

HIV/AIDS and the South African Media Workplace policies and programmes



CADRE

CENTRE FOR AIDS DEVELOPMENT,
RESEARCH AND EVALUATION

HIV/AIDS and the South African Media

Workplace policies and programmes

Compiled by

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The Centre for AIDS Development, Research and Evaluation (Cadre) is a South African non-profit organisation with offices in Johannesburg, Grahamstown and Cape Town, South Africa. Contact details as well as other reports relating to HIV/AIDS and the media are available on our website at www.cadre.org.za.

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SECTION ONE: INTRODUCTION AND METHODOLOGY

Background

The Centre for AIDS Development, Research and Evaluation (Cadre) is a non-governmental organisation committed to fast-tracking response to the HIV/AIDS epidemic through the development of key strategic insights that are grounded in research. Although Cadre was established in 2001, Cadre staff have been involved in social and communications development activities and research in relation to HIV/AIDS over the past decade. This interest and experience was built into the establishment of a Media Advocacy Project which has been developed in partnership with the Center for Communications Programs at Johns Hopkins University and is funded by USAID.

The project includes:

- ❑ A bibliography of literature focusing on HIV/AIDS and the Media
- ❑ A literature review on HIV/AIDS and the Media
- ❑ An analysis of HIV/AIDS workplace policies in media institutions (this report)
- ❑ An analysis of media institution's HIV/AIDS editorial policies and practices
- ❑ An analysis of HIV/AIDS news reporting in national and regional newspapers
- ❑ The development of a network of journalists involved in HIV/AIDS reporting
- ❑ Collaborative work with journalism and media studies departments at South African tertiary institutions.

A parallel aspect of the project is work in the field of entertainment education including the development of a 26-part youth drama series for SABC television, and the establishment of post-graduate courses in entertainment education in collaboration with the Centre for Cultural and Media Studies at the University of Natal (Durban).

Introduction

This exploratory study has been designed to provide preliminary data regarding whether and to what extent South African media institutions have responded to the need to develop corporate policies and strategies to delimit the impact of HIV/AIDS and to protect the rights of employees with HIV/AIDS.

An evaluation of media workplace policies and programmes is long overdue. This report explores the extent to which media institutions have thus far developed a proactive response to managing the epidemic through the introduction of workplace policies and programmes, and the extent to which these contribute to prevention as well as to upholding the rights of employees in relation to HIV/AIDS. It also sets out to ascertain whether HIV/AIDS is recognised by management as a threat to business which impacts directly on productivity, costs and markets.

The research findings are supplemented by a set of basic recommendations and guidelines, resource documents and sample policies for the promotion of appropriate policies and practice within media formations.

Specific study aims and objectives

The study's aims and objectives are to ascertain whether media institutions have:

- ❑ Conducted AIDS impact assessments to establish the direct and indirect costs of AIDS in the workplace and developed long and short-term strategies to manage and reduce this impact.
- ❑ Developed and/or implemented comprehensive AIDS workplace policies to ensure prevention of HIV infection among employees. This is seen to include the provision of education and condoms, as well as the promotion of sexually transmitted disease (STD) treatment and voluntary counselling and testing (VCT) for HIV/AIDS.
- ❑ Developed and implemented equitable and comprehensive AIDS workplace policies to ensure confidentiality, non-discrimination and the appropriate treatment and support for people with HIV/AIDS in the workforce.

Additional objectives of the research include establishing media institutions' views regarding:

- ❑ whether policy implementation has thus far been effective in eliminating unfair discrimination in the workplace, facilitating appropriate prevention goals, and supporting HIV positive workers to continue working productively for as long as possible.
- ❑ barriers to implementation and requirements for facilitating more effective implementation of workplace policy and programmes in the future.

The economic impact of HIV/AIDS in the workplace

The HIV/AIDS epidemic primarily affects working-age adults and far exceeds any other threat to the health and well-being of South African employees.^{1,2} Although many studies have been conducted within the private sector, literature available in the public domain documenting the impact of HIV/AIDS on South African firms is scarce and uneven. Two studies have attained prominence within this body of literature: the ING Barings Report on the economic impact of AIDS in South Africa and Bollinger and Stover's report on the economic impact of AIDS.³ This research indicates that AIDS-related illness and death of employees both increases expenditure and reduces revenue in South African firms.

Economic impacts listed in terms of effects on operating profits include:

- ❑ Increased expenditure for health care, burial fees, and for the training and recruitment of replacement employees.
- ❑ Decrease of revenue because of absenteeism due to illness of employees and/or their family members, attendance at funerals and time spent on training.
- ❑ Turnover of employees leading to a less experienced and less productive workforce (loss of skills and tacit knowledge).
- ❑ Declining morale and in consequence, lowered productivity.
- ❑ Increased demands for benefits and the rising costs of employee benefits in South Africa, unless they are restructured, will reduce operating profits.

While the exact financial costs of HIV/AIDS are open to debate, what is certain is that comprehensive workplace programmes and appropriate HIV/AIDS policies can be established for a fraction of the costs that will be incurred because of AIDS-related sickness and death.⁴

The costs associated with the impact of HIV/AIDS can usefully be divided into direct and indirect costs, where direct costs relate specifically to employee benefits

and indirect costs include costs which are both less apparent and less easily measured.

HIV is already resulting in the rising direct costs of employee benefits in South Africa. The cost of an average set of risk benefits is expected to double over the next five to ten years, unless they are restructured.^{5,6} A study conducted in South Africa in 1997 examined the expected impact of AIDS on employee benefits, and thus on corporate profits. It found that at the levels of benefits per employee at that time, the total costs of benefits would rise from 7% of salaries in 1995 to 19% by 2005.⁷

The insurance industry is currently converting from defined benefit arrangements for death and disability to a defined contribution arrangement which shifts the risk from the employer to the employee. Standard terms for group life cover have decreased from five to three times annual salary.⁸ Employers are nonetheless facing sharply increasing costs in group employee benefit provision. There is little doubt that benefits will be substantially restructured in the coming years. In contrast to insurance cover and pensions, however, it is important to note that medical aid benefits are not just a cost but also an investment; preventing or limiting sickness and absenteeism and minimising employee turnover.

The most significant costs for most companies are likely to be indirect costs which, unlike employee benefits, cannot be controlled. Such indirect costs include training and recruitment costs. They also include absenteeism, loss of skills and tacit knowledge, organisational disruption, and declining morale – all of which result in lower productivity.

These costs are highest for highly skilled workers, including, for example, journalists in the media sector, where instant substitution from a limited labour pool is extremely difficult. It is estimated that by 2010 approximately 15% of highly skilled employees will have contracted HIV.⁹ Whilst estimates vary, and whilst it also needs to be understood that HIV positive employees remain productive for many years, there is little doubt that small and medium size enterprises reliant on skilled people are particularly susceptible to the impact of HIV/AIDS.¹⁰

Another indirect cost of HIV/AIDS is its negative effect on market growth for many goods and services, especially non-essential goods. As HIV impacts on households, expenditure shifts to health care and funeral expenses. In addition, HIV/AIDS affects people within their most economically productive years, resulting in reduced savings and reduced disposable income.¹¹ Alongside fuel prices, AIDS was recently reported to be one of the two most significant factors affecting consumer spending in South Africa.¹²

Declining local markets may be accompanied by decreasing competitiveness in the global economy. Early results of on-going estimates by the World Bank suggest that the macroeconomic impact of HIV/AIDS may reduce the growth of national income by up to a third in countries with prevalence rates of 10%.¹³

In spite of the economic significance of HIV/AIDS impact, it is still generally being dealt with in the Human Resources (HR) departments of most companies, where HR managers are given the responsibility but not necessarily the authority to deal with the multitude of issues requiring action. It seems therefore, that HIV/AIDS is understood by many companies as a health problem rather than as a bottom-line profitability concern.¹⁴

It is partly because the impact of the HIV epidemic is slow and gradual that companies fail to take it into proper account as a threat to their profitability. But, by the time it impacts, the problem may be so advanced and so severe that there is little opportunity to prevent its effect and damage control is all that is left.¹⁵

HIV/AIDS prevention in the workplace

It is generally acknowledged that well-structured HIV/AIDS workplace programmes are cost-effective. These can be set up at a fraction of the current, rising cost of HIV/AIDS to any business. An AIDSCAP study in Kenya found that workplace prevention programmes (US\$15-50 per employee annually) usually cost half of the cost of HIV/AIDS to the company, which amounted to US\$45 per employee in 1994.¹⁶ But successful prevention programmes in the workplace across all sectors, are few and far between.¹⁷

According to UNAIDS,¹⁸ the recommended components of any workplace HIV/AIDS prevention programme are:

- An equitable set of policies that are communicated to all staff and properly implemented.
- Ongoing educational programmes on HIV/AIDS for all staff;
- Availability of condoms.
- Diagnosis and treatment of sexually transmitted diseases for employees and partners.
- Voluntary HIV/AIDS testing, counselling, care and support for employees and families.

Employee rights and benefits

In South Africa, workers who have HIV/AIDS are protected by law from discrimination on the basis of their HIV positive status. This is largely because it has been recognised that discrimination against HIV positive individuals retards preventative efforts and exacerbates the epidemic. Unfortunately, this legal framework, in many respects one of the most protective legal frameworks for people with HIV/AIDS of any country in the world, has not been matched with effective public education about non-discrimination and human rights regarding HIV. Those who know their legal rights are often unwilling to challenge unfair discrimination, as this would entail disclosing their HIV status. As a result, discrimination continues to circumvent the law.¹⁹

The legal framework protecting HIV positive employees from discrimination

- The Constitution gives all employees the right to fair labour practices and entitles everyone to equality and freedom from discrimination.
- The Employment Equity Act (No 55 of 1998) states that discrimination against job applicants or employees on the basis of HIV status is illegal and that testing of employees or prospective employees is illegal unless permission is granted by the Labour Court.
- The Labour Relations Act (LRA, No 66 of 1995) prohibits unfair discrimination in promoting, demoting, providing training opportunities and benefits and protects employees against arbitrary dismissals. The Act states that although a person can be dismissed when no longer able to work, fair procedures must be followed as set out in Schedule 8 of the LRA. The LRA provides the broad legal and human rights framework to which all company policy must conform and protects employees from being discriminated against or dismissed on the grounds of their HIV status.
- The Basic Conditions of Employment Act (75 of 1997) sets out, among other things, maximum working hours and the minimum number of days sick leave employees are entitled to.
- The Occupational Health and Safety Act (85 of 1993) requires employers to create a safe working environment. With regard to HIV/AIDS, this can be

interpreted to mean that employers must ensure that universal precautions are used when responding to accidents and that the necessary equipment to protect staff from possible HIV infection is available.

- ❑ The Compensation for Occupational Injuries and Diseases Act (130 of 1993) provides compensation for employees injured in the course and scope of their employment.

