

Working with HIV

A guide for UNISON safety reps

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1 Introduction

This booklet gives guidance to UNISON safety representatives, stewards, members and regional staff on dealing with a range of issues around HIV. These include the rights of UNISON members who have HIV related health and safety issues or who face discrimination because of the way HIV is dealt with in the workplace. The issue of HIV is important for UNISON because, each year, thousands of individuals are diagnosed with HIV for the first time and the condition is still regarded as stigmatising.

There are an increasing number of UNISON members who are living with HIV infection, some of whom have AIDS. UNISON will do all it can to ensure these members are not discriminated against or subjected to any form of harassment. We will also ensure that they are given the advice and support they require.

UNISON members may have partners, dependants, or friends who are ill as a result of HIV infection. UNISON has a role to play in giving them access to the support they need and where necessary, help in securing time off work.

A large number of UNISON members provide a service specifically for people with HIV or AIDS.

These members need a union that will fight for their rights to proper training and career development and which recognises the important and stressful nature of their work.

Many UNISON members have encountered increased hostility at work as HIV is used as a smokescreen for other people's bigotry and prejudices. Gay and bisexual men and black Africans are disproportionately affected by the virus and so these groups often face dual discrimination relating both to their sexual orientation and/or race as well as their HIV status. In addition, inaccurate and stigmatising press coverage of HIV has led to an increase in HIV-related harassment and abuse against this group of workers.

Some trade unionists have been hesitant about taking up HIV as an issue or feel that it is not relevant for them. There is also a mistaken view that HIV is no longer an important issue. This booklet will show you that HIV is still an area of concern for all UNISON members and will help you prepare to confront HIV as a trade union issue.

It is vital to act now rather than wait for problems to arise locally.

2. What are HIV and AIDS?

HIV stands for the Human Immunodeficiency Virus. HIV infects and destroys a person's immune system – the body's defence against disease – reducing its protection against infections and cancers. Most people with HIV are perfectly healthy and may not even know that they have been infected.

The terms HIV and AIDS (Acquired Immune Deficiency Syndrome) do not mean the same thing. AIDS is a diagnosis where part of the body's immune system stops functioning properly as a result of infection by HIV. If someone with HIV is not diagnosed and they do not start to take anti HIV drugs their immune system will become weak and unable to fight off certain infections and diseases. These infections or diseases are known as 'AIDS-defining illnesses'. People with AIDS die from the diseases the body becomes prone to, such as pneumonia and certain forms of cancer, rather than from AIDS itself.

You cannot develop AIDS unless you are infected with HIV. Due to improvements in treatment many people who have been infected with HIV remain healthy and AIDS-related illness has become far less common. Most people who are diagnosed early with HIV in the UK today can expect to have a long and active life.

HIV can be transmitted from anyone who has the virus, even if they do not have AIDS. However, HIV is not easily transmitted and there is no risk in normal everyday social or work contact with someone with HIV.

Infected blood, blood products, vaginal fluids or semen entering the bloodstream can spread the virus. The main ways that this happens is through unsafe sex or sharing hypodermic needles with someone who is already infected. HIV cannot be spread through social contact or saliva. To find out if you are HIV positive you must have a test. The most common test is a simple blood test. The test does not detect HIV itself but the antibodies that react to the virus; antibodies are made in your blood when an infection has got into your body. Tests commonly

available in the UK can now reliably diagnose HIV in a matter of minutes.

An estimated 90,000 people are currently living with HIV in the UK, the highest number ever and the Health Protection Agency estimates that around a quarter of these people are unaware of their condition. In 2009, there were 6,630 people newly diagnosed as HIV infected and 516 deaths from HIV related illnesses.

Since the late 1990s there have been major improvements in treatment for people living with HIV. In recent years medication has been developed that allows people living with HIV to easily manage their condition. In most cases treatment is now extremely successful, but in a small minority of cases treatments have failed because of problems complying with the medication or from side effects.

3. Fighting discrimination

One of the most important tasks of any UNISON branch will be to challenge people's attitudes as the infection is still frequently regarded as stigmatising. Many UNISON members will be faced with hostility at work as employers, fellow workers and the public use HIV as a smokescreen for bigotry and prejudice.

