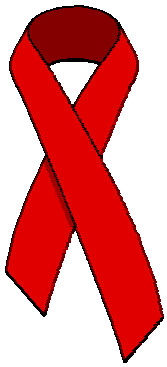
NATIONAL WORKPLACE HIV/AIDS POLICY



Developed by the
National Tripartite Committee
in collaboration with
Ghana AIDS Commission

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Preface

HIV/AIDS has profound social and economic effects which impact severely on enterprises, workers and their families. In addition to the immediate impact of illness and death of employees at the workplace, enterprises may be affected indirectly by HIV/AIDS through diverse impacts on the overall business environment.

In countries where the pandemic is advanced, studies have found that HIV/AIDS has a major internal and external impact on enterprises. Internally, it is manifested in increased labour costs due to absenteeism, bereavement, leave, medical, labour turnover, reduced productivity, and breakdown in worker morale, illness, training and mentoring of replacement staff. The changes in external market can be seen in decrease in demand, declining customer base and changes in product preferences to mention a few.

Further more, the fundamental rights of workers infected by the AIDS virus or affected by HIV/AIDS is compromised with respect to the pervasive discrimination and stigmatization that such workers face.

The trend in the National Sentinel Survey from 2003 to 2005 portrays the reproductive age bracket, 15-49 years, which is also the most productive age bracket socially and economically as being the most affected. Though the overall national prevalence shows a slight decline, the workforce continues to be the most highly affected.

It is against this background that the Government of Ghana, acting through the Ghana AIDS Commission and its partner agencies, the Ministry of Manpower, Employment and Development and the Tripartite Committee worked towards the development of a National Workplace HIV/AIDS Policy for Ghana. This policy will provide the framework for Ghana's Strategy to reduce the spread and mitigate the impact of HIV/AIDS on the workforce. It is a statement of commitment in support of necessary legislative reforms for protection and support of the right of the workforce infected or affected by the virus. It is expected that the policy will evolve over time as the policy and legislative environment becomes more responsive to the plight of persons infected and affected by the AIDS virus.

This document will be widely circulated among stakeholders within the 'World of Work'; Ministries, Departments and Agencies [MDA'S], NGO's, Workers Enterprises, Employers Enterprises, Private Sector, Professional bodies, The Informal Sector Trade Associations and Cooperatives .

I recommend highly this document to all stakeholders' committed to the protection of the rights of the rights of employers and the workforce infected with the virus or affected by AIDS.

H. E. John Agyekum Kufour,
President of the Republic of Ghana Chairman,
Ghana AIDS Commission

1.0 Introduction

The HIV/AIDS epidemic is now a global crisis, and constitutes one of the most formidable challenges to development and social progress. The epidemic is gradually yet steadily eroding decades of development gains, and has the potential of seriously undermining our economy with its attendant adverse social and political implications.

HIV/AIDS is a major threat to the world of work. It is affecting the most productive segment of the labour force and reducing earnings. The impact of HIV/AIDS is seen through declining productivity, increasing health care bills, increasing labour costs due to increasing staff absenteeism, among others. Additionally, the issue of HIV/AIDS is creating unwarranted stigmatisation and discrimination aimed at workers and people living with and affected by HIV/AIDS.

This policy, formulated by the social partners of the National Tripartite Committee (NTC), comprising Organised Labour, Ghana Employers' Association and Government, in collaboration with Ghana AIDS Commission and ILO, is aimed at providing **essential guidance** to policy makers, employers and workers enterprises for formulating and implementing workplace policies that are gender sensitive, address the needs of vulnerable groups and provide care and support initiatives. The policy draws extensive reference from the ILO code of Practice on HIV/AIDS and the World of Work.

Through this policy, the NTC will continue to collaborate with the Ghana AIDS Commission and related bodies to increase support to national commitments to protect the rights of workers, including those living with HIV/AIDS at the workplace as well as the rights of employers.

