

Labour (HIV and AIDS) Regulations, 2014

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IT is hereby notified that the Minister of Labour and Social Services, in terms of section 17 of the Labour Act [*Chapter 28:01*], has made the following regulations: —

Title

1. These regulations shall be cited as the Labour (HIV and AIDS) Regulations, 2013.

Purpose

2. To serve as a guide on the management of HIV and AIDS at the workplace.

Objectives

3. To reduce the impact of HIV and AIDS and related communicable diseases at the workplace.

Scope and application

4. These regulations cover and apply to—

- (a) all workers working under all forms or arrangements and at all workplaces, including—
 - (i) persons in any employment or occupation;
 - (ii) those in training, including interns and apprentices;
 - (iii) volunteers;
 - (iv) jobseekers and job applicants;
 - (v) laid-off and suspended workers;
- (b) all sectors of economic activity, the formal and informal economies.

Interpretation

5. In these regulations—

“AIDS” refers to the acquired immunodeficiency syndrome which results from advanced stages of HIV infection, and is characterised by opportunistic infections or HIV-related cancers or both;

“testing” in relation to HIV includes—

- (a) any direct analysis of the blood or other body fluid of a person to determine the presence of HIV or antibodies to HIV; or
- (b) any indirect method, other than the testing of blood or other body fluid, through which an inference is made as to the presence of HIV;

“related communicable disease” means any communicable disease whose transmission may be linked to HIV due to its transmission through body fluids or whose risk

of clinical disease may increase due to the presence of HIV;

“stigma” means the social mark, that when associated with a person usually causes marginalisation or presents an obstacle to the full enjoyment of social life by the person infected or affected by HIV;

“discrimination” means any distinction exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

“workplace” refers to any place in which workers perform their activity in the formal or informal sector;

“worker” refers to any person working under any form or arrangement;

“reasonable accommodation” means any modification or adjustment to a job or to the workplace that is reasonably practicable and enables a person living with HIV or AIDS to have access to, or participate or advance in, employment;

“medical practitioner” means a person registered as a medical practitioner in terms of the Medical, Dental and Allied Professions Act [Chapter 27:08].

Information, education and communication programmes

6. (1) Every employer shall cause to be provided for the benefit of every person employed by him/her, and at such place and time during normal working hours, continual, gender sensitive, accurate, up to date, relevant and timely information relating to—

- (a) the promotion of safe sex and risk-reducing measures in relation to sexually transmitted diseases; or
- (b) the importance of reducing all modes of HIV transmission by changing risky behaviours related to infection; or
- (c) the acquisition, transmission and prevention of HIV and related communicable diseases; or
- (d) the dangers of HIV and TB co-infection; or

- (e) measures to encourage workers to know their HIV status through voluntary counselling and testing; or
- (f) effective occupational safety and health measures; or
- (g) rights of employees affected and infected with HIV.

(2) The design of education programmes shall be in accordance with guidelines approved by the Ministry of Health and Child Care.

(3) The provision of the education referred to in subsection (2) shall be at such intervals as recommended and advised by the Ministry of Health and Child Care.

Prevention

7. (1) Prevention programmes at the work place should ensure —

- (a) access to all means of prevention, including the availability of necessary supplies, in particular male and female condoms and where appropriate, information about their correct use; and
- (b) the availability of post exposure prophylaxis; and
- (c) effective measures to reduce high-risk behaviours, including the most at-risk groups, with a view of decreasing the incidence of HIV; and
- (d) prevention of mother to child transmission (PMTCT); and
- (e) awareness on the importance of male circumcision; and
- (f) conducting of social behaviour change communication programmes in the workplace.

(2) Where there is a possibility of exposure to HIV at work, workers should receive education and training on modes of transmission and measures to prevent exposure and infection.

Care, support and treatment

8. (1) All persons covered by these regulations including workers and their immediate dependants (spouse and children) living with HIV, have a right to access free or affordable service.

(2) Work places must endeavour to provide counselling and other forms of psycho-social support to workers infected and affected with HIV and AIDS.

(3) Where health care services–

- (a) exist at the workplace, appropriate treatment must be provided in line with the set national health standard, through linkages with public health services;
- (b) are not available, workers must be informed and guided on where to access these services.

