights in the workplace, the duty to accommodate an employee with a disability, up to the point of undue hardship as defined by the Human Rights Code and the procedures that must be followed by all parties.
- Developing a workplace policy provides an opportunity for Senior Managers to pro-actively discuss the requirements in the workplace for persons

with a disability rather than being placed in a crisis management situation.

- Complimentary policies will be created in the workplace and be available for the employee and the manager to review and discuss (example: flexible work hours, non-discrimination, confidentiality).
- Accommodation provisions could have been made sooner, rather than later, thereby reducing tensions in the working group and ensuring that deadlines were met.
- Workload planning would take place, based on realistic needs of the employee and the organizational requirements.
- Expectations and responsibilities would be clearly defined at the outset, thereby ensuring that all relevant parties involved in the discussion about the duty to provide reasonable accommodation are aware of their role.
- Previous accommodation recommendations could be reviewed to determine if similar options would be viable in this situation.
- Consistency in how employees are treated.
- Organizational history is maintained and expanded on through proper documentation, monitoring and/or review.
- Organizational standards are developed.
- Health and safety guidelines are taken into consideration.
- Privacy and confidentiality is respected and upheld.

Each situation is different and will vary according to the unique requirements of the employee and the employer. This information sheet provides some examples of the negative consequences and the positive benefits related to the workplace policy development process.



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Practical Steps for Implementing Policies and Procedures

Preamble

Identifying and upholding human rights, as it relates to employment, is strongly linked to how an organization demonstrates two key values:

- 1. Commitment to human rights in the workplace, and;
2. Respect and dignity for individuals managing a life threatening, chronic and/or episodic disability.

When implementing human rights in the workplace, it is important to be aware that the steps taken at your organization will extend beyond policy and procedures development. Policy development is a first step, policy implementation and how you bring the policy to life in your workplace is the next step.

Employers are responsible for dealing effectively, quickly and fairly with situations involving claims of harassment and/or discrimination (which includes failure to accommodate employees needs). Employers could be held liable by a court or a human rights tribunal if they or responsible staff members do not act to end discrimination or harassment at their workplaces.

We have been asked by workshop participants to identify some practical steps that can be taken in the workplace to implement policies and uphold human rights. The following suggestions have been compiled from the feedback and recommendations we have received from individuals and organizations that have attended ICAD focus groups and the workshops held

across Canada over the past year. It also incorporates human resources recommended practices.

For further information please refer to: www.icad-cisd.com , or contact your local Human Rights office.

Introduction

An organization's philosophy on human rights is reflected in both the workplace core values that have been established as well as in the policies and procedures that are developed and implemented. In order to increase awareness about human rights and non-discriminatory business practices, discussions should take place at all levels of the organization including, senior managers, supervisors, and all staff.

Discussions about human rights with respect to employment and policy development may be driven by a number of factors and may include for example:

- Personal connection/experience with the issues
• Identifying and upholding human rights as a key organizational value
• Recruitment and retention
• Risk management and liability issues

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- Costs of not developing and implementing a workplace policy

Policy Development and Implementation

There are a number of factors that should be taken into consideration when developing and implementing policies in the workplace. ICAD's policy package and sample policy template explain in detail how an organization can take a rights-based approach to policy development. To locate this resource information please refer to our website at www.icad-cisd.com.

The policy development stage is an opportunity to think about and/or discuss a number of factors related to policy implementation and the impact this will have at your organization. Policy implementation refers to how an organization achieves a successful introduction to the policies it has developed and the practical application or practices that follow.

The first section in this resource document provides some considerations about the policy development stage. The second section provides practical steps for policy implementation and upholding human rights in the workplace.

Section 1: Fundamental Policy Development Considerations

- Policy development should be tailored to respond to the organizational culture, operational requirements and available human and financial resources.
- Recruitment and retention of staff is linked directly to organizational policies, procedures and practices.
- When developing policies for HIV/AIDS and/or other episodic, life threatening or chronic illnesses, it provides an opportunity to identify, cross-reference and promote other relevant policies. These may include, but are not limited to:
 - Privacy and confidentiality
 - Non-discrimination
 - Anti-harassment

- Complaints and complaint resolution
- Job accommodation
- Flexible work arrangements
- Employment equity
- Health & safety
- Insurance benefits
- Gradual back to work programs

- New policies and/or revisions should provide information about the rationale behind it, how it relates to the mission or vision of the organization, how it links directly to human rights and employment and the complaint resolution process if applicable.
- To the extent possible, engage and involve staff in policy development discussions. Awareness raising and education = involvement.
- Where applicable, be sure to consult with unions and/or other workplace partners on policy development and implementation.
- Research and/or identify other successful policy models from your own network that can be adapted and applied to your workplace.

Section 2: Policy Implementation

2.1 Organizational Considerations

When implementing policy and procedures there are a number of considerations including the following:

- Visible support for the policy should be evident from the Board of Directors, Executive Director, Senior Management Group or others as applicable.
- Core values that include a statement regarding human rights in the workplace should be identified.
- All employees should be concerned with developing a human rights culture in the workplace (Definition: A workplace environment where human rights and responsibilities are promoted and respected and

where employees are free from concerns related to basic equity issues).

- All managers should be aware of their duties and responsibilities under human rights law and the related organizational policy.
- Employees responsible for advice, policy adjudication and/or complaint resolution should receive specialized training.
- Plain language should be used for policy implementation information.
- All employees should have a copy of the policy or know where to access it for review. Employees should not be placed in the position of having to ask someone for the policy.
- Employees should sign off that they have received and reviewed the policy and agree to be bound by it. (Provide the acknowledgement form at the time of hiring or, at the latest, as part of the orientation process).
- The number of paper copies of the policy should be reduced/limited to avoid out-dated material from remaining in circulation.
- Policies and procedures should be posted onto the shared intranet or other information sharing mechanisms that are available.
- The policy should be communicated and promoted effectively and consistently.
- The policy should be discussed at staff meetings, department meetings and other meetings as applicable.
- The policy should be discussed with various committees as well as at the board as applicable (for example: health and safety committee, diversity and equity committee, personnel committee).
- All employees must be informed when the policy is up-dated to ensure that they understand the revisions, have an opportunity for questions and answers, sign off by acknowledging receipt and agree to be bound by the revised policy.

- The collective agreement and any revisions should be provided to all employees.
- The organization should plan to evaluate and measure the policy every two years reviewing the level of use, effectiveness, absenteeism rates, accessibility, privacy and confidentiality, perceptions and trust etc.
- The organizational financial bottom line should be considered in combination with the human costs involved. Successful and supportive organizations understand the needs of the employee and the employer and how these can best be addressed for the benefit of all concerned.
- The organization should ensure respect and dignity in the workplace in order to make it a safe environment for employees to come forward to ask any questions they may have.

2.2 Privacy and Confidentiality

A key consideration for policy implementation is privacy and confidentiality. For example:

- Confidentiality and privacy is a priority at all times.
- Request that employees (especially those handling sensitive information) sign a confidentiality agreement.
- Identify one person responsible as the medical contact for the organization. For example, this contact may handle enquiries and/or information about the policy, accommodation in the workplace, discussions about next steps and insurance claims.
- Consider whether that same person should be responsible for policy enquiries and/or complaints or if this responsibility should be broader and/or handled in a working group. Regardless of the approach taken, consistency is key. Note: Identifying one person will also ensure that an organizational history is established and it builds the capacity for the organization to respond to future policy enquiries.

- Insurance forms should be available/accessible with contact numbers/coordinates for enquiries.
- If desired, insurance claims may be processed directly between the employee and the insurance provider.
- Conduct a privacy audit (please refer to the ICAD website for further information and checklist).
- Develop and make available templates for an employee wishing to request accommodation and/or make an enquiry.
- Develop and make available templates or checklists for supervisors/managers responsible for meeting with the employee to discuss accommodation requirements.
- Conduct staff surveys to identify any areas/issues of concern and to measure changes in attitude and knowledge.
- Disciplinary action must be specified and taken seriously if confidentiality or privacy protection is not adhered to.

2.3 Training and Education

Education is an important part of preventing discrimination and/or harassment in the workplace. Training programs for all employees ensure that everyone knows the rules and how they will be applied. It also ensures consistency and equal treatment and will reduce the potential for discriminatory business practices.

All those responsible for enforcing or advising on workplace human rights policies or procedures should be knowledgeable about the policies. Basic steps to achieve this include:

- Providing up-to-date information about human rights issues and important court decisions or human rights tribunal decisions in human rights law;
- Ensure that all staff are trained in dealing with discrimination and/or harassment in the workplace;

- Measure the effectiveness of policies and procedures and make any necessary changes;
- Respond immediately to claims of discrimination or harassment.

2.3.1. Practical Steps for Training and Education

- Trainers should be trained themselves and up-to-date on human rights and employment legislation.
- Training should be on-going to provide information about any changes in human rights and/or employment legislation.
- Needs assessment should be carried out to identify priority education areas.
- All employees should be aware of organizational policies and how human rights apply.
- Orientation material for new employees should include a policy and procedures component.
- Employees should receive training and education on disability awareness and management.
- Case studies, role-plays and videos should be used as effective education tools.
- A participatory approach to training should be used as an effective model.
- Training can provide opportunities for professional development. For example, request a volunteer to be responsible for coordinating and/or designing/delivering an information workshop related to HIV/AIDS and the workplace.
- Establish and promote links with service organizations for disability awareness (statistics, lunch and learn series, information web/links available, information on different illnesses).
- Fact-sheets should be developed and made available at specified times throughout the year highlighting rights and responsibilities, procedures, employment standards and human rights.

