

# Preparing your Business for the Challenge of HIV/AIDS



Employers' Handbook on Managing HIV/AIDS in the Workplace Book 1

Thailand Business Coalition on AIDS (TBCA)  
Employers' Confederation of Thailand (ECOT)  
International Labour Office (ILO)



Supported by  
Joint United Nations Programme  
on HIV/AIDS (UNAIDS)



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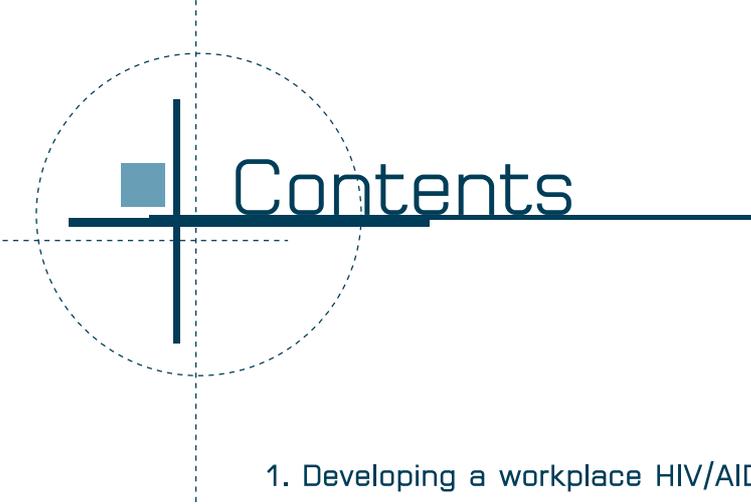
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Preparing your Business  
for the Challenge  
of **HIV/AIDS**



HIV/AIDS presents businesses with many challenges. Anyone in the company could be carrying HIV (the AIDS virus) the newest recruit or the most experienced, specialized employee; maintenance staff or senior managers. Employees' fears and misapprehensions can seriously disrupt work if rumours circulate that a colleague has HIV/AIDS. These can have a serious and costly impact on business operations.

But you can take action now to ensure that your business is prepared to meet these challenges, and will save time and resources in the long run. Among other things, taking a proactive approach to HIV/AIDS can:

- ▣ Make sure you are ready to respond when an employee reveals that they have HIV/AIDS;
- ▣ Allow you to retain valuable employees with HIV/AIDS, and allow them to continue working productively for your business;
- ▣ Help staff to protect themselves against HIV infection;
- ▣ Avoid work stoppages and disruption due to rumours about a staff member with HIV/AIDS; and
- ▣ Send a strong message to the workforce and to the public that the business cares about its staff.

This handbook discusses how to create a workplace HIV/AIDS policy and establish a company HIV/AIDS committee to oversee the company's HIV/AIDS response.

## 1. Developing a workplace HIV/AIDS policy and establishing a company HIV/AIDS committee



An HIV/AIDS policy should be the centrepiece of your business' HIV/AIDS strategy. A workplace HIV/AIDS policy can guide the company through

the important decisions to be made when employees find out, or fear, they are HIV-positive, and when concerns about HIV/AIDS disrupt work.

It lays down standards of behaviour for all employees regarding HIV/AIDS, provides guidance to supervisors and managers, and helps employees with HIV/AIDS to access the appropriate care and support to keep them healthy and working. It will show your staff and society that your company is concerned about HIV/AIDS and cares about its employees.

A workplace HIV/AIDS policy should be an official, written statement describing guidelines and principles related to HIV/AIDS, and staff responsibilities for upholding the policy. Developing the policy takes little time and is very cost effective. Among other things, the policy should address the following key issues:

- Prevention: Providing information, education and training to staff about how HIV is transmitted and about how they can protect themselves and their families;
- Care and support: Ensuring that employees with HIV/AIDS receive the appropriate assistance so that they can continue to work in a supportive environment; and
- The rights of staff with HIV/AIDS: to continue employment, to ensure confidentiality and freedom from discrimination in the workplace.

