

POLICY ON HIV & AIDS AT THE WORKPLACE

Item A-CORP (19-2009) CM 30/04/2009	HUMAN RESOURCE MANAGEMENT AND DEVELOPMENT DEPARTMENT: EMPLOYEE WELL-BEING DIVISION: REVISED POLICY ON HIV & AIDS AT THE WORKPLACE
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{B-HR (12-2008)}

{B-CORP (12-2009)}

RESOLVED:

1. That the report regarding the Revised Policy on HIV & AIDS at the Workplace **BE NOTED**.
2. That the Policy on HIV & AIDS at the Workplace, attached to the report as Annexure "A", **BE APPROVED**.
3. That the transfer of the function of Workplace HIV & AIDS from the Health Department to the Human Resource Management and Development Department, **BE IMPLEMENTED**.
- * 4. That all similar previous policies **BE RESCINDED**.

* **The following policy which was part of the EMM Policy Register was rescinded:**

HIV / Aids at the Workplace HR 34-2002 MC 17/10/2002

POLICY ON HIV & AIDS AT THE WORKPLACE

Effective implementation date:	
Last review date:	
Authorising Signature:	

1. PURPOSE

The purpose of the policy is to set out guidelines through Integrated Development planning (IDP) for Ekurhuleni Metropolitan Municipality (EMM), so as to ensure that employees with HIV & AIDS infection are not unfairly discriminated against in the workplace and also to provide guidelines on how to manage HIV & AIDS, enhance wellness and prevent spreading of HIV & AIDS within the EMM.

2. SCOPE OF APPLICATION

This policy shall be applicable to all employees of the Ekurhuleni Metropolitan Municipality.

3. PREAMBLE

The Ekurhuleni Metropolitan Municipality recognizes that:

- 3.1 The Human Immune Deficiency Virus (HIV) and the Acquired Immune Deficiency Syndrome (AIDS) are serious public health problems which have socio economic, employment and human rights implications.
- 3.2 The HIV & AIDS epidemic will affect every workplace, with prolonged staff illness, absenteeism and death impacting on productivity, employee benefits, occupational health and safety (OHS) production cost and workplace morale.
- 3.3 HIV & AIDS knows no social, gender, age or racial boundaries, but it is accepted that socio-economic circumstance do influence disease patterns. HIV & AIDS thrives in an environment of poverty, rapid urbanization, violence destabilization and unhygienic practice. Transmission is exacerbated by disparities in resource, patterns of migration from rural to urban areas and the non use of Personal Protective Equipment (PPE). Particularly women are more vulnerable to infection in cultures and economic circumstance where they have little control over their lives, a lack of knowledge and access to condoms.
- 3.4 Furthermore HIV & AIDS is still a disease surrounded by ignorance, prejudice, discrimination and stigma. In the workplace unfair discrimination against people living with HIV & AIDS has been perpetuated through practices such as pre-employment HIV testing, dismissals for being HIV positive, the denial of employee benefits and career advancement as well as illegal HIV testing at the workplace requested by management.

- 3.5 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 and AIDS policy and a comprehensive and holistic workplace programme. Addressing aspects of HIV & AIDS in the workplace will enable the employer, trade unions and government to actively contribute towards local, national and international effort to prevent and manage HIV & AIDS. In light of this, the policy has been developed as a guide to EMM, trade unions and employees.
- 3.6 Furthermore the policy seeks to assist with the attainment of the broader goals of:
- Contextualizing the pandemic
 - Identifying key challenges
 - Creating consistency and uniform response
 - Promoting prevention of the spread of HIV & AIDS
 - Eliminating unfair discrimination in the workplace based on HIV status
 - Promoting a no-discriminatory workplace in which people living with HIV & AIDS are able to be open about their HIV status without fear of stigma, rejection and or discrimination
 - Promoting appropriate and effective ways of managing HIV & AIDS in the workplace
 - Creating a balance between the rights and responsibilities of all parties without discrimination
 - Giving effect to the employers obligations as a member of the SALGBC
 - Assisting employees to reduce the risk of getting infected with HIV, through educational programmes promoting behaviour change
 - Giving effect to the Constitution with regard to employee rights, rights to life, to human dignity, privacy, to improve the quality of life
 - Mainstream HIV & AIDS into wellness
- 3.7 A safe working environment shall be provided to all employees, but the Occupational Health and Safety Act No. 85 of 1993 (as amended) also determine that:
- “Every employee shall at work
- a) take reasonable care for the health and safety of himself and other persons who may be affected by his acts or omissions,”

4. LEGAL FRAMEWORK

The policy shall be read in conjunction with the Constitution of South Africa, No. 108 of 1996, and all relevant Legislation which includes but is not limited or restricted to the following:

- The Constitution of the Republic of South Africa, 1996 (Previously Act 108 of 1996, substituted by S.1 (7) of Act 5 of 2005)
- Employment Equity Act, No. 55 of 1998
- Labour Relations Act, No. 66 of 1995
- Occupational Health and Safety Act, No. 85 of 1993 and its Regulations
- Compensation for Occupational Injuries and Diseases Act, No. 103 of 1993
- Basic Conditions of Employment Act, No. 75 of 1997
- Medical Schemes Act, No. 131 Of 1998

- Promotion of Equality and Prevention of unfair Discrimination Act, No 4 of 2000
- Conditions of Service applicable
- Policy on Ill-Health and Incapacity
- Application of Special Sick Leave Policy
- Sexual Harassment policy

5. HIV AND AIDS RELATED GLOSSARY OF TERMS AND DEFINITIONS

- 5.1** Where a definition cannot be found in this policy or legislation referred to, the definition of the oxford dictionary shall be accepted.

