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Department:  
Roads and Public Works  
NORTHERN CAPE PROVINCE  
REPUBLIC OF SOUTH AFRICA

## DEPARTMENTAL POLICY ON HIV AND AIDS



## TABLE OF CONTENTS

1. DEFINITIONS .....	3
2. INTRODUCTION .....	3
3. REGULATORY FRAMEWORK .....	3
4. OBJECTIVE.....	4
5. PRINCIPLES, VALUES/PHILOSOPHY.....	4
6. SCOPE OF APPLICABILITY.....	6
7. PROCEDURES .....	6
8. ROLES AND RESPONSIBILITIES.....	7
9. MONITORING AND EVALUATION .....	10
10. POLICY REVIEW.....	11
11. APPROVAL .....	11
Addendum 1: HIV/AIDS Policy Statement – Roads & Public Works.....	12

## 1. DEFINITIONS

"AIDS"	means the Acquired Immune Deficiency Syndrome
"HIV-negative"	means a person who has not contracted the HIV virus
"HIV-positive"	means a person who is infected with the HIV virus but has not contracted AIDS
"NGO"	means Non Governmental Organisation
"PLWAs"	means persons living with HIV/AIDS
"Programme"	means the HIV/AIDS programme formulated by and for the NCDRPW
"STI"	means sexually transmitted infections
"NCDRPW"	Northern Cape Department of Roads and Public Works
"EHWP"	Employee Health and Wellness Programme

## 2. INTRODUCTION

The Department has identified a need to implement a policy and programme to protect the rights of employees with HIV/AIDS and to ensure the safety of all employees in the workplace and address the concerns of employees who are HIV-negative by creating awareness.

The Department acknowledges that prejudices and stigmas associated with the epidemic exist in the workplace and that these prejudices will not be addressed without education, referrals to Health Care Professionals and NGOs dealing with HIV/AIDS and creating an enabling environment.

## 3. REGULATORY FRAMEWORK

This policy shall be guided by the provisions of the following legislative frameworks:-

- Constitution of the Republic of South Africa Act, No. 108 of 1996;
- the Public Service Act, No. 103 of 1994, as amended
- the Public Service Regulations, 2001, as amended



- the Labour Relations Act, No. 66 of 1995;
- the Employment Equity Act, No. 55 of 1998;
- the Basic Conditions of Employment Act, No. 75 of 1997;
- the Occupational Health and Safety Act, No. 85 of 1993;
- the Compensation for Occupational Disease and Injuries Act, No. 130 of 1993;
- the Promotion of Access to Information Act, No. of 2000;
- the Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000;
- the Medical Scheme Act, No. 131 of 1998;
- the Commission for Employment Equity Code of Good Practice on key aspects of HIV/AIDS and Employment, 2000 (Adopted in 1997 by the SADC Council.; and
- National Strategic Plan on HIV/AIDS 2007-2011.

## **4. OBJECTIVE**

In formulating this policy, the Department had the following objectives in mind:

- 4.1 To define the Department's position and practices in relation to employees and job applicants with HIV/AIDS.
- 4.2 To attempt to curb the spread of the virus through workplace programs and creating an enabling workplace environment to those that are infected and affected by HIV/AIDS.
- 4.3 To demonstrate its concern and commitment through the proper management of HIV/AIDS in the workplace.
- 4.4 To give effect to the rights employees have under the Constitution of the Republic of South Africa Act and other relevant applicable legislations.

## **5. PRINCIPLES, VALUES/PHILOSOPHY**

The NCDRPW affirms the following with respect to this policy:

### **5.1. Consultation**

The workplace HIV/AIDS policy will be developed and will be implemented in consultation with all the employees of the NCDRPW and relevant stakeholders e.g. trade unions and organisations for people living with HIV/AIDS (PLWAs) before the policy is adopted.

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## 5.2. Education and Training

HIV/AIDS education and training will take place during working hours at a venue which will be determined by the employer. The Employer shall provide the necessary resources to ensure employees have access to information and education programmes on HIV and AIDS.

HIV/AIDS information will also form part of the induction programme for new employees.

