

**DEPARTMENTS OF THE PROVINCIAL
GOVERNMENT WESTERN CAPE**

**TRANSVERSAL FRAMEWORK POLICY
ON
HIV AND AIDS/STI'S**

Adopted by Top Management Committee:

**Adopted by the Co-ordinating Chamber of the PSCBC for the Western Cape Province
(CCPWCP) on 13 April 2005**

Implementation date: 13 April 2005

DEPARTMENTS OF THE PROVINCIAL GOVERNMENT WESTERN CAPE

POLICY ON HIV AND AIDS/STI'S IN THE WORKPLACE

1. PREAMBLE

The Departments of the Provincial Government Western Cape (PGWC):

- 1.1 Commit themselves to creating a workplace that is safe, supportive and non-discriminatory.
- 1.2 Recognise the seriousness of the HIV and AIDS pandemic and its impact on the workplace.
- 1.3 Share the understanding that HIV and AIDS is a chronic, life-threatening disease with social, economic, human rights and developmental implications for the Departments and their staff.
- 1.4 Commit themselves to seeking ways to minimise the social, economic and developmental consequences of the prevalence of HIV and AIDS in the workplace to the PGWC and its staff.
- 1.5 Acknowledge that employees living with HIV and AIDS have a right to equality, dignity and privacy.
- 1.6 Recognise that women are particularly vulnerable to infection due to economic and gender imbalances and due to certain cultural practices.

2. DEFINITIONS

In this policy, any expression shall have the meaning assigned to it in either the Public Service Act of 1994 or the Public Service Regulations (*as amended*) and, unless the context otherwise indicates –

- 2.1 “**AIDS**” means the Acquired Immune Deficiency Syndrome, which refers to the final phase of HIV infection.
- 2.2 “**HIV**” means the Human Immunodeficiency Virus.
- 2.3 “**STI's**” means Sexually Transmitted Infections.
- 2.4 “**HIV testing**” means subjecting a person to a test to determine her/his HIV status. At present this normally takes the form of an antibody test (Rapid Screen Device).

- 2.5 **“Informed consent”** means a process of obtaining consent from a patient that ensures that the person fully understands the nature and consequences of the test before his/her agreement.
- 2.6 **“Pre and post test counselling”** means a process of counselling which facilitates an understanding of the nature and purpose of the HIV test. It examines what advantages and disadvantages the test holds for the person and the result, positive or negative, will have on them. This counselling must be conducted in person.
- 2.7 **“Prevalence assessment”** includes various methods to assess knowledge, attitude and extent of HIV prevalence (e.g. questionnaires, verbal interviews etc.).
- 2.8 **“Unfair discrimination”** means direct or indirect unfair discrimination against anyone on one or more grounds in terms of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) and the Employment Equity Act, No. 55 of 1998. In the context of this policy, unfair discrimination may occur when an employee is treated differently due to their real or perceived HIV positive status in a way which impairs that employee’s fundamental human dignity. Discrimination is not unfair if it is based on the inherent requirements of the job.
- 2.9 **“Voluntary Counselling and Testing (VCT)”** means a programme, which provides facilities for employees to be tested for the Human Immunodeficiency Virus. Generally, this is combined with a programme, which encourages them to undergo testing and counselling voluntarily. This is founded on the belief that people need to know their HIV and AIDS status in order to protect themselves and others from infection but also to obtain the proper care for themselves.

3. POLICY STATEMENT

The Departments of the PGWC affirm that:

- 3.1 All employees have the right to be treated with dignity and respect.
- 3.2 All employees have the right to a safe and supportive working environment.
- 3.3 Employees living with HIV and AIDS have the same rights and obligations as all other employees with regard to employment policies and practices.
- 3.4 Employees living with HIV and AIDS shall not be unfairly discriminated against on the basis of their HIV status or their AIDS condition and shall be protected against such discrimination.
- 3.5 Employees living with HIV and AIDS shall not be dismissed on the grounds that they are infected with the HIV.
- 3.6 Confidentiality regarding the HIV and AIDS status of any employee shall be maintained at all times.

