



**MINISTRY OF LABOUR AND HUMAN
RESOURCE DEVELOPMENT**



**WORKPLACE POLICY
ON
HIV/AIDS**

JUNE 2007

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PREFACE

The development of this Policy has been necessitated by the challenges posed by HIV and AIDS in the workplace. HIV and AIDS affect people mainly in their prime ages, between 15 and 49 years, who constitute the bulk of the workforce. The illness and subsequent deaths of workers resulting from HIV and AIDS, has an enormous impact on the national productivity and earnings. Resources that would have been used for wealth creation and poverty reduction are diverted to treatment, care and support for HIV and AIDS related illnesses.

The Government as a response to these challenges declared the pandemic a national disaster in 1999. Through Sessional Paper No.4 of 1997 on AIDS in Kenya, the Government put in place a national policy, defined an institutional framework and intensified intervention measures for the prevention, management, control and mitigation of HIV and AIDS impact. The Directorate of Personnel Management developed a workplace policy, **Public Sector Workplace Policy on HIV and AIDS** to guide public sector response to the pandemic.

The Policy directed that each Ministry come up with a sector specific policy. It is in line with this that my Ministry has developed this Policy. The Policy emphasizes the need for HIV and AIDS activities to be mainstreamed into the core activities of each department. To achieve this, my Ministry will ensure that adequate allocation of budgetary resources for HIV and AIDS programmes.

The Policy provides guidance for those who deal with the day-to-day HIV and AIDS related issues and problems that arise within the workplace and also outlines employees' rights, responsibilities and expected behaviour in the workplace. The strategies outlined in this policy aim at minimizing the effects of the pandemic in the workplace and providing the means towards greater efficiency in service delivery.

The emphasis of the Policy is on improved performance of officers. This is because a conducive workplace will lead to a healthier workforce regardless of the HIV status of officers. I expect that the implementation of this Policy will go along way in mitigating the impact of the pandemic in the workplace.

**HON. Dr. NEWTON KULUNDU,
MINISTER FOR LABOUR AND HUMAN RESOURCE DEVELOPMENT**

FOREWORD

HIV and AIDS has caused a lot of devastation in the workplace and has led to the erosion of socio-economic gains that had taken years to put together. This has inevitably affected the level of service delivery.

The Ministry of Labour and Human Resource Development being responsible for the formulation and coordination of human resource policies and the maintenance of a conducive work environment is at the forefront of ensuring that the workplace is free of stigmatisation and discrimination against workers living with HIV and AIDS. The aim of this Policy is to mitigate the impact of the pandemic on the specific mandates. It will guide the Ministry in developing programmes to facilitate effective and planned response to the management and prevention of HIV and AIDS within it's mandates

I wish to thank the members of the Aids Control Unit and the HIV Desk Officers in their effort and commitment in the development of this Policy.

**MARK K. BOR, EBS
PERMANENT SECRETARY
MINISTRY OF LABOUR AND HUMAN RESOURCE DEVELOPMENT**

Definition Of Terms

Affected	A person who is feeling the impact of HIV and AIDS through sickness or loss of relatives, friends or colleagues.
AIDS	Acquired Immune Deficiency Syndrome
ACU	Aids Control Unit: Ministerial committee responsible for coordinating and mainstreaming HIV and AIDS into the functions of the Ministry.
Comprehensive Care Clinic	A clinic offering a range of services to HIV positive persons including, clinical treatment, physical, nutritional and psychosocial support.
HIV	Human Immunodeficiency Virus: a virus that weakens the body's immune system causing AIDS.
HIV Desk Officers	Officers in the departments of the Ministry who are responsible for coordination of HIV and AIDS activities
HIV Screening	A medical test to determine a person's sero-status.
Infected	A person who is living with the HIV virus.
Peer educator/ Counselor	An officer that has received training HIV and AIDS counseling and who is actively involved with infected and affected colleagues
Sub-ACU	Departmental Committee responsible for coordinating and mainstreaming HIV and AIDS in the functions of the department, Provincial or District Headquarters.
Support	Services and assistance that are provided to help a person cope with difficult situations and challenges brought about by HIV and AIDS.
VCT	Voluntary Counselling and Testing: A process that enables people willing to know their sero-status to help them plan their lives and make informed decisions.
Workplace	Occupational setting, station or place where workers spend time for gainful employment.
Workplace Programme	An intervention to address HIV and AIDS specific issue within the workplace.