The reference point for this policy shall be the Ministry responsible for labour, and any interpretation or clarification should be referred to it. The Ministry working in conjunction with the social partners shall encourage the smooth implementation of this policy at the workplace. In doing this, the National Tripartite Committee expects the Ministry to liaise with the Ghana AIDS Commission to access local and international funding to support effective implementation of workplace HIV/AIDS policies and programmes.

2.0 Background

A nation's human resources constitute the source of its human capital and, there is a positive correlation between the rate of a country's socio-economic development and the rate of its human capital formation. The HIV/AIDS epidemic poses a serious challenge to Ghana's development because it is capable of reversing the modest human capital gains made since independence.

According to the ILO, HIV/AIDS is a major threat to the world of work because it is affecting the most productive segment of the labour force. It is imposing huge costs on enterprises in all sectors through declining productivity and earnings, increasing labour costs, loss of skills and experience.

At a prevalence rate of about 4 per cent with no visible signs of decline, many enterprises in Ghana risk loosing out significantly if the HIV/AIDS epidemic is allowed to explode into a crisis. The following possibilities, among others, confront industries in Ghana:

- loss of experienced personnel – particularly at the middle management and skilled workers levels;
- need for increased resources to hire and retrain replacements;
- increase in absenteeism and labour turnover;
- loss of productivity; and
- increased health care and funeral costs.

In Ghana, there is strong justification for enterprises to commit resources now to prevent the scourge of HIV/AIDS than wait to fight the disease when it assumes crisis proportions as is being experienced in other African countries. Leaders in industry especially need to show personal interest in all workplace HIV/AIDS programmes and commit adequate resources to fight its effects on the overall performance of their organizations.

The development of appropriate workplace policies and programmes however, need to be guided by a consistent national framework, aimed at providing guidelines for addressing HIV/AIDS-specific issues at the workplace. It must also provide a basis for translating the broad guidelines into specific workplace policies and for filling existing gaps in the labour legislation.

Indeed, the policy should help to define an organization's position and practices for preventing the transmission of HIV/AIDS; and for handling cases of HIV infection among employees. The policy should also provide guidance for supervisors who deal with the day-to-day HIV/AIDS issues and problems that arise within the workplace; and help to inform employees about their responsibilities, rights and expected behaviour on the job. They should also ensure non-discrimination at the unit level on a day-to-day basis.

Prior to the development of this document, Ghana had no policy or legislation covering employment-related HIV/AIDS issues. The public policy questions raised by HIV/AIDS and employment, cover a wide range of issues including prevention of HIV/AIDS, management and mitigation of the impact of HIV/AIDS on the world of work, care and support of workers infected and affected by HIV/AIDS, elimination of stigma and discrimination on the basis of real or perceived HIV status.

2.1 Human Rights and HIV/AIDS

During the early period of the AIDS pandemic in 1986 – 1988, there was a general recourse to legislation particularly in the developed countries, as a measure to protect the public against the disease. This is because in the absence of successful behaviour change or scientific intervention at that time, there was increasing pressure on public health officials to introduce legislation, which imposed coercive restrictions on the liberty, autonomy and privacy of persons vulnerable to HIV infection.

In Ghana, the 1992 Constitution guarantees the fundamental human rights and freedom for all persons in the country. Chapter 5 Article 17 on equality and freedom from discrimination states:

> All persons shall be equal before the law;
>
> A person shall not be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed, and social or economic status;

The constitutional provision under Chapter 5 Article 24 also states that, "every person has the right to work under satisfactory, safe and healthy conditions and shall receive equal pay for equal work without distinction of any kind". Therefore the denial of employment to HIV infected or affected persons would constitute a breach of their fundamental human rights.

2.2 The Gender Dimensions of HIV/AIDS

HIV/AIDS affects women and men differently in terms of vulnerability and impact and this is important when developing workplace policies. There are bilogiccal factors which make women more vulnerable to infection than men, and structural inequalities in the status of women that make it harder for them to take measures to prevent infection which in turn also intensifies the impact of AIDS on them. For example:

- The work that women carry out – paid or unrecognised – is more easily disrupted by AIDS: e.g., women dominate the informal sector where jobs are covered neither by social security nor by any occupational health benefits. The power imbalance in the workplace exposes women to the threat of sexual harassment. In most cases, they are unable to negotiate safe sex or refuse unsafe sex.

