HIV/AIDS as an Episodic Disability in the Workplace:
A Rights Based Approach to Policy Development and Implementation

Sample Policy Template September 2005 (Revised from January 2003)

Effective Date:                             Revised Effective:

This policy applies to [xxxxxxxxxx]. It will be reviewed every two years. Human rights laws, employment legislation changes and/or any other conditions that may affect the provisions in this policy will be tracked, implemented and communicated to all employees.

Note: This policy template applies to provincially regulated organizations, including non-profit and voluntary sector organizations.

Policy Introduction

The [applicable Provincial/Territorial Human Rights Commission] defines HIV/AIDS and other life threatening and/or chronic illnesses as a disability. A disability whether permanent, chronic, episodic and/or life threatening is a protected ground under the [name of the applicable Provincial/Territorial Human Rights Law].

The objective of this policy section is to explain the rights of the employee living and working with a disability as well as the employer obligations towards employees living and working with a disability.

[Name of organization] has implemented a rights-based policy that includes HIV or AIDS and other disabilities as defined by [name of the applicable Provincial/Territorial Human Rights Law]. Employee rights and employer obligations are entrenched in the [name of the applicable Provincial/Territorial Human Rights Law] (for example in Ontario the Ontario Human Rights Code) and as such are the same regardless if the disability relates to for example, HIV or AIDS, cancer, hepatitis C, heart disease, epilepsy and/or multiple sclerosis. To that end, the policies are all encompassing under [name of Province/Territory] human rights legislation in terms of:
• Disability as a protected ground
• Employee rights, and
• Employer obligations

Policy 3.0 HIV/AIDS and the Workplace Policy provides specific information about [name of organization] on-going commitment towards awareness and education, prevention, employee support and care.

Preamble of the [name of the applicable Provincial/Territorial Human Rights Law]

Note: As this policy is a rights-based policy, it is recommended to include the preamble of the provincial or territorial human rights law. This sets out the fundamental principles and reinforces the organizations commitment to upholding human rights in the workplace. Please refer to the ICAD website for the location of human rights offices in your province or territory.

Support in the Workplace

[Name of Organization] is a supportive work environment in which staff can discuss their health status free from discrimination, stigmatization or reprisal. To the extent requested, and to the extent possible, [name of organization] will encourage employees to seek out services and/or resources that are available in the community to assist any employee living and working with a life threatening, chronic or episodic disability.

Consultation is available to employees to assist with the effective management of health benefits and applicable leave as defined in the Personnel Policy Manual.

Support for Dependents with a Life Threatening and/or Chronic Illness or Episodic Disability

It is recognized that employees may be caring for a dependent with a life threatening or chronic illness. These employees are encouraged to discuss their situation with [name of organization] in order that they may be directed to the [State the Personnel Policy Manual and/or Collective Agreement as applicable] and/or to specific policies that are available to assist the employee with their circumstances.

Confidentiality for the dependent and their health status must be respected at all times and will be in accordance with [name of organization] confidentiality policy.

Training & Education for Policy Implementation

As part of the workplace commitment to this policy, training & education will be provided to managers or supervisors who have responsibility for employees. This training will focus on the rights of employees and the obligation of the employer with respect to disabilities in the workplace as well as policy implementation.
As part of the training & education process all employees and any new employees working at [name of organization] will be introduced to this policy with specific emphasis on making a request for reasonable accommodation and workplace support that is available.

Definitions

Disability

The [name of the applicable Provincial/Territorial Human Rights Law] provides a basic definition of disability to include:

- Conditions that have developed over time
- Conditions that result from an accident, or
- Conditions that have been present from birth

It includes physical, mental and learning disabilities and it includes visible, non-visible and perceived disabilities.

Episodic Disability

An episodic disability is characterized by unpredictable, intermittent and varying degrees of illness and wellness. As a result, there are any number of challenges that both employees and employers must manage, including but not limited to: the potential need for the employee to move in and out of the workplace in an unpredictable manner, workload planning and management, availability of flexible work arrangements, income replacement options and insurance benefits coverage.

Discrimination

Discrimination in employment is defined as treating people differently, negatively or adversely, in the course of their employment, because of a protected ground including race, ancestry, place of origin, colour, ethnic origin, citizenship, religion, age, sex (including pregnancy and childbirth), sexual orientation, marital or family status, disability or perceived disability, same sex partnership status, record of offences.

