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**Guidelines for APEC Member Economies for  
Creating an Enabling Environment for Employers to  
Implement Effective Workplace Practices for People  
Living with HIV/AIDS and Prevention in Workplace  
Settings**

Purpose: Information  
Submitted by: HTF Chair



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# **Guidelines for APEC member economies for creating an enabling environment for employers to implement effective workplace practices for people living with HIV/AIDS and prevention in workplace settings.**

Revised: 20 June 2007

## **1. Introduction**

In the 2004 statement *Fighting Against AIDS in APEC*, it was noted that the APEC should complement and add value to the work undertaken by competent international and regional organizations. These guidelines are therefore based on the guidance provided by the ILO *Code of Practice on HIV/AIDS and the World of Work* and the experience of member economies in addressing HIV and AIDS in the workplace.

While acknowledging that the public sector is a major employer in all member economies, the guidelines are also intended to address the policy environment and incentives that encourage private sector businesses to create a positive working environment for workers living with HIV, as well as to prevent HIV transmission. Workers in the informal economy, including home-based workers can, in many ways, be more vulnerable to HIV transmission. These guidelines therefore recognize a 'workplace' as any place where people carry out economic activities.

The guidelines make specific reference to the role of employers in addressing HIV and AIDS among migrant and mobile workers. Large-scale internal mobility and international migration for work are present in many APEC member economies. This movement of peoples not only drives economic development, but also contributes to the spread and impact of HIV and AIDS. Mobile populations may have more ready cash to buy alcohol, illegal drugs and sex. Often far away from their homes, families and communities, mobile populations may be physically and emotionally more vulnerable to sexual abuse and exploitation. Sometimes undocumented, they often work in less regulated sectors where information on HIV and AIDS is less readily available.

The guidelines also address the specific needs of women and girls, men and boys in workplace settings, and recognize that children who work have special needs for protection. Finally, the guidelines include voluntary accreditation and acknowledgement provisions, which have proved successful in highlighting employers' policies and good practices.

## **2. Purpose**

The purpose of these guidelines is to assist APEC member economies to create an enabling environment for employers to implement effective workplace practices on HIV. Effective workplace practices should aim to ensure the rights of workers living with HIV, prevent HIV transmission in workplace settings, eliminate stigma and discrimination on the basis of real or perceived HIV status, and mitigate the impact of HIV and AIDS on the world of work.

A key principle of the guidelines is that the process of policy development and implementation should be the result of consultation and collaboration between all concerned parties based on social dialogue and including, to the extent possible, workers living with HIV and their representatives. The guidelines take a human rights-based approach to HIV and

AIDS, as promoted by the Declaration of Commitment adopted by the United Nations General Assembly in 2001, and the international community at large.

### **3. Scope and Contents**

The guidelines are intended for the governments of APEC member economies, public and private employers, business associations, workers, trade unions and other worker organizations, organizations of people living with HIV, and all other groups with responsibilities and activities related to HIV and AIDS in workplace settings.

The guidelines cover key principles, domestic codes of practice, legal and policy frameworks, issues relating to gender and occupational health, children, enforcement, health care and social security, migrants and mobile populations, and voluntary accreditation mechanisms.

### **4. Key Principles**

APEC member economies should consider endorsing the key principles in the ILO *Code of Practice on HIV/AIDS and the World of Work*:

1. Recognition of HIV/AIDS as a workplace issue
2. Non-discrimination based on real or perceived HIV status
3. Gender equality
4. Healthy work environment
5. Social dialogue
6. No HIV testing for purposes of exclusion of employment or work processes
7. Confidentiality of HIV-related data
8. Continuation of employment relationship and adaptation of work
9. Prevention
10. Care and support

The full text of the key principles is contained in Annex 1 to these Guidelines.