- The burden of caring for HIV-infected family and community members falls more often on women and girls, thus increasing workloads and diminishing income generating and schooling possibilities.

- Sexist property, inheritance, custody and support laws mean that women living with HIV/AIDS, who have lost partners or who have been abandoned because they are HIV positive, are deprived of financial security and economic opportunities; this may, in turn, force them into "survival sex"; the girl child is especially vulnerable to commercial sexual exploitation.

- Studies show the heightened vulnerability of women, compared to men, to the social stigma and ostracism associated with AIDS (hence the need for gender sensitive information, education and communication).

- Generally, fewer women than men are covered by social security or occupation-related health benefits.

- Men are often victims of stereotypes and norms about masculine behaviour which may lead to unsafe sex and/or non-consensual sex.

- Men are over-represented in a number of categories of vulnerable workers; and may also find themselves through their employment in situations which expose them to unsafe sex between men.

Given the prevailing power relations between men and women, men have an important role to play in adopting and encouraging responsible attitudes to HIV/AIDS prevention and coping mechanisms.

2.3 Existing Labour Policies and Legislation:

The existing legal instruments that could be of relevance to HIV/AIDS and the workplace in particular are the following:

- ❖ Labour Act 2003 (Act 651)
- ❖ Workmen's Compensation Law, 1987
- ❖ Factories, Offices and Shop Act, 1990, Act 328.

3.0 POLICY GOAL

The policy goal is to provide broad national guidelines to direct the formulation of workplace policies and programmes.

4.0 POLICY OBJECTIVES

The broad objectives of the policy are to:

i. provide protection from discrimination in the workplace, to people living with HIV/AIDS;
ii. prevent HIV/AIDS spread amongst workers;
iii. provide care, support and counseling for those infected and affected.

5.0 GUIDING PRINCIPLES

The policy is guided by the Constitution of Ghana and other key principles as developed by the ILO:

5.1 Recognising HIV/AIDS as a workplace issue

HIV/AIDS is a workplace issue, and should be treated like any other serious illness/condition in the workplace.

5.2 Ensuring non-discrimination

There should be no discrimination against workers on the basis of real or perceived HIV status.

5.3 Recognising gender equality

The gender dimensions of HIV/AIDS should be recognized.

5.4 Promoting healthy work environment

The work environment should be healthy and safe, in order to prevent transmission of HIV.

5.5 Promoting social dialogue

The successful implementation of an HIV/AIDS policy and programme requires cooperation and trust between employers, workers and their representatives and government.

5.6 Prohibiting screening for purposes of exclusion from employment or work processes

HIV/AIDS screening should not be required of job applicants or persons in employment.

5.7 Ensuring confidentiality

Access to personal data relating to a worker's HIV status should be bound by the rules of confidentiality.

5.8 Ensuring continuation of employment relationship

As with many other conditions, persons with HIV-related illnesses should be allowed to work for as long as medically fit.

5.9 Preventing new infections

HIV infection is preventable. Prevention can be achieved through changes in attitude and behaviour. It can be furthered through provision of information and education, and in addressing socio-economic factors.

5.10 Providing care and support

All workers, including workers with HIV, are entitled to affordable health care services.

6.0 APPROACHES TO ACHIEVE OBJECTIVES

In order to attain the broad objectives against the background of the guiding principles, it is necessary to:

i. develop concrete responses at enterprise, community, regional, sectoral, national and international levels;
ii. promote processes of dialogue, consultations, negotiations and all forms of cooperation between governments, employers and workers and their representatives, occupational health personnel, specialists in HIV/AIDS issues, and all relevant stakeholders (which may include community-based and non-governmental organizations (NGOs));
iii. give effect to its contents in consultation with the social partners:
   – in national laws, policies and programmes of action,
   – in workplace/enterprise agreements, and
   – in workplace policies and plans of action.