- Specific training for accommodation in the workplace should be provided including; guidelines, respective rights and responsibilities, procedures to request, assessing various options, developing an accommodation plan, documenting the process and monitoring and evaluation.
- Invite an AIDS Service Organization to present a workshop or provide a talk.
- Policy training & education should focus on establishing a safe and supportive environment in which employees can be confident in coming forward to discuss and/or ask any questions.
- A training manual should be developed for all employees.
- If applicable, consider a presentation from an insurance company about the disability component of the benefits package with a question and answer session.

2.4 Accessing Human Rights Information

Information should be openly available for employees who wish to research human rights in the workplace. It is recommended to have a complaint process and organizational dispute resolution process in place. This information should be provided in the human resources policy manual and may include but is not limited to:

- Overview of the complaint process
- Investigation
- Protection from reprisal
- Complaint resolution

In addition, information about the local human rights office should also be available, including but not limited to:

- Contact details for the local Human Rights office
- Services provided
- How to access information

A number of other steps can be taken to encourage a culture of human rights in the workplace. For example:

- Invite a representative from the Human Rights office to provide an in-house education session.
- Encourage employees to seek out further information with either an employment lawyer and/or the human rights commission on specific topics of interest.
- Permit an employee to work with an employment advocate when discussing employment related issues, challenges, and/or making accommodation related decisions.

For further information please contact Rosemary Forbes, Program Manager, ICAD, (613) 233-7440 ext. 14 or visit our web-site at www.icad-cisd.com.



HIV/AIDS and the Duty to Accommodate

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Overview

Human rights laws are in place to create a work environment that promotes respect for the dignity and worth of all Canadians, mutual respect and understanding, and equal opportunity to participate in and contribute to the community. Human rights law requires an employer, short of undue hardship, to accommodate the needs of an employee who has a disability. Under human rights law, disability is a protected ground and it would be unfair as well as illegal to exclude someone from the workplace or activities in the workplace because their lawfully protected needs are different from the majority.

Just like other illnesses including, but not limited to, cancer, epilepsy and/or addictions, HIV/AIDS is defined under human rights law as a disability. As such it is a protected ground. In general, human rights law provides a basic definition of disability to include the following:

- Conditions that have developed over time
• Conditions that result from an accident, or
• Conditions that have been present from birth

The Ontario Human Rights Code, section 10, defines disability to include:

- a) Any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness
b) A condition of mental impairment or developmental disability
c) Learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language
d) A mental disorder, or
e) An injury or disability for which benefits were claimed or received under the Workplace Safety and Insurance Act

Comparable provincial human rights laws are in place across Canada and all define disability as a protected ground.

The principle of accommodation applies to all grounds of human rights law but certain grounds and issues arise frequently in the area of employment. This Information Sheet will concentrate on employees with disabilities and will provide basic information about:

- The principles of accommodation
• Accommodation in the workplace
• Duties and responsibilities, and
• Undue hardship

This is one in a series of information sheets addressing HIV/AIDS as an episodic disability in the workplace.

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6. Employment Standards in the Workplace
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- 10. Examples of Successful Job Accommodation
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Respect for the dignity of persons with disabilities is the key to preventing and removing barriers. This includes respect for the self-worth, individuality, privacy, confidentiality and autonomy of persons with disabilities.

Human rights law states that persons with disabilities have the right to full integration and participation in society. It guarantees equal treatment to all persons capable of performing the essential duties or requirements of the job or service. No one can be judged incapable of performing those duties until efforts have been made to accommodate the individual, up to the point of undue hardship to the employer.

Human rights law acknowledges the duty of the employer to provide individual accommodation, up to the point of undue hardship, and the responsibility to minimize the need for individual accommodation by ensuring that any rules, policies, standards or practices are not discriminatory. Discrimination based on disability or perceived disability is prohibited in employment. Human rights law guarantees equal treatment to a person with a disability who is able to perform the essential duties of a job with accommodation to the point of undue hardship.

The Principle of Accommodation

When we talk about the principle of accommodation, the generally accepted values are: dignity, individualization and inclusion.

Dignity:

Persons must be accommodated in a manner that most respects their dignity, including their privacy, confidentiality, comfort and autonomy.

Individualization:

There is no set formula for accommodation. Each person's needs are unique and must be considered afresh when an accommodation request is made. A solution may meet one person's requirements but not another's.

Inclusion:

Achieving integration and full participation requires barrier-free and inclusive designs and removal of existing barriers. Barriers can be physical, attitudinal and/or systemic. The Ontario Human Rights Commission states: "a systemic barrier is not just a single rule or policy but a combination of policies and/or guidelines that result in the exclusion of people".

Preventing and removing barriers means all persons should be able to access their environment and face the same duties and requirements with dignity and without impediment.

As we strive to remove physical barriers in the workplace, it is also important to provide education and awareness in order to challenge commonly held mistaken and/or inaccurate beliefs and attitudes about persons with HIV or AIDS in the workplace.

Accommodation in the Workplace

Disability is a protected ground under human rights law. Keeping the principles described above in mind, it is important to have a workplace policy that provides specific information about the duties and responsibilities with respect to the duty to accommodate in the workplace.

Because accommodation will vary according to a person's unique needs, these needs must be considered, assessed, and accommodated individually. Accommodation may include, but is not limited to:

- Physical modification of a work site
- Purchase of assistive devices (for example anti-glare screen saver, lumbar support for chair)
- Modifying performance standards or productivity targets
- Flexible work schedules
- Extra breaks during the day

- Transfer to a different job to reduce stress, and/or
- Leaves of absence as defined within existing leave policies or as required to accommodate the employee with a disability

Example:

If an employee is sensitive to light as a result of a medication(s) they are taking, the following are examples of modifications that may be provided:

- Lower wattage overhead lights
- Task lighting
- Broad spectrum lighting
- Install flicker free lighting
- Move work station to another area
- Place blinds on windows that create glare

To access a full range of information on accommodation possibilities for persons with HIV or AIDS, please refer to The Job Accommodation Network at <http://www.jan.wvu.edu>.

A clearly stated accommodation workplace policy will support people living with HIV or AIDS to make appropriate work-related decisions. These provisions will vary according to a person's unique needs.

Duties and Responsibilities

Once the employer is aware of the employee's needs, they must take steps to meet the duty to accommodate, up to the point of undue hardship.

There are a number of considerations in the accommodation process including, but not limited to:

- The nature of employment and the essential job duties
- The details about the limitations and/or requirements
- The availability of policies and procedures
- Privacy and confidentiality

- The overall level of trust that the employer has established with its employees to discuss accommodation requirements

Employers and persons with disabilities have a shared responsibility in making the accommodation process a success. When an accommodation is requested, everyone involved should cooperatively share information and actively seek solutions. This may include, but is not limited to:

- The employee
- The employer (human resources or senior management member)
- The union representative
- The supervisor
- Possibly co-workers
- Medical professionals
- Insurance providers
- Alternative practitioners (example: para-medicals)
- Supportive interventions such as wellness programs, education and awareness, support, care and treatment programs and;
- Other social networks such as peer support and referral services if available

A person with HIV or AIDS is not required to disclose their medical status. The information required relates specifically to any limitations that the employee may have in the performance of the essential duties of the job. Conclusions about the inability to perform essential duties should not be reached without actually testing the ability of the person. It is not enough for the employer or person to assume that the person cannot perform an essential requirement of the job. Rather, there must be an objective determination of that fact.

Responsibility of persons with a disability requesting accommodation:

- Make any request communicating the need for accommodation to the employer in writing
- Inform the employer of the needs and relevant restrictions or limitations
- Cooperate in obtaining necessary information, including medical and/or other expert opinions
- Actively participate in discussions about solutions
- The duty of "reasonable conduct" - to act reasonably and try to minimize any disruptive effect on the workplace
- As applicable and/or appropriate, assist with workload planning and/or redistribution
- Meet agreed upon performance objectives and measurements once accommodation is provided
- Develop an accommodation plan and agreement; and
- Work with the employer on an ongoing basis to manage and monitor the accommodation process to ensure the policy and procedure is being applied correctly

Responsibility of an employer receiving a request for accommodation:

- Maintain the confidentiality of a person with a disability
- Accept requests for accommodation in good faith and deal with accommodation requests in a timely manner
- Discuss with the employee the purpose and essential functions of the employee's job, the accommodation required, whether or not there are alternatives and take an active role in ensuring that possible solutions are examined
- Request only information that is required to make the accommodation

- Following discussion with and agreement by the employee, obtain expert advice or opinion where necessary
- Ensure that any medical opinion(s) required will be restricted to: the employee's capability to continue working, special workplace facilities or needs necessary to accommodate the employee's medical condition or protect the health of the employee, co-workers or other individuals with whom the employee has contact
- Identify potential accommodation options and assess the effectiveness each would have in allowing an individual to perform the job optimally
- Identify any costs, benefits or detriments
- Bear the cost of any required medical information or documentation
- Develop an accommodation plan and agreement, manage and monitor to ensure the policy and procedure is being applied correctly

When reviewing a request for accommodation the essential duties of the job and the non-essential duties of the job must be separated. The person with the disability should be assessed in terms of their ability to perform the essential duties and, on that basis, accommodation should be considered up to the point of undue hardship.