### **5. Legal and Policy Framework**

- 5.1. APEC member economies should consider ratifying international and, where applicable, regional human rights conventions and implement them as they apply to HIV and AIDS in the workplace, including the International Covenant on Economic, Social and Cultural Rights, 1966 and the International Covenant on Civil and Political Rights, 1966. APEC member economies should also consider ratifying the ILO Occupational Safety and Health Convention, 1981.
- 5.2. APEC member economies should consider developing or strengthening, as necessary, domestic legal and policy frameworks that protect in the workplace the rights and dignity of persons living with and affected by HIV and AIDS and those at the greatest risk of HIV or AIDS. This should occur in consultation with representatives of employers, workers, and people living with HIV, and be consistent with the ILO *Code of Practice on HIV/AIDS and the World of Work* and other established international guidelines on HIV and AIDS in the workplace.<sup>1</sup>

5.3. Legislation or other measures concerning HIV and AIDS in the workplace should consider covering, as a minimum, the:<sup>2</sup>

- prohibition of discrimination at work related to real or perceived HIV status
- prohibition of mandatory HIV testing in the context of employment, except in the particular situation where such testing<sup>3</sup> is determined to be (1) clearly justified by the inherent requirements of a particular job as consistent with up to date, scientific, and internationally-accepted medical knowledge about HIV and AIDS and their treatment, and (2) applied equally and without discrimination to all applicants in the context of the particular job concerned.
- confidentiality and the protection of HIV-related data<sup>4</sup>
- prevention of HIV transmission, including through gender sensitive occupational health and HIV programmes
- reasonable accommodation for the impact of HIV on workers and their families<sup>5</sup>
- grounds for early retirement related to medical unfitness to carry out any form of adapted work
- benefits, including early retirement options, insurance services, medical coverage and funeral schemes
- prohibition of sexual harassment and any form of violence at work
- workplace grievance and disciplinary procedures
- appropriate training of labour inspectors and workplace-based occupational health and safety (OHS) officers, OHS representatives and personnel officers, which ever is applicable to the individual workplace.
- jurisdiction of labour courts or commissions
- penalties for non-compliance
- implementation mechanisms.

5.4. Legislation or other measures may also provide for the establishment of workplace HIV committees.<sup>6</sup>

5.5. Legislation or other measures should apply to workers in government, parastatal and private sectors, large corporations, small and medium enterprises, not-for-profit organizations, and the informal sector as appropriate.<sup>7</sup>

5.6. Legislation or other measures should encourage the development and implementation of comprehensive gender sensitive occupational health and HIV prevention programmes, and consider providing financial and tax incentives for employers and workers to encourage this.

5.7. Legislation or other measures should permit and facilitate the legal recognition of domestic and local organizations of employers and workers responding to HIV and AIDS, and organizations of people living with HIV and other vulnerable groups to address HIV and AIDS in the workplace.

5.8. Legislation should be accompanied by fully-costed domestic plans for multisectoral implementation, with timeframes and targets, accountability mechanisms, and supported by high level ministerial leadership.

## **6. Domestic Codes of Practice on HIV and AIDS in the Workplace**

- 6.1. APEC member economies should consider application of the ILO *Code of Practice on HIV/AIDS and the World of Work* to domestic contexts, through social dialogue with representatives of governments, employers, workers, and people living with HIV. If appropriate, implementation of domestic codes should be considered.
- 6.2. APEC member economies should ensure that domestic codes of practice respect the principle of non-discrimination. There should be no discrimination against workers on the basis of real or perceived HIV status.<sup>8</sup>

