

HIV/AIDS & the workplace: Your **RIGHTS** as a DOMESTIC WORKER



HIV and the LAW



It is important that all employers and employees know as much as possible about HIV/AIDS.

This booklet is for domestic workers – to explain your RIGHTS and ANSWER YOUR QUESTIONS about HIV in the workplace.

Employers are also welcome to use the booklet to help them to understand HIV and the LAW.

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Contents



- What is HIV? 2
- What is AIDS? 3
- Who can get HIV? 3
- Can my employer ask me to go for an HIV test? 4
- If I chose to have an HIV test, can my employer get my HIV test results? 5
- What if my employer wants to take out an insurance policy or medical aid for me? 6
- Can I be dismissed (fired) from work if I have HIV? 8
- Can I still work if I have HIV? 9
- What happens if I get sick? 10
- Do I have the right to sick leave? 11
- What if I am too sick to work anymore? 12
- Am I entitled to long service pay? 13
- What are my other workplace rights? 14
- What can I do if I am dismissed (fired)? 16
- What can I do if I am sexually harassed or raped in the workplace? 18
- Who can I contact for help and advice? 20

WHAT is HIV?

HIV is the **H**uman **I**mmunodeficiency **V**irus. This is the virus that slowly destroys the immune system (the cells in your body that fight illness). HIV takes many years to weaken your immune system, and you cannot tell that someone has HIV just by looking at them.

Most people get HIV through unprotected sex (sex without a condom). HIV is also found in blood, which is why it is very important never to touch another person's blood unless you are wearing rubber gloves and to cover cuts with a plaster or bandage. Babies can also get HIV from their mothers during birth – if you are HIV positive and pregnant, ask your doctor or nurse about anti-retroviral medicines (such as Nevirapine), which is a drug that helps to prevent HIV infection during birth.

You CANNOT get HIV from sharing cups and plates, cooking, using the same toilet, touching, hugging or kissing.

WHAT is AIDS?

AIDS stands for **A**cquired **I**mmune **D**eficiency **S**ndrome. When HIV has damaged the immune system so badly that your body cannot fight disease, and you get sick all the time, you have AIDS. If you are getting sick all the time, you may need **ARV** (**A**nti-**r**etro**v**iral) drugs. ARV drugs are special medicines that can help people living with HIV to live long and healthy lives.

Your doctor or nurse can tell you more about HIV/AIDS.

WHO can GET HIV?

Anybody can get HIV – whether you are an employee or an employer. Some employers do not want to employ someone living with HIV. This is wrong. People living with HIV have the same rights as all other people. As a domestic worker, your rights are protected by the law.

CAN my EMPLOYER ask me to GO FOR AN HIV TEST?



No. The law says that your employer must get **permission** from the Labour Court

first before she can ask you to test for HIV.

If your employer asks you to go for an HIV test, you should ask to see the permission from the Labour Court first. This law is found in the Employment Equity Act.

If you feel uncomfortable about asking to see the permission, you can ask an organisation like the AIDS Law Project or an advice office to help you.

IF I CHOSE to have an HIV test, CAN my employer GET MY HIV test results?

No. The test results are a private matter between you and your doctor. **The doctor must NOT give your HIV test results to anybody without your permission.** Your employer does NOT have a right to know your HIV status, even if she is paying for the test.

If your doctor tells your employer or anyone else about your HIV status, without first getting your permission, you can report the doctor to the Health Professions' Council. An organisation like the AIDS Law Project or an advice office can help you do this.

WHAT if my employer WANTS TO TAKE OUT an insurance policy or medical aid for me?

Insurance companies discriminate against people living with HIV. Most insurance companies will ask you for an HIV test before you can take out a life insurance policy. If you test HIV positive, they will refuse to give you insurance.



Be very careful, because some employers can use this as a way to find out your HIV status! **Remember that your employer does not have a right to know your HIV status.**

Many life insurance policies will NOT pay out if your death is caused by HIV. Some funeral insurance companies also discriminate against people living with HIV. If you do not understand the policy, get advice from a law clinic or an advice office before you sign the policy.

You do **not** need an HIV test to join a medical aid. A medical aid scheme cannot refuse your application if you are living with HIV. There might be a one-year waiting period for medication to treat HIV if you already know that you are HIV positive when you join.

If you have a problem with a medical aid, an advice office can help you to take a complaint to the Council for Medical Schemes.