Members with HIV, or who are suspected of having HIV, may be subjected to harassment, abuse or discrimination. Employers might refuse to promote anyone they believe has HIV or remove them from work with the public. In some extreme cases, people with HIV have even been sacked.

Gay men and black workers are often associated with HIV which has led to an increase in cases of harassment and abuse against this group of workers under the guise of 'fear of AIDS'.

There have also been a growing number of attacks in the tabloid press on asylum seekers and others, originally from overseas, who are being treated within the UK.

Employers' legal duties to prevent discrimination and harassment

The Equality Act came into force on 1 October 2010 and brings together existing legislation that provides protection for people discriminated against on the grounds of their sex, race, disability, sexual orientation, age and religion or belief in one place. It also updates and improves harassment legislation. HIV and AIDS are considered a disability which means that those with the condition are protected under this legislation. Further provisions such as those relating to the new public sector equality duty and positive action came into effect in April 2011.

The Act gives a right not to be discriminated against in employment on grounds of disability and applies to recruitment, conditions of employment, promotion, training, dismissal, or subjecting a disabled person to any other detrimental treatment. This right is infringed if an employer treats workers with a disability less favourably than it treats other workers unless there are reasonable grounds.

The Act also places a duty on employers to make reasonable adjustments to working conditions or the physical features of the workplace if required.

Under this legislation people who are either **presumed to be or associated** with someone living with HIV are also protected from discrimination and harassment.

Workers with HIV who deal with the public may also be at risk of harassment. Where there is a potential risk of violence, threats of verbal harassment or abuse arising out of work, employers must assess this risk as part of their legal duty to carry out health and safety risk assessments, identify foreseeable sources of harassment and take action to deal with them.

An overview of the main areas covered in the new Equality Act 2010, can be found on the equality pages of the UNISON web site. Additional information can be found at equalities.gov.uk/equality_act_2010.aspx or acas.org.uk/index.aspx?articleid=3017

Details on UNISON's risk assessment guide can be found in the Further Information section

Many employers have agreed statements that they will not discriminate against people with HIV. For example, all of the energy companies have agreements or policies covering HIV, in local government, employers have agreed national guidance, which recommends that policies on HIV should be adopted, in the water sector, HIV and AIDS-related issues are dealt with within local bargaining agreements, in the health sector many branches have reached agreement at local level with individual NHS trusts and other employers and in higher education there is no national agreements on HIV, but some institutions have anti discrimination policies.

Whatever, the current situations within branches, **all employers have a legal duty not to discriminate against employees with HIV.**

What branches can do

Encourage the setting up of self-organised groups to give members directly affected by discrimination the opportunity of meeting and organising together.

- Encourage existing self organised groups to support any members known to be living with HIV and publicise the fact that this support is available.
- Where there is no self-organised group in the branch publicise any regional contacts that members can approach for advice.
- Ensure employers give proper training and information on HIV issues.
- Make it known that the branch supports any members facing discrimination or harassment.
- Review any equal opportunities statements or agreements to ensure they reflect the needs of people with HIV.

4. Employment policies

Many employers, whatever policies they may adopt, or whatever they say on paper, will not recruit or promote someone they know or suspect may be HIV positive.

However, an applicant's HIV status is, in almost all cases, totally irrelevant to whether or not they are the best person for the job. Government guidelines make it clear that 'in almost all occupations there is no risk of an infected person passing the virus on to others and this would not therefore generally be a reason for treating them any differently from other applicants'.

There are specific circumstances where some workers, such as certain health care workers, have to notify their employer if they have had a positive HIV antibody test, but in general there is no reason why a prospective employee should be asked to declare their HIV status.

In the past, some employers asked prospective employees to have a medical examination before they were offered a job. The introduction of the Equality Act 2010 mean that except in **very limited** circumstances, it is now illegal to ask a potential employee to either undergo a medical examination or complete a health questionnaire before the offer of a job has been made. There is also no reason why an HIV test should be included in any medical examination carried out after the offer of a job has been made, and a doctor who is carrying out such an examination should not test for HIV without specifically getting permission from the patient and offering counselling.