4. LEGAL & REGULATORY FRAMEWORK

The development of this policy arises from the rights and obligations imposed by the following statutory and regulatory framework:

- 4.1 The Constitution of the Republic of South Africa, 1996.
- 4.2 Employment Equity Act, 1998.
- 4.3 Labour Relations Act, 1995.
- 4.4 Occupational Health and Safety Act, 1993.
- 4.5 Compensation for Occupational Injuries and Diseases Act, 1993.
- 4.6 Basic Conditions of Employment Act, 1997.
- 4.7 Medical Schemes Act, 1998.
- 4.8 Promotion of Access to Information Act, No: 2 of 2000.
- 4.9 Regulations on Hazardous Biological Agents.
- 4.10 National Policy on Testing for HIV, Gazette 20710.
- 4.11 Promotion of Equality and Prevention of Unfair Discrimination Act, No: 4 of 2000.
- 4.12 Promotion of Administrative Justice Act, No: 3 of 2000.
- 4.13 PSCBC Resolution 8/2001: Policy on HIV and AIDS.
- 4.14 Public Service Act of 1994 *as amended*.
- 4.15 Public Service Regulations *as amended*.
- 4.16 Code of Good Practice on HIV and AIDS.
- 4.17 The Public Service Disciplinary Code & Procedures.
- 4.18 The Policy and Procedure on Incapacity.

5. SCOPE OF APPLICATION

This policy applies to all employees employed by the Departments of the PGWC including those employed on fixed-term contracts.

6. PROHIBITION ON DISCRIMINATION

- 6.1 The Departments take their obligations as an employer, seriously to promote the equal treatment of all their staff.
- 6.2 The Departments also take their obligation as an employer, seriously to prohibit and take action against unfair discrimination.
- 6.3 These obligations include all employment practices and extend to all employment policies, including but not limited to:
 - 6.3.1 recruitment procedures, advertising and selection criteria.
 - 6.3.2 appointments, and the appointment process, including job placement.
 - 6.3.3 job classification or grading.

- 6.3.4 remuneration, employment benefits and terms and conditions of employment.
 - 6.3.5 employee assistance programmes.
 - 6.3.6 job assignments.
 - 6.3.7 training and development.
 - 6.3.8 performance evaluation systems.
 - 6.3.9 promotion, transfer and demotion.
 - 6.3.10 termination of services.
 - 6.3.11 Incapacity on ill health management.
- 6.4 Employees living with HIV and AIDS have the same rights and obligations as all other employees with regard to employment policies and practices.
 - 6.5 The employee's right to confidentiality regarding her/his HIV status should be maintained during proceedings i.e. grievances and disputes, etc.
 - 6.6 HIV and AIDS status shall not constitute a reason to preclude any person from employment and the disclosure of HIV status shall not be used to discriminate unfairly against an employee on any grounds.
 - 6.7 Employees living with HIV positive status shall not be dismissed on the grounds that they are HIV positive.
 - 6.8 Employees who are no longer able to meet the performance and attendance requirements are to be dealt with in terms of the PSCBC Collective Agreement on incapacity.
 - 6.9 No employee may refuse to work with a person living with HIV, nor will the fact that a colleague is living with HIV be accepted as a valid excuse for non-compliance with work requirements or other reasonable instructions.
 - 6.10 The Departments of the PGWC seeks to actively eliminate the social stigma of, and discrimination against employees who openly declare their HIV status.

7. TESTING

- 7.1 The Employment Equity Act prohibits the testing of an employee for any purpose except where the Labour Court has authorised it.
- 7.2 Where HIV testing is permitted, by an order of the Labour Court or in terms of the Employment Equity Act, it should take place under the following conditions:
 - 7.2.1 At the request of the employee.
 - 7.2.2 Within a health-care worker patient relationship.
 - 7.2.3 With the voluntary and informed consent of the employee.
 - 7.2.4 With both pre- and post-test counseling.
 - 7.2.5 With confidentiality ensured.
- 7.3 Anonymous and unlinked testing, including verbal questionnaires and other methods used to determine someone's HIV status.
- 7.4 Departments should promote and facilitate access to Voluntary Counseling and Testing (VCT), which includes pre-test and post-test counseling, for all employees.