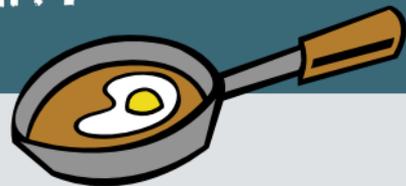
CAN I be DISMISSED (fired) FROM WORK if I have HIV?

No. You cannot be dismissed just because you have HIV. This is called an automatically unfair dismissal because you have been dismissed only because of your HIV status, not because you cannot do the work. But your employer is allowed to dismiss you if you are too sick to work – for example if you are sick with AIDS and your doctor tells you that you will not be able to work again.

If you are dismissed just because you have HIV, you can take your employer to the **CCMA** (Commission on Conciliation, Mediation and Arbitration), a special organisation that deals with labour cases. You must take your complaint to the CCMA within 30 days.

Organisations like the AIDS Law Project or an advice office can give you more information about how to take a complaint to the CCMA.

CAN I STILL WORK if I have HIV?



Yes. You can cook food, look after children, and do all your normal work. **People can only get infected with HIV if sexual fluids or blood enter their bodies, so there is no danger to your employer's family.**

Your employer must make sure that there is a first aid box in the house. This box must have rubber gloves, plasters and bandages in case you need to help a child who has a cut, or if you have cut yourself. If you have any open cuts or wounds, you must cover them with a plaster or bandage. If blood spills on the ground, use rubber gloves and clean it with bleach. *Remember that your employer and her family may also be living with HIV. You must use the same protection when you deal with anyone's blood.*



WHAT happens if I GET SICK?

People living with HIV



can get many illnesses. These are called *opportunistic infections* and can include flu, diarrhoea, thrush and others. Some of these illnesses are infectious (can be passed on to other people). **You must get treatment for these illnesses as soon as possible.**

Many people living with HIV also have TB (tuberculosis). If you have TB, it is very important to get treatment and to finish the full treatment, even if you feel better. If you have a cough for more than three weeks, you must see a doctor.

DO I have the RIGHT TO SICK LEAVE?

Yes. You are allowed to take **two weeks of paid sick leave every year.** You cannot be dismissed while you are on sick leave. If you have used up all your paid sick leave and vacation leave, your employer does not have to pay you for the time you are off sick.

If you need to take sick leave, you must tell your employer, or make sure that someone else tells your employer, that you will be off sick. If you are off sick for more than two days, you must give your employer a doctor's letter that says that you were too sick to work. The doctor is **not allowed** to mention your HIV status in the letter.

WHAT if I am TOO SICK TO WORK anymore?

Your employer must see if there is a chance that you will get better. To do this, your employer will need a doctor's letter, which says whether you are fit to work or not. **The doctor should NOT give information on your HIV status in this letter.**

Your employer **also** must see if it is possible for you to carry on working at some other job, or for shorter hours or fewer days in the week. Your employer must discuss this with you and give you a chance to speak.

If you are too sick to work at all, she can dismiss you for incapacity. *Incapacity* means that you can no longer do the job because you are sick or disabled.

Remember that your employer must give you a fair hearing before you are dismissed for incapacity.

AM I entitled to LONG SERVICE PAY?



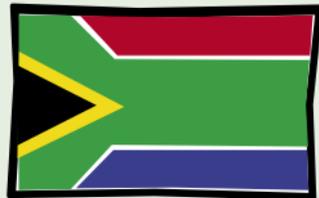
Your employer only has to give you long service pay if you are retrenched. *Retrenched* means that your employer cannot employ you anymore, for example, if she cannot afford to pay you anymore or they are moving to another town.

If you are retrenched, your employer **must** pay you **one week's pay for every year** that you worked for her.

She does not have to pay you this money if you refuse to accept another job she offers you, without a good reason. Your employer does not have to give you long service pay if you resign or are too sick to work.

WHAT are my OTHER WORKPLACE RIGHTS?

- ✓ All domestic workers have the **right** to a written contract of employment. If you do not have a written contract, ask your employer for one.
- ✓ You have a **right** to the minimum wage. Your employer **can pay you more** than the minimum wage, but she **cannot pay you less**. If you work more than 27 hours per week, you should get, monthly – R864 in a city, and R702 in a rural area. Your employer must give you an 8% increase every year.



- ✓ Your employer must register you for **UIF (Unemployment Insurance Fund)**. If you are dismissed or go on maternity leave, you can claim money from UIF.
- ✓ You have the **right** to take three weeks paid vacation (holiday) leave for every year that you work.
- ✓ If you work after hours or over weekends, you have the **right** to over-time pay.