Specific details of each approach to attain corresponding objectives are outlined below:

6.1 Objective 1:

Provide protection from discrimination in the workplace, to people living with HIV/AIDS

6.1.1 Approach:

i. ensure that pre-employment HIV/AIDS screening is not conditional for assessing fitness to work or for final recruitments and selections; standard medical forms should not request HIV status of employee or prospective employee;
ii. prohibit direct or indirect HIV/AIDS screening or the asking of questions about tests already taken; confidential voluntary counselling and testing should be encouraged;
iii. maintain confidentiality regarding all medical information, including HIV/AIDS status;

iv. make it non-obligatory for an employee to inform the employer regarding his/her HIV/AIDS status.
v. ensure protection from stigmatization and discrimination by unions, employers or clients for persons in the workplace infected with or affected by HIV/AIDS;
vi. ensure non-discrimination against HIV-infected employees in access to standard social security benefits and occupational related benefits;

6.2 Objective 2:

Prevent HIV/AIDS spread amongst workers;

6.2.1 Approach:

i. promote dissemination of information on HIV/AIDS in the workplace;

ii. ensure that protective devices (including condoms where appropriate) are made available at all workplaces to prevent the spread of HIV and other infection;

iii. promote and maintain a climate of information and education essential to maintaining a climate of mutual understanding necessary for ensuring the protection of persons infected with or affected by HIV/AIDS;

iv. promote access of employees and their families to information and educational programmes on HIV as well as to relevant counseling and referrals;

v. ensure that precautions are taken to reduce risk of transmitting blood-borne infections, including hepatitis B and HIV, through standard precautions.

6.3 Objective 3:

Provide care, support and counseling for those infected and affected.

6.3.1 Approach:

i. provide reasonable alternative working arrangements and/or assignments for persons impaired by HIV-illness;
ii. ensure that HIV-infected persons like persons suffering other illnesses are allowed to work for as long as they are medically fit for available or appropriate work;
iii. provide counselling and other forms of social support services to workers and their families infected and affected by HIV/AIDS.

7.0 SPECIFIC ROLES OF SOCIAL PARTNERS

The HIV/AIDS epidemic can undermine the whole national development strategy. Due to the serious national development problems associated with the epidemic there is wide consensus among nations on the need to broaden HIV/AIDS responses to cover all sectors. In Ghana these multi-sectoral approaches should be led by government acting through the Ghana AIDS Commission (GAC). In this regard the Ghana AIDS Commission (GAC) shall co-ordinate the activities of all agencies to provide a meaningful framework for partnership among the social partners. These social partners who are the main workplace actors shall have direct access to the GAC.

7.1 The Role of Government

Government has a key-role to play in an effective response to HIV/AIDS prevention and control. Government response can come through its own HIV-specific and HIV-related activities, and through its ability to mobilize society. Central to government's role should be the establishment of an enabling framework of policies and laws that establish the key principles of public and private action. Such action should be directed at ensuring that those infected and affected by the epidemic are protected from all forms of discrimination and stigmatization.

The Role of Government in the particular area of workplace HIV/AIDS policy will be performed by the sector Ministry responsible for labour.

The following specific areas are of importance:

a) *Coherence*. Government should ensure coherence in national HIV/AIDS strategy and programmes.

b) *Multi-sectoral participation*. The competent authority should mobilize and support broad partnerships for protection and prevention.

c) *Coordination.* Government should facilitate and coordinate all interventions at the national level.

d) *Prevention and health promotion*. The competent authority should work in partnership with other social partners to promote awareness and prevention programmes.

e) *Clinical guidelines.* Government should offer guidelines to assist employers in the care and clinical management of HIV/AIDS.

f) *Social protection*. Government should ensure that benefits under national laws and regulations equally apply to workers with HIV/AIDS.