The right to confidentiality

Every employee has a common law right to privacy. This means that employees do not have to inform their employers of their HIV status and that health care workers cannot reveal an employee's HIV status to their employer without the person's consent.

Protection of people with disabilities

People living with HIV are also protected by the constitution and the LRA from unfair discrimination in so far as 'disability' is interpreted as including people with HIV/AIDS.

Workplace policy models

The Code of Good Practice on HIV and AIDS and Employment

A *Code of Good Practice on HIV and AIDS and Employment* has been developed by the Minister of Labour and the Employment Equity Commission.²⁰ This is based on the code of practice developed by the Southern African Development Community (see Appendix 2).

Although the labour department's code is not legally binding, it has been ratified by the National Economic Development and Labour Council (Nedlac). While this is a step in the right direction, it has been argued that many companies will not implement the code unless a legal framework enforces compliance. It has been suggested that tax incentives would help ensure compliance in a context where as few as 6% of companies, mostly comprising major corporations, have as yet implemented the code.²¹

In line with legislation preventing discrimination, the Code of Good Practice on HIV/AIDS and Employment specifies with regard to employee benefits that:

- ❑ all employees have the right to standard and equal benefits regardless of HIV status;
- ❑ information from benefit schemes about the HIV status of workers is confidential;
- ❑ counselling should be available to inform all employees of their rights and benefits from medical aid, pension and social security funds.

The Treatment Action Campaign has argued for the additional inclusion of specific provisions for the adequate medical management of workers living with HIV. These provisions include:

- ❑ voluntary counselling and testing for HIV;
- ❑ mother/parent-to-child transmission prevention;
- ❑ prevention and treatment of opportunistic infections;
- ❑ provision of highly active antiretroviral therapy; and
- ❑ the establishment of new or supplementary funds for the provision of such programmes.

The Congress of South African Trade Unions (Cosatu), submitted a discussion document on the Code of Good Practice to Nedlac on 9 June 2000 which describes the code as a sound one supported by Cosatu.²² However, some concerns are also raised by Cosatu. These include:

- ❑ **The enforceability of the Code:** There is an absence of reporting and inspection requirements in the code to ensure compliance. It is suggested that the second annual report from employers should state steps taken to comply with the Code.
- ❑ **HIV testing:** Section 6.1.3. on HIV testing should be deleted from the Code as it goes beyond the provisions of the Employment Equity Act. Alternatively, the grounds under which HIV testing is 'permissible' should be clearly defined.
- ❑ **Employee benefits:** Section 9.3 suggests that employers would have access to information from benefit schemes. Cosatu argues that schemes should be prohibited from disclosing the medical status of employees to employers.
- ❑ **Definition of medical fitness:** The code fails to provide a clear definition of medical fitness or provide for the evaluation of medical fitness to be conducted by a medical professional.

Cosatu has developed its own draft policy and full guidelines for shopstewards dealing with HIV/AIDS in the workplace. These are currently under review (see Appendix 3).²³

The National Department of Health has also developed guidelines for developing a workplace policy and programme on HIV/AIDS and STDs.²⁴ The department's guidelines describe the necessary elements of a successful programme for dealing with HIV/AIDS in the workplace. It can be used to provide minimum standards and to evaluate programmes. The guidelines emphasise many useful aspects of the policy and programme development process. These include:

- ❑ Electing a representative HIV/AIDS and STDs committee with representation from all levels of the organisation, including top management and shop stewards;
- ❑ Performing a needs analysis upon which to base the policy. Important factors in determining the needs of the organisation are:
 - the number of employees;
 - the health, information and educational facilities already available and the extent to which they are being used;
 - the attitudes of employees and employers to HIV/AIDS and commitment to managing the impact of AIDS.
- ❑ Drafting, discussing, revising and adopting a policy that is explained to and accepted by management, unions and employee organisations.
- ❑ Developing and implementing a programme which is fully costed and has clear responsibilities and time lines.
- ❑ Monitoring and evaluating the programme; reviewing and revising the policy.

Profile of South African media sector

The communications environment in South Africa is relatively well-resourced. Of the four national television stations, three fall under the South African Broadcasting Corporation (SABC) and one is privately owned. These are supplemented by subscription-based stations. There are a large number of radio stations covering all South African languages. While many of these are Public Service radio stations owned by the SABC, there is a vibrant sector of both private and community stations across the country. Newspapers and magazines (print media) also offer considerable potential for communications regarding HIV/AIDS. Only the largest media organisations have permanent workforces which comprise

unskilled, and semi-skilled, as opposed to skilled labour (for example, printers, cleaners, security staff), whilst smaller media companies tend to outsource these functions. In this regard, the media sector differs from other industries such as manufacturing and mining, in so far as it consists predominantly of highly skilled employees. While this has the advantage of absolving the sector from direct responsibility for providing employee benefits to semi-skilled and unskilled labour, it also means that the media sector consists predominantly of employees who are not easily replaced.

Research methodology

The South African media sector is large and diverse and a quantitative survey approach would provide basic information on proportions of organisations with workplace policies and interventions. However, a quantitative study would not readily provide a clear understanding of the nature and extent of such policies and interventions. An alternative approach that allows for greater depth of understanding involves selective sampling of companies and application of qualitative research methods, and this has been adopted in this study.

Whilst the group of companies under review is not a representative sample of the media sector, and whilst trends identified within this group cannot be generalised to the media industry as a whole, this study methodology does provide sufficient insight into current approaches and allows for the identification and description of key areas of intervention. Individual companies will need to assess the applicability of emerging recommendations to their own specific circumstances.

The group of 11 media companies under review included as wide an array as possible. This included print, radio and TV companies and corporations. While all of the major media corporations in South Africa with large numbers of employees are included, an attempt was also made to access smaller media companies with as few as 29 full-time employees. The size of companies under consideration therefore varies from those with as many as 3 500 to as few as 29 full-time employees.

In-depth qualitative interviews were conducted with 11 human resource (HR) managers. In those smaller companies which did not have HR managers, interviews were conducted with financial managers instead. A semi-structured interview schedule, covering a wide range of topics, was used (see Appendix 1 for interview schedule.) Interviews were confidential and individuals have not been identified by name, nor are companies linked to respondent comments. However, a list of the companies who participated in the study is provided on the following page.

In addition, face-to-face or telephonic interviews were conducted with eight key informants. This included HIV/AIDS consultants and educators with experience in the media sector, as well as informants from relevant trade union groups.

Table 1: Media companies reviewed

Company	No of full-time personnel	Type of media
MNET	295	Television
ETV	250	Television
SABC	2 400	Television
Independent Newspapers (Cape)	850	Print
Johnnic (BDFM)	800	Print
Sowetan	240	Print
Mail and Guardian	75	Print
Media 24 (Naspers)	3 500	Print
Primedia	160	Radio
YFM	45	Radio
P4 radio	29	Radio

Table 2: Key informants interviewed

Name	Organisation
Tuani Gumani	Media workers union
Motsomi Mokhime	SA Union of Journalists (SAUJ)
Marion Stevens	Centre for Health Policy HIV/AIDS Programme
Francis Hartley	COSATU HIV/AIDS Co-ordinator, Western Cape
Mark Dekker	Dekker and Associates
Stephen Kramer	Metropolitan Life
Malcolm Steinberg	Abt Associates
Martin Jansen	Labour Resources Service

Notes

- 1 National HIV infection rates among women at South African public sector ante-natal clinics were reported to be 24.5% by the National Department of Health in October 2000. Projections extrapolated from this survey suggest that 4.7 million South Africans are HIV infected. Estimates based on the Metropolitan-Doyle model put current HIV infection rates in the South African workforce at 11.5%. While extrapolations off the ante-natal survey are extremely difficult, and the Metropolitan-Doyle model is constantly being refined, most experts agree that this figure of 11.5% HIV infection in the workforce is in all likelihood a conservative one. The ILO estimates that an average of 15 years of working life will be lost per employee due to AIDS.
- 2 Gresack, G. (2000) *HIV/AIDS in your workplace: From Ostriches to Proteas*. In: Everybody's Business [Ed's] Elizabeth Clarke and Katheryn Strachan, Metropolitan Employee Benefits, Metropolitan Group Cape Town.
- 3 Rosen, S., Vincent, JR., Simon, JL., Singh, G. and Thea, DM. (2000) *A model for assessing the costs of workforce HIV/AIDS*, p2, Harvard Institute for International Development, Harvard University, MA.
- 4 UNAIDS (1998) *Putting HIV/AIDS on the business agenda*, UNAIDS Best Practice Collection, UNAIDS, Geneva
- 5 Moore, D. (2000) *AIDS and Employee Benefits*. In: Everybody's Business [Ed's] Elizabeth Clarke and Katheryn Strachan. Metropolitan Employee Benefits, Metropolitan Group, Cape Town
- 6 Lovelife (2000) *The Impending Catastrophe: A resource book on the emerging HIV/AIDS epidemic in South Africa*, loveLife, Johannesburg
- 7 Southern African Economist (1997) *AIDS toll on regional economies*, April-May
- 8 von Widdern, V. (2001) *Guardrisk Life*, Cape Town
- 9 Lovelife (2000) *The Impending Catastrophe: A resource book on the emerging HIV/AIDS epidemic in South Africa*, loveLife, Johannesburg
- 10 UNAIDS (2000) *The Business Response to HIV/AIDS. Impact and lessons learned*, UNAIDS, Geneva
- 11 UNAIDS (2000) *The Business Response to HIV/AIDS. Impact and lessons learned*, UNAIDS, Geneva
- 12 du Plessis, R. (2001) quoted in Citizen, Newscheck, 12 June
- 13 UNAIDS (2000) *The Business Response to HIV/AIDS. Impact and lessons learned*, UNAIDS, Geneva
- 14 UNAIDS (1998) *Putting HIV/AIDS on the business agenda, UNAIDS Point of View*, UNAIDS, Geneva
- 15 Evian, Clive (2000) *AIDS in The Workplace*. In: Everybody's Business, Clarke, E. and Strachan, K. (eds) Metropolitan Employee Benefits, Metropolitan Group, Cape Town
- 16 Roberts, Matthew (2000) *The Impact of HIV/AIDS on Business in Africa*. In: Everybody's Business, Clarke, E. and Strachan, K. (eds) Metropolitan Employee Benefits, Metropolitan Group, Cape Town
- 17 Evian, Clive (2000) *AIDS in The Workplace*. In: Everybody's Business, Clarke, E. and Strachan, K. (eds) Metropolitan Employee Benefits, Metropolitan Group, Cape Town
- 18 UNAIDS (1998) *HIV/AIDS and the workplace: forging innovative business responses*, UNAIDS Technical Update, Geneva
- 19 Andrea Meeson (2000) *The Silence is Deafening*, SA Labour Bulletin Vol 243(4), Aug 2000.
- 20 Government Gazette, Vol 426, No 6942, <http://www.labour.gov.za/docs/aids/>
- 21 Inggs, M. (2001) *Call for Business to fork out in AIDS Fight*, Sunday Argus Business Report, 10 June
- 22 COSATU (2000) Submission on the Code of Good Practice on HIV/AIDS, June 2000, Johannesburg
- 23 Cf Appendix 3, <http://www.cosatu.org.za/docs/2000/hivbook.htm#8>
- 24 Department of Health (1998) *Guidelines for Developing a workplace policy and programme on HIV/AIDS and STDs*, Directorate: HIV/AIDS and STDs, Pretoria

SECTION TWO: RESEARCH FINDINGS

The findings presented in this section are drawn from:

1. An analysis of available workplace policies in the media.
2. Findings from qualitative interviews with human resource personnel and financial managers in the media sector.
3. Findings from expert interviews conducted with key informants (workplace programme HIV/AIDS consultants and researchers) working in the field of workplace policies and programmes.