The employer's duty to accommodate exists short of undue hardship, the point at which the cost of the accommodation would jeopardize the survival of an organization. In order to claim undue hardship, the employer has the onus of proof. It is not up to the person requesting accommodation to prove that the accommodation can be accomplished without undue hardship. The nature of the evidence required to prove undue hardship must be objective, real, direct, and in the case of cost, quantifiable. The employer must provide facts, figures and scientific data or opinion to support a claim that the proposed accommodation in fact causes undue hardship. A mere statement to the employee or the Human Rights Commission without supporting evidence, that the cost or risk is "too high"

based on impressionistic views or stereotypes will not be sufficient. The employer must be prepared to provide any supporting evidence to the Human Rights Commission.

The criteria for undue hardship can vary across Canada. Generally, there are three items that may be considered in assessing whether an accommodation would cause undue hardship to the employer. These are:

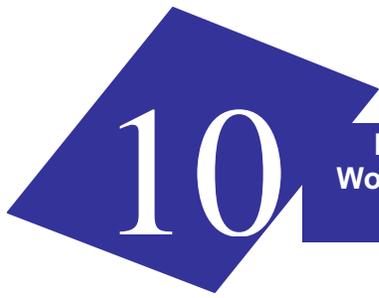
- Cost (Note: The majority of accommodation involves little or no cost to the organization)
- Outside sources of funding, if any, and
- Health and safety requirements, if any

This means that the employer must provide evidence showing that the financial cost of the accommodation (even with outside sources of funding) or health and safety risks would create undue hardship for the employer.

In many cases, the Commission will not accept the following as reasons for denying accommodation:

- Business inconvenience
- Employee morale
- Customer preference
- Client and/or colleague preference

It is important to note that there are some differences for assessing undue hardship at the federal and provincial levels and between provinces and territories. As such, please be sure to consult with the appropriate federal or provincial human rights office in your location to determine the correct interpretation for your jurisdiction.



HIV/AIDS and the Workplace Information Sheets



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Examples of Successful Job Accommodation

Some Examples of Accommodation Solutions

Preamble

Over the course of the past year, when discussing accommodation in the workplace with employers, the most frequently identified areas of challenge were workload management and/or unpredictable absenteeism. We have been asked to provide additional information about job accommodation as well as some successful accommodation examples.

The following information is not exhaustive. There may be some examples provided herein that can be used by different organizations. However, job accommodation must be handled on a case-by-case basis in order to respond to the unique circumstances and needs of the specific individual and the employer.

It is important to note that it should not be assumed that because an individual has a disability or limitation(s) that they will require accommodation(s) in the workplace. An individual may have a disability that does not necessarily limit their ability to perform job functions. Individuals with disabilities may need no accommodations, a few, or many. When discussing HIV/AIDS and job accommodation, the overriding requirement that was identified by individuals was flexibility in work hours.

In practical terms, providing accommodation means considering various options in order to assist another person in meeting their needs and goals in the workplace without compromising the needs and goals of the employer.

Job accommodation can take different shapes and may respond to a range of requirements.

The Job Accommodation Network: <http://www.jan.wvu.edu/media/HIV/html> has a variety of accommodation options and solutions listed for different disabilities. The fact sheets provide information about the disability, some of the medical symptoms that may be experienced, some of the possible job limitations that may result and various job accommodation solutions.

The following is reproduced with permission from the Job Accommodation Network for HIV/AIDS and the workplace.

Managing Weight Loss

- Provide ergonomic chair with extra padding, arm supports
- Provide access to refrigerator to store food supplements and/or medications

Activities of Daily Living

- Move workstation closer to the restroom
- Allow longer breaks
- Refer to appropriate community services

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Vision Impairment (reading information from computer screen)

- Provide equipment such as external screen magnifier, screen magnification software, larger sized monitor, anti-glare or anti-radiation screen guard, special computer glasses to reduce glare, and high resolution monitor
- Change font size or contrast in existing software application
- Frequent breaks to rest eyes when fatigue is a factor
- Additional training as may be required

Vision Impairment (reading information from paper copy)

- Provide equipment such as hand/stand magnifier, improved lighting or task lighting, optical wear such as eye glasses, low vision enhancement systems, flip-down magnifiers, etc.)
- Reduce glare on paper copy (install/close blinds on windows, change lighting in area)
- Enlarge information on photo copier
- Implement frequent breaks to rest eyes when fatigue is a factor
- Additional training as may be required

Photosensitivity

- Provide lower wattage overhead lights, task lighting, broad spectrum lighting, flicker free lighting
- Move work station to another area
- Place blinds on windows

Fatigue/Weakness

- Reduce or eliminate physical exertion and workplace stress
- Schedule periodic rest breaks away from the workstation

- Allow a flexible work schedule and flexible use of leave time
- Allow work from home
- Implement ergonomic workstation design
- Provide a mobility aid if walking cannot be reduced

Stress

- Identify stressors and reduce stress
- Offer peer counseling, EAP, an open door policy to the supervisor
- Provide time off for counseling and/or other supports

Cognitive Impairment

- Provide more structure and/or written job instructions when possible
- Prioritize job assignments
- Allow flexible work hours
- Allow periodic rest breaks to reorient
- Provide memory aids such as schedulers or organizers
- Minimize distractions
- Allow a self-paced workload
- Reduce job stress

Respiratory Impairment

- Provide good ventilation
- Provide a clean work environment
- Avoid temperature extremes

Skin Infections

- Avoid infectious agents and chemicals

Some Considerations and Solutions

1. Is it Necessary to Modify the Job? For example: Job description, duties, work schedule and/or work location.

Situation: An employee has difficulty getting up in the morning as a result of their medication. **Solution:** The employee's working hours were changed to allow the employee to travel to and from work during the off hours of the day. Her lunch hour was modified from one hour to half-hour and she was able to arrive at work at 10:00 a.m. and leave at 5:30 p.m.

Situation: An employee was finding it increasingly difficult to get to work due to the fatigue associated with preparing for the day and driving to work. **Solution:** The employee was provided with a revised work arrangement that allowed regular working from home two days a week.

Situation: An administrative assistant could only go to the clinic during work hours. **Solution:** The employer provided the employee with a flexible work schedule, so that she could go to the clinic for medical attention and counseling. The employee made up the hours throughout the week by staying later and by coming in early.

Situation: An employee was having difficulty scheduling routine visits to his physician. **Solution:** The employee was provided regular time off each week so the employee could make arrangements to see his physician regularly and work at home for the remainder of the day.

Note: *Other options include part-time work and/or job-sharing, working with volunteers or interns to assist the employee.*

2. Is it Necessary to Modify a Policy? For example: Formalize policy changes, notify employees, policy implementation.

Situation: An employee needs to eat regularly to control the side effects of medication and to ensure

optimal energy throughout the day. The employee handbook prohibits eating and drinking at the workstation. **Solution:** The workplace policy regarding food and drink was modified to allow the employee to have the necessary food/drink items at their workstation.

Situation: An employee was hypersensitive to fragrances in the workplace. The employee experiences severe headaches, difficulty breathing and is unable to perform job duties when exposed to fragrances. **Solution:** A policy was developed to address this, requesting employees to refrain from wearing or using fragrances in the workplace. Implementation of such a policy should also provide information to employees about the effects of fragrances on individuals who are hypersensitive to chemicals and fragranced products.

3. Is it necessary to use a product, purchase a piece of furniture or equipment?

Many products exist that could be used as an accommodation for an employee with a disability. Common terms used to refer to such products are assistive technology, ergonomic and/or independent living aids. Some products may be specifically designed for people with disabilities while others are not but may serve as an effective accommodation (for example an ergonomic chair).

It is important to note that if a product is purchased as an accommodation, the employer should consider compatibility issues, computer requirements, training, maintenance and the availability of technical support for the product.

Situation: An administrative secretary was experiencing visual difficulties. She was no longer benefiting from increasing the font on her computer to view and edit documents. **Solution:** The employer purchased screen magnification software. The software enhanced or enlarged all applications on the computer and allowed the employee to choose the amount of magnification and change color contrasts to fit her individual needs.

Situation: A bank teller was having difficulties standing for eight hours a day on a tile floor. **Solution:** The work area was carpeted using extra padding, which assisted in reducing fatigue, and a sit/stand/lean stool was purchased to assist the employee when standing. The employee was also permitted to take frequent rest breaks throughout the day. This was possible since the employee cut his lunch hour down to 30 minutes providing him with 30 minutes that could be used at other times of the day whenever a break was needed. Another teller was available to cover his breaks.

Note: *This solution can benefit any other occupations where standing for long periods of time is problematic (food processing plants, manufacturing, retail, service industry etc).*

Situation: An accountant was experiencing eye sensitivity to fluorescent light in her office. As a result, she was unable to clearly view her computer screen or written materials due to glare. **Solution:** The wattage in the overhead lights was lowered, task lighting was provided and a computer screen glare guard was installed

Situation: A machine operator was experiencing difficulties remembering the steps involved in changing a part on his machine. **Solution:** The employer provided the employee with a step-by-step checklist and directions explaining how to do this.

