

HIV/AIDS WORKPLACE POLICY

1. INTRODUCTION

The Langeberg Municipality as employer, recognises the importance of its employees and its responsibility to care for their personal well being in the workplace. In doing so, it encourages optimal work attendance and job performance. The employer is committed to address the psycho-social issues which may disturb employees infected and affected by HIV/AIDS and assents to create a supportive and caring environment for those affected and infected by HIV/AIDS.

2. OBJECTIVES

This Policy will cover all employees, workplaces and contract employment under the jurisdiction of the Municipality.

This policy aims to guide the Municipality's, employees and prospective employees on how best to manage HIV/AIDS within the workplace, in order to:

- ❖ Ensure non-discrimination between individuals with HIV infection and those affected (e.g. co-workers) and between HIV/AIDS and other life threatening conditions.
- ❖ Create a safe and healthy working environment for all employees and members of the public who utilise the Municipality's facilities.
- ❖ Introduce educational awareness and prevention programmes to contain and prevent the spread of HIV.
- ❖ Manage, support and accommodate those individuals who are infected or affected by HIV/AIDS so that they may continue to work productively for as long as possible.
- ❖ Ensure that no person discriminate against an employee or prospective employee on the basis of his or her HIV status.
- ❖ Ensure that no person will be denied employment, treated unfairly within the employment relationship, or be unfairly dismissed on the basis of his/her HIV status.

3. RIGHTS & RESPONSIBILITIES

The policy on HIV not only establishes certain rights but it also imposes certain responsibilities on the relevant stakeholders. This section seeks to identify the said rights and responsibility. It is further acknowledged that the success of the policy framework is dependent on the co-operation of all parties.

3.1 **The Municipal Manager**

The Municipal Manager takes overall responsibility for the implementation of the policy and compliance with the relevant legislation.

3.2 **Human Resources Department**

The Human Resources department carries the following responsibilities.

- In conjunction with line management, the Human Resources Department must ensure that all employees are familiar with the policy.
- Monitor and advise the Municipal Manager of any irregular application of the policy.
- Arrange for counselling where requested by employees.

- Advise management on disciplinary steps to be taken in circumstances where the policy was breached.

3.3 Managers & Supervisors

All Managers and Supervisors:

- Must ensure that all employees are aware of and familiar with the content of the policy.
- Are responsible for the implementation of this policy.
- Must establish and maintain communication channels to raise awareness concerning HIV/AIDS in the workplace.
- Must make appropriate arrangements to ensure that confidential information, regarding the HIV status of an employee, is protected.
- Must ensure that immediate and appropriate corrective action is taken where the policy is breached.

3.4 Employees

- Employees should acknowledge that a fellow employee's health condition is private and confidential and an employee living with HIV/AIDS is under no obligation to disclose his/her status to a manager or any other employee.
- Employees shall not discriminate against fellow employees who are living with HIV/AIDS and in particular an employee may not refuse to work with a colleague who is HIV positive. The Health and Safety Officer should nevertheless ensure that all employees are familiar with the basic safety procedures where there is potential exposure to HIV/AIDS.
- Employees shall endeavour to play a supportive role towards fellow employees who are living with HIV/AIDS.
- Employees who are aware of their positive HIV status shall take every precaution to ensure that fellow employees are not affected.

4. PRINCIPLES

The Municipality will ensure that the following principles are adhered to:

- ❖ The principle of voluntarism, which acknowledge that the most effective form of referral is self referral.
- ❖ The principle of confidentiality, which safeguards the details that employees reveal, and includes the safeguarding of all records, the non-sharing of any information other than with the employee's consent and that interviews be conducted in a place which is considered private. This information will not be part of the personnel file.
- ❖ The principle of neutrality, that the role and function of the HIV/AIDS Counsellor should not be tainted by workplace issues pursued by management and the workforce and thus maintain a state of neutrality as defined by Section 16(5)(c) of the Labour Relations Act, 1995.
- ❖ The principle of accessibility, committing management to make the service available to all employees.
- ❖ The broad brush principle, which refers to all problems which should affect job performance.
- ❖ The principle of constructive motivation in that management should motivates and gives employees the option to make use of the HIV/AIDS services.

- ❖ The principle of permanency, by means of a mutually agreed policy statement which guarantees the survival of the HIV/AIDS programme.

5. **AWARENESS, PREVENTION AND CARE PROGRAMMES**

The Municipality will provide life-skills training and empowerment programmes for all its employees and these will focus on:

- (a) Health promotion, prevention and care.
- (b) Appropriate prevention and management of STD's & TB (and other opportunistic infections).
- (c) Condom promotion and distribution.
- (d) Counselling on risk reduction.