8. COUNSELLING

- 8.1 Any employee, who decides to be tested for HIV for whatever reason, shall receive adequate pre-and post-test counselling conducted by a suitably trained HIV and AIDS counsellor. Any testing can only proceed where the employee has given his/her informed consent.
- 8.2 Follow up counselling should (ideally) be done through the Employee Assistance Program (EAP) by a suitably trained HIV counselor.
- 8.3 Counselling for both infected and affected employees will be done at the expense of the Department, within available resources.

9. CONFIDENTIALITY

- 9.1 All Departments shall respect the confidentiality regarding the HIV and AIDS status of any of its employees at all times.
- 9.2 All employees, including those living with HIV and AIDS, have a right to equality, dignity and privacy.
- 9.3 The Departments have an obligation to ensure that the working environment is safe for all their employees. Where employees living with HIV and AIDS work under conditions that could be hazardous to their sustained health, they are encouraged to reveal their status to the employer in order to minimise the risk to their health.
- 9.4 Should an employee voluntarily divulge his/her HIV-positive status to Management, it cannot be used against them nor can s/he be prejudiced.
- 9.5 Where an employee chooses to voluntarily disclose his/her HIV status to the employer or to another employee, this information may not be disclosed to another without their expressed written consent. Where written consent is not possible, steps must be taken to confirm that the employee wishes to disclose his/her status.
- 9.6 Mechanisms should be created to encourage openness, acceptance and support for those employers and employees, who voluntarily disclose their HIV status within the workplace, including:
 - 9.6.1 encouraging persons openly living with HIV and AIDS to conduct or participate in education, prevention and awareness programmes;
 - 9.6.2 encouraging the development of support groups for employees living with HIV and AIDS; and
 - 9.6.3 ensuring that persons who are open about their HIV or AIDS status are not unfairly discriminated against or stigmatised.

10. SAFE AND HEALTHY WORKING ENVIRONMENT

- 10.1 The Departments reconfirm their obligation to provide a safe and healthy working environment for their employees.
- 10.2 All workplaces must ensure that they are equipped with proper universal precautions (*infection control equipment and emergency resources like First Aid Kits*) that can be used in cases where there are accidents that can lead to infection.
- 10.3 Workplace health and safety committees should receive training on the impact of HIV and AIDS on workplace safety requirements.
- 10.4 All Departmental employees and in particular Health Care Workers and those employed within laboratories shall be provided with a protocol with regards to work place injuries.
- 10.5 All employees who have been exposed to blood or body fluids or who have been at risk of occupational infection must report the incident immediately to their supervisor. A base-line HIV test will need to be conducted in order to be eligible to claim for compensation in respect of the occupational injury sustained.
- 10.6 In the case of occupational exposure where there is potential for infection, the employee may be referred to the closest health-care facility for post-exposure prophylaxis treatment – preferably within 4 hours of the incident.

11. EMPLOYEE BENEFITS

- 11.1 Employees with HIV and AIDS may not be unfairly discriminated against in the allocation of employment benefits.
- 11.2 Employees who become ill with HIV and AIDS should be treated like any other employee with a comparable life threatening illness with regard to access to employee benefits.
- 11.3 Information relating to the medical status of an employee should be kept confidential and should not be used to unfairly discriminate against an employee in the provision of benefits.

12. ESTABLISHMENT OF HIV AND AIDS WORKPLACE PROGRAMMES FOR PROVINCIAL DEPARTMENTS

- 12.1 The PGWC will implement a transversal provincial framework HIV and AIDS/STI's workplace programme.
- 12.2 Each Department will be responsible for implementing a workplace HIV and AIDS/STI programme in line with the provincial programme and tailor-made for the conditions specific to each Department.