HIV AND AIDS RELATED GLOSSARY OF TERMS

AIDS	Acquired Immune Deficiency Syndrome- a syndrome (collection of diseases that results from infection with HIV).
AIDS Antibodies	Substances produced by cells in the body's immune system in response to foreign substances that have entered the body.
Asymptomatic	Infected by a disease agent but exhibiting no medical symptoms.
Care	A broad term referring to the steps taken to promote a person's well being through medical, psychosocial, spiritual and other means.
Confidentiality	The right of every person, employee or job applicant to have their medical information, including HIV status, kept private.
Epidemic	A disease, usually infectious, that spreads quickly through a population.
Evaluation	The assessment of the impact of a programme at a particular point in time.
Health Promotion	Programmes aimed at ensuring the physical and mental health and well being of employees.
HIV	Human immunodeficiency virus-the name of the virus which undermines the immune system and leads to AIDS.
HIV testing	Any form of testing designed to identify the HIV status of a person, including blood tests, saliva tests or medical questionnaires.
Immune system	A complex system of cells and cell substance that protects the body from infection and disease.

Incidence of HIV		The number of new cases of HIV in a given time period, often expressed as a percentage of the susceptible population.
Monitoring		The systematic and continuous assessment of a programme over a period of time.
Occupational Exposure		Exposure to blood or other body fluids, which may be HIV infected, during the course of carrying out working duties (for example, a health care worker may be exposed to HIV in case of needle stick injury).
Opportunistic infections		Infections that occur because a person's immune system is so weak that it cannot fight the infections.
Pandemic		An epidemic occurring simultaneously in many countries.
Policy		A document setting out department's or organization's positions on a particular issue (for example, a policy setting out the steps to be taken following occupational exposure to HIV).
Positive living skills		Skills that empower people living with AIDS (PLWAs) to cope with the difficulties and challenges they might face, and to live a long and fulfilling life.
Prevalence of HIV		The number of people with HIV at any specific point in time often expressed as a percentage of the total population.
Prevention programme		A programme designed to prevent HIV transmission, including components such as awareness, education and training, condom distribution, treatments of sexually transmitted infections and occupational infection control.
Rapid testing	HIV	An HIV testing process which enables a test result to be achieved within 10 to 30 minutes.
Seroconversion		The point at which the immune system produces antibodies and at which time the HIV antibody test can register an HIV infection.
Support		Services and assistance that could be provided to help a person deal with difficult situations and challenges.
Treatment		A medical term describing the steps being taken to care for and manage an illness.

Unfair discrimination	Unfair discrimination occurs when an employee is treated differently due to their real or perceived HIV status, in a way that impairs their fundamental dignity, Discrimination is not unfair if it is based on the inherent requirements of a job.
Wellness programme	A programme designed to promote the physical and mental health as well as the well being of employees, including components such as counselling, support groups, nutritional supplements, provision of treatment of opportunistic infections, provision of anti retroviral therapy.
Workplace programme	An intervention to address a specific issue within the workplace (for example, providing staff access to voluntary HIV counselling and testing programme)

ACRONYMS AND ABBREVIATIONS

AIDS	Acquired Immune Deficiency Syndrome
CBO	Community Based Organization
CCMA	Commission for Conciliation, Mediation and Arbitration
DOH	Department of Health
DOTS	Directly Observed Treatment Short Course
DPLG	Department of Provincial and Local Government
DPSA	Department of Public Service and Administration
EAP	Employee Assistance Programme
GEAR	Growth, Employment and Redistribution
HIV	Human Immunodeficiency Virus
HR	Human Resource
IDC	Interdepartmental Committee on HIV and AIDS
IDP	Integrated Development Planning
ILO	International Labour Organisation
KAP	Knowledge, Attitudes and Practices
KPA	Key Performance Area
KPI	Key Performance Indicators
KPT	Key Performance Target
M & E	Monitoring and Evaluation
MRC	Medical Research Council
MTEF	Medium Term Expenditure Framework
NAPWA	National Association of People living with HIV and AIDS
NGO	Non Government Organisation
NEC	National Executive Committee (structure of SALGA)
OHS	Occupational Health and Safety
MFMA	Municipal Finance Management Act
PLWA	Person living with HIV and AIDS
PMS	Performance Management System
SACN	South African Cities Network
SADC	South African Development Community
SALGA	South African Local Government Association
STD	Sexual Transmitted Disease
STI	Sexual Transmitted Infection
TB	Tuberculosis

UNAIDS	Joint United Nations Programme of HIV/AIDS
USAID	United States Agency for International Development
VCT	Voluntary Counselling and Testing
EMM	Ekurhuleni Metropolitan Municipality
IMATU	Independent Municipal and Allied Trade Union
SAMWU	South African Municipal Workers Union
PPE	Personal Protective Equipment (including clothes)

Definitions also include the following:

Alternative Employment

Placement of an employee from a current position to another position due to incapacity (with the new position possibly even in another department)

EMM

Ekurhuleni Metropolitan Municipality

High Risk Employees

Employees performing functions that may expose them to body fluids in the course of executing their work related duties such as but not limited to health personnel, emergency staff and protection services staff, cleansing personnel, First Aiders, OHS Officer etc.