5.1 **Awareness Programmes**

Every directorate, department, depot or workplace will participate towards developing and implementing a workplace HIV/AIDS Awareness Program.

An extensive range of awareness activities will be embarked on. These will include exhibitions, displays, posters, pamphlets, newsletters, etc. as may be necessary to promote awareness.

All new employees will attend an HIV/AIDS awareness programme as part of their Induction Training.

5.2 **Prevention and Care Programmes**

Education is the most effective measure for the prevention of HIV infection.

Education is also the best way to reduce discrimination both in and out of the workplace.

The Municipality will develop comprehensive and effective on-going education programmes.

All employees will on an on-going basis be exposed to educational programmes.

Peer educators will be identified, trained and supported to promote the programme at workplace level.

The Municipality will endeavour to give active support within budget limitations to Community Based Organisations (CBO's) and Non-Governmental Organisations (NGO's) involved in HIV/AIDS care and prevention services.

Such a workplace program will be based on consultations between the employer, management, trade unions and, where appropriate, NGO's and CBO's with expertise in HIV/AIDS education, counselling, and care services.

At a minimum, these programmes will cover at least:

- (a) HIV/AIDS (statistics, medical facts, etc.).
- (b) Sexually Transmitted Diseases (STD's) and Tuberculosis (TB) and their link to HIV.
- (c) Risk assessment and Safer sex practices.
- (d) Sexuality, Sexual Orientation, Sexual and Reproductive Health.
- (e) Gender and Cultural issues related to HIV/AIDS.
- (f) Relationships and Communication.
- (g) Attitudes and Values, Discrimination (to decrease stigma).
- (h) Living with HIV/AIDS (management, support, care, referral).
- (i) Universal Precautions.
- (j) Legal and Ethical issues (employment, confidentiality and disclosure).
- (k) HIV/AIDS and Pregnancy.
- (l) Pre and Post Test Counselling, HIV Testing.

5.3 Workplace exposure

There are numerous ways in which employees could be exposed to HIV/AIDS in the workplace, for example:

- Injuries that occur resulting in bleeding and blood staining of clothes, tools and objects.
- Health care employees exposed to body fluids or HIV – infected materials.
- Resuscitation and first aid measures.
- Rape or sexual penetrating assault.
- Assault with sharp instruments or bleeding injuries.

5.4 Safer sexual practice

HIV infection is preventable and can be prevented through changes in behaviour, knowledge and treatment.

5.5 Educational programmes

- The employer will endeavour to, within the scope of its budget constraints, provide educational programmes regarding HIV/AIDS for all employees.
- These programmes will provide information and teach the skills necessary for all employees to prevent themselves and others from becoming infected. The programmes will further seek to establish and maintain a work environment free of discrimination.
- Programmes will be regularly monitored, evaluated, reviewed and revised in accordance with any changes that may occur.
- Programmes should be linked, where feasible, to health promotion programmes, such as substance abuse.

5.6 Gender specific programmes

- All programmes should be gender sensitive as well as sensitive to race and sexual orientation.
- Programmes should help women to understand their rights, both within and outside the workplace.
- Information to women needs to alert them to the fact that they are at higher risk of infection.
- Appropriately targeted prevention programmes should be developed for men and should include strategies to promote men's responsibilities regarding HIV/AIDS prevention.

5.7 Voluntary Counselling & Testing

- The employer shall encourage all employees to be tested to determine their HIV status.
- Such testing shall be voluntary and shall be accompanied by pre and post- test counselling to ensure informed consent.
- Counselling and testing records will remain confidential.
- Employees/prospective employees who voluntarily disclose their HIV status will not be refused employment/promotion on the grounds of their HIV status.

- All employees have the legal right to confidentiality about their HIV/AIDS status, except in circumstances where the employer is legally required to disclose such information.

6. CONFIDENTIALITY AND DISCLOSURE

- ❖ All persons with HIV/AIDS have the legal right to privacy regarding their HIV status in all aspects of employment.
- ❖ An employee is under no obligation to inform the employer of his/her HIV status.
- ❖ Where an employee chooses to disclose his/her HIV status to the employer, this information will not be disclosed to others without the employee's express consent.

