

Having an employee living with HIV in the workplace is often a brand new experience for an employer and can raise many questions. Due to early diagnosis and the availability of HIV medications, people living with HIV are increasingly able to keep working or to return to work.

Can I ask employees if they have HIV?

As a general rule, the law requires that employees living with HIV be treated like any other employee. For example, employers are not allowed to ask specific questions about their employee's health and this includes questions about HIV status. This means that employers cannot ask about HIV status on a job application, during an interview or when an employee asks for time off due to illness. Instead, they can ask general questions about the employee's ability to carry out their job duties and, once hired, can request a note from the employee's doctor confirming that they have a health issue and outlining their limitations and special needs. Employers can require a medical exam, after making an offer of employment, in order to determine a person's ability to perform the job (e.g. ability to lift heavy objects). However, an HIV test would not be included in such medical testing as a positive test result would not directly speak to a person's ability to carry out their job duties.¹

If I have an employee who discloses their HIV status to me, do I need to tell their coworkers?

HIV is not transmitted by casual contact, so in most workplaces (e.g. office work, food services etc.) there is no risk of passing it on to coworkers or clients. Because there is no risk of HIV transmission, the law does not require employers to take any special steps to inform coworkers or clients of the employee's HIV status.² In fact, by law, employers are required to keep all employee health information confidential, including information regarding HIV status. This means that this information not be shared with coworkers, should not be stored in the employee's regular personnel file and should only be shared when the employee gives their written consent. Also, employees are not required by law to tell their employer their HIV status and have a right to keep this information private.

However, in jobs where there may be a risk of HIV transmission in carrying out job duties (e.g. health care, dental care etc.), there may be specific regulations which govern HIV disclosure. For example, doctors living with HIV are required to disclose their HIV status to the Alberta College of Physicians and Surgeons (the regulatory body governing their profession).³ If you are unsure about the risks of HIV transmission in your workplace or the regulations governing disclosure in your workplace, contact AIDS Calgary for further information.

Do I need to take any special precautions to prevent the spread of HIV in the workplace?

HIV can only be transmitted in situations where a body fluid containing HIV (i.e. blood, semen, vaginal fluid or breast milk) comes into direct contact with a cut on someone's skin, a person's mucous membrane (e.g. eye or inside of mouth) or by passing directly into a person's bloodstream through a needle-stick or similar injury. So, in most workplaces, the only situation where HIV transmission could occur would be during a workplace accident or injury where an employee administered first aid to another employee. In workplaces where such accidents or injuries could take place, employers should require employees to undergo first aid and CPR training. This training should include a section on "Universal Precautions", a strategy which teaches people to treat all blood and body fluids as potentially infectious and emphasizes that people should use the same precautions whenever they come into contact with body fluids. By using these precautions, people protect themselves from exposure and do not need to know a person's health status in order to provide an emergency response. So, employers do not need to tell coworkers about a person's HIV status, and instead, need only to ensure that employee's are educated about Universal Precautions and that their first aid kits include the necessary equipment, including latex gloves for general first aid and face masks for performing CPR.⁴

What if my employee is sick or asks for time off?

People living with HIV often experience illness, side effects from medications (e.g. fatigue, diarrhoea etc.) or periods of poor health when treatments lose their effectiveness and they need to transition to a new treatment regime. According to Alberta's human rights law, HIV is considered a "disability". Specifically, HIV is an "episodic disability", which means that people can have periods of good health and periods of illness.⁵

This can be very unpredictable, as individuals often do not know when they will be sick and when they will be well. This can also be confusing for employers, as individuals who seem to be very sick, or even close to death, can experience a full recovery and return to good health.

According to Alberta's *Human Rights, Citizenship and Multiculturalism Act*, employers have a legal duty to "accommodate" the individual needs of employees who have disabilities.⁶ This means that they must make a special effort to provide people with disabilities with whatever they need to do their job. Examples of accommodation might include time off when they are too sick to work or lighter work duties if they are unable to do heavy work. Employers are required to take *reasonable* steps to accommodate someone with a disability. This means that, as long as the accommodation does not cause the employer undue hardship, the employer must work with the employee to accommodate their needs. For example, if an employee needs to take time off work because they have had a bad reaction to some medications, an employer should allow them to take time off without losing their job. In this case, an employer may need to pay other employees overtime to cover for an absent employee or to hire a temporary employee to replace the absent worker. Depending on a variety of factors, like the size of the company and the length of time this accommodation was needed, this may or may not be enough to cause the employer "undue hardship."