The policy should reflect a balance between the interests of management, the workforce, and individual employees with HIV/AIDS. If the policy has the approval of both management and employees' representatives, it will be much easier to implement. Ensure that HIV/AIDS policies and procedures are in line with policies and procedures related to other health issues

## Principles

Based on Thailand's national AIDS policy and experience of working with over 1,300 Thai companies, it is suggested that your HIV/AIDS policy should incorporate the following principles:

1. The company will not practice or tolerate any form of discrimination against employees with HIV/AIDS. All employees will have the same consideration regarding career advancement and other benefits and rights, regardless of their HIV status.
2. The company will not terminate the employment of any employee just because they have HIV/AIDS, but will offer appropriate support (including changes to work duties and conditions) to enable an employee with HIV/AIDS to continue working for as long as they are willing and able to perform their contracted duties;
3. The company will not oblige current employees or job applicants to take an HIV test. However, it will support voluntary, confidential HIV counselling and testing by private or public health services outside the workplace;
4. All information about a current employee or job applicant's health status, including HIV/AIDS, will be treated as confidential by management and all staff;
5. Personnel files and medical files will be kept separately. Only people who can directly provide assistance can access an employee's medical files, and must have permission from the employee;
6. The company will supply accurate and complete information about HIV/AIDS to staff at all levels;

7. All matters relating to HIV/AIDS in the workplace will be decided and implemented collaboratively between management and staff;
8. Women will be given special consideration in HIV/AIDS prevention training because of their different needs and sensitivities surrounding the issue of HIV/AIDS; and
9. The company will consider providing appropriate assistance to sick employees who are unable to continue work, and their families.

In drafting your workplace HIV/AIDS policy, it may be helpful to look at the policies other companies have designed for managing HIV/AIDS. A selection of these is included in the Asian Business Coalition on AIDS website (<http://www.abcon aids.org>). However, your HIV/AIDS policy should be tailored to your own company's unique needs and capabilities. Do not forget to include an implementation plan and timetable, so that the policy becomes reality.

Once the policy has been finalized and agreed upon, make sure all employees are aware of its full contents, and that copies of the policy are accessible to all employees. New staff, including senior managers, should be briefed on the policy. Making the workplace HIV/AIDS policy formal and official will give employees confidence that it will still be followed even after a change of management.

Establish a company HIV/AIDS committee to take charge of all aspects of HIV/AIDS management. The committee's responsibilities can include drafting the workplace HIV/AIDS policy, planning and implementing HIV/AIDS strategies, and taking any other important decisions relating to HIV/AIDS. The committee can also look after the financing of HIV/AIDS activities, if necessary through fundraising outside the company. To ensure that all sides' interests are represented, the committee should include members of management, staff from various departments, and trade unions.



## 2. Focus issue: Continuing employment of staff with HIV/AIDS



Many managers worry about the business consequences of retaining employees with HIV/AIDS. While they wish to help the HIV-positive employee and not lose a skilled and experienced worker, they also mistakenly believe that simply dismissing them will be the cheapest and most effective course of action for the business. This section seeks to address some common managers' main concerns regarding continued employment of staff with HIV/AIDS, and show why continuing to employ HIV-positive staff makes good business sense.

**Will an employee with HIV/AIDS be fit to work?**

In most cases, people with HIV/AIDS are able to work just as well as other staff. People with HIV/AIDS usually do not develop symptoms until about seven or eight years after they were infected – and with a healthy lifestyle and appropriate treatment of opportunistic infections, they can go on working indefinitely. Some companies provide HIV-positive employees with anti-retroviral therapy, which helps to control the effects of the AIDS virus, HIV. In Thailand, where the drugs are now being produced locally, anti-retroviral therapy now costs about 1,200 baht per person per month and the price is likely to keep falling.