## **7. Gender sensitive occupational health and HIV programmes<sup>9</sup>**

- 7.1. APEC member economies should consider ratifying and implementing the UN Convention on the Elimination of all Forms of Discrimination against Women, 1979.
- 7.2. APEC member economies should work to ensure that occupational health and HIV programmes include updated information on:
  - the nature and modes of transmission of HIV infection;
  - access to voluntary and confidential counselling and testing services;
  - access to the means of HIV prevention (including male and female condoms, diagnosis and treatment of sexually transmitted infections, prevention of mother to child transmission (PMTCT) of HIV infection, and sterile injection equipment); and
  - access to health and other services for care, treatment and support for workers and their families living with HIV.
- 7.3. APEC member economies should ensure through legislation, relevant policies or other measures that occupational health and HIV programmes are sensitive to gender and sexual orientation. This includes addressing the different needs of both women and men (including men who have sex with men) explicitly, or addressing either women or men in separate programmes, taking into account the different types and degrees of risk for male and female workers, particularly young women.<sup>10</sup>
- 7.4. APEC member economies should ensure that sexual harassment and violence within the world of work are recognized as HIV risk factors to be strictly prohibited, and treated accordingly.

## **8. Special needs and protection of children who work**

- 8.1. APEC member economies should consider ratifying and Parties should implement the UN Convention on the Rights of the Child. APEC member economies should also consider ratifying and Parties should implement the ILO Minimum Age Convention, 1973 (No.138), and the ILO Worst Forms of Child Labour Convention, 1999 (No.182).
- 8.2. APEC member economies should, as appropriate, through legislation and other measures, including regional and international cooperation, protect children from all forms of economic and sexual exploitation, including ensuring they do not fall prey to sexual exploitation networks, and that they are protected from performing any

work likely to be prejudicial to, or to interfere with, their education, health, or physical, mental, spiritual, moral or social development.<sup>11</sup>

## **9. Factory and labour inspection, labour courts and tribunals**

- 9.1. APEC member economies should, as appropriate, take such actions as may be necessary to ensure that competent authorities supply technical information and advice to employers and workers concerning the most effective way of complying with legislation and regulations applicable to HIV and AIDS in workplace settings.<sup>12</sup>
- 9.2. APEC member economies should strengthen factory and labour inspection, labour courts and equal opportunity commissions or tribunals, as appropriate, to ensure they can enforce legislation relevant to HIV and AIDS in workplace settings. This may include training on HIV and AIDS in the workplace for inspectors, arbitrators and judges.<sup>13</sup>

## **10. Health Care, Social Security and Insurance**

- 10.1. APEC member economies should, as appropriate, take such actions as may be necessary to ensure that all public health care, pension and other social security services apply fairly and equally to all workers, including migrant and mobile workers and informal economy workers, irrespective of HIV status.
- 10.2. APEC member economies should ensure that health insurance and other health schemes for workers and their families include treatment for all sexually transmitted infections.
- 10.3. APEC member economies should, as appropriate, take such actions as may be necessary to ensure that where additional benefits schemes are provided by employers (including sick pay; health, salary and life insurance; pension and workers' compensation plans), these schemes apply fairly and equally to all workers.<sup>14</sup>
- 10.4. APEC member economies should, as appropriate, take such actions as may be necessary to ensure that HIV testing is not required as a condition of eligibility for social security schemes, general insurance policies, occupational schemes, health insurance and pension plans – whether these are public and statutory, or privately provided.<sup>15</sup>
- 10.5. APEC member economies should, as appropriate, take such actions as may be necessary to ensure that insurance companies do not require HIV testing before agreeing to provide cover for a given workplace. They should base their cost and revenue estimates and their actuarial calculations on available epidemiological data for the general population.<sup>16</sup>

## **11. Migrant and mobile workers**

- 11.1. APEC member economies should consider ratifying and implementing the UN Convention on the Protection of the Rights of All Migrant Workers and their Families, 2003 and the ILO Convention No. 97 (Migration for Employment), 1949.