Everyone has the right to see their GP's medical report before it is submitted to the employer. If the report contains irrelevant information, such as their HIV status, the GP can be asked to remove that reference or the applicant can refuse permission for it to be sent to the respective employer.

What branches can do

- Review harassment policies to ensure they apply to workers with HIV

- Ensure that application forms do not ask irrelevant questions about health concerns, including HIV. Such questions are now illegal (except in very limited circumstances).
- Discuss with employers what information they request when they ask for medical reports after the offer of a job has been made and why they require that information. It should be made clear that details of HIV status should not be included.
- Seek to agree a complaints procedure for those job applicants who feel they have been treated unfairly.

5. Members with HIV

Although a growing number of UNISON branches are being asked for support or advice from members with HIV who experience problems at work, in many cases members with HIV may be reluctant to contact their branch. The National AIDS Trust (NAT's) publication *Working with HIV* (see further information) found that only 28% of people living with HIV would seek help from their trade union if they experienced HIV discrimination at work, compared to 60% who would seek support from an HIV organisation.

This can be because a member does not feel confident that their branch will be willing or able to help them, or they have fears over confidentiality.

By publicising articles about HIV in branch newsletters or circulating information to members, branches can show that they are taking the issue seriously. **World AIDS Day on 1 December** is a good opportunity to highlight your members' commitment to ending discrimination against people living with HIV.

Among the types of problem a branch may be asked to deal with will be the situation where an employer discovers that a UNISON member is HIV positive. In extreme cases, an employer may actually sack someone under these circumstances. This is likely to be unfair dismissal and the branch should contact their regional office for advice immediately. Although cases of dismissal are rare, many people with HIV do find they come under pressure to resign, especially

if they have had a number of occasional bouts of illness. Any member placed under such pressure should be encouraged to contact their branch secretary, safety representative, branch disability officer, or equality coordinator.

Confidentiality

Where an employer does discover that a member is HIV positive, then that information is confidential and should not be disclosed to anyone. If an employer discloses any UNISON member's health status, it would be a breach of mutual trust and confidence and may also be in breach of the Data Protection Act. If a member chooses to notify his or her employer, this information should not be passed to anyone else (such as line managers or other colleagues) without the agreement of the member. The same general principle applies to UNISON representatives who are given information about a member's HIV status.

Unless a member is specifically required to do so by their professional code, they are under no duty to tell their employer that they are HIV positive. Any UNISON steward or branch officer approached for advice should suggest that, unless there is a very good reason to do so, for example the need to request reasonable adjustments, this information should not be disclosed to the employer.

Some professional bodies have issued specific advice on this issue, eg the Nursing and Midwifery Council.

Sickness absence

Employers should treat workers with HIV the same as any other employee with a disability. Only if their illness affects the employee's ability to do the job should their HIV status become an issue and even then introducing reasonable adjustments may resolve this. In addition, as best practice, branches should try to ensure that employers exclude disability-related absences from normal sickness absences monitoring in a clear and unambiguous agreement.

Almost all UNISON members will be covered by an occupational sickness scheme. The absolute

minimum most members will be entitled to is 28 weeks' statutory sick pay, but most have better schemes such as six months' full pay followed by six months' half pay, depending on length of service.

Unfortunately, an employer does not have to continue to employ someone for that period if they believe, after taking medical advice that the person will not be able to return to work. However, someone can usually only be dismissed legally if their health has been fully investigated to see if they are unlikely to be fit to do their job in the future. That would normally involve seeking medical reports from the employee's and/or an independent doctor. Branches should ask that, where this happens, any independent doctor used by the employer is a specialist in HIV related illnesses.

No employer should ask for such reports unless an employee has been off sick for a considerable time.

Branches should, however, be aware that many people with HIV or AIDS who have had long periods off work, have regained their health and returned to work.

The Equality Act 2010 has implications on how employers can treat people with certain illnesses and UNISON has issued separate advice to branches on this. (See further information).

6. Leaving work

A very small minority of members with HIV will decide that they want to give up work, although with the treatments now available this is very unusual. Branches should suggest that the member consider asking for a period of leave to come to terms with their diagnosis before making such a decision. They should also explore and exhaust the wide range of reasonable adjustments available to help them to manage the virus at work, for example changes to working hours, returning part-time or moving to a less stressful job.

