

Interagency  
Coalition on AIDS  
and Development



Coalition  
interagence sida  
et développement

# HIV/AIDS as an Episodic Disability in the Workplace:

## Employment Information for People Living with HIV/AIDS

*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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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

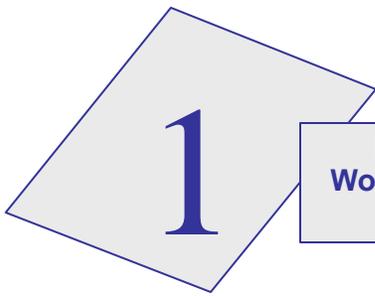
In October 2004 the Interagency Coalition on AIDS and Development (ICAD), in partnership with the Coalition des organismes communautaires Québécois de lutte contre le sida (COCQ-Sida), received funding from the Public Health Agency of Canada (PHAC) via the National HIV/AIDS Capacity Building Fund. This 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.



## HIV/AIDS and the Workplace: Information Sheets for PHAs



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# Employment Information for PHAs

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## Section 1: Introduction

None of us knows when we may receive news from our doctor informing us that we have an unexpected change to our health status. When an individual receives news that their health is at risk or that a medical condition may eventually prevent them from fully participating on the job, many questions and employment related considerations are to be expected. This is especially true if you are HIV positive and when discrimination and/or stigmatization are still a strong reality for many today both on and off the job.

The following information is for individuals who may be experiencing challenges or concerns related to HIV/AIDS and employment. The aim is to provide relevant and practical information that can be used as a resource for employment planning and/or in making critical employment-related decisions.

## Section 2: Definitions

The following definitions are provided in order to ensure that you are familiar with current terminology with respect to episodic disabilities in the workplace.

### Protected Grounds/Grounds of Discrimination

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 protected grounds may differ between provinces/territories. However disability is a protected ground in all provinces/territories.*

### Disability

#### A basic definition of a disability includes:

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

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

### 1. Employment Information for PHAs

2. HIV/AIDS and Human Rights in the Workplace
3. Discriminatory Business Practices
4. Case Study
5. Duty to Accommodate
6. Examples of Successful Job Accommodation
7. Frequently Asked Questions

Disability includes physical, mental and learning disabilities and it includes visible, non-visible and perceived disabilities. A disability whether permanent or chronic, episodic and/or life threatening is a protected ground under Human Rights law. HIV/AIDS is defined as a disability and as such is a protected ground from discrimination.

***Episodic Disability:***

A person can simultaneously live with both permanent and episodic disabilities; however, there are clear distinctions. An episodic disability is characterized by unpredictable, intermittent and varying degrees of illness and wellness. Specific challenges exist for individuals managing an episodic disability including for example the need to move in and out of the workplace or workforce in an unpredictable manner, workload management and/or income replacement options that respond to the episodic nature of the disability.

***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 general discriminatory business practices include but are not limited to:**

- Directly or indirectly refusing to employ someone 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.
- Terminating someone's employment based on a protected ground.
- Not hiring a job candidate because of their disability.

- Making adverse distinctions between employees based on a protected ground.

In addition to those above, there are also other discriminatory business practices that relate specifically to HIV/AIDS, human rights and employment. These include but are not limited to:

- Asking someone's HIV status on a job application form.
- Asking someone's HIV status in a job interview.
- Requesting an employee to provide a **specific** medical diagnosis as part of the accommodation process.
- Refusing reasonable accommodation in the workplace for an HIV positive employee.
- Allowing an employee to suffer discrimination and/or harassment as a result of their HIV status.
- Establishing or following any policy or practice which deprives an employee of career opportunities as a result of HIV status.

**Equal Treatment With Respect to Employment:**

***The right to equal treatment with respect to employment*** covers every aspect of the workplace environment and employment relationship including job applications, recruitment and hiring, training, transfers, promotion, terms of apprenticeship, dismissal and layoffs, rate of pay, overtime, hours of work, holidays, benefits, shift-work, disciplinary action and performance evaluations and/or other terms and conditions of employment as may be applicable in each individual circumstance. It is against the law to discriminate against someone on the basis of HIV status.