- 11.2. APEC member economies should develop and implement domestic, regional and international strategies that facilitate access to HIV prevention, care and treatment programmes for migrant and mobile workers, including the provision of information on health and social services in host economies.<sup>17</sup>
- 11.3. APEC member economies should remove any restrictions on access to health and other social services for internally mobile workers and their families. Particular attention should be paid to the needs of ethnic minorities.
- 11.4. APEC member economies should consider strengthening and implementing arrangements to facilitate access to health and related services for undocumented migrants and their families.
- 11.5. APEC member economies should, as appropriate, take such actions as may be necessary to ensure that large construction, mining, transport and other infrastructure projects have an environmental and social impact assessment which includes an HIV impact assessment as part of the feasibility study phase.<sup>18</sup>
- 11.6. APEC member economies should, as appropriate, take such actions as may be necessary to ensure that comprehensive gender sensitive occupational health and HIV prevention programmes be integrated as a precondition for construction and infrastructure development contracts bidding and approval.<sup>19</sup>
- 11.7. APEC member economies should, as appropriate, take such actions as may be necessary to ensure that workers travelling to other countries, as well as diplomatic, military, trade and labour officials and staff who will be assigned abroad, receive standardized pre-departure HIV training and post-arrival HIV orientation from labour recruiting agencies or other accredited sources.
- 11.8. APEC member economies should develop and implement strategies that provide for the education and training of police and immigration officials and staff, diplomatic, trade, transport and hospitality workers and other personnel in the position of recruiting, employing, hosting, controlling, assisting or supervising migrant workers on HIV prevention and the human rights of migrant workers. This education and training should include the HIV vulnerability of migrant workers, particularly young migrant workers and female migrant workers.

## **12. Accreditation Schemes**

- 12.1. APEC member economies should, as appropriate, consider developing or encouraging domestic, regional or local accreditation programmes in partnership with representatives of employers, workers and people living with HIV to certify employers that adopt, implement and monitor workplace standards on HIV prevention; non-discrimination policies; and care, treatment and support programmes for workers and their families living with or affected by HIV.
- 12.2. In consultation with representatives of workers and people living with HIV, accredited organizations can be acknowledged through annual awards and other forms of social recognition.

## **Annex 1**

### ***ILO Code of Practice on HIV/AIDS and the World of Work, 2001***

#### **Key Principles**

##### **1. Recognition of HIV/AIDS as a workplace issue**

HIV/AIDS is a workplace issue, and should be treated like any other serious illness/condition in the workplace. This is necessary not only because it affects the workforce, but also because the workplace, being part of the local community, has a role to play in the wider struggle to limit the spread and effects of the epidemic.

##### **2. Non-discrimination**

In the spirit of decent work and respect for the human rights and dignity of persons infected or affected by HIV/AIDS, there should be no discrimination against workers on the basis of real or perceived HIV status. Discrimination and stigmatization of people living with HIV/AIDS inhibits efforts aimed at promoting HIV/AIDS prevention.

##### **3. Gender equality**

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

##### **4. Healthy work environment**

The work environment should be healthy and safe, so far as is practicable, for all concerned parties, in order to prevent transmission of HIV, in accordance with the provisions of the Occupational Safety and Health Convention, 1981 (No. 155).  
A healthy work environment facilitates optimal physical and mental health in relation to work and adaptation of work to the capabilities of workers in light of their state of physical and mental health.

##### **5. Social dialogue**

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

##### **6. Screening for purposes of exclusion from employment or work processes**

HIV/AIDS screening should not be required of job applicants or persons in employment.

## **7. Confidentiality**

There is no justification for asking job applicants or workers to disclose HIV-related personal information. Nor should co-workers be obliged to reveal such personal information about fellow workers. Access to personal data relating to a worker's HIV status should be bound by the rules of confidentiality consistent with the ILO *Code of practice on the protection of workers' personal data*, 1997.

## **8. Continuation of employment relationship**

HIV infection is not a cause for termination of employment. As with many other conditions, persons with HIV-related illnesses should be able to work for as long as medically fit in available, appropriate work.

## **9. Prevention**

HIV infection is preventable. Prevention of all means of transmission can be achieved through a variety of strategies which are appropriately targeted to domestic conditions and which are culturally sensitive. Prevention can be furthered through changes in behaviour, knowledge, treatment and the creation of a non-discriminatory environment.

The social partners are in a unique position to promote prevention efforts particularly in relation to changing attitudes and behaviours through the provision of information and education, and in addressing socio-economic factors.