HIV Infected Employee

An employee who has tested positive for HIV or who has been diagnosed with AIDS.

HIV Positive

Having tested positive for HIV infection

Informed Consent

A process of obtaining written consent from an individual which ensures that the person fully understands the nature and implications of the test before giving his or her agreement to it and that such consultation shall take place in the language of choice of the employee.

PPE

Personal Protective Equipment which includes clothing

Post Exposure Prophylaxis (PEP)

Preventative treatment after exposure to HIV

Pre and Post Test Counselling

A process of Counselling, which facilitates an understanding of the nature and purpose of the HIV test. It examines that what advantages and disadvantages the test holds for the individual and the influence the test result will have on the person. Such, consultation shall be highly confidential and shall be in the language of the employee's choice.

Reasonable Alternative Accommodation

Any modification or adjustment to a job or to the workplace that is reasonably practical, which shall be on the same job level even if re-training, needs to be effected on EMM expenses. The aim is to enable an employee living with HIV & AIDS to have access to, or participate or advance in employment.

SALGBC

The South African Local Government Bargaining Council

STIs

Acronym for "Sexually Transmitted Infections". These are infections passed from one person to another during unprotected sexual intercourse, including syphilis, gonorrhoea, HIV and others.

Window Period

A period after a person has been infected with HIV and the duration is approximately between three and six months. During this period the body produces antibodies (which **may or may not** be detectable during window period and the HIV test may return a false negative result. During the window period a person is highly infectious and can spread HIV easily)

6. STAGES OF HIV AIDS

Explanation of the disease and its various clinical stages:

AIDS is caused by the Human Immunodeficiency Virus (HIV), so called because it attacks and destroys the immune system. The resulting immune deficiency causes a spectrum of clinical diseases of which AIDS is the end stage. HIV infection has different clinical stages discussed below:

6.1 Stage One – Acute HIV Infection

Approximately two weeks to three months after infection with HIV, some people may develop a flu-like or mild glandular-fever like illness. This illness is of short duration and recovery is complete. This may also be referred to as acute seroconversion illness, meaning that this is the time when HIV antibodies will appear in the blood. The stage of HIV infection is most often undiagnosed and prior to seroconversion is referred to as the window period (approximately between three and six months). If tested during the window

period the individual will test negative even though such an individual is positive and can infect other people.

6.2 Stage Two – HIV Well Phase

From the moment the virus enters the body that person is able to infect other people. During this stage infected persons look and feel healthy and usually do not know that they have been infected. This is called the 'HIV well phase' as they have no symptoms of illness. Babies who are infected by their mothers will usually develop full-blown AIDS quite quickly and die within three to five years. With adults the virus slowly destroys the immune system over several years.

6.3 Stage Three – HIV ill Stage

As the immune system weakens overtime, a variety of minor complications begin to surface. One of the first of such symptoms experienced by many people infected with HIV is lymph nodes (glands) that remain enlarged for more than three months, also called persistent lymphadenopathy.

Other symptoms often experienced months to years before the onset of AIDS, include:

- A lack of energy
- Weight loss
- Persistent or frequent yeast/thrush infections (oral or vaginal)
- Persistent skin rashes, dry and itchy skin
- Children may have delay development or "failure to thrive"
- Fungal nail infections
- Recurrent mouth ulcers
- Recurrent throat infections
- Shingles (Herpes Zoster)

6.4 Stage Four – Full Blown Aids

Around 7 – 10 years after infection, the immune system deteriorates further and signs and symptoms of serious opportunistic infections now start appearing. This period may continue for months or years but the infections gradually become more frequent and serious.

Symptoms are now more severe and may include:

- Cryptococcal Meningitis
- Pneumocystis carinii pneumonia (PCP)
- Hairy fungal growth of the tongue (hair leukolakia)
- Toxoplasmosis (brain and eye infection)
- Chronic diarrhoea and severe weight loss
- Blindness due to cytomegalovirus (CMV) retinitis (infection of the retina)
- Kaposi Sarcoma (skin cancer)
- Tuberculosis

People living with AIDS typically go through periods of being very sick with severe disease, alternating with periods of reasonable health. Death usually occurs within 6 months to 3 years after developing AIDS.