1.0. INTRODUCTION

The HIV and AIDS pandemic has become a national crisis and constitutes one of the most formidable challenges threatening development and socio-economic progress. HIV and AIDS has caused a big blow to the economy, since the most affected are between ages of 15-50, which constitutes the productive age.

Over the years the Ministry has experienced loss of staff due to deaths occasioned by the scourge and this has negatively impacted on the general operations and performance of its activities. The Ministry's succession plan is also affected because those who succumb are usually the young who are expected to take over the mantle from those retiring. Similarly, older and experienced officers are affected by the pandemic.

As a response to the calamity, the Ministry of Labour and Human Resource Development constituted the Aids Control Unit (ACU) in the year 2001 to coordinate a multi sectoral response to HIV and AIDS. Subsequently, various sub-ACUs were established in all its Departments, province and district levels.

This Policy will provide guidance for those who deal with day-to-day issues and problems related to HIV and AIDS at the workplace. The Policy outlines employees and employers rights and responsibilities at the workplace and encourage behaviour change. The policy covers the key areas of legal and regulatory framework, guiding principles, management of human resource, HIV and AIDS programs in workplace and outlines the process of implementation.

2.0 RATIONALE

In 2005, the Government developed a Public Sector Workplace Policy on HIV and AIDS. In order to 'domesticate' this Policy, the Ministry of Labour and Human Resource Development has developed a comprehensive ministerial workplace policy framework to guide workers to address HIV and AIDS issues

This Policy not only demonstrates the Ministry's concern and commitment in taking concrete steps in the management of the HIV and AIDS pandemic but also provides a lead on the development of workplace policies considering the central role that the Ministry has of being in charge of labour issues and Human Resource Development.

3.0. OBJECTIVES

The main objective of the Policy is to provide a framework to address HIV and AIDS in the Ministry of Labour and Human Resource Development.

The Policy specifically aims at:

- Establishing structures and promoting programmes to ensure non-discrimination and non-stigmatization of the infected and affected.
- Streamlining HIV and AIDS activities in the Ministry

- Identifying and mobilizing resources for implementation of HIV and AIDS activities in the Ministry.
- Specifying to Heads of Departments (HODs) and employees their rights and responsibilities regarding HIV and AIDS issues in the Ministry.

4.0. SCOPE

The Policy sets standards for managing HIV and AIDS. It applies to all HODs and employees in the Ministry of Labour and Human Resource Development.

5.0. LEGAL AND REGULATORY FRAMEWORK

The Policy shall be implemented within the framework of the **Constitution of Kenya** and other relevant legislation in place as well as proposed legislations which include the following:-

- **Public Service Commissions Act Cap 185**
- **Code of Regulations (2006)**
- **Public Service Commission Regulations**
- **The Employment Act Cap. 226**
- **Sexual Offences Act**
- **Factories and Other Places of Work Act Cap.514**
- **Other Labour Laws**

6.0. GUIDING PRINCIPLES

The principles that guide the Policy are in accordance with international conventions, national laws, policies, guidelines and regulations. These principles are:

6.1. Recognition of HIV and AIDS as a workplace issue

HIV and AIDS is a workplace issue and should be treated like any other serious illness/condition in the workplace. This is necessary not only because it affects the workplace but also the workplace, being part of the local community, has a role to play in the wider struggle to limit effects of the pandemic.

6.2. Non-Discrimination

There should be no discrimination and/or stigmatisation of workers on the basis of real or perceived HIV status. Discrimination and stigmatisation of the infected inhibits efforts aimed at promoting HIV prevention.

6.3. Gender Equality

Gender dimension of HIV and AIDS should be recognised. Women are more likely to become infected and are more often adversely affected by the HIV and AIDS

pandemic than men, due to biological, socio-cultural and economic reasons. The greater the gender discrimination in societies and the lower the position of women, the more negatively they are affected by HIV. Therefore, equal gender relations and the empowerment of women are vital to successful prevention of the spread of HIV infection and enable women to cope with HIV and AIDS.

6.4. Safety and Healthy Work Environment

The work environment should be healthy and safe and adapted to the state of health and capabilities of workers. All HODs have a responsibility to minimize the risk of HIV transmission by taking the appropriate first Aid/Universal infection control precautions at the workplace.

6.5. Social Dialogue

A successful HIV and AIDS policy requires co-operation, willingness and trust between employers, workers and Government, cultivated through dialogue of the parties concerned.

6.6. Screening for purpose of Employment

HIV and AIDS screening should not be a requirement for job applications or persons in employment and testing for HIV should not be carried out at the workplace except as specified in the National HIV and AIDS policy on testing.