Data from these sources is referenced as follows:

- Available workplace policy – *Policy ...*
- HR and financial managers from the media sector – *Media sector interview ...*
- Expert interviews (HIV/AIDS consultants and researchers) – *Key informant interview ...*

Impact of HIV/AIDS on the media sector

HIV/AIDS impact assessments conducted in the media sector

None of the companies interviewed had as yet conducted impact assessments to ascertain the potential effect of the HIV epidemic on their individual businesses. This was generally attributed to a lack of time or money:

'No, we are so busy broadcasting it [the impact of HIV/AIDS], we haven't looked within.' (Media sector interview 10)

One large company has recently contracted consultants to do an unlinked seroprevalence survey and economic impact assessment. Another has contracted a consultant to provide an initial discussion document in this regard. The document in question states that more people will be infected in the mid income job category than in the lower income group and suggests that a detailed impact assessment is required. As yet, however, this remains to be done.

Some HR managers argued that impact assessments within their specific companies were not required as sufficient information is already available to make an informed assessment of the impact of HIV/AIDS on the workplace:

'We carry impact assessment information every day in our paper so we have a good idea what the costs are. And we know what they are from experience; we've had quite a few deaths ...' (Media sector interview 1).

Another HR manager suggested there was sufficient data regarding HIV prevalence in the general population to know that action on the part of all companies to curtail the impact of HIV/AIDS is urgently required:

'If we extrapolate off the data we know that 10% of the building, or 85 people are HIV positive. There's no reason to think we escape the general [prevalence] figures. And even if it's half that, it's 40 people infected. Anyway, what about the rest, who are all affected, either with friends or family members infected. In the end, it affects us all. So we need to educate and deal with the issue ... because in one way or another it affects us all.' (Media sector interview 6).

HR managers are however, not generally in a position to decide or budget for impact assessment studies:

'HR departments initiate the work but they have no budget and no clout. They are the Cinderella departments of industry.' (Key informant interview 2)

Decisions regarding the allocation of resources lie with senior management who, according to media sector HR managers, in some cases remain to be convinced that the financial impact of AIDS will be significant enough to warrant detailed study:

'Management does not believe that the financial impact will be significant enough for us to budget for it [HIV/AIDS]. I'm not sure how they reached this conclusion. You know, in the corporate world, the bottom-line is money.' (Media sector interview 3)

'There is an attitude that, 'We won't go down because of AIDS''. (Media sector interview 4)

This view is clearly not shared by most HR managers themselves. Only one HR manager argued that his company would not have to carry any major costs resulting from HIV/AIDS:

'We won't be affected by impact on our client-base or major operational inefficiencies or disruption. Obviously, when a person can't work, we would try to help but not past a certain point. So it is the employee who will suffer, and not the company.' (Media sector interview 9)

For the remainder, HR managers believe that their companies will certainly suffer financial losses as a result of HIV infection among employees and should have business strategies in place to actively manage this impact:

'We really need to do an impact assessment in order to plan. We need to prepare for the eventuality of losing key staff and for the financial impact on the company. ...' (Media sector interview 8).

'We know that our business is injured by competition from cell-phones, casinos and the lotto. If we say those things affect us, how can we dream that AIDS won't?' (Media sector interview 4).

Key informants with specific expertise in the area of the financial impact of HIV/AIDS were in agreement that above and beyond the impact of HIV/AIDS on employee benefit costs and labour productivity, the media sector will suffer from an erosion of its market base resultant on HIV/AIDS. All sectors, including the media sector, will suffer from decreased consumption as the entire market diminishes as a result of negative population growth.

It was argued that the media sector could, in fact, suffer greater losses than other sectors. This is predominantly for two reasons. Firstly, the media market is a local rather than an export market, and secondly, media consumption is a 'luxury' rather than a necessity:

'Already a lot of companies are attributing a drop in the market to AIDS. If people have less disposable income, they won't buy newspapers.' (Key informant interview 5)

Key Informants pointed out that if companies failed to act on the financial impact of HIV/AIDS, then this is because it was still largely invisible:

'Most industries don't understand the impact because it's subtle and it happens over time. It's not like a war or a cholera epidemic, it's a slow attrition rate over time.' (Key informant interview 5)

It was argued by one key informant that the media sector was therefore likely to implement workplace programmes from a sense of social responsibility, rather than because they recognise such programmes as an economic necessity:

'The media industry will not be able to continue the audacity of commenting on the world's problems without doing anything. ... And the media industry, surely, can see itself as a champion of this cause. It can only do good for its business.' (Key informant interview 4)

Disclosure of HIV status by media sector employees

Only two employees at two of the eleven companies under review were identified as having publicly disclosed their HIV status.

A few of the companies under review have systems which allow HR departments to know the *number* of HIV infected employees in the workplace who have disclosed to their medical aids and/or employee assistance programmes, without breaching individual confidentiality. However, most companies get no statistics in this regard. In only one instance did an HR manager argue that there were probably no HIV infected workers employed in his company. For the rest, HR managers felt that, regardless of disclosure, they had employees who were already sick, or who had already died, from HIV/AIDS.

Understandings of HIV risk-profile

Most media sector and key informant interviewees were in agreement that media sector employees are at significant risk of HIV infection. The following (subjective) reasons were suggested by interviewees:

- ❑ *The media sector has a 'risk-taking' culture;*
- ❑ *The highly educated have a false sense of invincibility, tend to think they are immune and to see HIV/AIDS as 'someone else's problem';*
- ❑ *Professionals who travel for work are at greater risk;*
- ❑ *There is no reason to presume that HIV infection rates in the media sector are any lower than those in the population at large;*
- ❑ *The media sector consists of people who are upwardly mobile and whose expendable income increases their potential risk;*
- ❑ *There may be a higher proportion of gay or bisexual employees in the media sector;*
- ❑ *Media sector employees may be 'promiscuous';*
- ❑ *The media sector rotates employees from a limited pool of trained professionals;*
- ❑ *The sector predominantly employs young people in there 20's to late 30's who are at especially high risk of HIV infection.*

Only two media sector interviewees argued that there was a lower chance of HIV infection in the media sector than elsewhere. This was on the grounds that those in the media sector have 'very high awareness and education levels'.

By comparison, other interviewees made the point that the relationship between education and awareness on the one hand, and sexual behaviour on the other, was not clear-cut. It was argued that the assumption that AIDS awareness will result in safe sexual behaviour is a dangerous one, and that knowledge can itself be used in the services of denial:

'Despite higher levels of education, literacy and awareness, the need [for awareness programmes] is still there because of intellectual and emotional distancing from the issue where people think it doesn't affect them and those close to them.' (Media sector interview 6)

Key informants were in agreement that the corporate sector, including the media sector, has tended to convince itself that skilled labour is at low risk of HIV infection. This conviction is often backed up with the rationale that the HIV prevalence data from the ante-natal survey in the public sector doesn't relate to private sector workforces.

The implicit logic behind this viewpoint is sometimes a racial logic; whereby management assumes that a white workforce is not at risk:

'Companies have a mind-set that it's the tea-girl [sic] who is infected. In [professional] firms, there's still a belief that it won't grace our hallowed halls... Companies buy into these educational programmes for the natives [sic] until they realise how many of their management staff are on anti-retrovirals and then, suddenly everything changes. As soon as people realise that the epidemic is also white there's a quantum leap. I've seen it happen time and time again.' (Key informant interview 1)

Regardless of racial perspectives, key informants maintained that some management within the media sector still erroneously believe that their companies are exempt from bearing the brunt of the epidemic because media sector employees are largely a middle income and highly educated group.

Perceptions of risk revealed that even among HR personnel themselves, the logic and assumptions underlying judgements of individual and group risk were sometimes prejudicial. Thus one media sector interviewee grapples with the problem of how to explain unsafe sexual behaviour as follows:

'I think our staff are well-educated but still promiscuous. It boggles the mind. We have highly educated people here who have five girlfriends or girls with five different boyfriends paying different accounts. They are educated and know all about HIV, so why do they still behave this way? They are not ignorant but they take enormous risks anyway. Some people say it's a cultural thing, I don't know. You can't really say it's black or its white – it's across all colours. Maybe the media sector is a risk-taking culture.' (Media sector interview 1)

These findings indicate that the relationship between HIV infection rates and race, culture and class urgently need to be unpacked within the media sector, as elsewhere.

HIV/AIDS workplace policies

Six of the eleven companies under study had HIV/AIDS policies and three stated they were in the process of developing them. Only two companies had no concrete plans to develop a policy as yet.

'There is no specific budget set aside to develop a policy but it's been agreed to in principal.' (Media sector interview 8)

The financial manager at one of the companies currently in the process of drafting a policy stated that they were drafting policy for the following reasons:

'At management level, we agree that we should have one because it's topical and everyone else has one. And so we can cope if someone does start demanding treatment.' (Media sector interview 2)

In two of the smaller companies, HR managers were unsure as to what such a policy would entail, or why it might be required.

'We would follow the relevant labour legislation but I don't know what this is. I would be happy to follow a formulated policy for the sector as a

guideline but I think we have less need for it than a big company like “X” which has a printing division.’ (Media sector interview 9)

‘No, I’d need to think about that [whether we need one]. We just have basic conditions of employment.’ (Media sector interview 10)

Where HIV/AIDS policies have already been drafted, these generally form part of an overall policy and procedures manual which has been designed by outside consultants in consultation with relevant staff.

Budgets for HIV/AIDS policy development and implementation come from general consultancy and training budgets. No policies were attached to formal implementation plans with dedicated budgets. As a result, policy implementation is dependent upon the commitment of top management. Some HR managers expressed frustration in this regard:

‘We have had a policy in place since 1992. ... It includes education but it hasn’t been implemented. It’s not worth the paper it’s written on. It’s not advocated. It’s in a file.’ (Media sector interview 4)

‘People don’t utilize it. I want to see an HIV policy which is an instrument to empower people.’ (Media sector interview 8)

Apart from the fact that policies are often not adequately implemented, media sector interviewees identified two additional problems with existing policies:

- The policies are not always written in a way which is simple to understand.
- The policies are not sufficiently comprehensive, especially with regard to information on benefits and the provision of treatment and support.