Some examples of discriminatory practices include but are not limited to:

- Directly or indirectly refusing to employ someone based on a protected ground.
- Asking someone’s HIV status on a job application form.
- Terminating someone's employment based on a protected ground.
- Adopting a rule of not hiring women who may wish to start a family.
- Instructing a receptionist not to take applications from applicants who are from a particular racial or ethnic background.
- Not hiring a job candidate because of their disability.
- Establishing or following any policy or practice which deprives persons of career opportunities based on the protected grounds; and
- Making adverse distinctions between employees based on the protected grounds.
Stigmatization

Stigmatization is to describe or identify an individual in disrespectful terms or as a mark of shame or discredit.

Harassment

Harassment means any improper behaviour that is directed at and is offensive to an individual and which the person knew or ought reasonably to have known would be unwelcome. Harassment comprises objectionable conduct, comment or display made on either a one-time or continuous basis that demeans, belittles, or causes personal humiliation or embarrassment to an employee based on a prohibited ground of discrimination.

Disclose: Webster’s Dictionary: To make known, public.

At no time is an employee obligated to disclose their specific medical condition. Only relevant and appropriate information, explaining the limitations and/or requirements that the employee may have with respect to their ability to fulfill the essential duties of their job, need be provided.

Accommodation

A means of removing barriers that prevents persons with disabilities from fully participating in the workplace. Accommodation must be responsive to the individual circumstances of the employee.

1. Employee Rights and Employer Obligations

1.0 Employee Rights and Employer Obligations

Preamble

[Name of organization] recognizes that an employee with a disability may wish to continue to engage in as many of their normal pursuits as their condition allows, including work.

Provided an employee is medically fit for available appropriate work, can perform the essential duties of the job, is able to meet acceptable performance standards and medical evidence indicates the condition would not be adversely affected by continued employment, [name of organization] will take all reasonable steps to accommodate continued work and ensure the employee is treated fairly, and with dignity and respect.

1.1 Employee Rights:

[Name of organization] recognizes that the employee has the following rights:

- Privacy and confidentiality [if applicable, include Policy reference number].
- Be free from discrimination, stigmatization and/or harassment on any grounds enumerated by the [name of the applicable Provincial/Territorial Human Rights Law]
- Be free from discrimination, stigmatization and/or harassment on the grounds of association with one or more individuals who themselves are members of groups protected by the [name of the applicable Provincial/Territorial Human Rights Law]. For example if an employee is living with someone who is HIV positive.
- Receive the same insurance benefits coverage provided to other employees subject to any lawful exclusions and/or limitations of the insurer.
- Be provided reasonable accommodation, as warranted, based on medical confirmation(s) of the employee’s ability to continue working and any special workplace facilities or needs that are required.
- Equal treatment with respect to employment related issues which cover: job application forms, the process of applying for a job, recruitment and hiring, training, transfers, promotions, terms of apprenticeship, dismissal and layoffs, compensation, leave, benefits, discipline and performance evaluation and/or other terms and conditions of employment as may be applicable in each individual circumstance.

1.2 [Name of Organization] Obligations

[Name of Organization] recognizes the following obligations towards its employees:

- Respect that an employee’s health condition is personal and will be treated as confidential and in accordance with [name of organization] confidentiality policy.
- Ensure that any information and/or medical evidence provided are maintained as strictly confidential and in accordance with [name of organization] confidentiality policy.
- Foster an environment free from discrimination, stigmatization and/or harassment.
- Ensure that disciplinary action is taken against any person known to discriminate, stigmatize and/or harass any employee with a disability.
- Administer insurance benefits ensuring the employee will receive the same benefits coverage provided to other employees, subject to any lawful exclusions and/or limitations of the insurer.
- Require the employee to disclose only relevant and appropriate information such as prognosis for return to work, as well as any limitations and restrictions that require accommodation.
- Provide reasonable accommodation and/or any special workplace facilities that may be required in response to an approved request for reasonable accommodation.
- Protect the rights of all persons with a disability with respect to employment related issues which cover: job application forms, the process of applying for a job, recruitment and hiring, training, transfers, promotions, terms of apprenticeship, dismissal and layoffs, compensation, leave, benefits, discipline and performance evaluation and/or other terms and conditions of employment as may be applicable in each individual circumstance.
1.3 Discrimination and/or Harassment

The [name of the applicable Provincial/Territorial Human Rights Law] states that every person has a right to equal treatment with respect to employment without discrimination and every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of the following protected grounds: race, ancestry, national or ethnic origin, colour, citizenship, religion, age, sex (including pregnancy and childbirth), sexual orientation, marital or family status, disability or perceived disability or conviction for which a pardon has been granted.