4. Is it Necessary to Consult with other Resources?

Over the course of the accommodation assessment you may find it helpful to consult with an outside expert. This expertise may include the following:

- Ergonomic assessment
- Technology/Worksite evaluation
- Occupational/Rehabilitation Therapist
- Other as required

5. Explore Alternative Placement Options

The road to a successful accommodation may have challenges. Various roadblocks may lead an employer to the conclusion that accommodation in the original position may not be possible. While it is traditional to accommodate an employee in their original position, an employer should consider whether an alternative placement option could be the effective accommodation solution.

Some Questions to Consider When Exploring Alternative Placement Options:

- Is reassignment a possibility?
- Is the employee qualified for reassignment?
- Are there any vacant, equivalent positions available?
- If reassigned, will the employee have an equal opportunity to interact with co-workers and benefit from advancement in the new position as any other employee would?

If reassignment is the effective accommodation solution, identify an appropriate position and transfer the employee. Consider any reasonable accommodation needs the employee may have in the new position.

For further Canadian based resources about job accommodation solutions, please contact your local human rights office or search "**job accommodation solutions in Canada**".



How to Use the Policy Template Package

This template package is provided as a guide to assist you with policy review and/or development. For your reference, the package is developed in four sections:

1. Rights based approach to policy development.
2. Policy development guidelines.
3. Recommended policy components.
4. Sample policy template.

Rights Based Approach to Policy Development

This section provides some examples of characteristics of a rights based approach to policy development and how to ensure a supportive organizational culture for policy implementation.

Policy Development Guidelines

As an introduction to policy development, this section provides the definition of a policy and procedure and why it is important to have human resources policies and procedures developed.

Recommended Policy Sections

A series of recommended sections and the importance of including these sections in the workplace policy are provided.

Sample Policy Template

For your convenience, a sample policy template is provided in Section 12. The policy template reflects a rights-based approach to policy development and is provided for organizations to review, revise and/or adapt in order to reflect the particular organizational culture and/or human and financial resources available.

Note: Brackets provided throughout the policy template indicate where appropriate information should be placed (for example: name of organization, location, applicable human rights office)

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Section 1: A Rights-Based Approach to Policy Development

What Are Human Rights?

Human rights are entitlements that come to all individuals because they are human. They are the birthright of every individual person. The purpose of conventions/laws is to recognize and protect these rights for individuals or groups. Some of the most important characteristics of rights are:

- They are founded on respect for the dignity and worth of each person
- They are universal, and apply equally to all people, without discrimination whatsoever
- They are inalienable – no person can have their rights taken away, except in very specific circumstances
- They are indivisible, interrelated and interdependent – if one right is violated, that may well affect other rights

Some Examples of Core Human Rights:

- Everyone has the right not to suffer discrimination
- Everyone has the right to education and information, and to freedom of speech
- Everyone as a member of society has the right to health and to social security
- Everyone has the right to privacy (protection against mandatory testing and confidentiality of personal data)

Human Rights and their Relation to the Workplace

Equal treatment with respect to employment related issues includes the application of human rights to job application forms, the process of applying for a job, recruitment and hiring, training, transfers, promotions, terms of apprenticeship, travel, dismissal and layoffs, compensation, leave, benefits, discipline and performance evaluation and/or other terms and conditions of employment as may be applicable in each individual circumstance.

What is a Rights Based Approach to Policy Development?

A rights-based approach to policy development means applying human rights principles to the employment-related challenges of HIV and AIDS in the workplace. More and more we are understanding the importance of the workplace as an integral component in the continuum of care for individuals striving to maintain employment while at the same time managing the episodic nature of HIV or AIDS.

The best way to respond to the human rights implications of HIV/AIDS is to develop policies at all levels within the organization that protect the rights of those concerned and at the same time, provide a consistent framework for Senior Managers and Supervisors.

The *International Labor Organization Code of Practice* establishes fundamental principles for policies as follows:

1. Recognition of HIV/AIDS as a workplace issue
2. Non-discrimination
3. Gender equality
4. Healthy work environment
5. Social dialogue
6. No screening for purposes of exclusion from employment or work processes
7. Confidentiality
8. Equal treatment with respect to employment
9. Prevention
10. Care and support

Checklist: Some Characteristics of a Rights Based Policy and a Supportive Organizational Culture for Policy Implementation

- ❑ State the human rights values the organization is committed to.
- ❑ Link the policy to specific human rights law in your location.
- ❑ Specify employee rights in the workplace.
- ❑ Specify employer obligations in the workplace.
- ❑ Specify equal treatment with respect to employment.
- ❑ Provide statements about the following:
 - Discrimination, stigmatization and/or harassment
 - Privacy and confidentiality
 - Disclosure
 - Pre-employment and post-employment screening or testing
 - Disciplinary action if human rights are violated
- ❑ Ensure that the process for requesting accommodation in the workplace is clear and that the procedure respects individual circumstances.
- ❑ Ensure that any forms and/or procedures in place at the organization uphold human rights.
- ❑ Distribute the policy to all employees.
- ❑ Provide training to all employees about the policy and procedures and ensure all staff are trained in matters dealing with discrimination and harassment in the workplace.
- ❑ Respond immediately to claims of discrimination or harassment.
- ❑ Measure the effectiveness of policies and procedures as well as any related practices and make any changes as necessary.
- ❑ Monitor relevant human rights issues.
- ❑ Refrain from participating in any discriminatory business practices.

A rights based approach integrates human rights into all aspects of policy development, reflecting the indivisible, interrelated and interdependent nature of all human rights.

For a comprehensive listing of practical steps for implementing this policy in your workplace, please refer to www.icad-cisd.com. For further information, please contact Rosemary Forbes at 613-233-7440 ext. 14 or rforbes@icad-cisd.com.

Section 2: Policy Development Guidelines

Introduction

Human Resources policies are important to an organization because they:

- Establish common principles and procedures that all staff members must follow
- Provide guidelines for decision-making
- Assign responsibility; and,
- Define expectations

Important definitions are as follows:

Policy:

A *policy* is a formal statement of a principle or rule. A policy is the “what”.

A policy can:

- Reflect current practices
- Respond to a situation that has occurred
- Address emerging trends in the workplace
- Respond to requests from employees
- Address recurring issues or themes in the workplace

Policy review or development is also an opportunity to:

- Review and/or up-date organizational values
- Ensure a pro-active approach to human resources management
- Identify and uphold Human Rights and/or Employment Legislation
- Identify and develop any other policies that may be necessary
- Establish consistency in the organization; and,
- Address risk management

Policy Format

The policy format that an organization chooses to follow will reflect the following:

- Organizational culture
- How policies are developed and approved
- Training and education
- Available human and financial resources for implementation and monitoring

Policies can also be used as an educational and training tool, providing rationales, information and definitions that relate to the policy topic.

Typically one policy format and approval process will be followed in the organization.

Guidelines for the Main Policy Statement

The policy statement will respond to a topic or question that is current, important and relevant to the organization. The policy must be:

- Easy to understand
- As free of jargon as possible
- Consistent in the terminology used
- Clear
- In compliance with any human rights and/or employment standards legislation
- Reflective of any collective agreements in place
- Mindful of any precedents that may have been set previously

Different Organizations = Different Policies

While this policy template package is developed for Canada based employees, it must be noted that many ICAD members have programming and/or employees located internationally. To that end, different organizations have taken different approaches. *From the Executive Summary: UK Consortium on AIDS and International Development.* “Some have developed a central policy that is now being implemented locally. Others have developed central principles to ensure minimum standards and consistency but have left it up to local offices to decide how they want to implement. Some organizations have allowed local offices to develop their own responses and are now linking these with organization-wide guidelines. Whichever approach is taken, implementation needs to be tailored to local cultural, operational and legal dynamics to be effective”.

Procedure:

A *procedure* tells staff members how to carry out or implement a policy. A procedure is the “how to” and is typically written as instructions, in logical, numbered steps or in a narrative format.

The procedures should reflect the conduct and/or actions and the expectations required for the successful implementation of the policy for all staff members.

Depending on the policy objective, procedures may be a step-by-step, logical sequence of events that must be followed and may range from simple to more complex.

Procedures may be developed separately or form part of the overall policy document.

Section 3: Recommended Policy Components

Date of Policy:

When the policy was approved and implemented.

Policy revisions should be noted and tracked to provide an historical background on the policy.

Eligibility:

This information specifies whom the policy applies to in the organization. For example: full-time and/or part-time employees or employees who have worked for a specific period of time, or employees who may work at different geographical locations.

Purpose:

A line or two is typically devoted to explaining what the policy is intended to achieve. In other words, what is the objective of this policy?

Introduction:

Provide information about why the organization has decided to develop and implement the policy.

Definitions & Terminology:

Definitions and terminology are important when developing policy and procedures. A common understanding of the key concepts or terms used in the policy will ensure that the policy is clear, interpretations and adjudication are consistent and that personal bias is reduced.

Recommended definitions include: disability, episodic disability, disclosure, discrimination, stigmatization, harassment, discriminatory practices, confidentiality, HIV or AIDS and the duty to accommodate.

