

THE LEGAL AND POLICY FRAMEWORK

“If you take away our jobs, you will kill us faster than the virus...” Naveen Kumar, India, living with HIV and working to reduce employment-related discrimination

The legal and policy framework in a given country has the potential to provide significant encouragement and support for workplace action. This framework is provided by a combination of instruments starting with national laws. These may be ‘hard’ or binding laws, or ‘soft’ laws such as codes and policies. Regional instruments may also apply, such as the Southern Africa Development Community (SADC) Code of Conduct on HIV/AIDS and Employment, and sector-specific agreements. The national framework also draws on global instruments such as international human rights instruments and ILO Conventions. Although no Conventions or Recommendations deal specifically with HIV/AIDS, several cover relevant areas (see box).

ILO Conventions

Many instruments cover both protection against discrimination and the prevention of infection, and these can be and have been used in domestic courts. The Conventions which are particularly relevant in the context of HIV/AIDS at work include: Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Occupational Safety and Health Convention, 1981 (No. 155); Occupational Health Services Convention, 1985 (No. 161); Termination of Employment Convention, 1982 (No. 158); Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159); Social Security (Minimum Standards) Convention, 1952 (No. 102); and Labour Inspection Convention 1947, (No. 81) and Labour Inspection (Agriculture) Convention 1969 (No. 129).

Taking account of these Conventions, and other codes and instruments, the *ILO Code of Practice on HIV/AIDS in the world of work* was developed through tripartite consultations – between governments, employers and workers – in all regions of the world. It was finalized by a tripartite meeting of experts and adopted by the ILO Governing Body in June 2001. It is a voluntary instrument, but provides the basis for legislation as well as policies at all levels.

HIV/AIDS legal and policy action in the world of work

All countries, whatever the HIV prevalence, can benefit from a legal framework that spells out workplace issues, protects against employment discrimination, prevents occupational risk of HIV transmission, and ensures the participation of stakeholders in the national response to HIV/AIDS. Labour laws are a good entry point.

The strategy promoted by the ILO emphasizes participation of the social partners – workers and employers – in the elaboration of legislation and policy. The ILO Code of Practice states that, in order to eliminate workplace discrimination and promote workplace action, governments in consultation with social partners should provide a relevant regulatory framework and, where necessary, revise labour laws and other legislation to improve action against HIV/AIDS.

More than 70 countries have now adopted legislation and/or national policy that deal specifically with employment aspects of HIV/AIDS. Some countries have opted to do this through the adoption of specific AIDS laws, and others through equality laws, disability laws or employment and labour relations laws, including adoption of codes of conduct known as ‘soft’ law because they offer guidance rather than prescription.



The ILO Code of Practice sets out ten key principles to provide the basis for policy and legislation:

1. Recognition of HIV/AIDS as a workplace issue
2. Non-discrimination
3. Gender equality
4. A safe and healthy work environment
5. Social dialogue
6. Prohibition of screening for purposes of exclusion from work
7. Confidentiality
8. Continuation of employment relationship
9. Prevention
10. Care and support, including treatment.

Implementing legislation

Labour legislation is widely used both to directly regulate employer-employee relationships and to provide a framework within which workers and employers can define their relations by means of social dialogue, including collective bargaining.

Legislation serves to keep in mind and guarantee fundamental principles and rights at work, to serve as a deterrent to discrimination and to punish offenders.

Anti-discrimination laws and human rights legislation have the specific objective of ensuring the protection of fundamental rights and freedoms. They do not aim primarily to punish perpetrators for prohibited acts, but rather to uphold values, and to educate and provide remedies to repair the prejudices caused by rights' violations. Complaints under these laws are often filed before specialized courts that are well versed in discrimination and rights-based issues.

The labour inspection service also has a key role in advising on the implications of labour legislation and helping enforce it. In practice the inspectors often help workplaces develop relevant policies: traditionally these have related to health and safety and labour relations, but increasingly now include HIV/AIDS.

Further information:

- *ILO Code of Practice on HIV/AIDS and the world of work*
- *Implementing the ILO Code of Practice on HIV/AIDS and the world of work, an education and training manual* – modules 2 and 4
- *Guidelines on HIV/AIDS for labour judges and magistrates*
- *Legal initiatives to address HIV/AIDS in the world of work*
- *A handbook on HIV/AIDS for labour and factory inspectors*

All published by ILO/AIDS, www.ilo.org/aids – and see the database of legislation and policies at <http://mirror/public/english/protection/trav/aids/laws/index.htm>