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

In an employment setting, at no time is an employee obligated to disclose their specific medical condition.

## Section 3: Human Rights in the Workplace

With respect to accommodation, 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 in the Workplace:*

A means of removing barriers that prevent persons with disabilities from fully participating in the workplace. Accommodation must be responsive to the individual circumstances of the employee. Some examples of accommodation include:

- Physical modification of a work site.
- Purchase of assistive equipment or technology.
- Modifying performance objectives and/or productivity targets.
- If available, and if desired, transfer to another job to reduce stress.
- Leaves of absence as available and/or required.
- Flexible work hours.
- Implementing frequent breaks throughout the day.

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

**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.

Many workplaces in Canada have comprehensive policies and/or collective agreements in place and personnel who are responsible for implementing and upholding human rights in the workplace. Many others do not. In some situations, individuals may be left on their own to navigate through the sometimes daunting task of obtaining information and resources related to employment and the new reality of HIV/AIDS and the workplace.

Understanding your human rights is important, as it will provide you with a foundation to build from in terms of making critical employment-related decisions reflecting what you legally have the right to expect and request.

### **3.1 Some Human Rights in the Workplace**

- Health, safety and dignity.
- Privacy and confidentiality (In an employment setting, the right not to disclose your HIV status in the workplace, including but not limited to: senior officials, supervisors, human resources managers, union representative, and/or any other employees).
- Be free from discrimination, stigmatization and/or harassment on any grounds enumerated by 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 Human Rights law.
- 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, up to the point of undue hardship as warranted, based on medical confirmation(s) of your ability to continue working and any special workplace facilities or needs that are required.

- Provide only information that relates to any limitations that you may have in performing the essential duties of your job.
- The right to have the private nature of your health condition and medical file respected.

#### **Section 4: Common Fears that may be Experienced in the Workplace by Individuals with HIV or AIDS**

Even today with comprehensive information available about HIV and AIDS, many in our society continue to discriminate against individuals who are/or who are suspected to be HIV positive. As a result, a heavy burden can be placed on individuals who are HIV positive and any number of fears or concerns may at times become overwhelming.

It is normal to experience any or all of these concerns, as well as others that may be specific to each individual circumstance.

- Fear of a negative reaction and/or rejection.
- Uncertainty about who to contact for support in the workplace.
- Lack of clarity about what information you are obligated to provide to your employer.
- No policy in place that communicates the employer's position on HIV or AIDS at your place of work.
- Uncertainty about the wording to use when speaking with your employer.
- Uncertainty about your human rights and/or where to go to inform yourself.
- Fear that the information you discuss and/or provide will not remain private or confidential.
- Fear that the insurance provider may not keep your information confidential.
- Fear that the physician may disclose information to your employer.
- Fear that disclosure in the workplace may lead to disclosure to the broader community.

- Fear of experiencing discrimination in the workplace, including but not limited to: losing your job, being pressured to resign, a reduction in hours, loss of independence, loss of credibility, loss of opportunity for promotions and/or advancement, health and safety concerns.
- Fears about income security including having no insurance coverage and/or being denied insurance coverage.
- Fear about loss of control over the employer/employee relationship.
- Concern about having to potentially involve your colleagues in assisting with workload redistribution.
- Marginalizing behavior from colleagues leading to discomfort with participating in regular/routine office events for example: staff meetings, conferences, training and/or social events.
- Conflicting priorities between balancing the demands at work with changing and/or fluctuating energy levels and health requirements.

The more informed you are when meeting with your employer, the better equipped you will be to remain in control over this critical aspect of your life.

The following information is provided to assist you when speaking to your employer.