Introduction/Broad Overview

Information under this section would include:
Information about Human Rights legislation

Definitions and terminology

- Support in the workplace
- Support for dependents (if applicable)
- Training and education

Employee Rights and Employer

Obligations

Human Rights law ensures specific employee rights. The employer has specific obligations to ensure that those rights are protected. This section of the policy identifies specific employee rights and employer obligations for HIV/AIDS and other life threatening or chronic illnesses in the workplace. This section would include:

- Employee rights
- Employer obligations
- Discrimination and/or Harassment
- Confidentiality
- Designated health contact (see below)
- Informing the employer

Accommodation

A means of removing barriers that prevents persons with disabilities from fully participating in the workplace. Accommodation must respond to the individual circumstances of the employee. This section would include:

- Shared responsibilities
- Employee responsibilities
- Employer responsibilities
- Privacy and Confidentiality
- Undue hardship
- Recourse rights

HIV/AIDS and the Workplace

This section of the policy refers specifically to HIV/AIDS and the workplace and would include:

- Definition of HIV/AIDS
- Recruitment and employment
- Pre/post employment screening or testing
- Education and awareness
- Prevention & first aid
- Care and support in the workplace
- Support for dependents

Designated Health Contact

It is recommended to designate a staff member as the health contact. The health contact can be a member of the Human Resources department, the person who manages the insurance program or the person responsible for health and safety. This contact is available for any employee who wishes to discuss a health concern and is trained to provide a confidential, supportive environment in which the employee can discuss their situation, ask any questions, seek reassurance and obtain support and/or advice. The health contact would also be responsible for working with the employee in the event of a request for reasonable accommodation.

Training & Education

As part of the workplace commitment to the policy, training & education should be provided to managers or supervisors who have responsibility for employees.

This training will focus on the rights of employees and the obligation of the employer with respect to HIV or AIDS as well as other life threatening or chronic disabilities.

Managers and supervisors should be sensitive to their employee's needs and individual circumstances and ensure that any employee with a life threatening, chronic and/or episodic disability is treated consistently with other employees.

As part of the training & education process all employees and any new employees will be introduced to this policy with specific emphasis on what is required to make a request for reasonable accommodation and workplace support that is available.

Communication and Implementation

Having a workplace policy is the first step. The next steps in the process will determine the successful implementation of the policy. Policy communication and implementation is key to the overall success of the introduction of a workplace policy of this nature. The policy should be:

- Communicated to all staff
- Provided and/or distributed to all staff
- Routinely reviewed and,
- Monitored for its successful implementation and effectiveness

Monitoring & Evaluation

Monitoring and evaluating the policy as well as the specific steps taken regarding requests for reasonable accommodation will become a necessary step in the policy monitoring and evaluation process.

A minimum review period of two years is recommended.

Please contact ICAD for further information about:

- ❑ The policy on HIV/AIDS as an Episodic Disability in the Workplace.
- ❑ Policy review or development.
- ❑ Human Resources training for managers, supervisors and employees (including employee rights, employer obligations and the duty to provide reasonable accommodation).

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Policy Template

HIV/AIDS as an Episodic Disability in the Workplace:
A Rights Based Approach to Policy Development and Implementation

Sample Policy Template September 2005 (Revised from January 2003)

Effective Date:

Revised Effective:

This policy applies to [xxxxxxxx]. It will be reviewed every two years. Human rights laws, employment legislation changes and/or any other conditions that may affect the provisions in this policy will be tracked, implemented and communicated to all employees.

Note: This policy template applies to provincially regulated organizations, including non-profit and voluntary sector organizations.

Policy Introduction

The [applicable Provincial/Territorial Human Rights Commission] defines HIV/AIDS and other life threatening and/or chronic illnesses as a disability. A disability whether permanent, chronic, episodic and/or life threatening is a protected ground under the [name of the applicable Provincial/Territorial Human Rights Law].

The objective of this policy section is to explain the rights of the employee living and working with a disability as well as the employer obligations towards employees living and working with a disability.

[Name of organization] has implemented a rights-based policy that includes HIV or AIDS and other disabilities as defined by [name of the applicable Provincial/Territorial Human Rights Law]. Employee rights and employer obligations are entrenched in the [name of the applicable Provincial/Territorial Human Rights Law] (for example in Ontario the Ontario Human Rights Code) and as such are the same regardless if the disability relates to for example, HIV or AIDS, cancer, hepatitis C, heart disease, epilepsy and/or multiple sclerosis. To that end, the policies are all encompassing under [name of Province/Territory] human rights legislation in terms of:

This is one in a series of information sheets addressing HIV/AIDS as an episodic disability in the workplace.

- 1. Benchmarking Organizational Policy Development and Implementation
2. A Rights Based Approach to Workplace Policy Development
3. HIV/AIDS and Human Rights in the Workplace
4. Discriminatory Business Practices
5. Privacy Protection in the Workplace
6. Employment Standards in the Workplace
7. Case Study
8. Practical Steps for Implementing Policies and Procedures
9. HIV/AIDS and the Duty to Accommodate
10. Examples of Successful Job Accommodation
11. How to Use the Policy Template Package

12. Policy Template

- 13. Frequently Asked Questions

- Disability as a protected ground
- Employee rights, and
- Employer obligations

Policy 3.0 HIV/AIDS and the Workplace Policy provides specific information about [name of organization] on-going commitment towards awareness and education, prevention, employee support and care.

Preamble of the [name of the applicable Provincial/Territorial Human Rights Law]

Note: As this policy is a rights-based policy, it is recommended to include the preamble of the provincial or territorial human rights law. This sets out the fundamental principles and reinforces the organizations commitment to upholding human rights in the workplace. Please refer to the ICAD website for the location of human rights offices in your province or territory.

Support in the Workplace

[Name of Organization] is a supportive work environment in which staff can discuss their health status free from discrimination, stigmatization or reprisal. To the extent requested, and to the extent possible, [name of organization] will encourage employees to seek out services and/or resources that are available in the community to assist any employee living and working with a life threatening, chronic or episodic disability.

Consultation is available to employees to assist with the effective management of health benefits and applicable leave as defined in the Personnel Policy Manual.

Support for Dependents with a Life Threatening and/or Chronic Illness or Episodic Disability

It is recognized that employees may be caring for a dependent with a life threatening or chronic illness. These employees are encouraged to discuss their situation with [name of organization] in order that they may be directed to the [State the Personnel Policy Manual and/or Collective Agreement as applicable] and/or to specific policies that are available to assist the employee with their circumstances.

Confidentiality for the dependent and their health status must be respected at all times and will be in accordance with [name of organization] confidentiality policy.

Training & Education for Policy Implementation

As part of the workplace commitment to this policy, training & education will be provided to managers or supervisors who have responsibility for employees. This training will focus on the rights of employees and the obligation of the employer with respect to disabilities in the workplace as well as policy implementation.

As part of the training & education process all employees and any new employees working at [name of organization] will be introduced to this policy with specific emphasis on making a request for reasonable accommodation and workplace support that is available.

Definitions

Disability

The [name of the applicable Provincial/Territorial Human Rights Law] provides a basic definition of disability to include:

- Conditions that have developed over time
- Conditions that result from an accident, or
- Conditions that have been present from birth

It includes physical, mental and learning disabilities and it includes visible, non-visible and perceived disabilities.

Episodic Disability

An episodic disability is characterized by unpredictable, intermittent and varying degrees of illness and wellness. As a result, there are any number of challenges that both employees and employers must manage, including but not limited to: the potential need for the employee to move in and out of the workplace in an unpredictable manner, workload planning and management, availability of flexible work arrangements, income replacement options and insurance benefits coverage.

Discrimination

Discrimination in employment is defined as treating people differently, negatively or adversely, in the course of their employment, because of a protected ground including race, ancestry, place of origin, colour, ethnic origin, citizenship, religion, age, sex (including pregnancy and childbirth), sexual orientation, marital or family status, disability or perceived disability, same sex partnership status, record of offences.

Some examples of discriminatory practices include but are not limited to:

- Directly or indirectly refusing to employ someone based on a protected ground.
- Asking someone's HIV status on a job application form.
- Terminating someone's employment based on a protected ground.
- Adopting a rule of not hiring women who may wish to start a family.
- Instructing a receptionist not to take applications from applicants who are from a particular racial or ethnic background.
- Not hiring a job candidate because of their disability.
- Establishing or following any policy or practice which deprives persons of career opportunities based on the protected grounds; and
- Making adverse distinctions between employees based on the protected grounds.

Stigmatization

Stigmatization is to describe or identify an individual in disrespectful terms or as a mark of shame or discredit.

Harassment

Harassment means any improper behaviour that is directed at and is offensive to an individual and which the person knew or ought reasonably to have known would be unwelcome. Harassment comprises objectionable conduct, comment or display made on either a one-time or continuous basis that demeans, belittles, or causes personal humiliation or embarrassment to an employee based on a prohibited ground of discrimination.

Disclose: Webster's Dictionary: To make known, public.

At no time is an employee obligated to disclose their specific medical condition. Only relevant and appropriate information, explaining the limitations and/or requirements that the employee may have with respect to their ability to fulfill the essential duties of their job, need be provided.

Accommodation

A means of removing barriers that prevents persons with disabilities from fully participating in the workplace. Accommodation must be responsive to the individual circumstances of the employee.

1. Employee Rights and Employer Obligations

1.0 Employee Rights and Employer Obligations

Preamble

[Name of organization] recognizes that an employee with a disability may wish to continue to engage in as many of their normal pursuits as their condition allows, including work.

Provided an employee is medically fit for available appropriate work, can perform the essential duties of the job, is able to meet acceptable performance standards and medical evidence indicates the condition would not be adversely affected by continued employment, [name of organization] will take all reasonable steps to accommodate continued work and ensure the employee is treated fairly, and with dignity and respect.