Support may also be available from the Department of Work and Pensions Access to Work Scheme which provides advice on adjustments and financial

support to meet the cost of adjustments. If the member does not want to pursue any of these options, then the possibility of ill-health retirement can be explored.

Regardless members should be encouraged not to resign until they have fully exhausted the provisions of the occupational sickness absence scheme and taken advice on the benefits they will be entitled to if they give up work. Advice on this is available from the UNISON Welfare Section or from the Terrence Higgins Trust helpline, THT Direct (see further information).

Pensions

Monies from pension schemes are payable on retirement but can be paid in other scenarios, for example on the death of a scheme member. If a member dies whilst they are an active member of a pension scheme it is common for a lump sum payment to be paid to a nominated beneficiary. This payment is usually a multiple of salary and is three times annual pensionable salary in the Local Government Pension Scheme and twice annual pensionable pay in the 1995 Section of the NHS Pension Scheme.

Survivors' pensions can also potentially be paid to a surviving spouse, civil partner and in some schemes, nominated unmarried partners.

Survivors' benefits are dependent upon the particulars of the scheme in question and scheme members should check their members' handbook and information provided to them by the scheme for further clarification. Ultimately it is the scheme rules/regulations that define entitlement.

It is possible to access pension benefits early if a member is over the minimum pension age (usually 55 but there are exceptions). Benefits are usually reduced by the application of an early retirement reduction factor for being paid early. However, where an individual's employment terminates on ill-health grounds it can be possible for them to qualify for an ill-health pension from any age and such payments are not normally reduced and furthermore are often enhanced.

In exceptional circumstances of serious ill health it is also sometimes possible to exchange the whole, or part, of the pension for a cash sum payment although again this would depend upon the specific rules/terms of the pension arrangement in question. For pension benefits to be paid as a 100% lump sum on serious ill-health grounds a member would generally need to show that their life expectancy is likely to be less than 12 months.

Any UNISON member who is unsure of their pension rights and does not know what to do, even after seeking clarification from their pension scheme administrator, should contact UNISON's Pensions Unit for advice. Please note however that UNISON's Pensions Unit cannot provide financial advice,

UNISON members may also find the information they need on the pension pages of the UNISON website at unison.org.uk/pensions.

Pensions and a return to work

Members in receipt of pensions (including ill-health) who wish to return to work can generally do so.

However it's important to note that in some cases (and particularly where a public sector pension recipient wishes to return to public sector work prior to the scheme's normal pension age) that there can be pension implications in that it could be reduced or even suspended. This includes recipients of ill-health pensions.

Reducing or suspending a pension in this way is generally referred to as "abatement" and usually occurs if a person's income on re-employment plus the value of their pension payments exceeds their pre retirement income.

Members in receipt of pensions will need to check the terms of their pension payments when considering subsequent re-employment and particularly so if they are in receipt of an ill-health pension or re-commencing employment in the public sector.

Any members whose pension benefits have been reduced or suspended on re-employment and who

were unaware that this would happen on their re-employment and that this would have influenced their decision to seek alternative employment should contact UNISON's Pensions Unit with full details.

7. Returning to work

Advancements in treatment mean that a considerable number of people who had previously been so ill that they had to give up work are now well enough to consider returning to employment. Research has shown that when people living with HIV returned to or remained in work; more than half found that the virus had no impact on their working life.

The following section outlines a number of issues that are likely to arise for a person who left work due to HIV and who now wants to return.

Remarkable progress has been made in treating people with HIV and AIDS-related illnesses. Combinations of different types of drugs mean that the amount of virus in the body can often be reduced to very low levels and AIDS-related illnesses can be avoided.

There are however, three potential downsides to HIV treatment (though the majority of people will not experience these problems).

Firstly, for a very small minority of people living with HIV, treatment may not be effective. Secondly, some people experience some side effects (occasionally these can be quite severe and mean that people have to change to a different type of medication). Thirdly, depending on when someone started on treatment, some people have to stick to a strict regime which can involve restrictions on when and what they can eat and when they have to take each of the drugs. When reasonable adjustments are required to assist with such treatment, employers should not be startled by requests for meal breaks at specific times as they may already be making reasonable adjustments for other employees, e.g. those with diabetes.