#### **Section 5: Considerations in the Workplace and Reviewing Your Options**

Before approaching your employer to discuss your situation, it is important to take some time to review and assess your options. This can be done either on your own, or with someone that you trust who can help you to work through the information and/or questions you may have.

## 5.1 General considerations in your workplace:

- Is there is a Human Resources department?
- What is the level of support available in the workplace?
- Is the workplace a union or non-unionized environment?
- What policies and/or programs may be available?
- Is there an environment of trust that respects and upholds privacy and confidentiality?

## 5.2 Some specific questions to ask yourself initially:

- What are the main concerns and fears that I am currently experiencing?
- Am I ready to speak to someone at my workplace about this?
- Is it necessary to speak to my employer immediately, or is this something that can wait until the future?
- Who would be the most appropriate/best person to talk to at work (supervisor, manager, union representative, human resources, other)?
- What information do I currently have available to provide to my employer?
- Do I have any immediate limitations that need to be discussed and/or accommodated?
- Are there any health & safety issues that I need to take into consideration?
- Are there any policies from a regulatory body governing health and safety at my workplace that I must take into consideration?
- What is the human rights environment like at work?
- What workplace policies are available for me to review and refer to?
- Are there any workplace policies I might require clarification and/or further information about?

- How do I gain access to critical information that will assist me with my employment planning options?
- Am I aware of the respective responsibilities and my employee rights and the employer obligations in this specific situation?
- Do I fully understand my group benefits plan and if applicable, what options are available for income replacement?
- Do I have any cause for concern about the employee-employer relationship?
- What is my most immediate need?
- What are my remaining needs in order of priority?
- What action will I take if I do speak to someone in the workplace and my needs are not respected? (See section 9.2.3)

Absorbing the information from your doctor and understanding what it will mean to you in your personal life and the activities that you are involved in outside of work and/or on the job, will likely take some time. Trying to absorb the medical information you have received, while at the same time feeling the need to talk to your employer can create some pressure, confusion and/or conflict for you.

It is normal to feel a degree of urgency and/or pressure to speak to your employer. For some, this pressure comes mainly from the desire to be honest and forthcoming about the situation in the hope that your employer will understand your commitment to the job and the workplace.

Not coming forward may feel like you are keeping something from your employer and you may worry that this may have detrimental effects for you in the future. It is normal to feel this way and important to remember that you do have human rights in the workplace.

You should not feel pressured to speak to your employer immediately. If it is possible, try to give yourself some time away from your job during the initial stages of your diagnosis or if you are reaching a

stage where you may need to request accommodation, in order to think through the following:

- What information you want to convey
- What you need, and;
- What you are legally entitled to request of your employer in terms of accommodation in the workplace and support that may be available.

## Section 6: Considerations and Planning for Meeting with Your Employer

Ensuring that you have an appropriate level of support as well as open communication about your needs will reduce overall stress levels on the job and ensure that you have access to the optimum time available to adjust to any medication and/or to respond to lower energy levels that you may be experiencing throughout the day.

It may be that there is no immediate need for you to discuss your situation with your employer. You will be in the best position to make the determination about when to approach your employer and whom to speak to.

It is important to remember that trying to maintain a productive routine while you are also in the process of coming to terms with serious medical information may be difficult. Trying to accomplish everything and maintain the same level of activity and schedules may be manageable for some, but for others it may quickly take its toll away from work as well as on the job.

Employment related planning is aimed at finding an appropriate balance between sustaining your energy and productivity. The schedule that you develop with your employer is one part of the continuum of care where a number of pieces will come together to support you during times away from work and on the job.

### 6.1 Considerations prior to meeting with your employer:

- At no time are you required to provide the specific medical diagnosis to your employer.

Information is limited to your ability to perform the essential duties of your job.