1.1 Employee Rights:

[Name of organization] recognizes that the employee has the following rights:

- Privacy and confidentiality [if applicable, include Policy reference number].

- Be free from discrimination, stigmatization and/or harassment on any grounds enumerated by the [\[name of the applicable Provincial/Territorial Human Rights Law\]](#)
- Be free from discrimination, stigmatization and/or harassment on the grounds of association with one or more individuals who themselves are members of groups protected by the [\[name of the applicable Provincial/Territorial Human Rights Law\]](#). For example if an employee is living with someone who is HIV positive.
- Human Rights Code.
- Receive the same insurance benefits coverage provided to other employees subject to any lawful exclusions and/or limitations of the insurer.
- Be provided reasonable accommodation, as warranted, based on medical confirmation(s) of the employee's ability to continue working and any special workplace facilities or needs that are required.
- Equal treatment with respect to employment related issues which cover: job application forms, the process of applying for a job, recruitment and hiring, training, transfers, promotions, terms of apprenticeship, dismissal and layoffs, compensation, leave, benefits, discipline and performance evaluation and/or other terms and conditions of employment as may be applicable in each individual circumstance.

1.2 [\[Name of Organization\]](#) Obligations

[\[Name of Organization\]](#) recognizes the following obligations towards its employees:

- Respect that an employee's health condition is personal and will be treated as confidential and in accordance with [\[name of organization\]](#) confidentiality policy.
- Ensure that any information and/or medical evidence provided are maintained as strictly confidential and in accordance with [\[name of organization\]](#) confidentiality policy.
- Foster an environment free from discrimination, stigmatization and/or harassment.
- Ensure that disciplinary action is taken against any person known to discriminate, stigmatize and/or harass any employee with a disability.
- Administer insurance benefits ensuring the employee will receive the same benefits coverage provided to other employees, subject to any lawful exclusions and/or limitations of the insurer.
- Require the employee to disclose only relevant and appropriate information such as prognosis for return to work, as well as any limitations and restrictions that require accommodation.
- Provide reasonable accommodation and/or any special workplace facilities that may be required in response to an approved request for reasonable accommodation.
- Protect the rights of all persons with a disability with respect to employment related issues which cover: job application forms, the process of applying for a job, recruitment and hiring, training, transfers, promotions, terms of apprenticeship, dismissal and layoffs, compensation, leave, benefits, discipline and performance evaluation and/or other terms and conditions of employment as may be applicable in each individual circumstance.

1.3 Discrimination and/or Harassment

The [name of the applicable Provincial/Territorial Human Rights Law] states that every person has a right to equal treatment with respect to employment without discrimination and every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of the following protected grounds: race, ancestry, national or ethnic origin, colour, citizenship, religion, age, sex (including pregnancy and childbirth), sexual orientation, marital or family status, disability or perceived disability or conviction for which a pardon has been granted.

Note: Some grounds may differ between provinces. Please consult the applicable Human Right law in your province or territory.

The right to “equal treatment with respect to employment” covers every aspect of the workplace environment and employment relationship which includes job application forms, the process of applying for a job, recruitment and hiring, training, transfers, promotions, terms of apprenticeship, dismissal and layoffs, compensation, leave, benefits, discipline and performance evaluation and/or other terms and conditions of employment as may be applicable in each individual circumstance.

[Name of organization] holds all employees responsible for creating a non-discriminatory work environment and will take seriously and investigate any claim of discrimination and/or harassment. Where such a claim is proven, any/all of those involved will be subject to disciplinary action.

1.4 Confidentiality

Note: If your organization has implemented a policy on confidentiality it should be specifically linked with the confidentiality statement in this policy. If you do not have a specific policy on confidentiality, the wording below can be used.

[Name of organization] respects the right to privacy of former, current and prospective employees. While [name of organization] encourages a supportive work environment, an employee’s medical condition is personal. Until such time as an employee conveys their medical condition or wishes it to be discussed openly with others, any information provided by the employee to the employer must be maintained with a maximum degree of privacy and confidentiality. Any breach of confidentiality will result in disciplinary action that may include the possibility of dismissal.

At no time will [name of organization] record, or document for any purposes, any details specifying an employee’s HIV status. In order to meet its duty to accommodate, [name of organization] will be required to record and/or document details in regards to an employee's prognosis for return to work or regular work duties, as well as limitations, restrictions, and accommodation requirements, options and resolutions.

Any discussion that may take place about an employee’s HIV status must be pre-authorized and consented to in writing by the employee. At no time may an employee ask another employee about their HIV status and/or for any employee to disclose specific information about their HIV status unless as specified in Workplace Accommodation: Privacy and Confidentiality.

1.5 Designated Health Contact

[Name of organization] has a designated health contact for employees wishing to:

- Discuss their health situation;
- Convey their medical condition; and/or,
- Request accommodation in the workplace.

This person will be experienced in providing a confidential, supportive environment in which the employee can discuss their situation, ask any questions, seek reassurance and obtain support and/or advice.

The designated health contact at [name of organization] is the [title]

1.6 Informing the Employer

Anyone who has an illness or disability is required to inform the designated health contact, only if and when their condition and/or actions pose a health risk to themselves or others, or when they are no longer capable of performing the essential duties of the job. (Refer to Workplace Accommodation).

2. Workplace Accommodation

2.0 Preamble:

Under the [name of the applicable Provincial/Territorial Human Rights Law], persons with disabilities have the right to full integration and participation in society. Respect for the dignity of persons with disabilities is the key to preventing and removing barriers. This includes respect for the self-worth, individuality, privacy, confidentiality and autonomy of persons with disabilities.

Accommodation will vary according to a person's unique needs. These needs must be considered, assessed, and accommodated individually. [Name of organization] may request independent medical confirmation when receiving a request for reasonable accommodation.

Accommodation may include, but is not limited to: physical modification of a work site, job modifications, flexible work schedules, extra breaks during the day or altering break schedules, assistive devices, transfer to a different job to reduce stress and/or leaves of absence as defined within existing leave policies.

This policy acknowledges the duty of the employer to provide individual accommodation up to the point of undue hardship and the responsibility to minimize the need for individual accommodation by ensuring that any rules, policies, standards or practices are not discriminatory.

Responsibilities in the Accommodation Process

Employers and persons with disabilities have a shared responsibility in making the accommodation process a success. Nothing forces a person to reveal their medical condition. However, when an accommodation is requested, everyone involved should cooperatively share information and actively seek solutions.

[Name of organization] has a designated health contact for employees wishing to:

- Discuss their health situation;
- Convey their medical condition; and/or,
- Request accommodation in the workplace.

This person is experienced in providing a confidential, supportive environment in which the employee can discuss their situation, ask any questions, seek reassurance and obtain support and/or advice. The designated health contact at [name of organization] is the [title].

In some cases, the employee may simply want to make the employer aware that there is a health matter or concern and that they may require some extra time for diagnostic testing, or time off following a surgical procedure. In these examples, working through existing sick leave policies and/or flexible work schedules may be available. The designated health contact, to the best of their ability, will determine if the request or information provided by the employee should be pursued as a matter for workplace accommodation.

2.1 Employee Responsibilities

[Name of organization] recognizes that the employee has the following responsibilities in the accommodation process:

- Make any request for accommodation to the employer in writing (see attached template letter)
- Inform the employer of the employee needs and relevant restrictions or limitations
- Cooperate in obtaining necessary information, including medical and/or other expert opinions
- Actively participate in discussions about solutions
- To act reasonably and try to minimize any disruptive effect on the workplace
- As applicable and/or appropriate, assist with workload planning and/or redistribution
- Meet agreed upon performance objectives and measurements once accommodation is provided
- In collaboration with the employer, help to develop an accommodation agreement; and
- Work with the employer on an ongoing basis to manage and monitor the accommodation process to ensure the policy and procedure is being applied correctly.

2.2 [Name of organization] Responsibilities

[Name of Organization] has the following responsibilities in the accommodation process:

- Maintain the confidentiality of a person with a disability.
- Accept requests for accommodation in good faith and deal with accommodation requests in a timely manner.
- Discuss with the employee the purpose and essential functions of the employee's job, the accommodation required, whether or not there are alternatives and take an active role in ensuring that possible solutions are examined
- Request only information that is required to make the accommodation
- With the agreement of the employee, obtain expert medical advice or opinion where necessary
- Ensure that any medical opinion(s) required will be restricted to: the employee's capability to continue working; special workplace facilities or needs necessary to accommodate the employee's medical condition or protect the health of the employee, co-workers or other individuals with whom the employee has contact
- Identify potential accommodation options and assess the effectiveness each would have in allowing an individual to perform the job optimally
- Identify any costs, benefits or detriments
- Bear the cost of any required medical information or documentation
- Develop an accommodation plan and agreement, manage and monitor the plan to ensure the policy and procedure is being applied correctly.

2.3 Privacy and Confidentiality

Any discussion with the designated contact about a health matter or concern is strictly confidential. The designated contact is not permitted to discuss the contents of the meeting with any other employee or person associated with the employer without the expressed written consent of the employee.

All documents related to specific requests for accommodation will remain confidential and will only be released to a third party with the written consent of the employee or applicant. [Name of organization] will comply with all requirements of human resources best practices to protect personal information and adheres to the provisions explained in Policy [applicable policy number] Confidentiality.