Note: Some grounds may differ between provinces. Please consult the applicable Human Right law in your province or territory.

The right to “equal treatment with respect to employment” covers every aspect of the workplace environment and employment relationship which includes job application forms, the process of applying for a job, recruitment and hiring, training, transfers, promotions, terms of apprenticeship, dismissal and layoffs, compensation, leave, benefits, discipline and performance evaluation and/or other terms and conditions of employment as may be applicable in each individual circumstance.

[Name of organization] holds all employees responsible for creating a non-discriminatory work environment and will take seriously and investigate any claim of discrimination and/or harassment. Where such a claim is proven, any/all of those involved will be subject to disciplinary action.

1.4 Confidentiality

Note: If your organization has implemented a policy on confidentiality it should be specifically linked with the confidentiality statement in this policy. If you do not have a specific policy on confidentiality, the wording below can be used.

[Name of organization] respects the right to privacy of former, current and prospective employees. While [name of organization] encourages a supportive work environment, an employee’s medical condition is personal. Until such time as an employee conveys their medical condition or wishes it to be discussed openly with others, any information provided by the employee to the employer must be maintained with a maximum degree of privacy and confidentiality. Any breach of confidentiality will result in disciplinary action that may include the possibility of dismissal.

At no time will [name of organization] record, or document for any purposes, any details specifying an employee’s HIV status. In order to meet its duty to accommodate, [name of organization] will be required to record and/or document details in regards to an employee's prognosis for return to work or regular work duties, as well as limitations, restrictions, and accommodation requirements, options and resolutions.

Any discussion that may take place about an employee’s HIV status must be pre-authorized and consented to in writing by the employee. At no time may an employee ask another employee about their HIV status and/or for any employee to disclose specific information about their HIV status unless as specified in Workplace Accommodation: Privacy and Confidentiality.
1.5 Designated Health Contact

[Name of organization] has a designated health contact for employees wishing to:

- Discuss their health situation;
- Convey their medical condition; and/or,
- Request accommodation in the workplace.

This person will be experienced in providing a confidential, supportive environment in which the employee can discuss their situation, ask any questions, seek reassurance and obtain support and/or advice.

The designated health contact at [name of organization] is the [title]

1.6 Informing the Employer

Anyone who has an illness or disability is required to inform the designated health contact, only if and when their condition and/or actions pose a health risk to themselves or others, or when they are no longer capable of performing the essential duties of the job. (Refer to Workplace Accommodation).

2. Workplace Accommodation

2.0 Preamble:

Under the [name of the applicable Provincial/Territorial Human Rights Law], persons with disabilities have the right to full integration and participation in society. Respect for the dignity of persons with disabilities is the key to preventing and removing barriers. This includes respect for the self-worth, individuality, privacy, confidentiality and autonomy of persons with disabilities.

Accommodation will vary according to a person’s unique needs. These needs must be considered, assessed, and accommodated individually. [Name of organization] may request independent medical confirmation when receiving a request for reasonable accommodation.

Accommodation may include, but is not limited to: physical modification of a work site, job modifications, flexible work schedules, extra breaks during the day or altering break schedules, assistive devices, transfer to a different job to reduce stress and/or leaves of absence as defined within existing leave policies.

This policy acknowledges the duty of the employer to provide individual accommodation up to the point of undue hardship and the responsibility to minimize the need for individual accommodation by ensuring that any rules, policies, standards or practices are not discriminatory.
Responsibilities in the Accommodation Process

Employers and persons with disabilities have a shared responsibility in making the accommodation process a success. Nothing forces a person to reveal their medical condition. However, when an accommodation is requested, everyone involved should cooperatively share information and actively seek solutions.

[Name of organization] has a designated health contact for employees wishing to:

- Discuss their health situation;
- Convey their medical condition; and/or,
- Request accommodation in the workplace.

This person is experienced in providing a confidential, supportive environment in which the employee can discuss their situation, ask any questions, seek reassurance and obtain support and/or advice. The designated health contact at [name of organization] is the [title].

In some cases, the employee may simply want to make the employer aware that there is a health matter or concern and that they may require some extra time for diagnostic testing, or time off following a surgical procedure. In these examples, working through existing sick leave policies and/or flexible work schedules may be available. The designated health contact, to the best of their ability, will determine if the request or information provided by the employee should be pursued as a matter for workplace accommodation.