Working arrangements

Just because someone is ready to return to work does not mean that they will not have specific needs that the employer will have to address. Where someone was forced to leave work due to an HIV related illness they will be covered by the Equality Act 2010 on their return to work.

Under the Act the employer must make reasonable adjustments to avoid causing substantial disadvantage to a disabled employee or a disabled applicant for employment.

Some people who have left work because of HIV-related illnesses may want to return part time. Again the Equality Act 2010 is likely to assist branches in ensuring that this option is made available to members.

The NAT publication *Working with HIV* (see further information) is the results of the biggest study to date on the needs of people living with HIV at work. The most commonly sought adjustments reported were for flexibility at work to allow people to attend clinic appointments, followed by requests for changes in hours including start / finish times.

Some people who react well to new therapies initially may find that some time later they get ill again. Employers may therefore need to be asked to alter working patterns to suit the individual. They may also need to develop policies on disability leave.

Further details can be found on the Equality and Human Rights website equalityhumanrights.com

8. Carers

HIV will affect many UNISON members because their partners, dependants, or friends become ill as a result of the virus.

This can be a stressful time for anyone and as a carer it can be made worse if they have to argue with their employer for time off. Many members will choose to use their annual leave rather than try to explain the situation to their line manager or human resources department.

There are many national and local agreements that have provisions for special, caring or compassionate leave. Often this is general and discretionary. In some cases, these agreements only give leave if a member is caring for a spouse or relative.

Branches should consider negotiating carers leave agreements that entitle employees to a specified period of paid leave and a longer period of unpaid leave if they have to care for a partner, or dependant.

Bereavement leave should also be subject to prior agreement so that all employees know what they are entitled to without having to negotiate it at a particularly distressing time.

Branches can give support to any request by a carer for long term or open-ended leave, or for a temporary change to part-time or flexible working.

What branches can do

- Negotiate carer or special leave agreements with employers.
- Ensure that bereavement or compassionate leave agreements cover all partners, and dependants, not just spouses and relatives.

9. Workers in the HIV field

UNISON is one of the largest trade unions among workers in the HIV field.

A large number of members in both the public and voluntary sectors provide services to people with HIV or AIDS, or are involved in health promotional work around HIV. Many of those who have found jobs in this area first became involved in HIV work as volunteers before becoming employed, or have transferred into work with people with HIV because of a personal interest in this area.

The level of dedication among HIV workers is high, as is the level of stress. It is not uncommon for there to be a large turnover among service providers within the HIV field.

Cuts to public services are a major threat to the delivery of HIV services as it is likely that those

working within the sector, along with disabled people, including those with HIV may be more vulnerable when funding cuts are being considered or implemented.

Within the voluntary sector, the development of the 'contracting culture' has led to many HIV projects being funded on a short-term basis and are now facing the loss of funding. This means that a disproportionate number of HIV workers are on temporary contracts, face uncertainty about the security of their employment or are being made redundant. The same can be said for workers within the statutory sector who are also faced with massive cuts to their funding and deep cuts to staffing levels and services.

Changes to the funding of treatment and care may also lead to money being transferred out of London and other major cities where many treatment centres are based. This could also threaten the jobs of many HIV workers.

With the exception of research, medical and nursing staff, there are few recognised qualifications in the HIV field and workers often have little ongoing training or career development prospects. For this reason workers in HIV-related jobs may find themselves stuck there with little chance of promotion or career enhancement.

What branches can do

- Establish links/alliances with HIV organisations within your area to campaign against any proposed cuts to HIV services.
- Push for permanent contracts for all HIV workers.
- Get employers to provide relevant training and access to vocational qualifications for workers in the HIV field.
- Ensure that there are structures that allow workers in the HIV field to develop a career and that they are encouraged to do so.
- Facilitate regular meetings of HIV workers in the health, local authority and voluntary sectors with the aim of providing them with mutual support mechanisms.
- Ensure proper trade union support and

assistance is available for members in the HIV field, including advice on stress management. In some cases professional counselling arrangements may be appropriate and should be provided by the employer with adequate time off to attend sessions.