7. PROMOTING A NON-DISCRIMINATORY WORK ENVIRONMENT

7.1 Current and Prospective Employees

No employee, current or prospective, with HIV & AIDS shall be unfairly discriminated against within the employment relationship or within any employment policies or practices, 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 Programme (EAP)
- Workplace facilities and access thereto
- Occupational Health and Safety and access to PPE
- Training and Development
- Performance evaluation systems
- Promotion and transfer into alternative accommodation on the same level
- Disciplinary measures short of dismissal
- Termination of service
- Ill health / incapacity retirement

7.2 Work Environment

To promote a non-discriminatory health and safe work environment based on the principle of equality to ensure that employees not affected with HIV & AIDS are protected and employees suffering from HIV & AIDS are not unfairly discriminated against and are protected from victimization through positive measures such as:

- Development and implementation of HIV & AIDS programmes, to prevent unfair discrimination and stigmatization of infected employees.
- Awareness education and compulsory training on the rights of all employees with regard to HIV & AIDS
- Mechanism to promote acceptance and openness around HIV & AIDS in the workplace
- Providing moral and physical support for all employees infected with and affected by HIV & AIDS and their families
- Application of Grievance procedures and disciplinary measures to deal with HIV & AIDS related complaints in the workplace in terms of the Labour Relations Act, 1995 and Collective Agreement applicable.

8. HIV & AIDS WORKPLACE PROGRAMME

8.1 Organisational Risk Reduction

Assessing the impact on and spread of HIV & AIDS in the workplace:

EMM will develop appropriate policies and strategies to understand, assess and respond positively on the impact of HIV & AIDS and life threatening diseases in the workplace

Such strategies will include addressing the direct and indirect costs associated with HIV & AIDS in the workplace, namely:

- Direct costs, cost related to employee benefits, medical costs and increase cost related to staff turnover, training and recruitment costs
- Indirect costs, cost incurred as a result of increase absenteeism, the demise of employees, loss of productivity, a general decline in workplace morale and possible workplace disruption
- Re-incorporation counselling of employees after lengthy illness into the workplace.

8.2 First Aid / Universal Precautions

EMM has an obligation to provide a safe and healthy working environment for all employees. Appropriate precautions should be taken to ensure that an employee's condition does not present a health and / or safety hazard to other employees.

Risk of HIV infection at the workplace will be managed through the following means:

Standard procedures will be applied to reduce risk following injury at work involving:

- Blood and potential exposure to blood – borne pathogens, including HIV
- Appropriate HIV & AIDS information will be included into occupational health and First Aid training
- Emergency care and treatment for all EMM medical personnel, employees / people performing First Aid and after HIV exposure medical treatment and precaution will be provided at the cost of EMM.
- Emergency care and treatment for all EMM personnel who came into contact with body fluids in the course of their official duties
- Safe Workplace Procedures be in writing to implement precautionary measures where equipment / facilities need to be shared.
- First Aid kits including but not limited to Personal Protective Equipment such as rubber gloves, mouth pieces, goggles, masks, dust coast etc. will be made available throughout the organization.
- EMM will put up signs in clear and understandable language referring employees to the location(s) of First Aid boxes and telephone numbers of First Aiders and certificates of same to be displayed.
- All staff will be trained in universal precautions and will have access to the equipment needed to use these precautions.

- Personal Protective Equipment shall not be limited to the above-mentioned.
- Legal discarding and cleaning measures to be in writing and be instituted to prevent further contamination even at home.

Healthcare workers who may work under increased risk of infection will be informed of specific precautionary measures to be taken and will be provided with appropriate personal protective equipment (PPE) and facilities in terms of the Facilities Regulations (warm and cold flowing water and disinfectants and soap (OHS) Act 85, 1993 and its Regulations)

8.3 Education and awareness programmes

8.3.1 HIV prevention programmes

Prevention programmes shall be in writing and will be carried out in order to educate and prevent the transmission and contracting of HIV & AIDS. EMM is committed to furnish compulsory essential HIV & AIDS awareness education, health and well-being support to employees and their families including but not limited to:

- Raising awareness, imparting basic knowledge of the disease and information on the prevention of disease.
- Discouraging discrimination against individuals with HIV and those living with AIDS through dispelling any ignorance about the disease and its mode of transmission.
- Information on the rights of, and service available to, infected employees.
- Protection of employees potentially exposed to HIV in pursuance of their duties
- The promotion of physical, psychological and social well-being insofar as it may relate to HIV & AIDS and other life limiting diseases
- Employee education, health and well-being empowerment
- Encouraging employees affected by HIV & AIDS to utilize the EAP services and other forms of social support (including time off to participate in support group activities and transport).
- Regularly monitoring, evaluating and reviewing of the programme, as well as measuring the effectiveness of HIV & AIDS interventions.

These programmes shall be in writing as well as proof thereof for auditing purposes on six monthly basis “**Annexure C**” refers.

8.3.2 Skills Development Training and Education & Awareness

- The education process will involve all relevant stakeholders. EMM will utilize a wide range of forums to assist and provide the education in a sensitive manner.
- The EMM HIV & AIDS Workplace structures will agree and make recommendations on HIV & AIDS education and prevention programmes, which can be conducted in the workplace. These programmes should be conducted in appropriate languages taking into account levels of education / literacy.
- All educational programmes will form part of the skills development process within EMM.

- Proof thereof in writing for auditing purposes to be kept on file at departments.

9. EMPLOYEES WHO ENTER THE HIV ILL PHASE

9.1 Alternative Employment

- In the event of an employee being diagnosed with AIDS and can no longer perform his/her normal duties the employer may inter alia, consider alternative employment taking into consideration already acquired skills and expertise.
- If the employee cannot perform the alternative employment either, the matter be referred to the ill – health Incapacity Committee timorously for additional sick leave to be applied for Annexure E appended, to be considered.