6.7. Confidentiality

Access to personal data relating to a worker's HIV status shall be bound by the rules of confidentiality consistent with existing ILO Code of Practice and medical ethics.

6.8. Continuation of Employment Relationship

HIV infection should not be a cause for termination of employment. Persons with HIV related illness should be allowed to work for as long as they are medically fit in available appropriate work.

6.9. Prevention

HIV infection is preventable. Prevention of all means of transmission can be achieved through behaviour change, knowledge, treatment, and the creation of a non-discriminatory environment. Social partners are in a unique position to promote prevention efforts, particularly in relation to changing attitudes and behaviour through the provision of information and education and in addressing socio-economic factors.

6.10. Care and support

Solidarity, care and support should guide the response to HIV and AIDS at the workplace. All workers are entitled to affordable health services and to benefits from statutory and occupational schemes.

6.11. Management Responsibility

The Ministry will ensure the highest level of leadership as part of the national campaign against the pandemic.

6.12. Partnership

The Ministry will be responsible and accountable for implementation of this Policy. It will at all times develop effective partnerships to enhance the success of the Policy implementation.

6.13. Fair Labour Practices

Every person, whether infected or affected, has the right to fair labour practices in terms of recruitment, appointment and continued enjoyment of employment, promotion, training and benefits. HIV testing as a requirement for any of the above is prohibited.

6.14. Workplace Ethics

There will be zero tolerance to sexual harassment, abuse and exploitation.

6.15. Greater involvement of People Living with HIV and AIDS (PLWHA)

The involvement of PLWHA in educating and informing other workers shall be promoted at all levels of the Ministry.

7.0. RIGHTS AND RESPONSIBILITIES OF EMPLOYER AND EMPLOYEES

7.1. Rights of Employer

The Employer shall continue to enjoy the rights outlined below;

- 7.1.1. The right to enforce existing service regulations and relevant Acts of Parliament
- 7.1.2. The right to ensure optimal productivity from employees
- 7.1.3. The right to access information on hospital visit schedules and reason for absenteeism
- 7.1.4. The right to be educated and informed about the pandemic including developments in respect of prevention and treatment;

7.2 Responsibilities of Employer

It is the responsibility of the Employer to;

- 7.2.1 Leadership and spearhead the campaign to address HIV and AIDS.
- 7.2.2 Show empathy to infected and affected employees
- 7.2.3 Mainstream HIV and AIDS in all ministerial activities
- 7.2.4 Provide support to ACU and Sub-ACU activities

- 7.2.5 Implement and support this Policy
- 7.2.6 Ensure fairness in deployment of HIV and AIDS infected employees to less risky work environment upon mutual understanding
- 7.2.7 Maintain confidentiality about employees' medical records
- 7.2.8 Keep work environment hygienic and safe
- 7.2.9 In addition, officers will be provided with comfortable tables and chairs avoiding exposure that can lead to risky sexual behaviour.

7.3 Employee Rights

It is the right of the employee to;

- 7.3.1 Keep their HIV status confidential
- 7.3.2 Seek medical treatment as and when required
- 7.3.3 Remain in employment regardless of HIV status
- 7.3.4 Obtain general information on HIV and AIDS

7.4 Employee responsibilities

The employee has the following responsibilities;

- 7.4.1 It is the responsibility of the employee to know their HIV status and declare it willingly
- 7.4.2 It is the responsibility of an employee to take appropriate action on being informed about their HIV status, to protect him/herself, fellow employees and their family and seek guidance and counselling and treatment.
- 7.4.3 All employees must comply with the HIV and AIDS workplace policy. In addition, all employees are required to attend, lend support to and participate in all activities aimed at combating HIV and AIDS.
- 7.4.4 It is the moral responsibility of all employees to take care of themselves and other to avoid re-infection and infecting others.
- 7.4.5 It is the responsibility of the employees to support colleagues who are infected and affected in any way that they may deem fit.
- 7.4.6 It is the responsibility of employees not to stigmatise fellow employees
- 7.4.7 It is the responsibility of all employees to adhere to the Sexual Offences Act

8.0. MANAGEMENT OF HUMAN RESOURCES

8.1. Recruitment and Promotion

HIV screening should not be a requirement for staff recruitment and/or promotion.

8.2. Sick leave

Sick leave will be provided for as stipulated in the relevant service regulations. However, the Permanent Secretary on case-by-case basis will grant additional sick leave days.

