

HIV AND AIDS POLICY FOR EMALAHLENI LOCAL MUNICIPALITY

17/1/B

REPORT of the Director: Administration and Resources Management

Human Resources

PURPOSE

To implement the HIV AND AIDS Policy for all employees of the Emalahleni Local Municipality.

BACKGROUND

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The HIV and AIDS pandemic is affecting the people of South Africa including Emalahleni Local Municipality employees. To deal with this problem, an HIV and AIDS policy has been drafted for the consideration of the Council and approval. The policy is contained in the annexure.

DICUSSION

Emalahleni Local Municipality does not have a standing policy that serves as guiding in dealing with HIV and AIDS in the workplace. To have a policy on this issue would help in deal with the disease and to curb its spread. The draft policy is aimed at strategies on treatment of the employees who could be infected and to comply with all relevant legislations.

COMMENTS of the Director : Administration and Resources Management

Legal Section

COMMENTS of the Acting Director : Infrastructure and Basic Services

COMMENTS of the Director : Development Planning

COMMENTS of the Chief Financial Officer

RECOMMENDATION

HIV AND AIDS POLICY FOR EMALAHLENI LOCAL MUNICIPALITY/HR

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EMALAHLENI LOCAL MUNICIPALITY DRAFT HIV AND AIDS POLICY IN THE WORKPLACE

1. PREAMBLE.

- HIV (Human Immunodeficiency Virus) and AIDS (Acquired Immune Deficiency Syndrome) constitute the biggest threat to South African Society.
- AIDS is very likely to have far-reaching negative economic effects for employers, employees and South Africa as a whole.
- AIDS affects workplaces because of its impact on productivity costs, and the national economy.
- Productivity is reduced by absenteeism and loss of moral.
- Costs increase, as the employer has to pay for additional employee benefits.
- Loss of skilled workers to AIDS means there will be a need to train new workers.
- Level of service provision may decline in the future.

- Possible effects on life insurance and pension funds are a concern.
- Organizations cannot afford to ignore the threat of this deadly disease.
- Workplaces should provide a plan of action in order to start addressing the issue of HIV/AIDS.
- Sustainable workplace programmes on HIV/AIDS should be implemented.

2. MANDATES

- Employment Equity Act, No. 55 of 1998
(Section 54 (1)(a) No person may be unfairly discriminated against on the basis of his/her HIV status; Section 6(1) No discriminating against employee/applicant because of HIV; Section 7(2) No HIV testing)
- Labour Relations Act, No. 66 of 1995
(Section 187 (1)(f) No dismissal because of HIV positive; Section 188 (1)(a)(i) when service may be terminated; Section 203 (1)(a) – Code of Good Practice: Key Aspects of HIV/Aids and Employment)
- Basic Conditions of Employment Act, No. 75 of 1997
(Section 22(2) All employees must receive certain basic standards of employment including a minimum number of days sick leave)
- Compensation for Occupational Injuries and Diseases Act, 1993
(Section 22(1) Claim if infected at the workplace)
- Occupational Health and Safety Act, No. 85 of 1993
(Section 8(1) to provide a safe working place)
- Constitution of SA 108 of 1996
(All persons with HIV/AIDS have a right to privacy concerning their HIV/Aids status. No legal duty of the employee to disclose his/her HIV status to the employers)

3. STATEMENT OF INTENT

- 3.1 Emalahleni acknowledges the seriousness of HIV and Aids epidemic.
- 3.2 Is also concerned and committed in the fight against HIV and Aids in a positive supportive and non-discriminatory manner.
- 3.3 Emalahleni Local Municipality commits itself to implement an effective HIV and Aids programme.
- 3.4 To create a conducive environment at the workplace in dealing with HIV and Aids.
- 3.5 To ensure that the rights of workers living with HIV and Aids are fully respected.
- 3.6 Emalahleni HIV and Aids Policy define the organizations position and practices in relation to employees with HIV and Aids as well as preventing the spread.

- 3.7 The policy creates a consultative process with stakeholders, employees, and representatives in the form of trade unions by the organization.

4. DEFINITION

- HIV stands for Human Immunodeficiency Virus, and it is a virus, which causes the disease, AIDS.
- AIDS stands for Acquired Immune Deficiency Syndrome and it is a disease, which damages the body's ability to fight infections, and attacks the body's immune system.

5. DISCUSSION

5.1 Legal Framework

According to Sections 6(1) of the Employment Equity Act, no person may unfairly discriminate directly or indirectly against an employee in any employment policy or practice on the ground of her or his HIV status.

Section 7(2) further states that testing of an employee to determine the employee's HIV status is prohibited unless such testing is determined to be justifiable by the Labour Court in terms of Section 50(4) of the same Act.

Schedule 8, Section 10(1) of the Labour Relations Act is considered when addressing incapacity as a result of ill health. In this case it will be specifically HIV/AIDS.