10. Health and safety

Many of the potential workplace problems associated with HIV stem from a lack of understanding of how the virus is passed on. HIV is not easily transmitted. There is no risk in normal, social or work contact with an HIV-infected person. The virus cannot be passed on through knives and forks or crockery. Normal standards of hygiene will protect against HIV and most other infections.

Although most health and safety procedures are introduced for the protection of staff, it should be remembered that the main health risk is to people with HIV. Because they have a damaged immune system they cannot fight certain illnesses very well and can be put at risk through contact with anyone who carries an infection (although improvements in treatment mean this is now less of a concern). Staff who visit people with HIV or AIDS as part of their job should seek advice from their GP and line manager if they are unwell.

One of the main risks to UNISON members at work comes from accidental inoculation or contamination of an open wound with the blood or body fluids of an infected person. Safe systems at work will minimise the risk of all infections, including HIV, and in most workplaces existing working methods and proper standards of hygiene and cleanliness will be sufficient.

Regardless of the HIV status of their staff every employer must undertake a general risk assessment to identify risk to the health and safety of workers, and take necessary measures to protect employees from any risks identified, including those from blood borne viruses. If a worker is exposed to contaminated blood they should consider whether it is appropriate to access Post Exposure Prophylaxis (PEP). This is a treatment which if taken within

72 hours of exposure to a pathogen can prevent infection and the development of disease.

For more advice about PEP contact THT direct. (See further information).

Policies on health and safety should include the following points:

- assessment of risk of exposure in individual tasks
- prevention of exposure
- controlling the risks
- evaluation of control measures
- reporting and recording of incidents of exposure
- information, instruction and training for employees
- contingency plans for counselling any member of staff who may have been exposed
- following up any incidents.

The detail of the health and safety procedures that need to be adopted by an employer will vary considerably and no one booklet will be able to deal with all the areas that UNISON members work in. For example, health care workers who come into contact with blood or blood products will require detailed guidelines aimed at ensuring there is no risk of accidental contamination from HIV and a wide range of other infections, while social care workers and community staff will need additional advice and guidance on general hygiene and the disposal of waste.

Any procedures applied locally must be appropriate to that group of employees, easily understandable, well publicised, and supported with training. General 'blanket' guidelines, or detailed handbooks, which rarely get looked at, are no substitute for specific targeted advice.

In addition, any procedure introduced should be followed with all clients not only those known or suspected of being HIV positive around a quarter of people living with HIV do not know their status. Clients who know they have HIV will already be aware of the precautions they need to take to protect others. Those who do not know they have the condition may be less careful.

What branches can do

- Review existing health and safety guidelines to ensure they are relevant and easily understood.
- Ensure that all employees are given training and information on health and safety issues.
- Ensure that safety representatives and stewards have access to trade union training on HIV issues (see below).
- Ensure that health and safety procedures are not misused to discriminate against those living with HIV, and that members' confidentiality about their HIV status is safeguarded.
- Ensure appropriate protective equipment is provided.

11. Training

A comprehensive and effective training programme on HIV is necessary in every workplace. Training must be relevant and specific to the needs of the group it is aimed at. General equalities issues should also be included in the training programme.

It is also important that all staff with responsibility for discipline, grievance handling, recruitment or promotion, are trained on HIV as part of an overall equal opportunities training prior to taking up their duties.

All workers who deal with the public in a caring role will require specific training on health and safety and this should be extended to try to foster an understanding of different lifestyles that they may encounter among their client group.

Training practice in the field of HIV is constantly being evaluated and updated. All training programmes should be regularly reviewed to ensure that they are effective and that any developments in the knowledge of HIV are incorporated.

Safety representatives have a legal right to be consulted in good time on the planning and organising of health and safety training and also about any health and safety information given to employees whom they represent.

UNISON also has a responsibility to ensure that its own training courses include issues relating to HIV, as well as other equality issues. This is particularly important in stewards/safety representatives training so that all stewards and safety reps will know how to respond to an approach from a member with HIV, or who is caring for someone with the condition. Case studies and role playing are often a good way to increase a confidence in dealing with these issues.

What branches can do

- Review all the employer's training programmes to ensure they are both relevant and specific.
- Ensure safety reps are consulted on the content of training courses and information given to employees.
- Ensure that issues around HIV are included in branch training courses.