WHAT can I do if I am DISMISSED (fired)?

⇒ Your employer **CAN** dismiss you for:

- ❶ Misconduct – breaking the rules at work, like stealing
- ❷ Poor performance – if you cannot do the job properly
- ❸ Retrenchment – if your employer cannot employ you anymore for reasons that are not your fault
- ❹ Incapacity – if you are too sick to work

⇒ Your employer **CANNOT** dismiss you:

- ❶ Just because of your HIV status
- ❷ Because you refuse to have an HIV test

Even if your employer has a legal reason to dismiss you, she must still give you a fair hearing and must follow the law.

If you think the dismissal is unfair, you must take your complaint to the **CCMA within 30 days**.

Organisations like the AIDS Law Project or an advice office can give you more information about how to take a complaint to the CCMA.

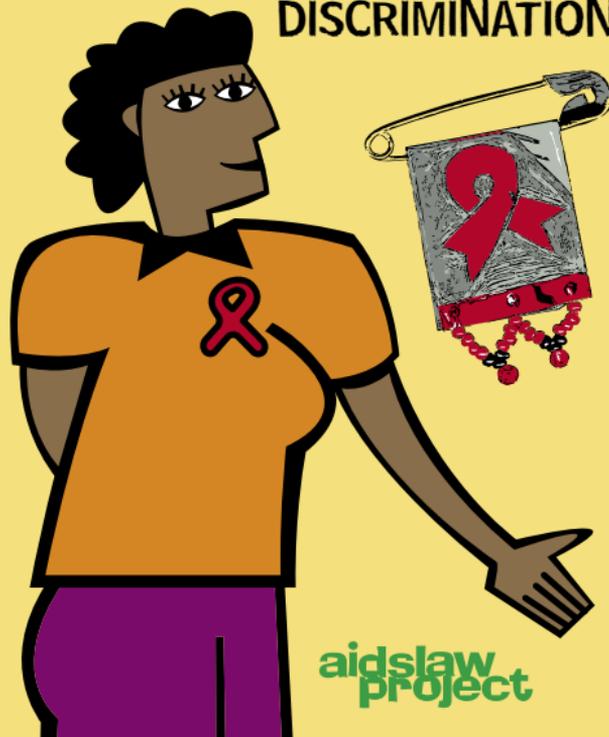
WHAT can I do if I am sexually harassed or raped in the workplace?

Your place of work must be safe and non-threatening. No-one is allowed to sexually harass you. Sexual harassment is unwanted sexual behaviour or comments that make you feel uncomfortable. Report any form of sexual harassment to the CCMA.

If you have been raped, there is a chance that you may have been exposed to HIV. There are anti-retroviral medicines you can take that can reduce the risk of becoming infected with HIV. Go to your local hospital or clinic immediately after the rape and ask about the anti-retroviral medicines. These medicines are referred to as **post-exposure prophylaxis (PEP)**. Also ask for the 'morning after' pill and antibiotics (to prevent pregnancy and sexually transmitted infections)

Sexual harassment and rape are very traumatic. It is important that you talk to someone who can listen to you and help you cope with your feelings.

STOP HIV/AIDS DISCRIMINATION



KNOW YOUR RIGHTS!

WHO can I CONTACT for help and advice?



 **The ALP (AIDS Law Project)**

Tel: 011 717 8600

 **The HIV/AIDS
toll-free Helpline**

Tel: 0800 012 322

 **The Stop Women Abuse
toll-free Helpline**

Tel: 0800 150 150

 **Black Sash advice offices**

- Durban
Tel: 031 301 9215
- Gauteng
Tel: 011 834 8361/5
- Grahamstown
Tel: 046 622 8091
- Knysna
Tel: 044 382 4458
- Pietermaritzburg
Tel: 033 342 6368
- Port Elizabeth
Tel: 041 487 3288
- Western Cape
Tel: 021 461 5607

 **The CCMA
(Commission on Conciliation,
Mediation and Arbitration)**

Tel: 0861 161 616

 **The Department of Labour**
(ask for details of your local Labour Office)

Tel: 012 309 4000

For more information about
the **ALP (AIDS Law Project)**,
you can contact us at:

Tel

011 717 8600

Fax

011 403 2341

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www.alp.org.za



equality for all

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