Consequently the Emalahleni Local Municipality views it as an unfair labour practice and discriminatory, to require an employee to undergo an HIV/AIDS test to determine employability, and also for an employer to force an employee to disclose his/her HIV/AIDS status before or during the employment contract unless it is an inherent requirement of the job and testing is done in accordance with the Employment Equity Act.

5.2 Employment contract and non-discrimination

Employees with HIV shall be governed by the same contractual obligations as all other employees. If a person makes his/her HIV status known voluntarily it shall not be a basis for refusing to conclude or to continue or to renew an employment contract.

HIV shall not be used as a justification for the non-performance of duties agreed to by the parties.

No employee shall be dismissed or have his/her employment terminated merely on the basis of HIV, nor shall HIV status influence retrenchment/procedures.

HIV and AIDS do not by themselves; justify termination of employment, demotion, transfer or discrimination in employment. The compulsory conditions of services, including pension fund, medical aid, stated benefits, sick leave, housing as amended from time to time will be applicable to persons with HIV/AIDS.

If an employee becomes unable to perform the work, management will make reasonable accommodation measures to enable the employee to meet established performance criteria. This may include flexible or part time working schedules, leave of absence, work restructuring or reassignment.

5.3 Testing

Section 7(2) of Employment Equity Act, No. 55 of 1998 states that testing of an employee to determine the employee's HIV status is prohibited unless such testing is determined to be justifiable by the Labour Court in terms of Section 50(4) of the same Act.

To manage the HIV/Aids epidemic in the workplace, the Emalaheni Local Municipality, will undertake surveillance screening of HIV infection with employees participating, invited on a voluntary, anonymous and unlinked basis to identify areas of strategic intervention.

Voluntary and confidential HIV antibody testing with pre- and posttest counseling will be made available to all employees. Employees will be confidentially notified of an HIV positive result and assured access and availability of continuing support and health services.

5.4 Confidentiality and disclosure

- Employee is not legally required to disclose his/her HIV status.
- If employee voluntary discloses this information will not be disclosed to other without employee's express consent.
- Mechanisms will be created to encourage openness, acceptance and support for those who voluntary disclose.

5.5 Management, Care and Counseling of HIV/AIDS at Work

The Council will provide details of employee assistance available to person affected by HIV/AIDS.

The Council will encourage and support employees with HIV by facilitating employee's access to health services and participation in counseling services.

All employees will receive educational and informational briefing on HIV/AIDS, and the realities, misconceptions and circumstances of working with affected employees. Where for reasons outside the Council control, co-workers become reluctant, unwilling or resist working with an affected colleague, they will be counseled and cautioned that their

attitude is inappropriate circumstances and unwarranted, unreasonable and not medically or scientifically justified, in an effort to alleviate their fears and concerns. However, if it can be proven beyond reasonable doubt that a persons with HIV/AIDS who has disclosed his/her status is discriminated against, disciplinary measures will be instituted.

5.6 Promotion of a safe working environment

The Council will ensure that the risk of HIV transmission at workplace is minimal through addressing risk areas, training and awareness on universal infection control procedures , provision of appropriate equipment and materials to protect employees from exposure and identifying steps to be taken in event of occupational accident.

5.7 Education and Information

Employees of the Council will be educated and informed through ongoing health education programmes.

Education and information programmes will be developed in co-operation with all appropriate stakeholders and always involve the utilization of community – based organizations where possible and available.

Information will also be provided through brochures, posters and condoms will be distributed to workers form time to time.

5.8 Objectives of Education and Information

To impart basic knowledge about the disease and information on prevention of the disease. Eliminating discriminations against persons with HIV/AIDS through dispelling any ignorance about the disease and its mode of transmission.

Provide information on the rights of and services available to infected employees. Protection of person potentially exposed to HIV in the pursuance of their duties.

5.9 Workplace HIV/Aids programme

5.9.1 Workplace will have a workplace programme to:

- Prevent new infection
- Provide support for employees
- Manage the impact on the organization.

5.9.2 Programme activities will include:

- HIV/AIDS awareness programme
- Promote condom distribution and use
- Encourage health-seeking behavior for STD's
- Create an environment that is conducive to openness, disclosure and acceptance
- Provide access to counseling.

5.10 Policy Review

The HIV/AIDS epidemic is continually evolving and various aspects of the epidemic may change with the time.

This policy will be reviewed every two years or as and when the need arises, in conjunction with developments in medical and scientific knowledge.

6. APPENDIX: GLOSSARY

- 6.1 **HIV:** (Human Immunodeficiency Virus) a virus that weakens the immune system.
- 6.2 **AIDS:** (Acquired Immune Deficiency Syndrome) the body loses its ability to fight infection.
- 6.3 **HIV Test:** a blood test to determine whether a person has HIV usually two or three tests are performed to confirm the results.
- 6.4 **HIV- Positive:** having tested positive for HIV infection.
- 6.5 **Immune Deficiency:** a condition where the body's defense system is compromised.
- 6.6 **Immune System:** the body's defense against infections.
- 6.7 **STD's:** sexually transmitted disease, infection passed from one person to another during sexual intercourse, includes Syphilis, Gonorrhoea and HIV.