The objectives of educational programmes will be to:

- Create Awareness on the HIV/AIDS epidemic.
- Remove HIV/AIDS related stigma and discrimination.
- Promote safe sex through condom distribution.
- Create an enabling environment for all employees.

## 5.3 Testing

No employee shall be required to undergo HIV testing for whatever reasons including campaigns, without his or her consent. Where consent is given, pre and post counselling must be given and testing must be done by professional and registered health care providers. Should a test prove positive, then the outcome must be regarded as a matter between the patient and the doctor concerned.

## 5.4 Confidentiality

NCDRPW employees are under no obligation to notify the bank of HIV/AIDS infections. The Department considers medical information including HIV/AIDS status confidential, unless disclosure is required and only under the following circumstances:

- The information is legally required
- The employee's health is affecting their own, and hence the Department's performance
- Long employee absence necessitates management to obtain the employee's medical status, with the employee's written permission

In all of the above circumstances, disclosure on HIV/AIDS status should only be made with the written approval of the Executive Manager: HCM and only after obtaining a written authority from the individual concerned.

If employees with HIV inform their supervisors or the HR unit, of their situation, then all reasonable precautions will be taken to ensure confidentiality and the employees' right to disclosure. An



employee may give informed and written consent to release such information to individuals specifically identified by the employee.

### **5.5 Managing Illness and Job Security**

HIV/AIDS shall be treated in the same way as other disabling or terminal conditions.

No employee should be dismissed merely on the basis of HIV status; nor shall HIV status influence retrenchment procedures.

When due to medical reasons an employee can no longer continue with his or her normal employment duties, efforts should be made to offer alternative employment (reasonable accommodation). When the employee becomes too ill to perform his or her duties, standard procedures for termination of employment due to incapacity should apply without discrimination.

## **6. SCOPE OF APPLICABILITY**

This policy shall apply to all employees of the NCDRPW, appointed in terms of the Public Service Act, 1994, as amended, and other relevant acts as well as to interns and contract workers. Assistance to family members will be limited to the extent that the problem experienced by the employee has a direct bearing on the employee's performance.

## **7. PROCEDURES**

The following procedures will be adhered to in managing and dealing with employees affected and infected with HIV/AIDS:-

### **7.1 Grievance Procedure**

The grievance procedure for the Public Service as set out in the Rules for Dealing with the Grievances of Employees in the Public Service No. R. 1012, as published by the Office of the Public Service Commission in the Government Gazette, No. 25209, 25 July 2003 shall be utilized by employees who are aggrieved in the workplace with the added proviso that supervisors or managers will implement extra measures to ensure confidentiality in HIV/AIDS disputes.

### **7.2 Procedure relating to HIV/AIDS testing**

The Department affirms its commitment that no employee shall be required to undergo compulsory HIV testing; unless if the testing is done with the explicit consent of the affected employee and the objective of which is to assist the affected individual in obtaining the appropriate care and support. HIV testing will not form part of the recruitment and selection process.

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Employees of the Department will not be obliged to disclose their HIV/AIDS status; in contrast the Department will advocate and encourage employees to undertake Voluntary Counselling and Testing.

### **7.3 Voluntary disclosure**

In instances where an employee chooses/considers voluntary disclosure of his/her status, such information should not be disclosed to any party without prior written consent of the affected employee.

The Department commits itself in providing continuous assistance and support for the employee that has voluntarily disclosed his/her HIV/AIDS status as per our Employee Assistance Programme.

### **7.4 Procedure relating to dismissal**

Employment contracts of employees who are diagnosed as HIV positive; or those that have contracted AIDS will not be terminated solely for the reason of their HIV/AIDS status.

The presence of HIV/AIDS does not justify termination of employment, demotion, or discrimination in employment. The compulsory conditions of service, including pension funds, medical aid, stated benefits, sick leave, housing, training and development would continue, as amended from time to time. Employees living with HIV/AIDS, have the same rights and obligations as all staff.

### **7.5 Policy on non-discrimination**

Department of Roads and Public Works is committed to fair, sound and non-discriminatory employment practices. Employees who develop, choose to disclose, or are diagnosed as HIV/AIDS positive will not be prejudiced, victimised or discriminated against on account of their medical condition or status.