g) *Research*. The competent authority should encourage and support research on HIV/AIDS at the workplace.

h) *Financial resourcing*. Government in consultation with the social partners should seek funding locally and internationally for their national HIV/AIDS strategic plans.

i) *Legislation*. In consultation with the social partners and experts in the field of HIV/AIDS, government should provide the relevant regulatory framework.

j) *Conditionalities for government support*. Government should encourage adherence to national laws and policies as a condition for assessing funding and incentives.

k) *Enforcement*. The competent authority should strengthen enforcement structures and procedures such as factory/labour inspectorates and labour courts and tribunals.

l) *Workers in informal activities (also known as informal sector).* Government should extend and adapt their HIV/AIDS prevention programmes to such workers.

m) *Mitigation*. Government should promote care and support of persons living with the HIV/AIDS through public health-care programmes, social security systems and/or other relevant government initiatives.

n) *Children and young persons*. Government should ensure that attention is paid to the impact of the epidemic on children and young persons whose parent or parents are ill or have died as a result of HIV/AIDS.

o) *Regional and international collaboration.* Government should promote and support collaboration at regional and international levels.

p) *International assistance*. Government should solicit international assistance in support of national programmes.

q) *Vulnerability.* Government should identify groups of workers who are vulnerable to infection, and adopt strategies to overcome the factors that make these workers susceptible.

r) Assistance to Employers. Government should guarantee access to local/international resources to the employer to manage healthcare and support programmes at the workplace in the event of an employer coming under severe pressure as a result of relatively high HIV/AIDS prevalence.

7.2 The Role of Workers Enterprises

Workers organizations should participate actively in developing workplace polices and programmes that ensure maximum protection and care for those affected by the disease. Workers need to be strengthened and empowered to mobilize their workforce on HIV/AIDS issues through information, education and communication, training and support.

Specifically, workers involvement should include the following:

a) *Workplace policy.* Workers and their representatives should consult with their employers on the implementation of an appropriate policy for their workplace.

b) *National, sectoral and workplace/enterprise agreements.* Workers and their organizations should adhere to national law and practice when negotiating terms and conditions of employment relating to HIV/AIDS issues.

c) *Information and education*. Workers and their organizations should use existing structures and facilities to provide information on HIV/AIDS in the workplace.

d) *Economic impact*. Workers and their organizations should work together with employers to develop strategies to assess and respond to the economic impact of HIV/AIDS in their particular workplace.

e) *Advocacy*. Workers and their organizations should work with employers, their organizations and governments to raise awareness of HIV/AIDS prevention and management.

f) *Personnel policies.* Workers and their representatives should support and encourage employers in creating and implementing personnel policies and practices that do not discriminate against workers with HIV/AIDS.

g) *Monitoring of compliance.* Workers' representatives have the right to take up issues at their workplaces through existing grievance and disciplinary procedures.

h) *Training*. Workers' organizations should develop and carry out training courses for their members on workplace issues raised by the epidemic.

i) *Risk reduction and management*. Workers and their organizations should advocate for, and cooperate with, employers to maintain a safe and healthy working environment.

j) *Confidentiality*. Workers' organizations should not have access to personnel data relating to a worker's HIV status.

k) *Workers in informal sector.* Workers and their organizations should extend their activities to these workers in partnership with all other relevant stakeholders.

l) *Vulnerability*. Workers and their organizations should ensure that factors that increase the risk of infection for certain groups of workers are addressed in consultation with employers.

m) *Support for confidential voluntary HIV counselling and testing*. Workers and their organizations should work with employers to encourage and support access to confidential voluntary counselling and testing.

n) *International partnerships*. Workers' organizations may be encouraged to build networks across national borders by using sectoral, regional and international groupings to highlight HIV/AIDS.

7.3 The Role of Employers' Enterprises

Employers shall be encouraged to develop policies to prevent discrimination against workers who are infected with HIV and to implement workplace AIDS educational programmes for their employees and their families.