- If you do speak to your employer, you can feel confident and within your rights in communicating that you have a disability. This term is linked specifically to the terminology used in human rights law. For consistency use this term with the understanding that you are not a disabled person, but rather, a person with a disability as defined by human rights law.
- If you are asked for more specific information about your medical status, you can respond with: “This is something that I prefer to keep private”. Or, “I appreciate your concern, however I do not wish to discuss the specifics” or “I have all of the information required from my doctor here for your review”, it talks specifically about the limitations and the requirements that I have at this time”
- Think through your approach with respect to your employer.
- Rehearse what you want to say. This will help you to anticipate any questions that you may receive and will also provide you with an opportunity to test out your comfort level in conveying this information prior to a face-to-face meeting with your employer.
- Write down any specific points that you want to convey.
- Do not feel pressured to respond to any questions you are either not certain about or not comfortable with. Write them down and confirm that you would like some time to think about these and that you will respond in a follow-up meeting.
- Be confident in establishing boundaries for yourself in the meeting. Know ahead of time what you will and will not say, have an answer or response ready for a number of different scenarios.
- Be prepared to maintain control over the information that you will convey.

- Attend the meeting with a clear understanding of what the desired outcome is. In other words, establish beforehand what the purpose of the meeting is. Some examples: to request a specific workplace policy, to seek clarification about a policy that you have read, to enquire about the insurance benefits program and how it may apply in your situation, to request accommodation in the workplace, other or all of the above.
- Attend the meeting as prepared as possible, having any notes, documents and/or information available as may be required.
- Keep an open mind when meeting with your employer. It is important to understand that both you and your employer will have needs that must be met. Working together to understand and meet these needs will result in a successful outcome for all concerned.
- Privacy and Confidentiality
- Records Management
- Discrimination and/or Harassment
- Flexible Work Arrangements
- Health & Safety
- Leave policies
- Insurance benefits and/or other income replacement benefits
- Gradual back to work programs
- Employee Assistance Program

**Ask yourself:**

- How would I go about making an enquiry about a workplace policy?
- If I do not have a copy of the policy, or if I do not know how to access it, whom can I approach to request a copy?

**Section 7: Gathering Relevant Workplace Policies and Related Information**

If you are employed at a workplace that has implemented a variety of Human Resources policies, there may be a number of policies that may apply to your situation. These policies may be available in a Human Resources Manual or an Employee Handbook, or possibly on a shared intranet site on the computer system. They may have been provided to you at the time of hiring or during the orientation process.

Look for the following policies and review these prior to meeting with your employer. **Note:** *This list is not exhaustive.*

**7.1 Workplace Policies:**

- HIV/AIDS in the Workplace
- Life Threatening, Chronic and/or Episodic Disabilities
- Code of Conduct
- The Duty to Accommodate

**7.2 Leave Entitlements and Income Replacement**

The issue of income replacement and the relationship to HIV/AIDS as an episodic disability is inextricably linked to the well being of individuals striving to balance active participation in the workplace with eligibility requirements for disability insurance or other income replacement programs.

It is understood that for many, issues of income security will become of primary concern when managing the employee/employer relationship and the continued work arrangement with your employer.

**Some considerations:**

- Are you aware of what leave benefits are available?
- Do you qualify for any emergency leave at your workplace?
- Are you aware of and do you qualify for the sickness benefit provided by the Federal Employment Insurance benefit plan?

- Are you covered by a group insurance benefit by your employer?
- Are you aware of the policy provisions for health and drug benefits, and if applicable, short-term and/or long-term disability?
- Does your benefit plan have provisions in place to respond to episodic illness? What are the guidelines around this benefit in terms of making claims?
- Does your workplace have a self-insured benefit available for disability coverage?
- Are you aware of the disability benefit payable under the Federal Canada Pension Plan?
- Are there any provincial disability programs that you may qualify for?
- Are you aware of any other sources of financial assistance to cover the cost of drug treatment options and/or income replacement?
- Potential side effects from any medication and what that might mean for you on the job.
- If you will need time away from the job or perhaps a modified schedule in order to adjust to any new medication, further tests and/or counselling and support.
- If there are any complementary practices, therapies and/or routines that will help you in your efforts to remain productive and to reduce stress both away from your job and while at work.
- To the best of your ability try to establish what the medical appointment schedule might look like over the course of the next 6 months. Planning in stages, based on factual information, will assist you when approaching your employer to discuss your requirements.