UNISON There For You support

UNISON There For You (formerly Welfare) can give assistance to members in difficulty. They support members in a variety of ways mainly through confidential advice and financial assistance in the form of grants. They can help with sorting out finances, advice on benefits or by putting members in touch with another organisation that can help. Help can also be given to assist with household bills, ease debts or help with the cost of a much-needed break.

Support is offered through a team of experienced casework staff at national office and a network of branch welfare officers who are there to listen and help

What branches can do

- Support any members with HIV who is experiencing difficulties at work.
- Review occupational sickness schemes.
- Ensure the branch has a welfare officer and that members know how to contact them.
- Ensure that all safety representatives, stewards and members know how to access advice on ill-health retirement.

12. Employer policies

Many employers already have written policies on HIV however a lot of these were introduced in the 1980's and have not been revised since. If your employer already has an HIV policy it may need updating.

If there is no policy, then this should be raised with a view to negotiating a suitable agreement for the organisation. Policies should suit the local individual circumstances and should include the following points.

A description of AIDS and how HIV is and is not transmitted

The following is taken from ACAS: AIDS is a disease caused by the human immune deficiency virus (HIV) which attacks the body's natural defence system and leaves it open to various infections and cancers. HIV infection is not acquired through everyday social and work contact, or sharing cutlery or toilets with an infected person.

Nor can it be caught in the same way as flu or colds via coughs and sneezes. The main means of transmission are during unprotected sexual intercourse with an infected person; by exposure to contaminated syringes and needles, and by an infected mother to her unborn child through the placenta.

Alternatively, the wording set out in the earlier section "What are HIV and AIDS" can be used.

An assurance of confidentiality

Employers have no right to know the results of any medical examinations of their employees, including tests for HIV. Under the Access to Medical Reports Act 1988, an employer must obtain written consent from an employee before applying to the employee's doctor for a medical report. The employee has the right to see this report to request amendments or to refuse consent if they disagree with the medical report.

Medical reports should not contain clinical details or results of tests. They should be an assessment

of the person's fitness for work only. If an employer does know that an employee has AIDS or is HIV positive, this knowledge should be kept confidential. Otherwise, they could be subject to legal action for breach of confidence.

ACAS also warns that employers who demand information about HIV status could be in breach of sex discrimination laws: 'At present, more men than women are HIV positive. An employer who insists on a requirement that all employees be tested 'HIV negative' might be guilty of indirect discrimination under the Sex Discrimination Act 1975 – unless the employer could produce a valid justification for this requirement. Similarly, indirect discrimination might arise if an employer insists on the disclosure of medical questionnaire and uses this information as a bar to recruitment.'

No discrimination against job applicants who are HIV positive

Under the Equality Act 2010 it is unlawful to discriminate against a job applicant because of their HIV status. In addition, indirect discrimination now covers those who are HIV positive. This means that a job applicant or employee could claim that a particular rule or requirement in place disadvantages people who are HIV positive. Unless this could be justified, it would be unlawful.

No HIV testing before or during employment

There is no reason to test either job applicants or existing employees and this could now be in breach of legislation. The Equality Act includes a provision which makes it unlawful, except in certain circumstances, for employers to ask about a candidate's health before offering them work.

Employment will not be affected by HIV status

HIV infection alone does not affect people's ability to do their job unless they develop illnesses that make them unfit to work. There is no reason why someone who is HIV positive cannot continue to work normally as long as they are fit to do so. There are no grounds for dismissing or otherwise discriminating against

an employee purely on the basis of infection or suspected infection. Opportunities for training and promotion should not be affected by an individual's HIV status. If necessary, further consideration should be given to reasonable adjustments.

Staff should also have the opportunity to review their needs and their annual appraisal could be used to do so.

AIDS treated as any other serious illness

Employees who develop AIDS symptoms that affect their work performance should be treated like anyone else with a life threatening condition. ACAS advice states: 'As with any other long-term problem, employers should act reasonably, taking account of all the circumstances, such as the individual's ability to continue working satisfactorily, the possibility of a move to different duties, and any medical advice received. The employee should also be kept fully informed if employment is at risk.'