- 12.3 Each workplace programme will promote the fundamental rights of HIV positive employees as well as deal with the practical challenges of managing HIV in the workplace.
- 12.4 Each programme will include, but not be limited to:
- 12.4.1 activities geared to preventing and reducing new infections;
- 12.4.2 activities aimed at care, treatment and support of affected and infected by HIV;
- 12.4.3 activities aimed at actively promoting non-discrimination; and
- 12.4.5 activities that address the vulnerability of women particularly to the virus and syndrome.
- 12.5 The workplace programme(s) will be guided by an inter-departmental approach in its implementation.
- 12.6 HIV and AIDS programmes will take place during working hours as far as possible and employees will be encouraged to attend such programmes, subject to the operational requirements of institutions.

13. RESPONSIBILITIES

- 13.1 The Head of the Provincial Department of Health will appoint a Provincial HIV/AIDS Co-ordinator, who will be an SMS member, to chair PEAP.
- 13.2 The PEAP shall establish partnerships with other stakeholders in order to co-ordinate and combine efforts in addressing all issues around HIV and AIDS.
- 13.3 The PEAP shall consist of:**
- 13.3.1 The Provincial HIV/AIDS Co-ordinator, who will chair PEAP;
- 13.3.2 One representative from each Provincial Department, who will be an SMS member;
- 13.3.3 An SMS member from the Directorate: Labour Relations, Corporate Services, PAWC to assist with implementing the strategic direction.
- 13.3.4 Any other role-players who may be co-opted onto PEAP to provide specific expertise, capacity and insight.
- 13.4 The operation of PEAP will be determined by the Chair in consultation with the rest of the committee. The roles of the committee members will include but not be limited to:
- 13.4.1 **Chair:**
- * the overall responsibility for managing the process of formulating and implementing the provincial policy and programme;
 - * formulate the long-term vision and strategic direction of the provincial policy and programme;
 - * report regularly to the director-general, the appropriate collective bargaining structure and the Head of the Department of Health.

- 13.4.2 **Departmental SMS representatives:**
- * overall responsibility for managing the process of implementing the provincial policy and programme within their respective departments;
 - * adjusting the provincial programme to the needs within their respective departments;
 - * report regularly to PEAP on progress in implementing the provincial programme within their respective departments.

- 13.4.3 **SMS Representative of Labour Relations: Corporate Services, Department of the Premier:**
- * assist where necessary with the implementation of the long-term vision and programme of action of the province;
 - * serve as a liaison between PEAP and the appropriate collective bargaining structures.

- 13.4.4 **Other roleplayers:**
- * specific insight, expertise or capacity.

13.5 **The Role and Responsibilities of PEAP:**

Draft a transversal provincial workplace programme of action.

Co-ordinate and facilitate the implementation of the provincial policy and plan at departmental level.

Ensure that the provincial policy is implemented.

Monitor and review the implementation of the provincial HIV and AIDS/STT policy and programme. The Task Team will report regularly to the Provincial Co-ordinator.

Recommend changes to the provincial policy and programme as required.

13.6 **Role and Responsibilities for PEAP co-ordinator within each Department:**

13.6.1 To adapt the provincial plan to the needs present in the department.

13.6.2 Implement the provincial workplace plan within his/her department.

13.6.3 Set up a departmental structure or structures to ensure the roll-out of the workplace plan.

13.6.4 Liaise with other Provincial Departments including their support structures such as Employee Assistance Programmes (EAP), Occupational Health and Safety Staff v Health Staff on the contents of HIV and AIDS programmes.

13.6.5 Report regularly on the progress in implementation.

13.7 **Role and Responsibilities of Departmental HIV Task Teams:**

1.3.7.1 The Departmental Task Team on HIV and AIDS shall consist of all stakeholders within the Department (including trade unions, management).