9.2 Leave Procedures

9.2.1. Sick Leave and Additional Sick Leave

Once an employee's work performance and attendance become affected, he/she will be entitled to the same sick leave allocation as any other employees. "Should the sick leave cycle be exhausted, the employee shall be entitled to a further 40 working days on half day per sick leave cycle of 36 months" or as amended/determined by the SALGA from time to time in the Conditions of Service applicable.

9.2.2 Annual Sick Leave

Should an employee exhaust his/her sick leave, the employee may use annual leave to cover for time off due to illness, on condition that it is not an injury on duty or sexual harassment case which occurred during official working hours, in which case it is also an injury on duty to be referred to the Compensation Commissioner with Special Sick Leave to be provided, in terms of the COID Act.

9.2.3 Family Responsibility Leave

Employees shall be granted family responsibility leave in terms of Conditions of Service applicable provided the employee has been in service for longer than four (4) months

Family responsibility leave will be granted in the following circumstances namely:

- When the employee's child is born
- When the employee's child is sick
- When the employee's spouse or life partner is sick
- When the employee's spouse or life partner dies
- When the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling dies

9.3 Incapacity Process

- 9.3.1 Should an employee not meet acceptable levels of performance **Annexure E** shall be considered where after the employee shall be referred to the Ill Health Incapacity Committee in the case of ill health, before sick leave is exhausted and to the registered medical Occupational Practitioner/Officer in terms of the Ill Health Incapacity Policy. The diagnosis will remain confidential and the registered medical OHS Practitioner/Officer will provide an opinion with regards to the employee's ability to fulfil his/her job requirements, to the said Committee, or
- 9.3.2 If the employee is no longer able to fulfil his or her job requirements, the employee may be placed on ill-health retirement and will qualify for benefits as determined by the pension/provident fund. The Labour Relation Act (LRA) will guide this process on ill retirement/termination. (see Code of Practice LRA).
- 9.3.3 In the case of misconduct, disciplinary action be taken (**Annexure E** refers)

10. TERMINATION OF EMPLOYMENT

- 10.1 Employees with HIV & AIDS shall not be dismissed solely on the basis of their HIV & AIDS status.
- 10.2 Where an employee has become too ill to perform their current work, an employer is obliged to follow accepted guidelines as stipulated in the Ill Health and Incapacity Policy – (Ill Health /Injury). The employer shall ensure that in terms of the Constitution the employee's right to confidentiality regarding his or her HIV & AIDS status is maintained during any incapacity proceedings. An employee cannot be compelled to undergo an HIV test unless the Labour Court authorizes such a test or to disclose his or her HIV & AIDS status as part of such proceedings. Only case numbers and no names, pay numbers or Identity Numbers shall be made available.

11. HIV TESTING

The Ekurhuleni Metropolitan Municipality shall not require an employee, or an applicant for employment to undertake an HIV test in order to ascertain the employee's HIV & AIDS status, unless the Labour Court authorizes such a test in terms of the employment Equity Act and the process is consulted with recognized unions, in advance.

11.1 Permissible HIV Testing

The Ekurhuleni Metropolitan Municipality may provide HIV testing to an employee who has personally requested a test in writing under 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 purpose of applying for compensation following an occupational accident involving a risk of exposure to blood or other body fluids

- In the event of an occupational accident and the testing is refused, the employee shall submit a written letter of indemnity to the EMM also stating that the consequences of refusal are fully understood.

Workplace HIV testing may only take place within the following defined conditions:

- At the initiative of an employee
- Within a health care worker and patient relationship
- With informed consent and pre-and post test counselling
- With strict procedures relating to confidentiality of an employee's HIV & AIDS status as described in this policy.
- Test results shall be provided to the employee only to ensure confidentiality.
- The employee may provide test results to management in the presence of his/her union representative or representative of his/her choice, however, such submission is, not compulsory and the employee must be informed accordingly in writing.

12. CONFIDENTIALITY AND DISCLOSURE

- 12.1 All individuals with HIV & AIDS have the legal right to human dignity and privacy an employee is therefore not legally required to disclose his or her HIV & AIDS status to the employer or to other employees.
- 12.2 Where an employee chooses to voluntarily disclose his or her HIV & AIDS 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 agrees that his or her HIV status be disclosed. Consent may be written or verbal and in the presence of his/her union representative or fellow employee of his choice. Representation shall therefore be in terms of the Condition of Service applicable.
- 12.3 Mechanisms must be created and consulted to encourage openness, acceptance and support for employees who voluntarily disclose their HIV & AIDS status within the workplace including:
- Management to conduct and participate in education, prevention and awareness programmes during official working hours.
 - Encouraging the development and attendance of support groups for employees and direct family members living with HIV & AIDS
 - Ensuring that individuals who are open about their HIV & AIDS status are not unfairly discriminated against or stigmatized.
 - Management to provide information on nutrition during support group meetings.