Employees working with colleagues who have HIV

Since HIV cannot be transmitted by everyday contact at work, employees who are HIV positive present no risk to their colleagues.

However, because of widespread misinformation, some employees may still have fears. ACAS advises that one of the best ways of reducing the fear of HIV/AIDS is to introduce an HIV education programme for all staff. The programme could include explanatory leaflets, special presentations and videos. ACAS also recommends that managers and HR staff should receive training to enable them to answer employees' questions. Employees who continue to refuse to work with colleagues with HIV or AIDS after receiving advice and training will be in breach of the Equality Act and should be dealt with under the organisation's disciplinary procedure'.

Help available to employees with AIDS or HIV positive

Confidential help and advice should be available to employees who are, or think they might be, HIV positive. Information for all employees should include

telephone numbers and addresses of organisations offering help. This help may be available in-house, for example, from occupational health units or health education departments.

Procedures for first aid

First aiders should be given up-to-date training and advice on HIV. There have been no cases of infection transmitted by administration of first aid measures and usual hygiene precautions will protect against HIV.

Commitment to reduce any occupational risks of infection

Some jobs involve contact with blood and other body fluids.

Employers must make a thorough assessment of health risks to staff and the public, and introduce necessary protective measures.

Contaminated sharps such as needles are particularly hazardous and must be disposed of safely. Needlestick injuries are reportable to the Health and Safety Executive if they result in HIV infection.

13. Further Information

Publications

UNISON has produced a wide range of health and safety information. A few of the most relevant guides are listed here but more information and guidance can be found on the UNISON health and safety web page at unison.org.uk/safety

The following UNISON publications are available from the Communications Unit, please quote the stock number.

A guide to risk assessment for UNISON health and safety representatives. (Stock no. 1351)

UNISON guide on preventing needlestick injuries in local government. (Stock no. 1734)

Making Us Better – *UNISON guide to sickness absence agreements* (Stock no 2594)

Additional advice and information is also available from the following organisations:

Equality and Human Rights Commission (EHRC)

The EHRC replaces and brings together the work of the Equal Opportunity Commission, the Racial Equality Commission and the Disability Rights Commission. It promotes and monitor human rights and protect, enforce and promote equality across the nine “protected” grounds - age, disability, gender, race, religion and belief, pregnancy and maternity, marriage and civil partnership, sexual orientation and gender reassignment. It also operates a helpline in England, Scotland and Wales.

Further information can be found at equalityhumanrights.com

National AIDS Trust (NAT)

NAT provides comprehensive advice on HIV at work for both employers and people living with HIV, as well as specific resources to assist employers and HIV positive job applicants with the recruitment process.

New City Cloisters, 196 Old Street,
London, EC1V 9FR

Telephone 020 7814 6767

Email: info@nat.org.uk; www.nat.org.uk

Terrence Higgins Trust – (THT Direct)

THT offers a very wide range of support services on HIV –related issues.

Telephone 0845 1221 200.

Email: info@ttht.org.uk; ttht.org.uk

NAM

NAM works to change lives by sharing information about HIV. Their website aidsmap.com has a comprehensive directory of HIV services across the UK.

nam.org.uk

Telephone: 020 7840 0050 (between 9.30-5.30 Monday-Friday)

Email: info@nam.org.uk

London Lesbian and Gay Switchboard (LLGS)

The LLGS provides information, support and a referral service for lesbians, gay men, bisexual, trans people and anyone who needs to consider issues around their sexuality

Telephone 020 7837 7324

Web site: llgs.org.uk

There are also number of HIV organisations, which cover an area of the country or provide a service to a specific group. Information on these can be obtained from the local telephone directory.

Health Protection Agency

The Health Protection Agency is an independent UK organisation that was set up by the government in 2003 to protect the public from threats to their health from infectious diseases and environmental hazards. It does this by providing advice and information

hpa.org.uk

Your comments

We welcome comments on this booklet from branch officers, stewards or safety reps.

Please write to the Health and Safety Unit,
UNISON Centre, 130 Euston Road,
London NW1 2AY

Tel: 020 7121 5156

Fax: 020 5121 5766

Email: healthandsafety@unison.co.uk

www.unison.org.uk



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