1.3.7.2 Adapt the Provincial HIV and AIDS programme and annual business plan to the specific needs of their Department.

- 1.3.7.3 Administer the HIV and AIDS programme within the Department.
- 1.3.7.4 Provide the necessary educational material and programmes for Provincial Departments.
- 1.3.7.5 Prepare a procedure manual, with associated contact numbers, to implement the policy.
- 1.3.7.6 Communicate the policy to all employees.
- 1.3.7.7 Monitor, evaluate and report on compliance with the HIV and AIDS policy and programmes within the Department.
- 1.3.7.8 Advise management regarding programme implementation and progress.
- 1.3.7.9 Facilitate the provision of information on risk reduction within Provincial Departments.
- 1.3.7.10 Liaise with local AIDS service organisations and other stakeholders and specialists for the provisioning of education, counselling, support services and treatment.
- 1.3.7.11 Create an environment and mechanisms that will promote openness, disclosure and acceptance between staff.

14. RESOURCES

- 14.1 Each Department must allocate a budget within the framework of its annual strategic plan as per National and Provincial prescripts.
- 14.2 In allocating resources, every Department should, inter alia, consider the following:
 - 14.2.1 Absenteeism.
 - 14.2.2 Training.
 - 14.2.3 Special events.
 - 14.2.4 Employee wellness.
 - 14.2.5 Other indirect costs related to HIV and AIDS.

15. GENERAL RESPONSIBILITIES

15.1 Responsibilities of Departments

- 15.1.1 All Departments are responsible for the implementation of this policy.

15.2 Responsibilities of Line managers

- 15.2.1 All managers are responsible for the implementation of this policy, ensuring compliance with and knowledge of its terms and for taking immediate and appropriate corrective action where warranted.
- 15.2.2 If employees living with HIV and AIDS express a need for counselling, managers are responsible for the referral of such employees to professional counselling services.

- 15.2.3 Employees who are no longer able to meet the performance and attendance requirements are to be dealt with in terms of the PSCBC collective agreement on incapacity.

15.3 *Responsibilities of all employees*

- 15.3.1 All employees are responsible for protecting themselves from HIV infection, taking care of their health, educating themselves about HIV and AIDS and taking part in HIV and AIDS programmes within the working environment.
- 15.3.2 Employees living with HIV and AIDS are encouraged to reveal their status to the employer in order to minimise the risk to their health and to help the employer comply with its legal or operational obligations.

16. GRIEVANCES AND DISPUTES

- 16.1 Employees living with HIV and AIDS who are aggrieved for any reason whatsoever, shall have recourse to the prescribed Grievance Rules, Collective Agreements and any other right they have by law.
- 16.2 Any employee may follow the Grievance Procedure, where she/he feels aggrieved that her/his HIV positive status has been revealed to colleagues without her/his written consent.

17. DISCIPLINE AND DISMISSAL

- 17.1 Any disciplinary action, including action resulting in the dismissal of an employee, must take place in terms of the Disciplinary Code and Procedures.
- 17.2 It is a disciplinary offence for anyone to reveal the HIV and AIDS status of another employee without her/his written consent.
- 17.3 Similarly, any discrimination against someone on the basis of their HIV or AIDS status or alleged status is a disciplinary offence.

18. DEALING WITH INCAPACITY

- 18.1 Where an employee living with HIV or AIDS becomes too ill to perform his/her assigned duties, the case will be dealt with according to the Policy and Procedure on Incapacity.
- 18.2 Wherever possible, the Departments will strive to modify or adjust the employee's job or workplace in ways that are reasonable and practicable to enable an employee living with HIV and/or AIDS to participate and advance in employment for as long as possible.

19. REGULAR REVIEW

19.1 This policy will be reviewed regularly and adapted to changed circumstances.

20. MONITORING, EVALUATION AND REPORTING

20.1 The HIV and AIDS Programme co-ordinator and Working Group (PEAP Committee) must monitor the implementation of this policy and evaluate the policy with due regard to changing circumstances/knowledge around this epidemic.

20.2 The HIV and AIDS Programme co-ordinator and Working Group (PEAP Committee) must submit an annual report in this regard to the Top Management.

This done and signed at _____ on this the _____ day of _____ 200 .

On behalf of the employer

EMPLOYER	NAME	SIGNATURE
Departments of the PGWC		

On behalf of trade union parties

TRADE UNION	NAME	SIGNATURE
DENOSA		
HOSPERSA		
NEHAWU		
NUPSAW		
PAWUSA		
PSA		