13. COMPENSATION FOR OCCUPATIONALLY ACQUIRED HIV AND AIDS

- 13.1 An employee shall be compensated if he or she becomes infected with HIV & AIDS as a result of an occupational accident in terms of the Compensation for Occupational Injuries and Disease Act (1993, Act No 103 of 1993 as amended)

- 13.2 Ekurhuleni Metropolitan Municipality shall take steps prescribed in the Reporting of incidents policy and Legislation to assist employees with the application for registration of claims, benefits and treatment, including:
- Assist with registering of the claim immediately with Insures of EMM and Compensation Commissioner.
 - Provide information to infected employees on the compensation claim procedure.
 - OHS Officers shall assist with the investigation and collection of information proving that individual was exposed to HIV infected body fluid / blood in the work environment. The Reporting of Incidents Policy shall apply.
 - Provide free of charge Post Exposure Prophylaxis (PEP) to employees after a possible exposure to HIV in the work place within four (4) hours after the accident.
 - OHS Officers to render assistance with completion of relevant forms and reports in the same manner as any other injury on duty.
 - Communicate with the Workman's Compensation Commissioner on behalf of the affected employees as prescribed in the COID Act (Act no 103 of 1993) immediately.
- 13.3 Occupational exposure shall be dealt with in terms of the Compensation for Occupational Injuries and Diseases Act (1993). The employer shall ensure that the provisions, procedures and guidelines of this Act are adhered to.

14. EMPLOYEE BENEFITS

- 14.1 Employees with HIV & AIDS shall not be unfairly discriminated against in the allocation of employee benefits.
- 14.2 Employees who become ill with HIV & AIDS shall be treated like any other employee with comparable life threatening illness with regard to access to employee benefits.
- 14.3 Information from benefits schemes regarding the medical status of an employee shall not be requested from the medical schemes and information provided by an employee shall be kept confidential at all times and shall not be used to victimize the individual.
- 14.4 Available benefits related to HIV & AIDS will be communicated extensively using a wide range of communication channels, such as one on one discussion and departmental general information sessions.
- 14.5 Application for additional sick leave shall be submitted timorously by the ill Health and Incapacity Committee, after investigation and confirmation at a meeting.

15. **EKURHULENI METROPOLITAN MUNICIPALITY SUPPORT STRUCTURE**

15.1 The EMM Human Resource Management and Development Department shall undertake to provide as a minimum the following service to EMM employees:

- Wellness information booklets
- Electronically distributed health related information
- Provision of male and female condoms placed in containers at strategic places.
- Compulsory and regular HIV & AIDS education and training during departmental session for all employees of the EMM at least once every quarter. Such sessions shall be conducted during official working hours
- Provide and support prevention and education strategies to reduce risk behaviour
- Encourage reduction of HIV transmission and the keeping of information thereof for audit purposes.
- Comprehensive HIV & AIDS care and support service by the Human Resource Management and Development Department.
- Facilitate development and implementation of copying strategies for employees by the Aids Unit and Committee.
- Effective involvement of internal and external stakeholders and communities by the Aids Unit and Human Resource Management and Development Department.
- Ensure efficient mainstreaming of the HIV & AIDS workplace strategy and monitoring of the activity by EMM Human Resource Management and Development Department and compile statistics on a quarterly basis.
- Ascertain effective monitoring and evaluation of the Multi-sectoral HIV & AIDS programme and amending thereof by the EMM Human Resource Management and Development Department and compile statistics on a quarterly basis.
- Submission of reports on the above to the Local Labour on a quarterly basis, by the HIV & AIDS Committee.

15.2 The Human Resource Management & Development Department's HIV & AIDS workplace Programme involvement includes, but is not limited to:

Ensure adherence to and assist in the regular review of the Policy on HIV & AIDS at the workplace.

- The implementation of the Employee Assistance Programme (EAP), which includes professional therapy, counselling and consultation service. Ensure that aftercare and support are available by means of support groups assisted by a registered medical practitioner and the HRM&D Department.
- Provision of ill-health and / or incapacity policies, procedures process, management and evaluation, monitoring and amendment / revision of some on a regular basis, by HRM&D Department.

16. MONITORING AND EVALUATION

The Ekurhuleni Metropolitan Municipality commits itself to the following:

- Disseminate and communicate the Policy on HIV & at the workplace to all staff, through the induction process, periodical compulsory educational workshop & awareness campaigns for all employees on a quarterly basis.
- Implement, monitor and evaluate the impact of HIV & AIDS at the workplace, every 6 (six) months.
- Create interdepartmental structure to ensure that HIV & AIDS interventions are well supported, sustained and coordinated into the future.
- Advise management regarding programme implementation and progress with submission of the reports to the Local Labour Forum.
- Liaise with local HIV & AIDS organizations and other relevant resource in the community.
- Promote supportive and conducive working environment.
- Liaise with other Metros or Councils and private sector on programmes and report same to HIV & AIDS Committee for investigation and possible application at least twice per year.

17. DISPUTE RESOLUTION

Any dispute arising from the application of this Policy shall be dealt with according to EMM grievance procedures contained in the Conditions of Service applicable.

18. REVIEW OF POLICY

The HIV & AIDS Workplace Policy will be reviewed annually in the light of Epidemiological scientific and or other relevant information.