**Won't keeping on an employee with HIV/AIDS be too expensive?**

Having an employee with HIV/AIDS will bring no increased medical costs for companies that provide staff health benefits through the government social security scheme. Any additional benefits provided by the company should be covered by the company's insurance. The company is not obliged to help families of deceased employees with funeral costs, unless this is company policy. Government social insurance benefits cover some of the costs.

In addition, dismissing an employee with HIV/AIDS means that a replacement must be recruited and trained. This is expensive, and it may be months or even years for a new employee to be as capable as the employee they replace. Taking on new staff also reduces the productivity of co-workers and supervisors.

**Will an employee with HIV/AIDS still be motivated to work?**

After an initial emotional adjustment period, most people with HIV/AIDS are motivated to work just as hard before, particularly if they feel supported by the company. They do not want to be seen as having limited abilities. They generally do not take more sick leave than their colleagues, except when it becomes absolutely necessary. Every company limits the number of sick days employees can take per year, and this limit naturally applies to employees with HIV/AIDS.

**What about the risk of infection for other workers?**

HIV/AIDS cannot be passed on through casual contact, so other employees can work alongside their HIV-positive colleagues without any risk.

**Won't dismissing an employee with HIV/AIDS keep other workers happy?**

If you just dismiss an employee with HIV/AIDS because others refuse to work with them, you ensure that the same thing can happen again in the future. The more cost-effective alternative is to implement a workplace awareness-raising and education programme on HIV/AIDS. Combined with a policy of non-discrimination, this will ensure that employees are comfortable working alongside a colleague with HIV/AIDS.

## The law

Legally, having HIV/AIDS is not sufficient reason for a company to dismiss an employee. The rights of people with HIV/AIDS are protected by the Thai Constitution and Thai labour law, which also stipulates that all workers must receive adequate compensation and notice when they are dismissed. If you terminate the employment of HIV-positive staff without adequate reason, you could be sued for unfair dismissal. The end of this booklet provides more information on legal issues relating to HIV/AIDS.

## Reputation

A company's reputation for socially responsible practices is an important factor in the current business environment. Automatically dismissing HIV-positive employees could generate damaging publicity and make the company appear socially irresponsible.

### 3. Focus issue: Compulsory HIV testing

Some companies think it is a good idea to make all employees and job applicants take a compulsory HIV test. There are many reasons why compulsory testing should not be part of your HIV/AIDS response. Compulsory testing is illegal and a violation of workers' human rights. It is also a violation of constitutional rights and Thai criminal and commercial law for anyone, including healthcare professionals, to reveal a person's HIV status without the person's permission. Opening a sealed envelope containing a person's HIV test results without their permission is punishable under criminal law.

Besides the legal issues, compulsory testing sends the wrong messages to the workforce. It adds to an atmosphere of fear and suspicion about HIV/AIDS, and is likely to increase discrimination and disruption when rumours start about an employee being HIV positive. It also tells employees that management does not care about their rights.

If employees or prospective job applicants are worried that they may be HIV-positive, or simply do not want to find out, they will leave the company or not apply in order to avoid compulsory testing.



Before instituting compulsory testing, you should consider whether you are ready to tell employees that they are HIV positive, and what support you could offer them. And remember, anyone could be HIV-positive and not know it. Is the management team ready to be included in the compulsory testing?

In any case, compulsory testing is unreliable and does not protect employees from HIV. It can take up to six months for testing to detect HIV infection. To be sure of detecting every HIV-positive employee, a company would have to conduct compulsory testing every six to 12 weeks. It is much more cost-effective to institute a workplace HIV/AIDS education and prevention programme so that staff can learn to protect themselves and to feel comfortable working alongside colleagues with HIV/AIDS.