### **7.6 Record keeping**

Maximum safety measures shall be put in place to safeguard records pertaining to HIV/AIDS information of employees.

## **8. ROLES AND RESPONSIBILITIES**

### **8.1 Roles and Responsibilities of the NCDRPW**

#### **8.1.1 Commitment**

The Management of the Department pledge their commitment to this policy and its contents. Management further commit themselves inter alia to the following aspects related to this policy and epidemic:

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- a) to create an environment responsive to any issue flowing from HIV/AIDS infection in the workplace;
- b) to be sensitive to the special needs of persons infected and affected by HIV/AIDS in the workplace;
- c) to ensure confidentiality in the handling and protection of any employee's health condition;
- d) to provide a budgetary allowance for the programme;
- e) to ensure that condoms are readily accessible and distributed to all employees;
- f) to investigate and identify appropriate medical centres and counsellors to refer employees with HIV, AIDS and STIs to.

#### **8.1.2 Consultation**

It is in the interest of fairness and transparency that all Managers in the Department shall ensure that the process of consultation with the relevant stakeholders takes place before the policy is adopted.

#### **8.1.3 Confidentiality and Disclosure**

No employee shall be required to undergo HIV/AIDS testing unless the Labour Court orders otherwise. An employee who contracts HIV/AIDS will not be obliged to inform Management of his/her status. If an employee discloses his/her HIV/AIDS status to his/her supervisor, Management or the employee wellness coordinator, all reasonable precautions will be taken to ensure confidentiality of the employee's status and his/her right to privacy.

It shall be the prerogative of an employee who is infected with HIV/AIDS to have his/her status disclosed to other employees.

#### **8.1.4 Employee Benefits**

Employees with HIV are entitled to the same benefits as all other employees. No employee shall be dismissed from duty merely because of his/her HIV status. An employee who contracts HIV will continue to be employed until he/she becomes medically unfit for duty. Where an employee becomes totally unfit to perform any work, the employee shall follow the procedure of dismissal on the basis of incapacity.

Employees with HIV/AIDS shall be regarded and treated as persons suffering from any other illness, those that are no longer fit to perform their normal duties will be regarded as persons with disabilities and the Department shall make reasonable accommodation such as leave or transfer to lighter duties, etc. for their situation and to meet established performance criteria.

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### 8.1.5 Counselling

Management should be sensitive to the special needs of employees infected and affected by HIV/AIDS and should demonstrate personal support to them. Access to appropriate support and counselling services of the employee's choice will be made available to affected employees through referrals by the Employee Wellness Unit.

The Department recognizes, on the basis of recent medical and scientific evidence, that HIV/AIDS is not transmitted through casual personal contact under normal working conditions. Any employee who is unduly concerned about contracting HIV in the workplace will be assisted through individual counselling or referral to appropriate organization through the EHWP.

### 8.1.6 Occupational Safety

The Department shall ensure and maintain a safe working environment for all its employees. Universal precautions must be used when responding to an occupational accident. Management shall ensure that proper equipment is available to protect employees from possible infection.

Where an employee contracts HIV/AIDS as a result of an occupational accident, the Department shall assist the employee with his/her claim for compensation in terms of the Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993.

## 8.2 Roles and Responsibilities of Employees

- 8.2.1 All employees must take responsibility for their own health and participate in the HIV/AIDS programme.
- 8.2.2 Employees must respect the privacy and confidentiality of those infected with HIV/AIDS.
- 8.2.3 The rights of those who are not HIV-positive must also be respected.
- 8.2.4 Employees are expected to continue working relationships with and to provide support to those infected with HIV/AIDS.

## 8.3 Roles and Responsibilities of all levels of Management

- 8.3.1 Show commitment to the HIV/AIDS programme.
- 8.3.2 Allow time for employees to take part in the HIV/AIDS and STD programme including attending STD clinics, other health services and education and awareness programmes.
- 8.3.3 Provide a link between management and subordinates.
- 8.3.4 Participate in departmental programmes.