## **10. Care and support**

Solidarity, care and support should guide the response to HIV/AIDS in the world of work. All workers, including workers with HIV, are entitled to affordable health services.

There should be no discrimination against them and their dependants in access to and receipt of benefits from statutory social security programmes and occupational schemes.

## Annex 2

### Background to the development of the Guidelines

The potential impact of HIV and AIDS on economic growth, development, and the social fabric of APEC economies is daunting. Employers can contribute to lessening the impact of HIV and AIDS through initiatives in the workplace. Some examples of measures that can be taken to create a positive working environment for people living with HIV, and at risk of HIV, include: eliminating HIV testing for the purpose of exclusion from employment; ensuring that employees can continue working as long as their condition permits; ensuring confidentiality of personal data; and eliminating stigma and discrimination in the workplace. These measures serve to counteract reductions in labour productivity and improve morale in the workplace.

The meaningful involvement of people living with HIV in the development and implementation of HIV-related policies and programmes has long been recognised as a core principle in the response to HIV and AIDS. The ‘Greater Involvement of People Living with HIV/AIDS (GIPA) Principle’ was endorsed at the Paris AIDS Summit in 1994 by 42 heads of state and government representatives, including from the following APEC member economies: Australia, Canada, China, Indonesia, Japan, Mexico, Philippines, Thailand, USA & Vietnam.

In 2001, as a result of a resolution at the June 2000 International Labour Conference, the International Labour Office (ILO) launched the *Code of Practice on HIV/AIDS and the World of Work*. The Code of Practice is the framework for action related to the workplace and has proved to be an invaluable resource. It contains key principles for policy development and practical guidelines for programmes at enterprise, community and national levels.

In June 2001 at the United Nations General Assembly Special Session on HIV/AIDS, Member States adopted the *Declaration of Commitment on HIV/AIDS*. Member States committed to ‘by 2005, strengthen the response to HIV/AIDS in the world of work by establishing and implementing prevention and care programmes in public, private and informal work sectors and take measures to provide a supportive workplace environment for people living with HIV/AIDS...’ (para.49)

Member States also committed to ‘by 2003, develop a national legal and policy framework that protects in the workplace the rights and dignity of persons living with and affected by HIV/AIDS and those at the greatest risk of HIV/AIDS in consultation with representatives of employers and workers, taking account of established international guidelines on HIV/AIDS in the workplace...’ (para.69)

The fact that many workers in Asia are mobile/migrant workers is an important dimension to consider when addressing HIV/AIDS in the workplace. As of 2000, there were 49.9 million international migrants in Asia, which accounts for 29% of the 175 million international migrants worldwide. Factors influencing the vulnerability of migrant workers include: separation from home communities and/or families; poor working conditions; lack of access to services and social protection; stigma and discrimination; and lack of policy coherence between sending and receiving countries/communities.

In the *Declaration of Commitment on HIV/AIDS*, UN Member States also committed to ‘by 2005, develop and begin to implement national, regional and international strategies that facilitate access to HIV/AIDS prevention programmes for migrants and mobile workers, including the provision of information on health and social services...’ (para.50)

Programmes addressing HIV/AIDS in the workplace must also take into account the particular vulnerability of female workers. Globally, just under half of all adults living with HIV are now female and in most regions of the world, women and girls make up an increasing proportion of the population living with HIV. Women and girls are physiologically more susceptible to HIV/AIDS, and their vulnerability is further heightened as a result of discrimination, societal norms, lack of legal protection, poverty and violence.

In recognition of the severity of the HIV/AIDS pandemic, in 2004 APEC Leaders pledged their political commitment through the ‘Fighting Against AIDS in APEC’ initiative. Since then the Health Task Force has undertaken several HIV/AIDS initiatives, including two workshops in 2005 on ‘HIV/AIDS Management in the Workplace’ and ‘HIV/AIDS and Migrant/Mobile Workers.’