Company HIV/AIDS policy is generally communicated to staff in the same way that other company policy and procedures are and most companies have provided employees with their own individual copies. However, some companies have gone to additional lengths to ensure that employees read and understand the policy on the grounds that the distribution of written documents are an insufficient means for communicating HIV/AIDS policies to employees.

Policy contents and implementation

Prohibition of pre-employment testing

In accordance with South African law, all media sector company policies reviewed rule out the pre-employment testing of prospective employees.

One company policy allows for the testing of prospective employees for the purposes of exclusion from employment benefits. However, the policy in question states that this information will not be used to influence employment decisions but only employee benefit criteria. This policy also specifies that should signs and symptoms of AIDS be present during the recruitment process, the company reserves the right to insist on an assessment to determine the potential fitness of the recruit to perform the required functions before effecting a decision on employment. (Policy 7)

Job-security for HIV positive employees

All policies guaranteed job security for HIV positive employees who are well enough to fulfil the occupational requirements of their jobs.

In five of the six policies under review, however, job security was also dependent upon:

- ❑ the potential 'threat' to others;
- ❑ the 'interests' of all employees;
- ❑ the possibility of 'incompatibility'.

The nature of the potential 'threat' to other employees specified in three of the policies is defined as a medical threat as determined by medical opinion:

'As long as these employees are able to meet acceptable standards of work performance and work attendance and given that medical opinion indicates that their condition is not a threat to others, treatment of these employees should be sensitive and consistent with treatment of other employees.'
(Policy 3)

However, the exclusion mentioned in one policy regarding the 'interests of all employees' remains unspecified:

'Taking into account occupational requirements and the interests of all employees.' (Policy 4)

Finally, one policy excludes HIV positive employees in the case of 'incompatibility', defined in terms of recalcitrance on the part of co-workers:

'...If peers remain recalcitrant, and in the absence of alternative options, the employee's employment may be terminated on the basis of incompatibility.' (Policy 7)

Protection from discrimination by other workers

All policies provided for the protection of HIV positive employees from discrimination by their fellow workers and specified that this would be dealt with in terms of the company's disciplinary procedures for misconduct. However, one policy was unclear in this regard:

'Refusal to work with a colleague who is merely HIV positive will not be tolerated. If this is the case, the offending employee must be counselled and informed as to the non-infectious nature of HIV through casual (non-sexual) contact. However, fellow workers may refuse to work with a colleague who is HIV positive or has AIDS.' (Policy 7)

Access to training and promotion

In four policies, the issue of training and promotion opportunities was not explicitly mentioned.

Only two policies specifically stated that HIV positive employees would not be discriminated against in relation to training and promotion.

'HIV will not be used as a negative criterion for promotion, training and/or development opportunities.' (Policy 6)

However, one of these policies stated that while discrimination regarding training and promotion was generally unacceptable, HIV positive people would be excluded from, 'certain specialized positions requiring substantial investment in both time and financial costs'. (Policy 7)

Incidence of workplace discrimination

None of the HR managers interviewed had in fact heard of or witnessed any HIV-related discrimination in their workplaces. As one HR manager pointed out, however, if discrimination has not been an issue then this is at least partly because most HIV infected employees have chosen not to disclose their HIV status to their colleagues.

According to HR managers at those two organisations at which HIV positive employees had chosen to disclose publicly, employees had undergone a process of experiential learning such that fears of HIV infection through casual contact with colleagues were dispelled.

Disclosure and confidentiality

All policies specify that disclosure is voluntary and guarantee the confidentiality of HIV infected workers. However, this did not *explicitly* preclude HR personnel or management from receiving information regarding HIV status from medical personnel or the administrators of benefit funds except in one instance, where the policy states that ‘trustees and administrators of benefit funds may not disclose the identity of a person with HIV/AIDS to the company without the person’s express and informed consent’.

For the most part, policies do not specify that companies cannot be informed regarding the HIV status of their employees by medical personnel:

‘Any information supplied by an employee or his/her doctor, is treated as strictly confidential.’ (Media sector interview 4)

In only three instances do policies *explicitly* state that written consent from the employee is required before information regarding HIV status is disclosed to others.¹

Medical AID benefits

Although all policies under review state that employee benefits are non-discriminatory, only two specifically mention the nature of available medical aid benefits pertaining to HIV/AIDS. In the first: ‘[A] commitment is made offering... referral to medical and other resources, such as counselling services.’ (Policy 6). The second policy, which goes into some detail regarding the company’s specific health care benefits, specifies that only those who disclose their HIV status to the benefit manager will be eligible for benefits.

Seven out of eleven HR managers stated that they were unsure exactly what their medical aids provided for in terms of HIV/AIDS cover.

‘We use Discovery, but I don’t know about the coverage of AIDS’ (Media sector interview 2)

‘I’m not sure what exactly is covered in terms of treatment. But it makes sense if they don’t cover HIV. They don’t pay for addictions either.’ (Media sector interview 3)

‘Discovery has a sub-scheme. You are not automatically covered for AIDS. you have to pay in extra money, although I’m not exactly sure’ (Media sector interview 8)

‘We use Sizwe and Omni Health, but I’m not sure exactly what they cover’ (Media sector interview 5)

Those companies where HR managers knew the most about their cover tended to have funds which made the best provision for their employees with HIV. In many instances, the best provision was provided by companies with in-house medical aids.

‘We attempt to achieve early identification and early treatment of infection through the promotion of voluntary testing and counselling in our medical aid letters and memos. The employees who have HIV contact an HIV/AIDS medical specialist and he contracts a treatment plan. The medical aid

covers anti-retrovirals up to R16 600. This is a separate amount for HIV above and beyond the overall limit.’ (Media sector interview 4)

‘We have an on-site counsellor, although no case records are kept on the premises and after an initial pre-test, employees are referred to Cape Mental Health for pre-and-post test counselling... The medicine limit of Omnicare [medical aid] is R45 000 which is enough to cover anti-retrovirals now that prices are down.’ (Media sector interview 6)

Over half of the companies (6) were either already contracted to Discovery Health or were planning to move to Discovery. This was largely due to the increasing cost of their current medical aid relative to Discovery Health. It is interesting to note in this regard that HR managers at these companies were all unaware that Discovery does not provide cover for anti-retroviral drugs.²

Key informants with expertise in the area of medical aid benefits felt that company policies should ideally specify the exact nature of available treatment for HIV/AIDS:

‘They say they will provide treatment, but they don’t say whether this will include anti-retrovirals or the prevention of mother-to-child transmission. There should at least be annexes.’ (Key informant interview3).

Key informants argued that companies need to actively evaluate what their medical aids provide for HIV infected employees in order to ensure that AIDS is being properly managed by their medical aids. Inadequate or insufficient treatment for HIV/AIDS can be counter-productive and even detrimental to employee’s health and longer-term productivity. This is particularly pertinent with regard to the provision of anti-retrovirals. At the time of research, AID for AIDS,³ which provides what is generally considered to be the best treatment package for HIV/AIDS in South Africa, only covered members for dual, as opposed to triple anti-retroviral therapy. This is despite growing evidence that dual therapy results in resistance within six months. As one key informant noted:

‘The immune system can then rebound to a worse position than where it started. In the first world, it’s regarded as unethical to give dual therapy.’ (Key informant interview 4)

Caution was also sounded against the provision of anti-retrovirals in the absence of adequate medical expertise and support. And while antiretroviral treatment for HIV is essential, key informants pointed out that other treatment modalities, like counselling and the early treatment of opportunistic infections are also essential and should not be ignored.

Provision of voluntary counselling and testing (VCT) and ongoing counselling for employees

All policies stated that prospective employees are not required to undergo HIV testing as a condition of the selection procedure. However, only four pointed out that confidential HIV/AIDS counselling and testing is nonetheless available to employees on request.

‘Pre- and post-test counselling services should be provided for an employee wishing to be tested or for those who are infected with the virus.’ (Policy 6)

The provision of ongoing supportive counselling for HIV infected individuals, as well as VCT alone, is specified by three policies, although the costs of this are not necessarily covered. In those seven companies where the provision of VCT was not covered by company policy, media sector interviewees were unsure as to whether voluntary counselling and testing (VCT) and/or ongoing counselling was covered by their companies’ medical aid.

Key informants argued that companies rely too heavily on medical aids to promote voluntary counselling and voluntary testing for HIV/AIDS. They felt that companies needed to be more proactive about promoting VCT services to employees:

'You don't need to have a workplace health service to provide meaningful STD treatment and promote VCT.' (Key informant interview 4)

Disability and retirement benefits

All six workplace policies under review included an undertaking to deal with **currently employed** HIV/AIDS infected personnel in the same manner as other employees in so far as normal medical disability, ill-health retirement or retrenchment procedures apply.⁴

However, one policy states that employees who already have HIV at the time of employment will be excluded from disability benefits. The policy also specifies that while the company's retirement and disability benefits currently make no exclusions pertaining to HIV/AIDS in the case of employees who became infected during the course of employment, this might have to be amended at a future date in order to maintain the fund's viability. (Policy 7).

None of the policies under review provide specific details regarding the nature of disability benefits or retrenchment procedures, although some do refer the reader to relevant documents in this regard.

Many companies have already restructured their employee benefits towards fixed contributions, as opposed to fixed benefits, thereby delimiting the risk of funds being bankrupted by HIV/AIDS.⁵

Those with fixed pension and disability fund benefits recognise that their funds will have to be monitored for viability and that benefits may well have to be reduced.

'Disability claims are a big problem because the person is paid 75% of their monthly package until death or pension age, so its much more costly than a pension. In one case, someone with HIV was on disability for eight years... But as yet, the fund is still viable and we re-assess it regularly.' (Media sector interview 7).

Provision for education and awareness programmes

Of the six HIV/AIDS policies under review, four specifically mentioned the provision of HIV/AIDS education and awareness for employees.⁶

In two instances, this was merely mentioned – for example: 'All employees must be offered appropriate education and awareness programmes.' (Policy 6). In the two other policy documents, however, the required content of such education was spelt out in greater detail and included input regarding:

- transmission, prevention and risk-assessment;
- preventing fear and discrimination;
- company AIDS policy;
- enabling management in dealing with HIV infected employees;
- safety measures for first aid personnel.