Employers shall also be educated to use the skills of HIV/AIDS persons to the maximum as long as possible. This will include retraining of employees where necessary and appropriate use of their services.

The specific role of the employer should include the following:

a) *Workplace policy*. Employers should consult with workers and their representatives to develop and implement an appropriate policy for their workplace.

b) *National, sectoral and workplace/enterprise agreements.* Employers should adhere to national law and practice in relation to negotiating terms and conditions of employment about HIV/AIDS issues with workers and their representatives.

c) *Education and training*. Employers and their organizations, in consultation with workers and their representatives, should initiate and support programmes at their workplaces to inform, educate and train workers about HIV/AIDS prevention, care and support.

d) *Economic impact.* Employers, workers and their organizations, should work together to develop strategies to assess and respond to the economic impact of HIV/AIDS on their particular workplace and sector.

e) *Personnel policies*. Employers should not engage in nor permit any personnel policy or practice that discriminates against workers infected with or affected by HIV/AIDS. In particular, employers should:
   - not require HIV/AIDS screening or testing unless otherwise specified in the section under *testing* of this policy;
   - ensure that work is performed free of discrimination or stigmatization based on perceived or real HIV status;
   - encourage persons with HIV and AIDS-related illnesses to work as long as medically fit for appropriate work; and
   - provide that, where a worker with an AIDS-related condition is too ill to continue to work and where alternative working arrangements including extended sick leave have been exhausted, the employment relationship may cease in accordance with anti-discrimination and labour laws and respect for general procedures and full benefits.

f) *Grievance and disciplinary procedures*. Employers should specify under what circumstances disciplinary proceedings can be commenced against any employee who discriminates on the grounds of real or perceived HIV status or who violates the workplace policy on HIV/AIDS.

g) *Confidentiality*. Accessing employee HIV/AIDS-related information should generally be strictly limited to medical personnel and management and such information may only be disclosed if legally required or with the consent of the person concerned.

h) *Risk reduction and management*. Employers should ensure a safe and healthy working environment. To support behavioural change by individuals, employers should also make available, where appropriate, male and female condoms.

i) *Workplaces where workers come into regular contact with human blood and body fluids.* In such workplaces, employers need to take additional measures to ensure that all workers are trained in Universal Precautions

j) *Reasonable accommodation.* Employers, in consultation with the worker(s) and their representatives, should take measures to reasonably accommodate the worker(s) with AIDS-related illnesses. These could include rearrangement of working time, special equipment, opportunities for rest breaks, time off for medical appointments, flexible sick leave, part-time work and return-to-work arrangements.

k) *Advocacy*. Employers and their organizations should encourage fellow employers to contribute to the prevention and management of HIV/AIDS in the workplace.

l) *Support for confidential voluntary HIV counselling and testing*. Employers, workers and their representatives should encourage support for, and

access to, confidential voluntary counselling and testing that is provided by qualified health services.

m) *Workers in informal activities (also known as informal sector)*. Employers of workers in informal activities should investigate and develop prevention and care programmes for these workers.

n) *International partnerships*. Employers and their organizations should contribute to international partnerships in the fight against HIV/AIDS.

8.0 CONTROLS

The Ministry working in conjunction with the social partners shall encourage the smooth implementation of this policy at the workplace. In doing this the National Tripartite Committee expects the Ministry to liaise with the Ghana AIDS Commission to access local and international funding to support effective implementation of workplace HIV/AIDS policies and programmes.

To encourage compliance with this policy,

1. The Ministry in charge of labour shall be responsible for any clarification and/or interpretation of the policy.
2. Any workplace grievance, misunderstanding or conflict arising out of implementation of this policy, shall subject to the provisions of Labour Act 2003 (Act 651) and related Acts, and other workplace redress mechanisms, be referred to the NTC.
3. The Labour Department and Factories Inspectorate shall include in their regular reports, the implementation of this policy at the workplace.
4. The NTC shall on an annual basis, recognize organizations that excel in the implementation of this policy.