In order to request accommodation in the workplace, employees must disclose that they have a health issue or disability, but they do not need to give specific information about what the disability is. Employers should respect their employee's right to privacy and not push them to disclose this information. However, employers can require:

- That employees communicate their need for accommodation in writing so that the employer is aware of what the employee needs and can work with the employee to come up with accommodation options that work for both of them.
- That employees provide a doctor's note confirming that they have a disability and outlining what their limitations and special needs are (e.g. time off or shift to lighter job duties). Again, the doctor does not need to state what the disability is.

Can my employee still qualify for health benefits if they have HIV?

Many group health benefits plans will cover people living with HIV, so employers should ask about this when signing up for a health benefits plan in order to ensure that their employees will be covered. However, some plans will contain clauses regarding "pre-existing conditions" and may require employees to pay an additional charge due to a pre-existing condition, may require a specific period of time to pass before making a health claim related to a pre-existing condition, or may not offer coverage at all to people with pre-existing conditions.⁷

Do I need a workplace policy on HIV?

Employers should work to develop and implement a workplace policy on HIV/AIDS, a policy addressing confidentiality and education that will enable employees to be aware of the issues surrounding HIV/AIDS. Having a clear policy in place means that, if a worker discloses their HIV status, co-workers and supervisors will know how to respond.⁸ A policy can also give employees living with HIV confidence and assurance of their rights, thereby providing them with some much-needed assurance in a time of great uncertainty. Other advantages of implementing a workplace AIDS policy include:⁹

- Combating stigma and discrimination and promoting equity
- Being proactive rather than reactive
- Providing a clear framework for supervisors and managers
- Addressing health and safety issues
- Defining confidentiality/privacy and ensuring these are protected
- Promoting open environment and well-being of employees
- Avoiding potential lawsuits

For more information, the Interagency Coalition on AIDS and Development has developed resources for employers, including detailed fact sheets on HIV in the workplace and an HIV/AIDS workplace policy template that can be easily adapted for any workplace. Please see the following link for this resource: http://www.icad-cisd.com/documents/WrkplacePolicy_Booklet_NGOs_EN.pdf . Also, AIDS Calgary can provide employers with support and information if they have questions or would like to implement a workplace HIV policy.

¹ Pre-Employment Inquiries Information Sheet & Duty to Accommodate Interpretive Bulletin. Alberta Human Rights and Citizenship Commission. Electronic documents. Accessed Dec 19 2007.

http://www.albertahumanrights.ab.ca/publications/Information_Sheets/Info_INDEX.asp

² Criminal Law and HIV/AIDS Fact Sheets #1-8. Canadian HIV/AIDS Legal Network. Electronic documents. Accessed Dec 19 2007. <http://www.aidslaw.ca/publications/interfaces/downloadFile.php?ref=26>

³ Alberta College of Physicians and Surgeons. Electronic document. Accessed Dec. 19 2007.

http://www.cpsa.ab.ca/publicationsresources/attachments_policies/hiv%20infection%20in%20health%20care%20workers.pdf

⁴ HIV/AIDS as an Episodic Disability in the Workplace: Employment Information Sheets. Interagency Coalition on AIDS and Development. Electronic document. Accessed Dec 19 2007. http://www.icad-cisd.com/documents/WrkplacePolicy_Booklet_NGOs_EN.pdf .

⁵ Episodic Disabilities. Canadian Working Group on HIV and Rehabilitation. Electronic document. Accessed Dec 19 2007.

http://www.hivandrehab.ca/EN/episodic_disabilities/index.php

⁶ Duty to Accommodate Interpretive Bulletin. Alberta Human Rights and Citizenship Commission. Electronic document.

Accessed Dec 19 2007. http://www.albertahumanrights.ab.ca/publications/Information_Sheets/Info_INDEX.asp

⁷ HIV in the Workplace. Mark Cichocki, RN. Electronic document. Accessed Dec 18 2007

<http://aids.about.com/od/hivandtheworkplace/a/workhiv.htm>

⁸ AIDS and Workplace Policy. Canadian Public Health Association. 1997

⁹ HIV/AIDS as an Episodic Disability in the Workplace: Employment Information Sheets. Interagency Coalition on AIDS and Development. Electronic document. Accessed Dec 19 2007. http://www.icad-cisd.com/documents/WrkplacePolicy_Booklet_NGOs_EN.pdf .