## Section 8: Information from your Physician

You may require a follow-up appointment with your doctor to discuss more specifically the implications to you on the job. Considerations for discussion include but are not limited to:

- Provide a letter to your doctor to confirm your expectations and understanding about the confidential nature of your medical information. Advise that you do not consent to this information being provided to any third party without your written consent.
- Any immediate limitations there may be. This will provide you with a guideline in terms of understanding what the work-related priority is and if applicable, any immediate accommodation needs.
- What the short-term effects are with respect to your ability to perform the essential duties of your job.

When you meet with your doctor to discuss the above information, be prepared to discuss the essential duties of your job and those elements that may require modification and/or adjustment. Understand that you will be working with the medical information you have received to date.

There are likely to be many unknowns and it is likely that your situation will change over time. Flexibility on the part of you and your employer will become a critical component to a successful working relationship.

It may be that during the initial period you will require a short-term leave away from your job or, a reduced and/or flexible work schedule. Talk to your doctor to determine what is recommended during this time and in consultation with your employer determine if this can be accommodated for example via a sick leave benefit, a flexible work arrangement or sick leave benefits through the employment insurance program.

## Section 9: Being Prepared to Discuss Accommodation Requirements with your Employer

When you meet with your employer, the more information that you have on hand, the more productive the meeting will be both for yourself and the employer. Allowing for some time to collect as much relevant information as you can before the meeting will demonstrate your commitment to the workplace and signal that you intend on being an active part of the discussions, decisions and any accommodation process that will be carried out. It is important that you work together with your employer to find the best possible solution to your accommodation needs and at the same time ensure that the needs in the workplace are being discussed, are understood and are met.

### 9.1 Accommodation in the Workplace:

Under 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. An employer 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, job sharing, ergonomic assessment, equipment or modification to existing equipment to assist an employee in fulfilling the essential job duties, transfer to a different job to reduce stress and/or leaves of absence as defined within existing leave policies.

For comprehensive accommodation considerations and suggestions for HIV or AIDS and other disabilities, please access the Job Accommodation Network website: <http://www.jan.wvu.edu/media/HIV.html>

### 9.2 Respective Employee and Employer 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 together.

#### 9.2.1. Employee Responsibilities:

- Make any request for accommodation to the employer in writing (communicating the need).
- 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.
- To act reasonably and try to minimize any disruptive effect on the workplace.
- As applicable and/or appropriate, assist with workload planning and/or workload re-distribution.
- Meet agreed upon performance objectives and measurements once accommodation is provided.
- In collaboration with the employer, 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.

#### 9.2.2. Employer Responsibilities:

- 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 as applicable 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 agreement, manage and monitor to ensure the policy and procedure is being applied correctly.

The success of the accommodation process will in part be the result of the collaboration between you, the employer and all parties involved. Further information about human rights and the accommodation process can be obtained at [www.icad-cisd.com](http://www.icad-cisd.com) or from your local human rights office.

### **9.2.3. Human Rights Complaints and Recourse:**

Increasingly, collective agreements and workplace policies include clauses specifically related to

preventing and resolving incidents of discrimination and harassment in the workplace. Employers, labour representatives and employees recognize the responsibilities they share for maintaining workplace environments free of discrimination and harassment.

If you believe you have been discriminated against and you have a workplace policy or a collective agreement that provides information about your recourse rights, as well as the internal procedures for grievances or complaints, the recommend practice is to utilize the internal procedures that have been established first.

If the workplace does not have a policy providing this information, consider contacting the human resources manager or the person responsible for human resources at your workplace to discuss the situation further.