(4) Linkages with the Ministry of Health and Child Care must be established to access comprehensive health services including VCT, antiretroviral therapy and treatment of opportunistic infections (OIS) and STIs through–

- (a) referrals to public health systems;
- (b) Private insurance;
- (c) Social security schemes;
- (d) Industrial clinics or hospitals, etc.

(5) Care and support are regarded as critical elements that must guide a workplace in responding to HIV and AIDS.

(6) Mechanisms must be created to encourage openness, acceptance and support for workers infected and affected by HIV and AIDS and to ensure that they are not discriminated against nor stigmatised.

Medical testing on recruitment

9. (1) No employer shall require, whether directly or indirectly, any person to undergo HIV testing or any other forms of screening for HIV as a precondition to the offer of employment.

(2) Subsection (1) shall not prevent the medical testing of persons for fitness for work as a precondition to the offer of employment.

Testing of employees for HIV and confidentiality

10. (1) It shall not be compulsory for any employee to undergo, directly or indirectly, any testing for HIV.

(2) No employer shall require any employee, and it shall not be compulsory for any employee, to disclose, in respect of any matter whatsoever in connection with his/or her employment, his/or her HIV status.

(3) No person shall, except with the written consent of the employee to whom the information relates, disclose any information relating to the HIV status of any employee unless the information is required to be disclosed in terms of any other law.

Stigma and discrimination

11. (1) No employer shall discriminate against or stigmatise workers, in particular jobseekers and job applicants on the grounds of real or perceived HIV status.

(2) No employer shall prejudice an employee in relation to promotion, transfer, training or other employee development programme on the basis of the employee's real or perceived HIV status.

(3) Real or perceived HIV status shall not be a ground for discrimination preventing the recruitment or continued employment of a worker

(4) Real or perceived HIV status shall not be cause for termination of employment.

(5) Persons with HIV-related illness shall not be denied the possibility to carry out their work, with reasonable accommodation, if necessary, for as long as they are medically fit to do so.

Eligibility for employee benefits

12. (1) Subject to any other law to the contrary, the HIV status of an employee shall not affect his or her eligibility for any occupational or other benefit schemes provided for employees.

(2) Where in terms of any law the eligibility of a person for any occupational or other benefit scheme is conditional on an HIV and AIDS test, the conditions attaching to HIV and AIDS shall be the same as those applicable in respect of comparable chronic illness.

(3) Where any HIV testing is necessary in terms of subsection (2), the employer shall ensure that the employee undergoes appropriate pre and post-HIV test counselling.

(4) Where an employee opts not to undergo an HIV test for the purposes of subsection (2), no inferences concerning the HIV status of the employee may be drawn for such exercise by the employee of the option not to undergo the test.

(5) Where an employee undergoes an HIV test for the purposes of subsection (2), the employer shall not, unless the occupational or other benefit scheme concerned is operated by the employer, be entitled to information concerning the HIV status of the employee concerned.

Sick and compassionate leave

13. Any employee living with HIV and AIDS shall be subject to the same conditions relating to sick leave as those applicable to any other employee in terms of the Act.

HIV risk reduction and management

14. (1) Where a person is employed in an occupation or is required to provide services where there may be a risk of transmitting or acquiring HIV, the employer shall provide appropriate training, together with clear and accurate information and guidelines on modes of transmission and measures to prevent exposure to infection.

(2) The working conditions and procedures in relation to occupations referred to in subsection (1) shall be designed to ensure optimal hygienic precautions to prevent the spread of HIV and related transmissible diseases, such as tuberculosis.

(3) Workers whose occupations put them at risk of exposure to human blood, blood products and other body fluids shall receive additional training in exposure prevention, exposure prevention procedures and post-exposure prophylaxis.

(4) Appropriate personal protective clothing and equipment shall be issued, free of charge, by the employer to persons employed in occupations referred to in subsection (1).

(5) The employer shall cause to be reviewed, for safety and efficacy, the use of any equipment, devices, procedures, including first-aid procedures used, or guidelines followed, in any occupation referred to in subsection (1).

Copy of regulations for each employee

15. The employer shall ensure that these regulations are made available to each employee.

Offence and penalty

16. Any person who contravenes any provision of these regulations shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Repeals

17. The Labour (HIV and AIDS) Regulations, 1998, published in Statutory Instrument 202 of 1998, are repealed.