2.1 Employee Responsibilities

[Name of organization] recognizes that the employee has the following responsibilities in the accommodation process:

- Make any request for accommodation to the employer in writing (see attached template letter)
- Inform the employer of the employee needs and relevant restrictions or limitations
- Cooperate in obtaining necessary information, including medical and/or other expert opinions
- Actively participate in discussions about solutions
- To act reasonably and try to minimize any disruptive effect on the workplace
- As applicable and/or appropriate, assist with workload planning and/or redistribution
- Meet agreed upon performance objectives and measurements once accommodation is provided
- In collaboration with the employer, help to develop an accommodation agreement; and
- Work with the employer on an ongoing basis to manage and monitor the accommodation process to ensure the policy and procedure is being applied correctly.
2.2 [Name of organization] Responsibilities

[Name of Organization] has the following responsibilities in the accommodation process:

- Maintain the confidentiality of a person with a disability.
- Accept requests for accommodation in good faith and deal with accommodation requests in a timely manner.
- Discuss with the employee the purpose and essential functions of the employee’s job, the accommodation required, whether or not there are alternatives and take an active role in ensuring that possible solutions are examined.
- Request only information that is required to make the accommodation
- With the agreement of the employee, obtain expert medical advice or opinion where necessary.
- Ensure that any medical opinion(s) required will be restricted to: the employee’s capability to continue working; special workplace facilities or needs necessary to accommodate the employee’s medical condition or protect the health of the employee, co-workers or other individuals with whom the employee has contact.
- Identify potential accommodation options and assess the effectiveness each would have in allowing an individual to perform the job optimally.
- Identify any costs, benefits or detriments.
- Bear the cost of any required medical information or documentation.
- Develop an accommodation plan and agreement, manage and monitor the plan to ensure the policy and procedure is being applied correctly.

2.3 Privacy and Confidentiality

Any discussion with the designated contact about a health matter or concern is strictly confidential. The designated contact is not permitted to discuss the contents of the meeting with any other employee or person associated with the employer without the expressed written consent of the employee.

All documents related to specific requests for accommodation will remain confidential and will only be released to a third party with the written consent of the employee or applicant. [Name of organization] will comply with all requirements of human resources best practices to protect personal information and adheres to the provisions explained in Policy [applicable policy number] Confidentiality.

To protect the interests of the employee, confidentiality will be maintained throughout the accommodation process to the extent practicable and appropriate under the circumstances. Only those with a need to know will be made aware of the request for accommodation of an employee’s limitations and restrictions such as anyone who is party to the accommodation process, who is asked to help develop options and who must implement the eventual accommodation chosen.
2.4 Undue Hardship

Where a particular means of accommodation is requested and it has been found that it cannot be met without incurring undue hardship, every effort will be made to provide alternative accommodation up to the point of undue hardship.

It is the responsibility of the Executive Director to make a decision about the likelihood of undue hardship arising by considering:

- The nature and cost of the accommodation as assessed in the context of the size and financial situation of the organization as a whole.
- Safety and/or health risks, if any, and who bears them.

Any decision to refuse a request for accommodation will be done so only after the [Provincial/Territorial] Human Rights Commission office has been consulted.

2.5 Recourse Rights

Before refusing to provide accommodation [name of organization] will ensure that all effective options to accommodate, short of undue hardship, are considered.

Where any employee believes that their request for accommodation has not been handled in accordance with this policy and procedure, or is not satisfied with the type of accommodation offered, that employee has a right of appeal to an [Name of the Committee] consisting of the Board Chair or designate, one other board member or executive committee member and a Human Resources Consultant chosen by the employer.

The employee must advise the Executive Director within five working days if they want the decision reconsidered by the Appeal Committee. The employee has the right to make written submissions or to speak to the Committee about why the request should be approved. The employee has the right to be accompanied by an advocate.

The [Name of the Committee] will make its recommendation within [number of working days] of the appeal. The employee will be informed immediately of the decision.

If the appeal is refused, the employee will be advised of their continuing right to make a complaint of employment discrimination under the [Name of the applicable Provincial/Territorial Human Rights Law]

3. HIV/AIDS and the Workplace

3.0 The HIV/AIDS and the Workplace policy is intended:

(a) To minimize the possibility of HIV infection.
(b) To ensure a supportive work environment.
To manage and mitigate the impact of HIV/AIDS in the workplace.
(d) To eliminate stigma and discrimination in the workplace on the basis of real or perceived HIV status, or vulnerability to HIV infection.

3.1 Principles:

The Joint United Nations Programme on HIV/AIDS states:

“A supportive social, political and legal environment helps individuals to exercise their responsibility to protect themselves and others from HIV infection … Everyone is entitled to enjoy all human rights without discrimination, including discrimination based on actual or suspected HIV infection”.