Regardless of policy, six companies out of eleven had in fact conducted some sort of AIDS education in the workplace. However, HR managers pointed out that this had, for the most part, been extremely limited:

'We had a road-show in '99 but it was not well- attended. ... But we've had no structured workshops for employees.' (Media sector interview 7)

'We had an internal workshop but we need to do it again. We should definitely be doing more. We need to cut through the 'Do we really need this' attitude ...' (Media sector interview 3)

In no instances where HIV education had been conducted was there a specific budgetary allocation for HIV education. It was sometimes a struggle for HR managers to get money allocated to HIV/AIDS specific education.

Given the constraints of time and money, one HR manager argued that peer-education presented the most effective model for workplace education:

'Peers are in the best position to encourage people to go for testing, etc and there's no extra time involved. It's also more individual and so it can impact better on behaviour change.' (Media sector interview 4)

Only one company has provided a substantial amount of time (four hours per employee) to group training workshops thus far. As the HR manager involved pointed out, however, this required considerable commitment from top management level, as 'it amounted to half a day of lost productivity per employee'. (Media sector interview 6)

The training workshops at the company in question were interactive and highly personalised. They attempted to tackle personal perceptions of risk and to break down deep-seated fears which lead to discrimination against those with HIV. Management received separate training in order to prepare them for managing HIV/AIDS in the workplace. Workshops were held in groups of 15 in order to ensure proper participation and discussion.

Of those five media sector interviewees who stated that their companies had not conducted any education whatsoever, only two argued that such education was unnecessary, albeit 'a good thing in general'. For the rest, HR managers maintained that such initiatives had been de-prioritized by those holding the purse-strings: 'The problem is balancing productivity and training time.' (Media sector interview 5) and 'They [managers] are reluctant to budget for it.' (Media sector interview 8)

Key informants involved in the facilitation of workplace HIV education in the media sector agreed that it can be an uphill battle convincing management to budget sufficient resources for educational programmes.

'People don't realize that educational programmes are only cost effective if they lead to behaviour change. If not, they are a waste of money. So the more expensive and the better-done it is, the more cost-effective it will be.' (Key informant interview 3)

Key informants pointed out that management still labours under the assumption that HIV/AIDS education involves nothing more than the provision of basic information regarding transmission and prevention. It was argued that one of the most important aspects of any educational input involves overcoming the fears and anxieties that surround the disease:

'No matter how intellectual or well-educated we are, we are still scared of [sharing] a cup and saucer. It's a primitive animal fear in us.... If you break down the stigma and fear, suddenly everyone wants to be involved.' (Key informant interview 1)

Provision for the reduction of risk in the workplace

All policies under review make provision for workplace safety through the use of universal precautions and the provision of relevant equipment for use during first

aid procedures. However, training in this regard is often not specifically provided for in company policy.

Prevention and treatment of sexually transmitted diseases

There can be little doubt that a concerted effort to eradicate STDs in the workforce would have a significant impact on HIV infection rates. However, none of the policies under review mention or promote the treatment of STDs.

Two key informants argued that the glaring omission of STD promotion and treatment as another example of denial regarding own risk.

'The private sector is still not on board regarding STDs because of the perception that private sector employees don't have them' (Key informant interview 3)

Key informants also pointed out that companies rely too heavily on medical aids to promote and provide STD treatment. It was argued that companies should be proactive in ensuring that these services are accessible to employees:

Condom-provision in the workplace

Although seven companies stated that they in fact provided condoms in the workplace, only one had a policy which specified a company obligation in this regard (Policy 7). Of the seven companies which do provide condoms in the workplace, three were currently out of stock. In effect, only four out of eleven companies therefore had condoms in the workplace at the time of this study. There appears to be a risk that companies which pay for condoms, rather than using free government supplies, are less likely to ensure an unlimited and consistent supply.

Notes

1. Two policies specify that employees with known medical information about colleagues are also obliged to keep such information confidential.
2. Neither does Discovery promote voluntary counselling and testing for HIV through its rewards system, which gives you bonus points for a large variety of health-seeking behaviours including a variety of other regular check-ups. In order to be eligible for the treatment for HIV-related opportunistic infections, members of Discovery are nevertheless required to disclose their HIV status and to submit an additional chronic disease application.
3. AID for AIDS is used by Medscheme, a managed healthcare company used by a large number of medical aid schemes.
4. Two policies also state that where an HIV infected employee's work is adversely affected, reasonable effort will be made to provide alternative, non-strenuous work.
5. Only the smallest company has as yet provided no benefits (apart from medical aid) to its employees. Two companies provided death and disability benefits, but not pension schemes.
6. In fact, however, six companies had nonetheless already conducted some AIDS education.

SECTION THREE: DISCUSSION AND RECOMMENDATIONS

Understanding the financial implications of HIV/AIDS

None of the companies under review had as yet conducted impact assessment studies although the impact of HIV/AIDS on both increasing costs and decreasing profit margins is likely to be extremely detrimental. The need to take HIV/AIDS into account in strategic planning may be especially urgent in the media sector, in so far as its largely skilled workforce is not easily replaced and its sales are directly affected by a declining local market.

While it is neither feasible nor necessary for every single media company to conduct its own impact assessment study, media sector management would benefit greatly from sharing the findings and recommendations from impact assessments of HIV/AIDS in a selection of representative workplaces countrywide.

Scepticism regarding extrapolations to the media sector from the public sector or other workplace sectors is widespread. In the absence of hard data regarding HIV infection rates within the media sector itself, it remains difficult to argue for the urgent implementation of expensive but cost-effective measures to limit the financial impact of the disease.

Apart from combating denial, HIV seroprevalence surveys within the media sector may be useful to determine exact HIV prevalence rates among employees at the current time – such that the impact of HIV/AIDS across the sector and within specific companies can be assessed and proactively managed. Such findings could also serve as a baseline to assess both the effectiveness and cost-effectiveness of workplace interventions.

It would seem that many companies are still relying on employee benefit administrators to restructure benefit packages as and when required and have not as yet taken into account a variety of other impacts, such as decreasing productivity and an eroding market base. In some instances, especially within smaller companies, management within the sector still appear to erroneously believe that skilled labour is at low risk of infection and that HIV will not impact significantly on the industry's market base.

Understanding the need for optimal HIV/AIDS treatment and care

Medical aid provision for HIV/AIDS in the South African media sector currently varies widely. In many cases, media sector companies choose medical aids on the basis of cost, without sufficient consideration of the extent to which HIV/AIDS is or is not covered. The provision of optimal medical aid benefits for HIV/AIDS, despite increased expense in terms of costs for both employers and employees, may well prove cost-effective in the long-term. Such costs are offset by productivity gains when appropriate basic treatment and care as well as anti-retroviral drugs, are provided.

Human resources personnel in the media sector are often ignorant regarding both the treatment requirements for HIV/AIDS and of their companies' medical aid provision in this regard. As a result, they are unable to critically evaluate their medical aid benefits and motivate for better coverage. They are also unable to assess when HIV infected employees are being unfairly excluded from benefits to which they are entitled.

Likewise, companies should not rely entirely upon medical aid companies to promote VCT and STD treatment. The promotion of these services within companies is an essential aspect of workplace education and prevention programmes.

Company HIV/AIDS policy

Only six of the eleven companies under review had HIV/AIDS policies at the time of study. All media sector companies need to design policies which suit their organisational needs as soon as possible. The two basic areas for strategic intervention in the workplace are (a) prevention and (b) employee rights and benefits. In this regard, workplace policy is essential to provide both management and employees with guidance in terms of both necessary procedures and available resources.

A comprehensive HIV/AIDS policy should ideally cover the following issues:

- access to jobs for applicants with HIV/AIDS;
- job security for employees with HIV/AIDS;
- legal provisions against the compulsory testing of employees or job applicants;
- availability of confidential HIV testing and counselling;
- the right of employees to keep HIV status confidential or to disclose selectively;
- protection against discrimination by others in the workplace;
- equal access to employee benefits;
- access to training and promotion;
- performance management;
- grievance procedures;
- reduction of risk in the workplace;
- first aid and other precautions against infection;
- provision for education and awareness programmes specifying educational objectives;
- provision for other prevention programmes such as STD prevention and treatment;
- specific medical aid provisions for HIV infected employees;
- additional social and medical support for employees and family members with HIV/AIDS;
- monitoring and evaluation of the impact of HIV/AIDS in the workplace;
- monitoring and evaluation of the effectiveness and impact of workplace programmes.

Recommendations for the improvement of existing HIV/AIDS policies

At present, most workplace policies focus on the provision of basic preventative education and outline anti-discriminatory measures in line with South African legislative requirements, including equal rights to employee benefits. However, policies refer to general principles and do not detail concrete specifics. Policies will be easier to implement if they outline in adequate detail the specific provisions and where appropriate, specific exclusions, of their employee benefits with regard to employees with HIV/AIDS.

It has been argued that such details can be worked out in due course and that policies merely provide basic frameworks in this regard. However, it can also be

argued that undefined commitments to the provision of education, medical care and non-discriminatory benefits are of little value and provide an inadequate basis for the planning of proactive and effective programmes. By comparison, detailed information regarding the nature of employee rights and benefits provide the groundwork for consensual action and are open to re-negotiation and amendment.

Non-discriminatory employment practices, employee benefits and development opportunities

In accordance with the law, all policies exclude pre-employment HIV testing. However, one company surveyed in this study still determines employee benefit provision by HIV status at the time of employment. Policies such as this should ideally be updated in accordance with the legal obligation to prohibit all forms of discrimination against HIV infected individuals.

While all other policies specify that HIV infected employees will not be discriminated against in terms of employee benefits, many fail to specify that the same non-discriminatory principles apply to training and promotion opportunities. Policies should specify that HIV positive employees will not be excluded from such opportunities. If it is deemed necessary and desirable to exclude HIV infected employees from any costly specialised training, the financial limit on such investment should be clearly specified.

Job-security for HIV positive workers and employees with AIDS related illnesses

Although all policies under review guaranteed job-security for HIV infected employees, many contained vague provisos in this regard. Such provisos included the medical 'threat' to and 'interests' of other employees. Such provisos, if required, should be clearly specified such that the exact nature of such a threat or conflicting interest is properly defined.

Policies or appendices in the form of guidelines should also explicitly clarify the steps to be taken by employees who are sick with AIDS. This should include elaboration regarding what to do when an employee's sick leave runs out and the nature of the disability benefits which can be expected to take effect. As more and more people become sick with HIV/AIDS, employees and management will require clear guidelines in order that time-consuming labour disputes can be avoided. Such guidelines should specify whether provision will be made for alternative, non-strenuous work for those who wish to remain employed despite intermittent illness or decreasing productivity.

Medical AID benefits for HIV infected employees

Policies should inform employees as to exactly what medical care, treatment and support they are entitled to.

Special provisions with regard to medical aid ideally include:

- voluntary HIV counselling and testing;
- treatment for STDs;
- prophylaxis for preventable illnesses;
- treatment for opportunistic infections;
- anti-retroviral drug therapy;

- ❑ prevention of mother-to-child- transmission of HIV/AIDS;
- ❑ ongoing supportive counselling.