*Note: A person who wishes to complain directly to the human rights office has the right to do so, whether they have used, or have chosen not to use workplace internal procedures.*

The Human Rights Commission is neutral and does not take sides in the complaint. Commission staff will provide information to both parties about human rights laws and the complaint procedures. Commission staff will work with both parties to try to settle the dispute if possible. Voluntary and confidential mediation services are offered to both parties.

*Note: If either party requires legal advice, they should contact a lawyer.*

It is important to note that human rights legislation is designed to prevent and alleviate discrimination, not to find fault and assign blame. Human rights remedies depend on the particular case.

For example, an organization may be required to:

- Change its policies;
- Implement training initiatives;
- Establish a way of resolving internal human rights complaints; or

- Introduce anti-discrimination and harassment policies.

For further information about the complaint process, please consult the workplace policy and/or contact your local human rights office.

### **Community Support:**

You may want to talk to other people living with HIV in your community, and learn about how they have handled workplace issues. This can be very helpful in giving you emotional support and also in learning from experience how others in your situation are coping. If your community has an AIDS Service Organization, you may want to contact them to find out if there are support groups or services that would be appropriate for you. Please refer to our website at [www.icad-cisd.com](http://www.icad-cisd.com) for contact details or consult your local listings.

### **In Conclusion:**

Understanding your human rights will assist you when making critical employment related decisions. You are in the best position to determine the human rights culture and practices at your workplace. You may receive a variety of advice about what you should do, whom you should talk to and when. In the end, use your instinct and best judgement, take some time to consider your options and exercise your human rights.

Taking these steps will ensure that you retain control over this important aspect of your life and that you will be engaged in the decision making process at your workplace.

For more information please visit our web-site at: [www.icad-cisd.com](http://www.icad-cisd.com).

# 2

## HIV/AIDS and the Workplace: Information Sheets for PHAs

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

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#### 2. HIV/AIDS and Human Rights in the Workplace

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6. Examples of Successful Job Accommodation
7. Frequently Asked Questions

## **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.

# 3

## HIV/AIDS and the Workplace: Information Sheets for PHAs

## 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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### 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](http://www.icad-cisd.com).

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

# 4

## HIV/AIDS and the Workplace: Information Sheets for PHAs

### 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 ..."

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

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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 employers' 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.

# 5

## HIV/AIDS and the Workplace: Information Sheets for PHAs

## 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

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.

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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. Where a person is unable to perform the essential duties of the job, even with accommodation, or where accommodation would amount to undue hardship a decision not to employ the person would not be discriminatory.

### 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.

# 6

## HIV/AIDS and the Workplace: Information Sheets for PHAs

### Examples of Successful Job Accommodation

#### 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.

### Some Examples of Accommodation Solutions

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

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

1. Employment Information for PHAs
2. HIV/AIDS and Human Rights in the Workplace
3. Discriminatory Business Practices
4. Case Study
5. HIV/AIDS and the Duty to Accommodate

#### 6. Examples of Successful Job Accommodation

7. Frequently Asked Questions

### **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**

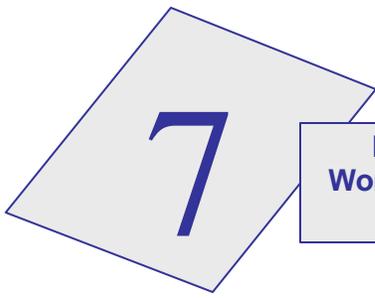
The road to a successful accommodation may have challenges. Various roadblocks may lead an employer to the conclusion that accommodation in the original position may not be possible. While it is traditional to accommodate an employee in their original position, an employer should consider whether an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



## HIV/AIDS and the Workplace: Information Sheets for PHAs

### 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?***

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

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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

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](http://www.clc-ctc.ca)

International Labour Office: [www.ilo.org/aids](http://www.ilo.org/aids)

Human Rights at Work: Published by the Human Resources Professionals Association of Ontario in partnership with the Ontario Human Rights Commission. Available at: <http://www.ohrc.on.ca>

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](http://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](mailto: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](http://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>