To protect the interests of the employee, confidentiality will be maintained throughout the accommodation process to the extent practicable and appropriate under the circumstances. Only those with a need to know will be made aware of the request for accommodation of an employee's limitations and restrictions such as anyone who is party to the accommodation process, who is asked to help develop options and who must implement the eventual accommodation chosen.

2.4 Undue Hardship

Where a particular means of accommodation is requested and it has been found that it cannot be met without incurring undue hardship, every effort will be made to provide alternative accommodation up to the point of undue hardship.

It is the responsibility of the Executive Director to make a decision about the likelihood of undue hardship arising by considering:

- The nature and cost of the accommodation as assessed in the context of the size and financial situation of the organization as a whole.
- Safety and/or health risks, if any, and who bears them.

Any decision to refuse a request for accommodation will be done so only after the [\[Provincial/Territorial\]](#) Human Rights Commission office has been consulted.

2.5 Recourse Rights

Before refusing to provide accommodation [\[name of organization\]](#) will ensure that all effective options to accommodate, short of undue hardship, are considered.

Where any employee believes that their request for accommodation has not been handled in accordance with this policy and procedure, or is not satisfied with the type of accommodation offered, that employee has a right of appeal to an [\[Name of the Committee\]](#) consisting of the Board Chair or designate, one other board member or executive committee member and a Human Resources Consultant chosen by the employer.

The employee must advise the Executive Director within five working days if they want the decision reconsidered by the Appeal Committee. The employee has the right to make written submissions or to speak to the Committee about why the request should be approved. The employee has the right to be accompanied by an advocate.

The [\[Name of the Committee\]](#) will make its recommendation within [\[number of working days\]](#) of the appeal. The employee will be informed immediately of the decision.

If the appeal is refused, the employee will be advised of their continuing right to make a complaint of employment discrimination under the [\[Name of the applicable Provincial/Territorial Human Rights Law\]](#)

3. HIV/AIDS and the Workplace

3.0 The HIV/AIDS and the Workplace policy is intended:

- (a) To minimize the possibility of HIV infection.
- (b) To ensure a supportive work environment.

- (c) To manage and mitigate the impact of HIV/AIDS in the workplace.
- (d) To eliminate stigma and discrimination in the workplace on the basis of real or perceived HIV status, or vulnerability to HIV infection.

3.1 Principles:

The Joint United Nations Programme on HIV/AIDS states:

“A supportive social, political and legal environment helps individuals to exercise their responsibility to protect themselves and others from HIV infection ... Everyone is entitled to enjoy all human rights without discrimination, including discrimination based on actual or suspected HIV infection”.

The [Name of the applicable Provincial/Territorial Human Rights law] is for everyone. HIV/AIDS is defined under the code as a disability. As such the employee has certain rights under the code. These rights are defined in policy *1.1 Employee Rights and policy 1.2 Employer Obligations*.

3.2 Definition

AIDS stands for Acquired Immunodeficiency Syndrome. AIDS is the advanced stage of the disease caused by the Human Immunodeficiency Virus (HIV). This virus seriously damages a person’s immune system.

Research has shown and there is no evidence that HIV transmission involves insects, food, water, sneezing, coughing, toilets, urine, swimming pools, sweat, tears, shared eating and drinking utensils or other items such as telephones. There is no evidence to suggest that HIV can be transmitted by casual, person-to-person contact in any setting including shaking hands or hugging.

3.3 HIV/AIDS Screening, Recruitment and Employment

[Name of organization] workplace approach to HIV/AIDS is based on current public health aspects of HIV/AIDS.

The only medical criteria for recruitment and employment is fitness to work and the ability to perform the essential duties of the job.

As such:

- Since HIV infection is not spread by ordinary workplace activities there is no basis for screening tests.
- ICAD does not require pre and/or post employment HIV/AIDS screening or testing for any employee or candidate for employment.

3.4 Education & Awareness

[Name of organization] recognizes a number of concerns may be present in the workplace. These concerns may include, but are not limited to:

- Risk of HIV infection
- A safe working environment for all
- How/where to obtain current health information
- Fair and equal treatment of individuals who are HIV positive
- Respect
- Confidentiality

In order to support all employees, [name of organization] is committed to ensuring HIV/AIDS related education & awareness in the workplace.

This education will be:

- On-going to ensure the most current research and education is provided
- Comprehensive
- Accurate
- Given on organization time
- Available to all employees
- Available to family members wishing to participate

[Name of organization] workplace policies will be provided to all managers, supervisors and employees to ensure they have clear and current information and in order that they do not act in a discriminatory manner toward co-workers who are HIV positive or towards anyone who is a caregiver or lives with someone who has HIV or AIDS.

3.5 Prevention & First Aid

HIV is transmitted from an infected person to someone else:

- (a) Through sexual intercourse (including semen donation)
- (b) Through blood (principally blood transfusions and non-sterile injection equipment; also includes organ or tissue transplant); and
- (c) From infected mother to infant during pregnancy, at birth or through breastfeeding

[Name of organization] will provide employees with sensitive, accurate and up-to-date information to enable them to protect themselves from HIV and other sexually transmitted or blood borne infections.

First Aid Precautions

All employees will take the following precautions as appropriate:

- (a) Universal Precautions must be followed for the prevention of HIV infection. Latex, vinyl or plastic gloves (available in first aid kit) must be worn if exposure of blood to skin is a possibility;
- (b) First aid should be administered without delay;
- (c) Any blood on the skin must be washed off with hot soapy water as soon as possible;
- (d) Any materials or surfaces soiled should be washed with a disinfecting solution (1:10 dilute Bleach). Blood stained clothes or cloths should be rinsed out in cold water and then laundered normally. Blood-stained disposable gloves, towels or any other disposable material or garments should be placed in a plastic bag, closed with a twist tie and placed in regular garbage.
- (e) Seek medical advice regarding post exposure prophylaxis.

First Aid Kit

[Name of organization] First Aid Kit is located in [state location] As the designated health contact, the [title] will ensure that this kit is monitored and re-stocked on a routine basis.

3.6 Care & Support in the Workplace

While [name of organization] encourages a supportive work environment an employee's health status is personal. Until such time as an employee discloses their health status or wishes it to be discussed openly any information provided by the employee to the employer must be kept strictly confidential at all times.

To the extent requested, and to the extent possible, [name of organization] will encourage employees to seek out services and/or resources that are available in the community to assist any employee living with HIV/AIDS.

Consultation is available to employees to assist with the effective management of applicable health benefits and applicable leave as defined in the personnel policy manual.

[Name of organization] acknowledges that HIV/AIDS impacts male and female staff differently. This includes the recognition that women normally undertake the major part of caring for those with AIDS-related illnesses, and pregnant women with HIV have additional specific needs. Any support programs available will take into consideration unique individual requirements. It is recognized that these requirements may change over time.

In order to respond to these changes, [name of organization] will ensure that discussions around appropriate levels of support are continued on an on-going basis at the organization.

Frequently Asked Questions

The following questions deal with complex matters and the answers provided may not apply to your particular facts and/or circumstances. Keep in mind, as well, that the laws and practices described below are always subject to change. For these reasons, these questions and answers should not be used as a substitute for independent legal advice in connection with a particular problem or concern that you may have. Although ICAD has carefully prepared this information as a resource, it cannot accept any legal responsibility for its contents or for any consequences arising from its use.

Q. *What happens if an employee does not disclose their HIV positive status when hired?*

A. Under most human rights laws across Canada, an employer is only permitted to ask job applicants questions relevant to the individual's ability to perform the essential duties of the job for which they are applying. It is in extremely rare cases where an employee's HIV status is relevant to those essential duties and so, for the most part, employees will not be under any obligation to disclose this information. If they are not under any duty to disclose, employees are not being dishonest when they withhold this information. In the rare instance when an employer has the right to ask (for example if an applicant is providing peer counseling to HIV positive individuals), the employee should not withhold the information or lie about their status.

Q. *When reference checking, how much information can be collected and disclosed? For example: Can previous employers be asked for details about any previous disability claims, time off work,*

whether the employee required accommodation in their previous employment?

A. Normally, potential and former employers are permitted to exchange information about employees during the reference checking process. This exchange, though, does have certain limits. Depending on the province in which the employee resides, there may exist privacy legislation to protect personal information in the workplace. In Alberta, for example, employers can only collect and disclose personal information for **reasonable** purposes related to managing or recruiting personnel.

If the employee works for a federally regulated organization like a bank, railway or telecommunications company, the *Personal Information Protection and Electronic Documents Act* ("PIPEDA") would apply to their personal employee information. The federal Privacy Commissioner once stated that the disclosure of a former employee's attendance record was permitted under PIPEDA, but not the disclosure of the medical reasons for those absences.

Q. *When it comes to reference checks, what can an individual do to protect their rights? Can a candidate for a position ask to see the reference check notes?*

This is one in a series of information sheets addressing HIV/AIDS as an episodic disability in the workplace.

1. Benchmarking Organizational Policy Development and Implementation
2. A Rights Based Approach to Workplace Policy Development
3. HIV/AIDS and Human Rights in the Workplace
4. Discriminatory Business Practices
5. Privacy Protection in the Workplace
6. Employment Standards in the Workplace
7. Case Study
8. Practical Steps for Implementing Policies and Procedures
9. HIV/AIDS and the Duty to Accommodate
10. Examples of Successful Job Accommodation
11. How to Use the Policy Template Package
12. Policy Template

- A. If the employee's personal employee information is protected under PIPEDA or one of the provincial privacy statutes, that employee has the legal right to access whatever personal information is being held about them by a former or potential employer. If they are refused that access, they can complain to the appropriate Privacy Commissioner's office who will have the authority to force the employer to provide the access.