The promotion of voluntary counselling, testing and disclosure

In the absence of both voluntary testing and voluntary disclosure, non-discrimination remains a principal rather than a reality. Thus far, only two employees at the media companies reviewed were identified as having publicly disclosed their HIV status.

More attention should be paid to the promotion of a climate of trust and security such that employees are encouraged to go for voluntary counselling and testing (VCT) in order to obtain preventative and early medical care. The promotion of a supportive environment for employees infected by HIV/AIDS will enable employees to disclose their HIV status without fear of discrimination and receive the support required to remain healthy and productive for as long as possible.

Policies should do more than state that HIV status will remain 'confidential'. They should specify that it is illegal for medical information to be disclosed by medical practitioners or medical aid administrators to any other company personnel. In order to promote selective disclosure within the company, policies should also specify that if employees chose to disclose their HIV status to individual members of management or staff in the interests of improved support, such information must likewise be treated as strictly confidential. Disciplinary procedures in the event that confidentiality is not respected should likewise be specified.

The promotion of STD treatment

None of the workplace policies under review referred to the promotion of STD treatment despite the fact that the role of STDs in the spread of HIV in sub-Saharan Africa is widely known. The Mwanza trial in Tanzania showed a 42% reduction in HIV transmission by providing effective treatment for STDs. Effective STD treatment, unlike safer sexual behaviour, is relatively easy to achieve. There can be little doubt that a concerted effort to promote STD treatment would have a significant impact on HIV infection rates amongst employees.

The provision of HIV/AIDS education, awareness and training

To varying degrees, human resource managers still labour under the erroneous assumption that HIV/AIDS awareness and education in the workplace only involves basic education regarding the transmission and prevention of HIV. The implicit assumption that knowledge of HIV transmission and prevention is all that is, or should be, required to effect behaviour change remains widespread.

Company policies should specify all the aims and objectives of educational initiatives such that this is not limited to the provision of basic information regarding the prevention of HIV transmission.

Essential aspects of HIV/AIDS education in the workplace include:

- ❑ outline of company HIV/AIDS policy regarding HIV infected employees rights;
- ❑ promotion of non-discrimination and support for employees living with HIV/AIDS;
- ❑ safety precautions required in the workplace;
- ❑ promotion of risk-reduction and safer sexual behaviour;
- ❑ promotion of STD treatment;

- ❑ promotion of voluntary HIV testing and counselling;
- ❑ promotion of positive living with HIV/AIDS, including treatment, care and support options.

HIV/AIDS policy and programme implementation

The existence of comprehensive policy documents is clearly only a first step in the process of programme implementation. At the moment, many policies exist on paper but are not acted on.¹ In most instances, corresponding implementation plans with specified budgets remain to be developed. Core management principals and an explicit results chain should be used to plan and monitor HIV/AIDS programmes. In addition, employees need to be actively engaged regarding the contents of company HIV/AIDS policies. It is insufficient for companies to simply circulate written policy documents.

The media sector as a whole still needs to shake itself out of complacency and recognise that it is not just its readership, but also its employees, who are infected and affected by HIV/AIDS. While the responsibility of the media to the population at large lies in the provision of information and education alone, it has a far greater responsibility to its own employees. The media sector should take a leadership role in the implementation of proactive workplace policies which limit the financial impact of HIV/AIDS and ensure the equitable treatment of people with HIV/AIDS. The hypocrisy of reporting on a national crisis the sector itself does nothing about is, quite simply, bad for business.

Note

- 1 As yet, only one of the companies under review had begun to implement a comprehensive educational programme for employees.

Appendix One

Interview schedule: Workplace policies and programmes in the media sector

- How many workers does your organisation employ?
- What print or electronic media fall into this stable?
- Do you have any idea how many HIV infected employees you have? Have any employees openly disclosed their HIV status to you?
- Have any instances whatsoever of HIV-related discrimination in the workplace been reported?
- Has your company conducted an AIDS impact assessment in order to establish the current and projected financial cost of the epidemic to the company?
- If so, what were the main findings of this assessment?
- Has your company restructured any of its benefits (medical aid, death, disability or pension) to take HIV/AIDS into account?
- Do company employees have medical aid benefits that cover HIV/AIDS? What is covered by your company's medical aid for HIV/AIDS and is it adequate?
- Does your company promote and provide voluntary HIV testing and counselling?
- Have you conducted any HIV/AIDS education in the workplace?
- If yes, what has this entailed?
 - Was it a one-off or ongoing programme?
 - How many workers have received training so far?
 - Has this included employees at management level?
 - Is the programme compulsory?
- Are there free condoms available in the workplace?
- Does your company have an AIDS workplace policy?
- If you don't have a workplace policy: What would help you to develop one?
- What do you think a workplace policy in the media sector *should* contain?
- If you do have a workplace policy, does it specify that it:
 - Guarantees job security for HIV positive workers
 - Specifies retrenchment procedures for sick workers
 - Guarantees confidentiality of HIV infected workers
 - Guarantees worker benefits for HIV positive workers
 - Provides for the reduction of risk in the workplace
 - Provides for education and awareness programmes
 - Provides for condom provision in the workplace
 - Provides protection against discrimination by other workers
 - Guarantees access to training and promotion
 - Prohibits pre-employment testing
 - Can you please provide a copy?
- Is there a specific budget attached to this policy? Is it enough? Can you specify the amount?
- Is there an implementation plan attached to the policy?
- Do you think the policy or programme could be further improved or elaborated? Please say what areas (rights, prevention, care, support) could be improved and how.
- Would you say all aspects of the policy are already being implemented? What has been done, and what remains to be done?

- Has the company communicated the policy to all staff members? How exactly?
- Were any unions involved in the policy development or implementation? Which?
- What difficulties and constraints have you faced so far in attempting to implement HIV/AIDS policy and/or programmes?
- What would help you to overcome these sorts of difficulties?

Appendix Two

Department of Labour Employment Equity Act: Code of Good Practice on Key Aspects of HIV/AIDS and Employment

1. Introduction

- 1.1. The Human Immunodeficiency Virus (HIV) and the Acquired Immune Deficiency Syndrome (AIDS) are serious public health problems which, have socioeconomic, employment and human rights implications.
- 1.2. It is recognised that the HIV/AIDS epidemic will affect every workplace, with prolonged staff illness, absenteeism, and death impacting on productivity, employee benefits, occupational health and safety, production costs and workplace morale.¹
- 1.3. HIV knows no social, gender, age or racial boundaries, but it is accepted that socioeconomic circumstances do influence disease patterns. HIV thrives in an environment of poverty, rapid urbanisation, violence and destabilisation. Transmission is exacerbated by disparities in resources and patterns of migration from rural to urban areas. Women particularly are more vulnerable to infection in cultures and economic circumstances where they have little control over their lives.
- 1.4. Furthermore, HIV/AIDS is still a disease surrounded by ignorance, prejudice, discrimination and stigma. In the workplace unfair discrimination against people living with HIV and AIDS has been perpetuated through practices such as pre-employment HIV testing, dismissals for being HIV positive and the denial of employee benefits.
- 1.5. One of the most effective ways of reducing and managing the impact of HIV/AIDS in the workplace is through the implementation of an HIV/AIDS policy and programme. Addressing aspects of HIV/AIDS in the workplace will enable employers, trade unions and government to actively contribute towards local, national and international efforts to prevent and control HIV/AIDS. In light of this, the Code has been developed as a guide to employers, trade unions and employees.
- 1.6. Furthermore, the Code seeks to assist with the attainment of the broader goals of:
 - eliminating unfair discrimination in the workplace based on HIV status;
 - promoting a non-discriminatory workplace in which people living with HIV or AIDS are able to be open about their HIV status without fear of stigma or rejection;
 - promoting appropriate and effective ways of managing HIV in the workplace;
 - creating a balance between the rights and responsibilities of all parties;
 - giving effect to the regional obligations of the Republic as a member of the Southern African Development Community.

2. Objectives

- 2.1. The Code's primary objective is to set out guidelines for employers and trade unions to implement so as to ensure individuals with HIV infection are not unfairly discriminated against in the workplace. This includes provisions regarding:
 - creating a non-discriminatory work environment;
 - dealing with HIV testing, confidentiality and disclosure;

- providing equitable employee benefits;
 - dealing with dismissals; and
 - managing grievance procedures.
- 2.2. The Code's secondary objective is to provide guidelines for employers, employees and trade unions on how to manage HIV/AIDS within the workplace. Since the HIV/AIDS epidemic impacts upon the workplace and individuals at a number of different levels, it requires a holistic response which takes all of these factors into account. The Code therefore includes principles, which are dealt with in more detail under the statutes listed in item 5.1., on the following:
- creating a safe working environment for all employers and employees;
 - developing procedures to manage occupational incidents and claims for compensation;
 - introducing measures to prevent the spread of HIV;
 - developing strategies to assess and reduce the impact of the epidemic upon the workplace; and
 - supporting those individuals who are infected or affected by HIV/AIDS so that they may continue to work productively for as long as possible.
- 2.3 In addition, the Code promotes the establishment of mechanisms to foster cooperation at the following levels:
- between employers, employees and trade unions in the workplace; and
 - between the workplace and other stakeholders at a sectoral, local, provincial and national level.

3. *Policy principles*

- 3.1 The promotion of equality and non-discrimination between individuals with HIV infection and those without, and between HIV/AIDS and other comparable health/medical conditions.
- 3.2. The creation of a supportive environment so that HIV infected employees are able to continue working under normal conditions in their current employment for as long as they are medically fit to do so.
- 3.3. The protection of human rights and dignity of people living with HIV or AIDS is essential to the prevention and control of HIV/AIDS.
- 3.4. HIV/AIDS impacts disproportionately on women and this should be taken into account in the development of workplace policies and programmes.
- 3.5 Consultation, inclusivity and encouraging full participation of all stakeholders are key principles which should underpin every HIV/AIDS policy and programme.

4. *Application and scope*

- 4.1. All employers and employees, and their respective organisations are encouraged to use this Code to develop, implement and refine their HIV/AIDS policies and programmes to suit the needs of their workplaces.
- 4.2. For the purposes of this Code, the term 'workplace' should be interpreted more broadly than the definition given in the Labour Relations Act, Act 66 of 1995, Section 213, to include the working environment of, amongst others, persons not necessarily in an employer-employee relationship, those working in the informal sector and the self-employed.
- 4.3. This Code however does not impose any legal obligation in addition to those in the Employment Equity Act and Labour Relations Act, or in any other legislation referred to in the Code. Failure to observe it does not, by itself, render an employer liable in any proceedings, except where the Code refers to obligations set out in law.

- 4.4. The Code should be read in conjunction with other codes of good practice that may be issued by the Minister of Labour.