#### **8.4 Roles and Responsibilities of Human Capital Management**

- 8.4.1 Accelerate the acquisition of skills and capacity-building for managing HIV and AIDS in the workplace;
- 8.4.2 Support programmes that seek to change the attitudes and behaviours of management and all employees towards those infected and/or affected by HIV and AIDS;
- 8.4.3 Collaborate with the HIV and AIDS Coordinator in police analysis and review processes to ensure sensitivity and responsiveness to employees or job applicants that are infected and/or affected by HIV/AIDS including recruitment, selection and all other policies; and
- 8.4.4 Ensure adherence to the Occupational Health and Safety Act.

#### **8.5 Roles and Responsibilities of HIV/AIDS Coordinator**

- 8.5.1 Liaise and network with all other stakeholders and role-players in the HIV and AIDS sector to ensure that the Department is well aware of the developments taking place;
- 8.5.2 Devise comprehensive strategies and mechanisms for information dissemination and on-going sensitisation of employees of the Department;
- 8.5.3 Encourage operational activities within the Department about the integration of HIV/AIDS programmes in those activities by providing leadership and support, thereby extending ownership of the programme across all operations of the Department; and
- 8.5.4 Advise and provide strategic direction for HIV/AIDS Workplace Programme for long-term sustainability, including providing leadership on the implementation of the Workplace Wellness Programme.

### **9. MONITORING AND EVALUATION**

The Accounting Officer is the official who has overall responsibility for the proper implementation and monitoring of this policy.

The Directorate Policy and Planning shall also, on behalf of the Accounting Officer, monitors and evaluates compliance and impact of these guidelines by all programs and sub-programs in the Department.

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In addition, the NCDRPW shall appoint an HIV/AIDS Programme Co-ordinator and Working Group to:

- 9.1 implement, monitor and evaluate the Department's HIV/AIDS programme;
- 9.2 communicate the policy to all employees;
- 9.3 advise Management on the implementation and progress of the programme;
- 9.4 liaise with AIDS service organisations;
- 9.5 review the policy on a regular basis to take account of significant medical and/or scientific developments.

## 10. POLICY REVIEW

This policy will be reviewed annually to take into account the progression of the epidemic, developments in medical care, experience in managing it in the workplace and its impact on employees and requests to amend this policy may be considered.

The policy shall be adopted and implemented only after consultation with all stakeholders.

## 11. APPROVAL

*Approved / ~~Not Approved~~*

*Comments:*

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HEAD OF DEPARTMENT

*16/01/2012*  
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DATE

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## **Addendum 1: HIV/AIDS Policy Statement – Roads & Public Works**

Department of Roads and Public Works recognises that HIV/AIDS endangers our success by threatening the wellbeing of our employees, and that of our clients and service providers. In an effort to deal with the issue proactively, we are committed to assisting our employees infected with or affected by HIV/AIDS. The details of this undertaking can be found in Department of Roads and Public Works' HIV/AIDS Workplace Policy document.

Our stance on HIV/AIDS is as follows:

- NCDRPW will not carry out direct or indirect pre-employment screening for HIV/AIDS as a pre-requisite for employment.
- NCDRPW will endeavour to educate all employees about HIV/AIDS prevention, transmission and treatment.
- HIV infection, in itself, does not constitute lack of fitness to work, so an employee cannot and will not be dismissed simply because he/she is HIV-positive.
- All medical records will be kept confidential. It is up to the employee to release information concerning his/her HIV status if he/she chooses to.
- If an employee is unable to work because of an AIDS-related illness, reasonable alternative working arrangements will be made where possible.
- NCDRPW will do best to protect any member of staff against stigmatisation and discrimination in the workplace. Any employees found doing this, will face disciplinary action.
- HIV-positive staff members will enjoy health and social protection just like any other member of staff living with a progressive or debilitating illness.
- HIV /AIDS will be treated like any other medical condition when it comes to medical aid cover or the granting of sick leave.
- Disciplinary action will be taken against any member of staff who is found to have deliberately disclosed the HIV/AIDS status of an employee to a third party.
- NCDRPW encourages its members of staff and their registered dependants to find out their HIV status and make use of support services.
- Credible and cost-effective vendors for such services will be communicated to staff, which will be able to use such services discreetly. Vendors may not and will not be asked to disclose names or information of employees using their services.

Let's help one another, through caring and support by facing this challenge together.

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Head of Department

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