APEC Leaders also stressed that APEC should only complement and add value to the work undertaken by competent international and regional organizations. In 2005 ASEAN and ILO published *HIV and AIDS and the World of Work in ASEAN*, which documents initiatives in the following APEC member economies: Brunei Darussalam, Indonesia, Malaysia, Philippines, Singapore, Thailand and Vietnam. The APEC guidelines build on the work of ASEAN and ILO by including other APEC member economies, and with a particular focus on the creation of an enabling environment for employers to implement effective workplace practices for people living with HIV/AIDS and prevention in workplace settings.

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<sup>1</sup> See UN Declaration of Commitment on HIV/AIDS (2001), para. 69.

<sup>2</sup> See *Implementing the ILO Code of Practice on HIV/AIDS and the World of Work* (ILO, 2002). See also *Handbook for Legislators on HIV/AIDS, Law and Human Rights* (UNAIDS & IPU, 1999) ‘Employment Law’ pages 76-78.

<sup>3</sup> See WHO Guidance on provider-initiated HIV testing and counselling in health facilities, [http://www.who.int/hiv/who\\_pitc\\_guidelines.pdf](http://www.who.int/hiv/who_pitc_guidelines.pdf)

<sup>4</sup> Including medical notes and information relating to counselling, care, treatment and receipt of benefits, which should be kept separate from the personnel file. See *ILO Code of Practice on the Protection of Workers’ Personal Data* (1997).

<sup>5</sup> This could include rearrangement of working time, special equipment, opportunities for rest breaks, time off for medical appointments, flexible sick leave, part-time work and return-to-work arrangements. See *ILO Code of Practice on HIV/AIDS and the World of Work*, Section 5.2 (j). Reasonable accommodation.

<sup>6</sup> Membership should include representatives of top management, supervisors, workers, trade unions, human resources department, training department, industrial relations unit, occupational health unit, health and safety committee, and persons living with HIV, if they agree. See *ILO Code of Practice on HIV/AIDS and the World of Work*. Appendix III.

<sup>7</sup> Regarding the informal sector, see *ILO Code of Practice on HIV/AIDS and the World of Work*, Appendix I, footnote 1.

<sup>8</sup> See *ILO Code of Practice on HIV/AIDS and the World of Work*, Section 4.2, Key principles.

<sup>9</sup> See *ILO Code of Practice on HIV/AIDS and the World of Work*, Section 6.3, Gender specific programmes.

<sup>10</sup> See *ILO Code of Practice on HIV/AIDS and the World of Work*, Section 6, Prevention through information and education.

<sup>11</sup> See General Comment No. 3 (thirty-second session, 2003) HIV/AIDS and the Rights of the Child, para. 36.

<sup>12</sup> See *ILO Code of Practice on HIV/AIDS and the World of Work*, Section 5 General rights and responsibilities.

<sup>13</sup> See *ILO Code of Practice on HIV/AIDS and the World of Work*, Section 7.5 Training for factory / labour inspectors.

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<sup>14</sup> See ILO *Implementing the ILO Code of Practice on HIV/AIDS and the World of Work*, Module 7 Care and support.

<sup>15</sup> See ILO *Code of Practice on HIV/AIDS and the World of Work*, Section 8.2 Testing: prohibition for insurance purposes.

<sup>16</sup> See ILO *Code of Practice on HIV/AIDS and the World of Work*, section 8.2 Testing: prohibition for insurance purposes.

<sup>17</sup> See UN General Assembly Declaration of Commitment on HIV/AIDS, 2001. para. 50.

<sup>18</sup> Recommendation of the ASEAN Task Force on AIDS, 2003. ATFAO recommended that for projects with no HIV and AIDS impact assessment and where there is no allocation of funding for HIV prevention in infrastructure construction projects, the allocation of 1% of the project's budget for HIV and AIDS activities should apply.

<sup>19</sup> See Chiang Rai Recommendation, ASEAN Task Force on AIDS, 1999. Comprehensive HIV prevention programmes include treatment for sexually transmitted infections.