The [Name of the applicable Provincial/Territorial Human Rights law] is for everyone. HIV/AIDS is defined under the code as a disability. As such the employee has certain rights under the code. These rights are defined in policy 1.1 Employee Rights and policy 1.2 Employer Obligations.

3.2 Definition

AIDS stands for Acquired Immunodeficiency Syndrome. AIDS is the advanced stage of the disease caused by the Human Immunodeficiency Virus (HIV). This virus seriously damages a person’s immune system.

Research has shown and there is no evidence that HIV transmission involves insects, food, water, sneezing, coughing, toilets, urine, swimming pools, sweat, tears, shared eating and drinking utensils or other items such as telephones. There is no evidence to suggest that HIV can be transmitted by casual, person-to-person contact in any setting including shaking hands or hugging.

3.3 HIV/AIDS Screening, Recruitment and Employment

[Name of organization] workplace approach to HIV/AIDS is based on current public health aspects of HIV/AIDS.

The only medical criteria for recruitment and employment is fitness to work and the ability to perform the essential duties of the job.

As such:

• Since HIV infection is not spread by ordinary workplace activities there is no basis for screening tests.
• ICAD does not require pre and/or post employment HIV/AIDS screening or testing for any employee or candidate for employment.
3.4 Education & Awareness

[Name of organization] recognizes a number of concerns may be present in the workplace. These concerns may include, but are not limited to:

- Risk of HIV infection
- A safe working environment for all
- How/where to obtain current health information
- Fair and equal treatment of individuals who are HIV positive
- Respect
- Confidentiality

In order to support all employees, [name of organization] is committed to ensuring HIV/AIDS related education & awareness in the workplace.

This education will be:

- On-going to ensure the most current research and education is provided
- Comprehensive
- Accurate
- Given on organization time
- Available to all employees
- Available to family members wishing to participate

[Name of organization] workplace policies will be provided to all managers, supervisors and employees to ensure they have clear and current information and in order that they do not act in a discriminatory manner toward co-workers who are HIV positive or towards anyone who is a caregiver or lives with someone who has HIV or AIDS.

3.5 Prevention & First Aid

HIV is transmitted from an infected person to someone else:

(a) Through sexual intercourse (including semen donation)
(b) Through blood (principally blood transfusions and non-sterile injection equipment; also includes organ or tissue transplant); and
(c) From infected mother to infant during pregnancy, at birth or through breastfeeding

[Name of organization] will provide employees with sensitive, accurate and up-to-date information to enable them to protect themselves from HIV and other sexually transmitted or blood borne infections.
First Aid Precautions

All employees will take the following precautions as appropriate:

(a) Universal Precautions must be followed for the prevention of HIV infection. Latex, vinyl or plastic
gloves (available in first aid kit) must be worn if exposure of blood to skin is a possibility;
(b) First aid should be administered without delay;
(c) Any blood on the skin must be washed off with hot soapy water as soon as possible;
(d) Any materials or surfaces soiled should be washed with a disinfecting solution (1:10 dilute Bleach).
   Blood stained clothes or cloths should be rinsed out in cold water and then laundered normally.
   Blood-stained disposable gloves, towels or any other disposable material or garments should be
   placed in a plastic bag, closed with a twist tie and placed in regular garbage.
(e) Seek medical advice regarding post exposure prophylaxis.

First Aid Kit

[Name of organization] First Aid Kit is located in [state location] As the designated health contact, the [title]
will ensure that this kit is monitored and re-stocked on a routine basis.

3.6 Care & Support in the Workplace

While [name of organization] encourages a supportive work environment an employee’s health status is
personal. Until such time as an employee discloses their health status or wishes it to be discussed openly any
information provided by the employee to the employer must be kept strictly confidential at all times.

To the extent requested, and to the extent possible, [name of organization] will encourage employees to seek
out services and/or resources that are available in the community to assist any employee living with
HIV/AIDS.

Consultation is available to employees to assist with the effective management of applicable health benefits
and applicable leave as defined in the personnel policy manual.

[Name of organization] acknowledges that HIV/AIDS impacts male and female staff differently. This
includes the recognition that women normally undertake the major part of caring for those with AIDS-related
illnesses, and pregnant women with HIV have additional specific needs. Any support programs available
will take into consideration unique individual requirements. It is recognized that these requirements may
change over time.

In order to respond to these changes, [name of organization] will ensure that discussions around appropriate
levels of support are continued on an on-going basis at the organization.