19. HIV AND AIDS COMMITTEE

The HIV & AIDS Committee shall consist of but not limited to members as per “Annexure A”

20. COMPETENCIES FOR AN HIV AND AIDS COORDINATOR

Competencies for an HIV & AIDS Coordinator shall consist of but not be limited to the provisions of checklist appended as “Annexure B”

21. ROLES AND RESPONSIBILITIES OF THE HIV AND AIDS COMMITTEE

- The roles and responsibilities of the HIV and AIDS Committee and its member individually shall be clearly defined taking into consideration the needs of stakeholders and developmental level of all employees of EMM.
- Attendance registers shall be signed at each meeting. Same shall be audited and should a member of the Committee be absent for three meeting another member be elected and appointed in his/ her place.
- Feedback by members of the HIV & AIDS Committee on executed activities and proposed / planned activities and information be provided to the OHS Safety Committees on a monthly basis.

- That HIV & AIDS be a standing Item on the OHS Safety Committees of departments.
- That an Audit on HIV & AIDS activities in departments be conducted at least every six (6) months by the OHS Officers and that the Audit be submitted to the Executive Director HRM&D for inclusion in the HIV & AIDS Committee activities submitted to the Local Labour Forum.
- That HIV & AIDS be a standing Item for discussion on the Agenda of the Local Labour Forum.
- The check list for the composition of the HIV & AIDS Committee is appended as “**Annexure A**”

21.1 The HIV & AIDS Committee shall also consider:

- Organizational risk reduction
 - First aid / universal precautions
 - Education and awareness programmes
 - Other prevention programmes
 - Wellness management and include nutrition and habits of employees at work and
 - Nutrition at committee meetings and body breaks
- 21.2 Constant information thereof must be provided to departments and included in the Agenda of the OHS Committee for discussion and also presentation to employees
- 21.3 The Committee shall prepare and conduct a workplace impact assessment. The checklists for same are appended as “**Annexure D**” and submit same to the HRM & D Department.
- 21.4 Action programmes and implementation thereof must be regarded as a high priority by the HIV & AIDS Committee.
- 21.5 Counselling services and information must be provided to contractors of EMM. The HIV & AIDS Committee shall prepare documents and involve employees in same where possible.
- 21.6 The HIV & AIDS Committee must ensure lines of communication and accountability between the various structures and the HIV & AIDS Coordinator and that same is understood by all
- 21.7 The HIV & AIDS Committee must ensure that the necessary budgeting is submitted yearly, as well as report on the implementation and spending thereof by submitting a report quarterly to the Executive Director (ED): HRM&D Department.
- 21.8 A checklist of policies and procedure to be reviewed yearly by the HIV & AIDS Committee for submission to the Executive Director: HRM&D Department and Local Labour Forum is submitted as “**Annexure C**”

22. PARTNERSHIP

- Partnerships are vital to the success of an HIV & AIDS Committee
- Partnerships assist in sharing information, experience, skills and resources
- Partnerships assist an HIV & AIDS Coordinator and Committee to fulfil their functions.
- Reports on meeting with “Partners” and their activities must be submitted to the Executive Director: HRM&D Department and included in the Audit submitted to the Local Labour Forum.

23. CONTRACTORS

Safety files of contractors must also provide a section for HIV & AIDS and proof must be provided to OHS Officer of information, discussions and activities of HIV & AIDS for their employees.

24. ILL HEALTH AND INCAPACITY

Incapacity must be determined by the HIV & AIDS Committee as well as the Ill-Health and incapacity Committee. Procedure for determining same is appended as “**Annexure E**”.

CHECKLIST FOR THE COMPOSITION OF AN HIV AND AIDS COMMITTEE AND ACTIVITIES

- A registered Occupational Health and Safety Practitioner
- Include personnel of EMM who will be involved with the development, implementation, or monitoring, evaluation and Auditing of HIV and Aids workplace polices and programmes and application thereof in Departments (such as OHR, HR, personnel from EAP, unions, etc;)
- Include personnel involved with broader wellness management programmes within the municipality (Human Resource Management and Development Department),
- Include key people who represent the various interests of the municipality (Equity, Labour Relation, Finance);
- Include women to articulate their perspective, interest and concerns into the planning and the programme;
- Include employees who are living with HIV and AIDS, as they better than anyone else can inform the Committee of the capacities and concerns of employees with HIV and AIDS,
- Include representative from IMATU and SAMWU so as to ensure participation and to maximize the potential for good communication with the workforce.
- Include people with relevant skills;
- Include people who are able to build support for the HIV and AIDS workplace Programme;
- Ensure representation of both genders;
- To meet at least one per month during official working hours;
- Ensure representation of all sections of stakeholders at all meetings;
- That the Unions, IMATU and SAMWU be responsible for the appointment of their representatives;
- That the Human Resource Management and Development Department request nominations of committee members form Departments / Stakeholders and that the composition of the HIV & AIDS Committee;
- The Human Resource Management and Development Department to convene meetings and to provide secretarial services at same;
- The Human Resource Management and Development Department to provide Agendas seven (7) days in advance for every meeting
- The Human Resource Management and Development Department to provide Minutes of every meeting held and that copies of same be filed and kept for audit purposes.