If it comes to light that a former employer has lied about the employee to a potential employer who is seeking a reference check, and that the employee suffers damages as a result, the employee may be able to file an action in defamation against the former employer. The employee should seek legal advice before embarking on this course of action.

For more information, see "Employment References: Care, not Silence, Required" at <http://www.emond-harnden.com/publications/oct98/referenc.shtml>

Q. *If an employee has a dependent child who is HIV positive, does reasonable accommodation apply to the employee at their workplace?*

- A. The law is unclear on this issue and there are legal decisions that contradict one another. Perhaps someday the Supreme Court of Canada will settle the law on this question but for now it will depend on which province the family lives in.

In British Columbia, for example, the Court of Appeal found that a change in the employee's hours of work which prevented the employee from caring for her disabled child amounted to a *prima facie* case of discrimination. The Court stated that there must be a "serious interference with a substantial parental or other family duty or obligation of the employee" for the employee to have a claim of discrimination.

In Ontario, on the other hand, an arbitrator stated that an employer does not owe an employee's child a duty to accommodate without undue hardship.

Q. *If an employee is legally prescribed medicinal marijuana, and if there is a requirement for this during the workday, what, if any workplace accommodation provisions would apply. How might this work in practical terms?*

- A. Under human rights legislation across the country, employers have a duty to accommodate an employee with a disability up to the point of undue hardship. If the employer could prove that permitting the employee to use marijuana would result in serious safety risks, whether the risk was to themselves or others, or if job performance is adversely affected (including service to clients) the employer may be able to argue that they could not accommodate the employee without undue hardship. The employer would be required to prove, however, that the risk was real, measurable and significant. In a case such as this, the employee may be requested to take sick leave, a leave of absence or a short-term disability.

If the employer could not prove undue hardship, the employee would have the right to be accommodated. It is important to remember that employees have a duty to cooperate in their own accommodations. As such, an employer has the right to ask the employee to provide it with a medical certificate from the employee's physician stating that she was legally prescribed marijuana. The employer also has an obligation to ensure that its employees are not breaching the *Criminal Code of Canada* and so would be permitted to require proof that the employee is following all of the rules and regulations from Health Canada for the medical use of marijuana.

Q. *Can an insurance company legally request HIV status and/or HIV testing to determine if the employee is HIV positive?*

- A. Insurance companies are entitled to reject an application on the basis of any pre-existing disability.

In general, if the insurance policy you are applying for has a requirement for evidence of insurability (the gathering of personal medical information),

the insurance company is entitled to ask about your HIV status. To that end, an insurance company can request a medical test to confirm your HIV status.

If an employee is found to have made a false statement on the insurance application form the policy will be considered null and void and they will not be covered.

For further information please refer to: HIV & AIDS Legal Clinic (Ontario) HALCO, "The HIV & the Law Advocate's Manual" found at <http://www.halco.org/manual.html>

Q. What steps can an employee take to ensure confidentiality is maintained?

A. Insurance companies are regulated under PIPEDA and they must govern themselves accordingly. If you believe that an insurance company has disclosed your information, improperly and without your consent, contact the federal Privacy Commissioner's office at 1-800-282-1376 or, in Ottawa, at 995-8210.

Q. Are insurance questions permitted about how the individual contracted HIV? If yes, what would be the rationale for this?

A. PIPEDA states that a company can only collect personal information that a "reasonable person" would consider necessary to meet a particular purpose. An insurance company could ask for the manner in which the individual contracted HIV but if it could not provide a reasonable explanation as to why it requires that information (i.e. to assess risk), it would not be permitted to collect that information or to refuse to provide insurance coverage to someone who refused to answer the question.

If you believe that an insurance company has improperly asked for this information, contact the federal Privacy Commissioner's office at 1-800-282-1376 or, in Ottawa, at 995-8210.

Q. What limitations or exclusions as a result of HIV status are legally permitted under a group benefits

plan? Specifically: Health and medical benefit, short or long-term disability benefits, life insurance.

A. Although the specific laws across the country may differ slightly, for the most part, insurance companies are permitted to discriminate against individuals based on their disabilities or medical histories as "pre-existing" conditions.

Q. If an employee is involved in an accident at work and a co-worker is HIV infected as a result of assisting an HIV positive employee, can the HIV positive individual be held liable in any way or is the employer liable in any way?

A. HIV positive persons are only required to disclose their status to persons with whom they are engaging in high-risk behaviour, such as sexual contact or sharing of needles during drug use.

Employers are regulated by health and safety statutes across the country. In Ontario, for example, there is no requirement under the *Occupational Health and Safety Act* for employees to disclose whether or not they are HIV positive. Instead, employers are required to take universal precautions so that everyone, regardless of their status, must take care when coming into contact with another's bodily fluids on the job.

Q. What obligations does the employer have towards volunteers and human rights in the workplace?

A. Excerpted from Human Rights at Work: Who is Protected at Work? Section D. Volunteers and Other Workers in Ontario.

"The Code does not refer specifically to volunteers but the Commission takes the position that the phrase "equal treatment with respect to employment" can be interpreted to protect anyone in a work-like context. This includes volunteer services and individuals who work without a salary to gain experience, such as those on a practicum or being mentored. It also covers those who work for benefits. While there have been no Ontario decisions on these issues, some BC decisions found that the province's human rights law applied to

discrimination against a volunteer, under the areas of employment and services."

In general, although Human Rights law does extend to volunteers and other workers, the application of the Code in specific circumstances can become challenging because trying to "prove" that denial of a volunteer placement is based on HIV status may be difficult. This stems from (in some cases) the criteria for placement and the selection process that may not be as formalized as with a standard recruitment and selection process for paid employment.

That said, many organizations who rely on volunteers are looking at the volunteer selection process and ensuring that procedures are in place to mitigate any discriminatory business practices, this includes a number of practices that encompass overall volunteer recruitment, management, retention and recognition.

Note: Any organization involved in volunteer or employee placements should have something in their documentation that stipulates the human rights expectations regarding "equal treatment with respect to employment". Categories of workers (ie: paid employee, volunteers and/or other workers) should be specified.

Q. How do I respond to questions about gaps in my resume?

A. For job seekers who may have been out of the workforce for some time or for those who have a mixed work history or no clear thread uniting the positions held, this is a common question. Typically there are two types of resumes, chronological and functional.

A chronological resume is organized with the most recent position listed first and previously held positions listed following in order.

A functional resume lists experience in skills clusters or rearranges employment history into sections that highlights areas of skill and accomplishment.

Traditionally a functional resume is used when an individual has significant gaps in work history or experience. However, it is important to note that over the years the functional resume has grown in popularity as a means to cover up resume gaps, rather than addressing them in a constructive manner.

If you require assistance with your resume or to enquire about job placement support, employment action, paid or possibly unpaid work placement and/or volunteer experience, please contact your local AIDS service organization.

Q. If I have agreed to an employment medical, does my physician have the right to let the employer know that I am HIV positive?

Any employment medical that you agree to undergo must be specifically related to the assessment of your ability to carry out the essential duties of the job and to assess a bona fide job requirement. **For example:** If you are being hired to work in a warehouse and there is a heavy lifting requirement, the assessment by the physician must be limited to your ability to lift the required weight.

Q. We are a small organization and we have concerns regarding how to successfully manage employee absences and/or altered work-schedules. Do you have any advice on how to manage this?

A. Discussions about reasonable job accommodation provide an opportunity for your organization to develop longer-term strategies that may respond to both staffing challenges and/or absences. With this in mind, job accommodation becomes part of a broader Human Resources strategy and may include discussion about the following ways to manage these challenges at your workplace:

- Multi-skill development
- Training two staff members for key roles
- Professional development and/or mentoring
- Task delegation

- Internship programs
- Co-op placement programs
- Graduate trainees
- Volunteer development
- Alternate funding sources that may be available for staffing support (HRSDC, foundations etc.)
- Succession planning
- Group insurance benefits plans that have flexible short and/or long term disability payments

Please refer to the information sheets on HIV/AIDS and the Duty to Accommodate and Examples of Successful Job Accommodation.

What other resources are available?

Interagency Coalition on AIDS and Development: www@icad-cisd.com, to obtain further information about HIV/AIDS and the Workplace.

Rosemary Forbes, Program Manager at ICAD to obtain information about attending or delivering a workshop in Canada: rforbes@icad-cisd.com or 613-233-7440 ext. 14.

Coalition des organismes communautaires québécois de lutte contre le sida (COCQ-Sida) <http://www.algi.qc.ca/asso/cq.html>

Job Accommodation Network: www.jan.wvu.edu/media/HIV/html

HIV & AIDS Legal Clinic (Ontario) HALCO, Sept 2004 “The HIV & the Law Advocate’s Manual” found at <http://www.halco.org/manual.html>.

Canadian AIDS Society (CAS): <http://www.cdnaids.ca> and CAS Income Security Project: <http://www.hivandpoverty.ca/>

Canadian Working Group on HIV and Rehabilitation <http://www.hivandrehab.ca>

Canadian Labour Congress: Canadian HIV/AIDS Labour Fund www.clc-ctc.ca

International Labour Office: www.ilo.org/aids

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