8.3. Working Hours

Normal working hours will continue to apply for all employees. However, more flexible/humanitarian approach will be applied for those infected or affected.

8.4. Counselling Services

The Ministry will ensure that each department has a minimum of two skilled counsellors trained from among staff to provide counselling services on HIV and AIDS and drug abuse. The Ministry will always encourage affected/infected to be peer counsellors.

8.5. Termination of Employment

The policies and procedures to termination of services will apply to all employees. No employee shall be dismissed or have employment terminated based solely on perceived or actual HIV status.

8.6. Medical Privileges

The normal provision of medical privileges will continue to apply. However, to reduce the negative effects of illness and incapacity on employees, the Ministry will establish a Voluntary Counselling and Testing Centre (VCT) and comprehensive care clinic at Directorate of Occupational Health and Safety Services (DOHSS).

8.7. Deployment and Transfers

The Ministry will ensure:

- 8.7.1 Where possible, partners and spouses are not separated to minimise vulnerability;
- 8.7.2 Where employees are deployed in remote areas, the period served in such areas is limited to three years.
- 8.7.3 Staff requiring access to family support or medical care are deployed appropriately; and
- 8.7.4. Where fitness to work is impaired by illness, reasonable alternative working arrangements are made where possible

8.8. Sexual Harassment, Abuse and Exploitation

- 8.8.1 There shall be zero tolerance to sexual harassment, abuse and exploitation in the workplace. Gender harassment will also not be tolerated.
- 8.8.2 The Ministry will discourage the use of official means and position to sexual exploitation, abuse and harassment.

8.9. Discrimination

All employees have the same rights and obligations as stipulated in the terms and conditions of service.

8.10. Stigmatisation

Employees shall not refuse to work or interact with fellow colleagues on the grounds that the latter are infected or perceived to be infected. Such refusal shall constitute misconduct. The Ministry shall continue to give appropriate information to employees to reduce stigma.

8.11. Grievances and Concerns

The Permanent Secretary shall establish and maintain communication channels for employees to raise concerns and grievances and access support relating to HIV and AIDS. In addition, the ACU and departmental sub-ACUs will act as channels to address the same.

9.0. HIV AND AIDS PROGRAMMES AND STRATEGIES AT THE WORKPLACE

To ensure that the Policy is widely disseminated and monitored, programmes and strategies that will be put in place will include the following:

9.1. Prevention and Advocacy

9.1.1. VCT (Voluntary Counseling Testing)

- Empowering DOHSS to provide Voluntary Counseling Testing (VCT) services and Comprehensive Care Services
- Networking and partnering with other VCT centres and hospital for referrals

9.1.2. IEC (Information, Education, Communication)

- The ministry will develop sector-specific (IEC) materials that will always be placed at strategic points e.g. Reception Desks

9.1.3. Promotion of attitude and behaviour change

- This will be done through workshops, sharing experiences, seminars and peer education

9.1.4. Establishment of HIV/AIDS resource centres in each department and the Ministry's learning institutions

- HODs will be expected to provide space, personnel and budget
- The Ministry shall ensure that staff are permanently deployed to man the ACUs and Sub-ACUs

9.1.5. Incorporation of HIV/AIDS education curricular in the Ministry's training institutions

- A pool of peer educators/counselors will be created
- Resource persons will be invited to give talks

9.1.6. The provision of both male and female condoms

- Employees will receive education on use of condoms and the demystification of myths on condoms

9.1.7. Mobilization of resources

- The ACU will develop proposals, work plans and activities and lobby for increased funding of HIV activities

9.1.8. Dissemination

- Employees, social partners (FKE and COTU) and other stakeholders in the Ministry of Labour and Human Resource Development shall be made aware of the content of the policy on HIV and AIDS.

9.2. Care and support of the infected and affected

The ministry shall;

- Set aside a portion of the HIV and AIDS budget line for care and support for the affected and infected
- Endeavor to link infected employees to support groups
- Build Directorate of Occupational health and safety Services' (DOHSS) capacity to be used as in house referral in the Ministry and establish linkages with other stakeholders
- Establish a mechanism to address the psycho-social, physical, emotional, education and spiritual needs of affected and infected employees.
- Encourage HODs, employees and stakeholders to ensure that the rights and dignity of all affected or infected persons are respected.
- Ensure that HIV/AIDS campaign is mainstreamed into departmental functions operations and programmes.
- Ensure that counseling services at the workplace are provided.
- Ensure that the infected members of staff have access to treatment
- Put in place legislation that eliminate workplace discrimination