**CHECKLIST OF CODE COMPETENCIES FOR AN HIV AND AIDS
COORDINATOR**

- Experience and interest in HIV and AIDS issues
- Skills and/or experience in advocacy, networking and co ordination
- Occupational Health and Safety experience and competency
- Project management and organizational experience
- Financial management experience
- Strategic planning skills
- Strong communication skills
- Report writing, monitoring and evaluation skills
- Experience in Workplace HIV & AIDS programme writing, monitoring and evaluation of same.

1. REVIEWING EXISTING POLICIES, PROCEDURES AND PROGRAMMES

Developing and implementing a workplace HIV and AIDS policy will require a review of existing municipality policies, procedures and programmes to ensure that these are in line with the municipality’s HIV and AIDS Policy and principles.

The policies, procedure and programmes that may need to be reviewed are listed in the following checklists:

1.1 Checklist of policies and procedures

- Policies and procedures on non discrimination
- Disability policies
- Recruitment policies and medical questionnaires
- HR policies and procedure
- Occupational health and safety policies
- Employee benefit procedure and Conditions of Service
- Disciplinary codes and procedures
- Service delivery and contingency plan/s policy
- Policy on Reporting of Incidents
- Needle Stick Policy
- HIV & AIDS Policy
- Contractor Management Policy

1.2 Checklist of programmes

- EAP programmes
- OHS programmes/Audits
- Health promotion programmes
- Education and training programmes
- Education and training programmes for all HIV & AIDS Committee members
- Nutrition programme to be investigated for affected employees.

The questions posed below can assist a department in the process of reviewing HR policies, procedure and programmes

1.3 Checklist for reviewing HR policies, procedures and programmes

Do HR policies, including policies on employee benefits and their application, reflect the principles contained in the Minimum Targets on HIV and AIDS and other relevant guidelines – such as:

- Do all employment policies and practices ensure that an employee living with HIV and AIDS will not be unfairly discriminated against?
- Do employment policies and practices prohibit unlawful HIV testing of an employee, unless Labour Court authorization has approved such HIV testing?
- Do employee policies and practices protect the confidentiality of employees?
- Are HIV and AIDS integrated into all core HR management policies and programmes?
- Are municipality policies and procedure consistent with the Code of Good Practice on Disciplinary and Incapacity Matters as stipulated by the LRA, which treats HIV and AIDS like all other serious illnesses, and which ensures that criteria are not HIV specific?
- Are HR policies and procedure for defining work incapacity due to ill health and ill health retirement responsive to HIV and AIDS? Are systems in place to link and interpret HR functions such as monitoring absenteeism and sick leave, to facilitate the identification of employees in need?
- Do HR policies provide for alternate options (besides sick leave) for employees with reduced work capacity, such as in the case of employees living with HIV and AIDS?
- Are processes in place to ensure that employees living with HIV and AIDS who are on a medical scheme are aware of the treatment options available to them?
- Do performance management systems take HIV and AIDS into account?
- “Annexure A” of this policy also to be applied.

Checklist of employee data that can be collected and analyzed for an impact assessment

- Number of employees, by grade, age, and gender;
- Salary and grading structure;
- Sick leave;
- Early retirements for health reasons;
- Deaths in service, and
- Staff turnover.

DETERMINING ILL – HEALTH INCAPACITY

The Code of Good Practice on Disciplinary and Incapacity Matters provides clear guidelines on how to deal with employees who are unable to consistently perform their job functions, either as result of poor performance, or as a result of ill health or injury. Employees living with HIV & AIDS who are unable to consistently perform at the expected level should be treated similarly to any other employees who are unable to consistently perform at the expected level. Where incapacity is due to poor performance, the procedures outlined in the Code shall be followed and likewise where the incapacity is due to ill health or injury.

However, in the case of employees living with HIV & AIDS, it may be necessary to ensure that the reason for incapacity is carefully determined (is the poor performance due to ill health?) in order to ensure that the correct procedures are applied in a non discriminator fashion.

Incapacity due to poor performance occurs when an employee is unable to consistently perform at the expected level. In the case of employees who deliberately fail to perform, this is a case of misconduct rather than incapacity and shall be dealt with as such.

Incapacity due to ill health occurs when an employee is unable to consistently perform their job function, as a direct result of ill health or injury. Again, in the case of employees deliberately abusing sick leave, this shall be with as a case of misconduct rather than incapacity.

The Code contains detailed procedures including a process to investigate the extent of an employee's ill health or injury. Employees living with HIV & AIDS shall be dealt with similarly to all employees. However, key issues to note are that:

- Procedures allow for an investigation to determine an employee's poor health. The focus of the investigation be based on functional grounds (on the employee's capacity to do the job), as opposed to purely medical grounds (e.g. HIV status).
- Where an employee's HIV status is not known, HIV testing of an employee for purpose of incapacity proceeding is prohibited unless Labour Court authorization has been obtained.
- Where an employee's HIV status is known, procedures must ensure that this information is kept confidential and does not go beyond the incapacity proceedings.
- Defining work incapacity due to HIV & AIDS may be difficult due to the fluctuating course of the illness and the lack of specific HIV & AIDS expertise of many medical practitioners. Incapacity and ill health assessors must be provided with guidelines on HIV & AIDS so that where AIDS related symptoms are present, a full incapacity assessment is conducted.
- An Occupational Health and Safety Doctor registered with the Medical Board must therefore be consulted and written reports obtained at all time.