5. *Legal framework*

- 5.1. The Code should be read in conjunction with the Constitution of South Africa Act, 108 of 1996, and all relevant Legislation which includes the following:
- Employment Equity Act, 55 of 1998;
 - Labour Relations Act, 66 of 1995;
 - Occupational Health and Safety Act, 85 of 1993;
 - Mine Health and Safety Act, 29 of 1996;
 - Compensation for Occupational Injuries and Diseases Act, 130 of 1993;
 - Basic Conditions of Employment Act, 75 of 1997;
 - Medical Schemes Act, 131 of 1998; and
 - Promotion of Equality and Prevention of Unfair Discrimination Act, 4 of 2000.
- 5.2. The contents of this Code should be taken into account when developing, implementing or reviewing any workplace policies or programmes in terms of the statutes listed above.
- 5.3. The following are selected, relevant sections contained in certain of the above-mentioned legislation. These should be read in conjunction with other legislative provisions.
- 5.3.1. The Code is issued in terms of Section 54(1)(a) of the Employment Equity Act, 55 of 1998 and is based on the principle that no person may be unfairly discriminated against on the basis of their HIV status. In order to assist employers and employees to apply this principle consistently in the workplace, the Code makes reference to other pieces of legislation.
- 5.3.2. Section 6(1) of the Employment Equity Act provides that no person may unfairly discriminate against an employee, or an applicant for employment, in any employment policy or practice, on the basis of his or her HIV status. In any legal proceedings in which it is alleged that any employer has discriminated unfairly, the employer must prove that any discrimination or differentiation was fair.
- 5.3.3. No employee, or applicant for employment, may be required by their employer to undergo an HIV test in order to ascertain their HIV status. HIV testing by or on behalf of an employer may only take place where the Labour Court has declared such testing to be justifiable in accordance with Section 7(2) of the Employment Equity Act.
- 5.3.4. In accordance with Section 187(1)(f) of the Labour Relations Act, 66 of 1995, an employee with HIV/AIDS may not be dismissed simply because he or she is HIV positive or has AIDS. However, where there are valid reasons related to their capacity to continue working and fair procedures have been followed, their services may be terminated in accordance with Section 188(1)(a)(i).
- 5.3.5. In terms of 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 workplace. This may include ensuring that the risk of occupational exposure to HIV is minimised.
- 5.3.6. Section 2(1) and Section 5(1) of the Mine Health and Safety Act, 29 of 1996 provides that an employer is required to create, as far as is reasonably practicable, a safe workplace. This may include ensuring that the risk of occupational exposure to HIV is minimised.

- 5.3.7. An employee who is infected with HIV as a result of an occupational exposure to infected blood or bodily fluids, may apply for benefits in terms of Section 22(1) of the Compensation for Occupational Injuries and Diseases Act, 130 of 1993.
- 5.3.8. In accordance with the Basic Conditions of Employment Act, 75 of 1997, every employer is obliged to ensure that all employees receive certain basic standards of employment, including a minimum number of days sick leave [Section 22(2)].
- 5.3.9. In accordance with Section 24(2)(e) of the Medical Schemes Act, 131 of 1998, a registered medical aid scheme may not unfairly discriminate directly or indirectly against its members on the basis of their 'state of health'. Further in terms of section 67(1)(9) regulations may be drafted stipulating that all schemes must offer a minimum level of benefits to their members.
- 5.3.10. In accordance with both the common law and Section 14 of the Constitution of South Africa Act, 108 of 1996, all persons with HIV or AIDS have a right to privacy, including privacy concerning their HIV or AIDS status. Accordingly there is no general legal duty on an employee to disclose his or her HIV status to their employer or to other employees.

6. *Promoting a non-discriminatory work environment*

- 6.1. No person with HIV or AIDS shall be unfairly discriminated against within the employment relationship or within any employment policies or practices, including with regard to:
 - recruitment procedures, advertising and selection criteria;
 - appointments, and the appointment process, including job placement;
 - job classification or grading;
 - remuneration, employment benefits and terms and conditions of employment;
 - employee assistance programmes;
 - job assignments;
 - training and development;
 - performance evaluation systems;
 - promotion, transfer and demotion;
 - termination of services.
- 6.2. To promote a non-discriminatory work environment based on the principle of equality, employers and trade unions should adopt appropriate measures to ensure that employees with HIV and AIDS are not unfairly discriminated against and are protected from victimisation through positive measures such as:
 - preventing unfair discrimination and stigmatisation of people living with HIV or AIDS through the development of HIV/AIDS policies and programmes for the workplace;
 - awareness, education and training on the rights of all persons with regard to HIV and AIDS;
 - mechanisms to promote acceptance and openness around HIV/AIDS in the workplace;
 - providing support for all employees infected or affected by HIV and AIDS; and
 - grievance procedures and disciplinary measures to deal with HIV-related complaints in the workplace.

7. HIV testing, confidentiality and disclosure

7.1. HIV testing

7.1.1. No employer may require an employee, or an applicant for employment, to undertake an HIV test in order to ascertain that employee's HIV status. As provided for in the Employment Equity Act, employers may approach the Labour Court to obtain authorisation for testing.'

7.1.2. Whether section 7(2) of the Employment Equity Act prevents an employer-provided health service supplying a test to an employee who requests a test, depends on whether the Labour Courts would accept that an employee can knowingly agree to waive the protection in the section. This issue has not yet been decided by the courts.²

7.1.3. In implementing the sections below, it is recommended that parties take note of the position set out.

7.1.4. Authorised testing: Employers must approach the Labour Court for authorisation in, amongst others, the following circumstances:

- during an application for employment;
- as a condition of employment;
- during procedures related to termination of employment;
- as an eligibility requirement for training or staff development programmes; and
- as an access requirement to obtain employee benefits.

7.1.5. Permissible testing

An employer may provide testing to an employee who has requested a test in the following circumstances:

- as part of a health care service provided in the workplace;
- in the event of an occupational accident carrying a risk of exposure to blood or other body fluids;
- for the purposes of applying for compensation following an occupational accident involving a risk of exposure to blood or other body fluids.

Furthermore, such testing may only take place within the following defined conditions:

- at the initiative of an employee;
- within a health care worker and employee-patient relationship;
- with informed consent and pre- and post-test counselling, as defined by the Department of Health's National Policy on Testing for HIV; and
- with strict procedures relating to confidentiality of an employee's HIV status as described in clause 7.2 of this Code.

7.1.6 All testing, including both authorised and permissible testing, should be conducted in accordance with the Department of Health's National Policy on Testing for HIV issued in terms of the National Policy for Health Act, 116 of 1990.

7.1.7. Informed consent means that the individual has been provided with information, understands it and based on this has agreed to undertake the HIV test. It implies that the individual understands what the test is, why it is necessary, the benefits, risks, alternatives and any possible social implications of the outcome.

7.1.8. Anonymous, unlinked surveillance or epidemiological HIV testing in the workplace may occur provided it is undertaken in accordance with ethical and legal principles regarding such research.³ Where such research is done, the information obtained may not be used to unfairly discriminate against individuals or groups of persons. Testing will not be considered anonymous if there is a reasonable possibility that a person's HIV status can be deduced from the results.

- 7.2. Confidentiality and disclosure
- 7.2.1. All persons with HIV or AIDS have the legal right to privacy. An employee is therefore not legally required to disclose his or her HIV status to their employer or to other employees.
- 7.2.2. Where an employee chooses to voluntarily disclose his or her HIV status to the employer or to other employees, this information may not be disclosed to others without the employee's express written consent. Where written consent is not possible, steps must be taken to confirm that the employee wishes to disclose his or her status.
- 7.2.3. 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:
- encouraging persons openly living with HIV or AIDS to conduct or participate in education, prevention and awareness programmes;
 - encouraging the development of support groups for employees living with HIV or AIDS; and
 - ensuring that persons who are open about their HIV or AIDS status are not unfairly discriminated against or stigmatised.

8. *Promoting a safe workplace*

- 8.1 An employer is obliged to provide and maintain, as far as is reasonably practicable, a workplace that is safe and without risk to the health of its employees.
- 8.2 The risk of HIV transmission in the workplace is minimal. However, occupational accidents involving bodily fluids may occur, particularly in the health care professions. Every workplace should ensure that it complies with the provisions of the Occupational Health and Safety Act, including the Regulations on Hazardous Biological Agents, and the Mine Health and Safety Act, and that its policy deals with, amongst others:
- the risk, if any, of occupational transmission within the particular workplace;
 - appropriate training, awareness, education on the use of universal infection control measures so as to identify, deal with and reduce the risk of HIV transmission in the workplace;
 - providing appropriate equipment and materials to protect employees from the risk of exposure to HIV;
 - the steps that must be taken following an occupational accident including the appropriate management of occupational exposure to HIV and other blood borne pathogens, including access to post exposure prophylaxis;
 - the procedures to be followed in applying for compensation for occupational infection;
 - the reporting of all occupational accidents; and
 - adequate monitoring of occupational exposure to HIV to ensure that the requirements of possible compensation claims are being met.

9. *Compensation for occupationally acquired HIV*

- 9.1. An employee may be compensated if he or she becomes infected with HIV as a result of an occupational accident, in terms of the Compensation for Occupational Injuries and Diseases Act.

Employers should take reasonable steps towards:

- providing information to affected employees on the procedures that will need to be followed in order to qualify for a compensation claim; and

- assisting with the collection of information which will assist with proving that the employees were occupationally exposed to HIV infected blood.
- 9.2. Occupational exposure should be dealt with in terms of the Compensation for Occupational Injuries and Diseases Act. Employers should ensure that they comply with the provisions of this Act and any procedure or guideline issued in terms thereof.

10. *Employee benefits*

- 10.1. Employees with HIV or AIDS may not be unfairly discriminated against in the allocation of employee benefits.
- 10.2. Employees who become ill with AIDS should be treated like any other employee with a comparable life threatening illness with regard to access to employee benefits.
- 10.3. Information from benefit schemes on the medical status of an employee should be kept confidential and should not be used to unfairly discriminate.
- 10.4. Where an employer offers a medical scheme as part of the employee benefit package it must ensure that this scheme does not unfairly discriminate, directly or indirectly, against any person on the basis of his or her HIV status.

11. *Dismissal*

- 11.1. Employees with HIV/AIDS may not be dismissed solely on the basis of their HIV/AIDS status.
- 11.2. Where an employee has become too ill to perform their current work, an employer is obliged to follow accepted guidelines regarding dismissal for incapacity before terminating an employee's services, as set out in the Code of Good Practice on Dismissal contained in Schedule 8 of the Labour Relations Act.
- 11.3. The employer should ensure that as far as possible, the employee's right to confidentiality regarding his or her HIV status is maintained during any incapacity proceedings. An employee cannot be compelled to undergo an HIV test or to disclose his or her HIV status as part of such proceedings unless the Labour Court authorised such a test.

