

Labour Relations (HIV and AIDS) Regulations, 1998

S.Is 202/1998, 90/1999

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

1. Title

These regulations may be cited as the Labour Relations (HIV and AIDS) Regulations, 1998.

2. Interpretation

In these regulations—

“AIDS” means acquired immuno-deficiency syndrome and includes the AIDS-related complex;

“HIV” means human immuno-deficiency virus;

“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 with HIV due to its transmission through body fluids or whose risk of clinical disease may be increase due to the presence of HIV;

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

3. Education of employees on HIV and AIDS

(1) Every employer shall cause to be provided for the benefit of every person employed by him, and at such place and time during normal working hours as he may appoint, education and information relating to— (a) the promotion of safe sex and risk-reducing measures in relation to sexually transmitted diseases; and

(b) the acquiring and transmission of HIV; and (c) the prevention of the spread of HIV and AIDS; and (d) counselling facilities for HIV and AIDS patients.

(2) Education and information shall be provided in terms of subsection (1) by persons who have proven sound knowledge and expertise in matters relating to HIV and AIDS, and who are able to communicate information with consistency and accuracy.

(3) The design of the education programmes shall be in accordance with guidelines approved by the relevant employer and employee organizations, in consultation with the Ministry of Health and Child Welfare and any other organization with expertises in HIV and AIDS-related matters.

(4) The provision of the education referred to in subsection (1) shall be at such intervals as the relevant employer and employee organizations may agree.

4. Medical testing on recruitment

(1) No employer shall require, whether directly or indirectly, any person to undergo any form of testing 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.

5. Testing of employees for HIV and confidentiality

(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 employment, his 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 acquired by that person in the course of his duties unless the information is required to be disclosed in terms of any other law.

6. Job Status and training

(1) No employer shall terminate the employment of an employee on the grounds of that employee's HIV status alone.

(2) No employee shall be prejudiced in relation to—

(a) promotion; or

(b) transfer; or

(c) subject to any other law to the contrary, any training or other employee development programme;

or

(d) status; or in any other way be discriminated against on the grounds of his HIV status alone.

7. Eligibility for employee benefits

(1) Subject to any other law to the contrary, the HIV status of an employee shall not affect his 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 upon an HIV or AIDS test, the conditions attaching to HIV and AIDS shall be the same as those applicable in respect of comparable life-threatening illnesses.

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

(5) Where an employee undergoes an HIV testing 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.

8. Sick and compassionate leave

Any employee suffering from HIV or AIDS shall be subject to the same conditions relating to sick leave as those applicable to any other employee in terms of the Act.

9. HIV risk management

(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 or AIDS, the employer shall provide appropriate training, together with clear and accurate information and guidelines on minimising the hazards of the spread of HIV or AIDS and related communicable diseases.

(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 or AIDS and related communicable diseases to employees and members of the public.

(3) Personal protective devices shall be issued, free of charge, by the employer to persons employed in occupations referred to in subsection (1).

(4) 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).

10. Copy of regulations for each employee

An employer shall provide every employee with a copy of these regulations.

11. Offence and penalty

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