Although compulsory HIV testing should not form part of your HIV/AIDS policy, you should encourage employees to consider seeking voluntary and confidential HIV testing themselves. This should be accompanied by professional counselling both before taking the test and before receiving a positive result. There are many benefits of voluntary, confidential counselling and testing. Counselling provides a good opportunity for HIV/AIDS education, to encourage safer behaviour. If a person knows early on that they are HIV-positive, they have more time in which to prepare themselves emotionally and financially. They can also protect their partners from infection, and can seek appropriate care and treatment.

#### 4. HIV/AIDS and the Law in Thailand

Though Thailand has no specific laws pertaining to HIV and AIDS, existing laws do apply. The Centre for AIDS Rights (CAR), in collaboration with independent lawyers, the Thai NGO Coalition on AIDS (TNCA), and the Office of the Public Prosecutor, has documented these laws.

##### In the Thai Constitution

¶ Section 30: Unjust discrimination against a person on the grounds of difference in physical or health condition, personal status, language, sex, age, economic and social status, religion, education or political opinion that is not conflicting to the Constitution will not be allowed.

¶ Section 31: An individual shall enjoy the right and liberty in his or her own life and person. No arrest, detention or search of a person, or act affecting the right and liberty under paragraph one shall be made except by virtue of the law.

¶ Section 34: A person's family rights, dignity, reputation or the right of privacy shall be protected. The assertion or circulation of a statement or picture in any manner whatsoever to the public, which violates or affects a person's family rights, dignity, reputation or the right of privacy, shall not be made except in (cases where it) is beneficial to the public.

##### In the Criminal Code

¶ Section 322: Any individual who opens a sealed package or takes this sealed package from another in order to inquire about its contents or to distribute the information, will be liable to imprisonment of no more than six months and/or a fine of no more than Baht 1,000.

¶ Section 323: Any individual who acquires information from another in his or her professional capacity – as a responsible officer, a physician, pharmacist, drug distributor, midwife, religious personnel, lawyer or financial auditor, or assisting in any of these occupations – and distributes information that may be defamatory to another person will be imprisoned for no more than six months and/or fined no more than Baht 1,000.

¶ Section 326: Any individual who defames another to a third party and this defamation results in discrimination or otherwise will be imprisoned for no more than one month and/or fined no more than Baht 2,000.

¶ Section 327: Any individual who defames a deceased person to a third party and this defamation results in the parents, spouse or children of the deceased being discriminated against, that person violates Section 326 of the Criminal Code.

### In the Civil and Commercial Code

¶ Section 420: Any individual who deliberately commits an unlawful act to another that causes death or personal injury, or damage to health status, loss of freedom, or loss of assets, must compensate for these losses.

### In the Medical Council Code of Conduct

¶ Sub-section 3 paragraph 4:  
Medical practitioners must provide courteous service to all patients and without undue force.

¶ Sub-section 3 paragraph 9:  
Medical practitioners cannot release patient information that he/she acquires from his/her practice unless it is with the consent of the patient or when the law stipulates it.

¶ Sub-section 3 paragraph 10:  
Medical practitioners cannot refuse assistance to a person in danger when assistance is requested and the practitioner is able to provide such assistance.

### National AIDS policy on HIV testing

The National AIDS Committee has stipulated the following policy regarding HIV testing.

1. Testing must be done with the consent of the person being tested.
2. Pre- and post-test counselling must be provided in order to prepare the emotional state of the person being tested.
3. Test results must be confidential and revealed only to the physician and the patient.
4. Release of test results must receive consent from the person being tested. Thus, testing of job applicants or employees, or life and health insurance, during ante-natal care, entry in an educational institution and receiving medical attention is considered a violation according to the national AIDS policy.

For further information please contact the Centre for AIDS Rights.

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The Booklets of the series

Employers' Handbook on Managing HIV/AIDS in the Workplace

Include

Book I Preparing your Business for the Challenge of HIV/AIDS

Book II HIV/AIDS Prevention and Education in the Workplace

Book III HIV/AIDS Care and Support in the Workplace

Book IV Support and Care Referral Network



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