7. HIV TESTING

- ❖ HIV testing is any form of medical testing to determine the HIV status of a person.
- ❖ HIV testing must be carried out with informed consent which means that the individual has been made aware of, and understands, the implications of the test.
- ❖ Pre-test counselling should be given before an HIV test, to make sure that the person has sufficient information to make an informed decision about having a HIV test.
- ❖ Post-test counselling should be provided when an individual receives his/her HIV test result.
- ❖ An employer is permitted and may provide testing to an employee who has requested a test in the following circumstances:
 - (a) As part of a health care service provided in the workplace.
 - (b) In the event of an occupation accident carrying a risk of exposure to blood or other body fluids.
 - (c) For the purposes of applying for compensation following an occupational accident involving a risk of exposure to blood or other body fluids.
- ❖ Such testing may only take place within the following defined conditions:
 - (a) At the initiative of an employee.
 - (b) Within a health care worker and employee-patient relationship.
 - (c) With informed consent and pre- and post-test counselling.
 - (d) With strict procedures relating to confidentiality of an employee's HIV status.
- ❖ Employers who require testing must adhere to the Labour Legislation in, amongst others, the following circumstances:
 - (a) During an application for employment.
 - (b) As a condition of employment.
 - (c) During procedures related to termination of employment.
 - (d) As an eligibility requirement for training staff development programmes.
 - (e) As an access requirement to obtain employee benefits.

8. CREATING A SAFE WORKING ENVIRONMENT

- ❖ The Municipality will strive to provide and maintain, a working environment that is safe and without risk to the health of its employees.
- ❖ The Municipality will provide psycho-social support to the counsellors and affected staff wherever possible.
- ❖ The Municipality will take steps to ensure the risk of HIV transmission at work is minimised. These will include:

- (a) Assessing the risk, if any, of the occupational transmission of HIV within the workplace.
 - (b) Providing appropriate training on how to deal with and reduce the risk of HIV transmission at work.
 - (c) Providing appropriate equipment and materials to deal with and reduce the risk of transmission at work.
- ❖ Where a real possibility of HIV transmission has occurred following an occupational accident, rape or a penetrating assault, the Municipality will take all reasonably necessary steps to assist the employee to:
 - (a) assess the risk of HIV transmission (counselling)
 - (b) prevent the risk of HIV transmission prior to zero-conversion (testing and treatment/prophylaxis)
- ❖ The Municipality will provide guidelines regarding steps to be taken in the event of an occupational incident with a risk of HIV infection and to prevent cross infections for example: **“A Protocol for needle sticks injuries and other sources of exposure to blood and blood products.”**
- ❖ These guidelines will include such elements as:
 - (a) Creating an awareness of the risk of HIV transmission in the event of an occupational incident involving blood or bodily fluids.
 - (b) HIV testing of the parties involved in an accident.
 - (c) Reporting procedures.

9. **COMPENSATION FOR HIV INFECTION AT WORK**

- ❖ The Municipality will take all reasonable steps in terms of the Compensation for Occupational Injuries and Diseases Act (130 of 1993), to assist employees with claims for compensation and compensate for cost of testing and prophylactic therapy before zero-conversion as performed by specified health centres.
- ❖ A claim to the Compensation Commissioner will only be submitted upon confirmation of zero-conversion of the employee.

10. **EMPLOYEE BENEFIT SCHEMES**

The Municipality will endeavour to ensure that employees with HIV/AIDS not be discriminated against with the allocation of employee benefits.

❖ **Medical Aid Schemes**

The Municipality will prevail on these funds to maintain a non-discriminatory attitude towards patients with HIV/AIDS and to treat such patients in a similar manner to those affected by other life-threatening diseases.

Normal benefits should be available to all who initially qualify for admission to the funds via normal procedures.

❖ **Pension/Retirement Funds**

The Municipality will prevail on the funds to maintain a non-discriminatory attitude towards patients with HIV/AIDS and to treat such patients in a similar manner to those affected by any other life-threatening disease.

No person should be denied access to the Pension or Retirement funds provided they fulfil initial criteria for admission.

11. **MANAGING HIV POSITIVE EMPLOYEES**

- ❖ Employees living with HIV/AIDS will continue to work under normal conditions in their current employment for as long as they are medically fit to do so.
- ❖ This takes into consideration not only their ability to perform their assigned duties but also susceptibility to infection (e.g. nursing staff working in a TB clinic).
- ❖ The Municipality will work towards ensuring that the performance of every staff member is maintained, where possible.
- ❖ The above includes taking reasonable steps to accommodate employees with related HIV/AIDS impairments within the workplace, to assist them to continue in productive employment.
- ❖ Employees with HIV/AIDS will be governed without distinction or discrimination to existing sick leave allocations (ill health policy).
- ❖ If health care facilities or services are not available at the workplace, employees will be referred to appropriate services within the community.
- ❖ The Municipality will endeavour to provide support or take steps to assist employees with HIV/AIDS to have access to appropriate medical treatment.
- ❖ These will also include:
 - (a) Giving the employee time off according to the sick leave policy to attend clinics or counselling.
 - (b) Transferring the employee to lighter or less stressful duties, where it is both necessary and possible.
 - (c) When the employee is no longer able to work, the employee will be dealt with in terms of the Municipality's conditions of service and policies as well as applicable labour legislation.