12. *Grievance procedures*

- 12.1. Employers should ensure that the rights of employees with regard to HIV/AIDS, and the remedies available to them in the event of a breach of such rights, become integrated into existing grievance procedures.
- 12.2. Employers should create an awareness and understanding of the grievance procedures and how employees can utilise them.
- 12.3. Employers should develop special measures to ensure the confidentiality of the complainant during such proceedings, including ensuring that such proceedings are held in private.

13. *Management of HIV in the workplace*

- 13.1. The effective management of HIV/AIDS in the workplace requires an integrated strategy that includes, amongst others, the following elements:
- 13.1.1. An understanding and assessment of the impact of HIV/AIDS on the workplace; and

- 13.1.2. Long- and short-term measures to deal with and reduce this impact, including:
- An HIV/AIDS Policy for the workplace
 - HIV/AIDS Programmes, which would incorporate:
 - ongoing sustained prevention of the spread of HIV among employees and their communities;
 - management of employees with HIV so that they are able to work productively for as long as possible; and
 - strategies to deal with the direct and indirect costs of HIV/AIDS in the workplace.

14. *Assessing the impact of HIV/AIDS on the workplace*

- 14.1. Employers and trade unions should develop appropriate strategies to understand, assess and respond to the impact of HIV/AIDS in their particular workplace and sector. This should be done in cooperation with sectoral, local, provincial and national initiatives by government, civil society and non-governmental organisations.
- 14.2. Broadly, impact assessments should include:
- risk profiles; and
 - assessment of the direct and indirect costs of HIV/AIDS;
- 14.3. Risk profiles may include an assessment of the following:
- The vulnerability of individual employees or categories of employees to HIV infection.
 - The nature and operations of the organisation and how these may increase susceptibility to HIV infection (eg migrancy or hostel dwellings).
 - A profile of the communities from which the organisation draws its employees.
 - A profile of the communities surrounding the organisation's place of operation.
 - An assessment of the impact of HIV/AIDS upon their target markets and client base.
- 14.4. The assessments should also consider the impact that the HIV/AIDS epidemic may have on:
- Direct costs such as costs to employee benefits, medical costs and increased costs related to staff turnover such as training and recruitment costs and the costs of implementing an HIV/AIDS programme.
 - Indirect costs such as costs incurred as a result of increased absenteeism, employee morbidity, loss of productivity, a general decline in workplace morale and possible workplace disruption.
- 14.5. The cost effectiveness of any HIV/AIDS interventions should also be measured as part of an impact assessment

15. *Measures to deal with HIV/AIDS within the workplace*

- 15.1. A workplace HIV/AIDS policy
- 15.1.1. Every workplace should develop an HIV/AIDS policy,⁴ in order to ensure that employees affected by HIV/AIDS are not unfairly discriminated against in employment policies and practices. This policy should cover:
- the organisation's position on HIV/AIDS;
 - an outline of the HIV/AIDS programme;
 - details on employment policies (eg position regarding HIV testing, employee benefits, performance management and procedures to be followed to determine medical incapacity and dismissal);

- express standards of behaviour expected of employers and employees and appropriate measures to deal with deviations from these standards;
 - grievance procedures in line with item 12 of this Code;
 - set out the means of communication within the organisation on HIV/AIDS issues;
 - details of employee assistance available to persons affected by HIV/AIDS;
 - details of implementation and coordination responsibilities; and
 - monitoring and evaluation mechanisms.
- 15.1.2. All policies should be developed in consultation with key stakeholders within the workplace including trade unions, employee representatives, occupational health staff and the human resources department.
- 15.1.3. The policy should reflect the nature and needs of the particular workplace.
- 15.1.4. Policy development and implementation is a dynamic process, so the workplace policy should be:
- communicated to all concerned;
 - routinely reviewed in light of epidemiological and scientific information; and
 - monitored for its successful implementation and evaluated for its effectiveness.

15.2. *Developing workplace HIV/AIDS programmes*

- 15.2.1. It is recommended that every workplace works towards developing and implementing a workplace HIV/AIDS programme aimed at preventing new infections, providing care and support for employees who are infected or affected, and managing the impact of the epidemic in the organisation.
- 15.2.2. The nature and extent of a workplace programme should be guided by the needs and capacity of each individual workplace. However, it is recommended that every workplace programme should attempt to address the following in cooperation with the sectoral, local, provincial and national initiatives:
- hold regular HIV/AIDS awareness programmes;
 - encourage voluntary testing;
 - conduct education and training on HIV/AIDS;
 - promote condom distribution and use;
 - encourage health seeking behaviour for STDs;
 - enforce the use of universal infection control measures;
 - create an environment that is conducive to openness, disclosure and acceptance amongst all staff;
 - endeavour to establish a wellness programme for employees affected by HIV/AIDS;
 - provide access to counselling and other forms of social support for people affected by HIV/AIDS;
 - maximise the performance of affected employees through reasonable accommodation, such as investigations into alternative sick leave allocation;
 - develop strategies to address direct and indirect costs associated with HIV/AIDS in the workplace, as outlined under item 14.4;
 - regularly monitor, evaluate and review the programme.

- 15.2.3. Employers should take all reasonable steps to assist employees with referrals to appropriate health, welfare and psycho-social facilities within the community, if such services are not provided at the workplace.

16. Information and education

- 16.1. The Department of Labour should ensure that copies of this Code are available and accessible.
- 16.2. Employers and employer organisations should include the Code in their orientation, education and training programmes of employees.
- 16.3. Trade unions should include the Code in their education and training programmes of shopstewards and employees.

Notes

If we are against discrimination against people with HIV/AIDS, then the term 'unfair discrimination' should be avoided and discrimination should assume its rightful place. In other words, we should talk of discrimination instead of unfair discrimination.

1. The Code will be accompanied by Technical Assistance Guidelines on Managing HIV/AIDS in the workplace. It is envisaged that these will be developed in the second half of 2000 and published during 2001. The guidelines will provide more detail on the implementation of potential policies and programmes to address these impacts, including strategies to accommodate the needs of small businesses and the informal sector.
2. The Employment Equity Act does not make it a criminal offence for an employer to conduct a test in violation of section 7(2). However an employee who alleges that his or her right not to be tested has been violated may refer a dispute to the CCMA for conciliation, and if this does not resolve the dispute, to the Labour Court for determination.
3. See amongst others the Department of Health's National Policy for Testing for HIV and the Biological Hazardous Agents Regulations.
4. This policy could either be a specific policy on HIV/AIDS, or could be incorporated in a policy on life threatening illness.

Appendix Three

COSATU'S Draft Workplace Policy on HIV/AIDS

Preamble

HIV and AIDS in South Africa are a major health problem, with employment, human rights and economic implications. This policy is intended to cover all employees and employers in the Republic of South Africa.

The policy is necessary for the workplace because:

- ❑ HIV infection takes place mostly among the economically active age group.
- ❑ Women are additionally at risk of HIV infection.

The policy recognises that workplace-based programmes that promote HIV/AIDS awareness, prevention and care are an important part of a national HIV/AIDS strategy.

The main objective of this policy is to reduce the number of new infections among employees and their families and to ensure that the rights of employees with HIV are fully respected. This policy conforms to the Southern African Development Community (SADC) Code on HIV in Employment, which was endorsed at the SADC summit in September 1997. It is also in compliance with the protections against arbitrary discrimination that are embodied in existing labour legislation.

Non-discrimination

- ❑ Employees with HIV/AIDS should be treated the same as all other employees.
- ❑ Employees with HIV-related illnesses, including AIDS, should be treated in the same way as any other employee with a life-threatening illness.
- ❑ An employee with HIV/AIDS should not face unfair discrimination in access to employment, training, promotion, or employee benefits.
- ❑ Employees infected with HIV should be protected from stigmatisation and discrimination by co-workers. Where there has been adequate information, education and provisions for safe work, then disciplinary procedures should apply to people who victimise other employees with HIV.

Confidentiality and testing

- ❑ It is the law that HIV testing should only take place after appropriate counselling and with informed consent.
- ❑ There should be no direct or indirect pre-employment testing for HIV. There should also be no HIV testing for training or promotion purposes.
- ❑ The HIV status of an individual employee is of no relevance to an employer. People with HIV have equal rights to privacy and confidentiality. If an employee discloses his or her HIV status to colleagues and management this information should be treated as confidential.

Managing illness and job security

- ❑ No employee should be dismissed merely on the basis of HIV status; nor shall HIV status influence retrenchment procedures.
- ❑ When due to medical reasons an employee can no longer continue with his or her normal employment duties, efforts should be made to offer alternative employment (reasonable accommodation). When the employee becomes too ill to perform his or her job, standard procedure for termination of employment due to incapacity should apply without discrimination.

Education, counselling and training

A fund should be established at the industry level, jointly managed by the union and employers, for the purpose of HIV/AIDS education and training in the industry.

HIV/AIDS education and counselling should take place in every workplace during working hours.

The objectives of education, counselling and training should be to:

- create awareness of the HIV/AIDS epidemic;
- remove the stigma against those infected;
- promote safe sex through condom distribution;
- equip union leadership with counselling skills;
- provide care and support for people with HIV/AIDS.

To ensure effective education, the industry should build partnerships with local, provincial and national government as well as with NGOs, CBOs and organisations of people living with HIV/AIDS.

Strategies should be devised to monitor the impact of training on an ongoing basis.

Health and safety

All workplaces must ensure that they are equipped with proper universal precautions (infection control equipment and procedures) that can be used in cases where there are accidents that lead to blood spills.

Workplace health and safety committees should receive special training on HIV and AIDS and on how to take universal precautions.

Health care funds

Efforts should be made to standardise health care services throughout the industry, and primary health care protocols for the care and management of HIV should urgently be developed.

No health care fund should be allowed to discriminate by refusing cost-effective treatment and/or reasonable benefits for the treatment of Sexually Transmitted Diseases (STDs) including HIV.

Additional funds should be made available in order for the health care funds to offer quality services for HIV/AIDS infection.

Provident fund and other benefits

Whilst it is recognised that HIV/AIDS may make it necessary to restructure or revisit employee benefits, this should be done in a way that allows the funds to remain economic, but does not exclude or limit benefits to employees with HIV/AIDS.

The employers and unions should commission research into the impact of HIV/AIDS on the existing employee benefits.

Implementation

The union should establish necessary structures at all levels, including joint union and management teams, for the successful implementation of this policy.

Review, monitoring and evaluation

A baseline study to establish the present impact of HIV in the workplace, including knowledge of HIV by workers and employers, should be conducted as soon as possible.

Pilot programmes to test AIDS prevention strategies should be devised and run jointly by the union and employers. In addition, there should be ongoing evaluation and monitoring of activities that are required by this policy.

The policy should be reviewed periodically in the light of changes in medicine and science concerning the HIV / AIDS epidemic.