12. GRIEVANCE PROCEDURE

- ❖ The Municipality will ensure that the rights of employees living with HIV/AIDS, and remedies available to employees in the event of a breach of such rights become integrated into the existing grievance procedure.
- ❖ The Municipality will create an awareness and understanding of the remedies available to employees who are discriminated against on the basis of their HIV status.
- ❖ The Municipality develop special measures to ensure confidentiality of the complainant during such proceedings, including ensuring that such proceedings are held in private.
- ❖ Where disputes may arise in relation to HIV/AIDS in the workplace, the Municipality will take steps to deal with this issue, including:
 - (a) An investigation into the nature and cause of the dispute.
 - (b) Attempt to resolve the dispute through the relevant dispute resolution mechanism.
 - (c) Provide counselling and additional education to all those involved.
 - (d) As a final resort, the taking of disciplinary steps against staff causing the disruption.

13. DISMISSAL

- ❖ Employees with HIV/AIDS have the right not to be unfairly dismissed on the basis of their HIV status.
- ❖ Diagnosis of a person's HIV/AIDS status is not a sufficient reason to dismiss an otherwise healthy person.
- ❖ The Municipality is obliged to follow accepted guidelines regarding dismissals for incapacity before terminating an employee's services.
- ❖ The above will include attempts to accommodate the employee's disability and to find alternatives to dismissal.

- ❖ The Municipality will ensure that as far as possible, the employee's right to confidentiality regarding his or her HIV status is maintained during an incapacity proceeding.
- ❖ An employee cannot be compelled to undergo a HIV test or to disclose his or HIV status as part of incapacity proceedings.
- ❖ Where an employee no longer has the capacity to continue working, the Municipality may lawfully terminate the employee's services. It would need to follow fair procedures as stipulated in the Labour Relations Act 66 of 1995.

14. HIV/AIDS WORKPLACE COMMITTEE

- ❖ The implementation of this policy will be co-ordinated by the Health and Safety Workplace Committee.
- ❖ The Committee will submit regular progress reports to relevant Committees of the Municipality's Council.

15. POLICY REVIEW

This policy will be reviewed {every two years} as and when necessary by the Health and Safety Workplace Committee.

16. LEGAL AMBIT

- ❖ All persons with HIV/AIDS have a common law and constitutional right to privacy regarding their HIV/AIDS status. Accordingly there is no legal duty on an employee to disclose their HIV/AIDS status to their employer. The Municipality will respect this right except where there is a risk to the employer in delivering services to its clients.
- ❖ In accordance with section 6(1) of the Employment Equity Act (55 of 1998) no person may unfairly discriminate against an employee or prospective employee on the basis of his or her HIV status.
- ❖ In accordance with section 7(2) of the Employment Equity Act (55 of 1998) no employee or prospective employee may be required to undertake a HIV test in order to ascertain that employee's or prospective employee's HIV status unless such testing is determined as justifiable by the Labour Court.
- ❖ In accordance with section 185 of the Labour Relations Act 66 of 1995 an employee with HIV/AIDS may not be dismissed simply on the basis of his or her HIV/AIDS status. However where he or she no longer has the capacity to work, his/her services may be terminated in accordance with section 198(1) and (i).
- ❖ In accordance with section 8(1) of the Occupational Health and Safety Act 85 of 1993 an employer is obliged to provide, as far as is reasonably practicable, a safe working environment which includes minimising the risk of occupational infection with HIV.
- ❖ In accordance with the basic Conditions of Employment Act 75 of 1997 every employer is obliged to ensure that all employees are entitled to certain basic standards of employment, including a minimum number of sick days provided in terms of section 22 of this Act.
- ❖ In accordance with section 22 of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 an employee who is affected with HIV as a result of an occupational exposure to infected blood or bodily fluids, is entitled to compensation.
- ❖ In accordance with section 24(3) and section 29(n) of the Medical Schemes Act 131 of 1998, registered Medical Aid schemes may not discriminate directly or indirectly on the basis of a person's "health status" and they must, in terms of section 57(g) offer a minimum level of benefits to all members.

- ❖ The Municipality will use this policy in conjunction with the Code of Good Practice and the Technical Guideline (in relation to the Employment Equity Act) in order to ensure an effective implementation of an HIV/AIDS programme.

17. IMPLEMENTATION OF THE POLICY

The policy shall be implemented after consultation with the labour unions and the approval of the Municipal Manager.

Signed at on this day of

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MUNICIPAL MANAGER

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IMATU CHAIRPERSON

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SAMWU CHAIRPERSON