

# AGREEMENT

## SAFETY AND SECURITY SECTORAL BARGAINING COUNCIL

AGREEMENT NO	13/2001
DATE:	20 August 2001

### EMPLOYEES OF THE SOUTH AFRICAN POLICE SERVICE LIVING WITH HIV / AIDS POLICY

1. The parties agree to the policy: Employees of the South African Police Service Living with HIV / AIDS policy, attached hereto.
2. The parties further agree that agreement 7/99: HIV Policy, is hereby revoked.
3. This agreement binds the parties to the agreement and all employees who are not members of a registered trade union admitted to this Sectoral Bargaining Council, as well as all members of registered trade unions admitted to this Sectoral Bargaining Council who are not parties to this agreement.
4. This agreement shall be valid and be implemented as from 20/8/01 until it is either amended or revoked in the Safety and Security Sectoral Bargaining Council.
5. This agreement shall be subject to the provisions of any applicable Act of Parliament, or secondary legislation promulgated in terms thereof.
6. The representatives of all parties concerned undertake to take every reasonable step necessary to ensure the implementation of this agreement.
7. Amendments to this agreement shall not be in force of effect unless they have been reduced in writing and signed by all parties concerned.
8. This agreement signed on behalf of the South African Police Service as Employer and the relevant employee organisations all signatories being duly authorised thereto at PRETORIA on the 20<sup>th</sup> day of August 2001.



Signature of representative of employer

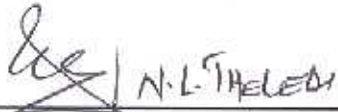


**SOUTH AFRICAN POLICE SERVICE**

Signature of representative of recognised employee organisations.



**SOUTH AFRICAN POLICE UNION**



**POLICE AND PRISONS CIVIL RIGHTS UNION**

# EMPLOYEES OF THE SOUTH AFRICAN POLICE SERVICE LIVING WITH HIV/AIDS POLICY

## 1. Preamble

- 1.1 The Human Immunodeficiency Virus (HIV) and the Acquired Immune Deficiency Syndrome (AIDS) are serious health problems which have socio-economic, employment and human rights implications.
- 1.2 It is recognised that HIV/AIDS epidemic will affect every workplace, with prolonged staff illness, absenteeism and death impacting on service delivery, employee benefits, occupational health and safety, operational effectiveness and efficiency and workplace morale.
- 1.3 Furthermore, HIV/Aids is still a disease surrounded by ignorance, prejudice, discrimination and stigma. In the workplace, unfair discrimination against people living with HIV and Aids has been perpetuated through practices such as pre-employment HIV testing, dismissals for being HIV positive and the denial of employee benefits.
- 1.4 The South African Police Service is committed to promoting equal opportunities and fair treatment in employment for all its employees, through the elimination of unfair discrimination in all policing policies and practices.
- 1.5 In recognition of the fact that employees living with HIV /AIDS should not be treated different from employees inflicted with other life threatening conditions, it must be ensured that such employees or those with any other sexually transmitted diseases carry no special burden.
- 1.6 It is acknowledged that continued employment opportunities are of therapeutic value for an employee living with a life-threatening condition, and any form of unfair discrimination against such employee is prohibited.

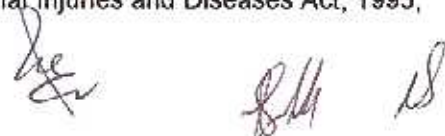
## 2. Purpose

To provide employment practices and procedures which ensure that employees with HIV/Aids are not unfairly discriminated against in the workplace, by-

- creating a safe working environment for all employees;
- promoting a supportive work environment in which employees living with HIV/Aids are able to be open about their HIV/Aids status without fear of stigma or rejection;
- developing procedures to manage occupational incidents and claims for compensation;
- introducing measures to prevent the spread of HIV;
- developing strategies to assess and reduce the impact of the epidemic on the workplace and service delivery; and
- supporting those employees who are infected or affected by HIV/Aids so that they may continue to work productively for as long as possible.

## 3. Authorisation

The provisions of the Constitution of South Africa Act, 1996 Employment Equity Act, 1998, Labour Relations Act, 1995; Basic Conditions of Employment Act, 1997; Medical Schemes Act, 1998; Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, Occupational Health and Safety Act, 1993, Compensation for Occupational Injuries and Diseases Act, 1993,



Codes of Good Practice and relevant collective agreements provide the framework and authorisation.

#### 4. Scope of application

This policy is applicable to all employees appointed in terms of the South African Police Service Act, 1995 (Act no 68 of 1995) and the Public Service Act, 1994 (Act no 103 of 1994).

#### 5. Policy provisions

##### 5.1 Medical testing

- 5.1.1 No employee or prospective employee shall, be required to undergo any medical examination to assess their immune/HIV/AIDS status, unless the Labour Court has declared such testing to be justifiable. Any medical examination undertaken either before employment or thereafter shall be solely to determine the functional performance of an employee, and offer a prognosis on the fitness for work of the employee. Indirect screening methods such as inquiries regarding previous testing or an assessment of risk behaviour is prohibited.
- 5.1.2 Employees must be advised of the advantages of voluntary testing should they suspect that they have been exposed to infection, as the early initiation of aggressive treatment regimens offer a better long-term prognosis for persons living with HIV/AIDS.
- 5.1.3 An employer may provide testing to an employee who has requested a test in the following circumstances:
- As part of a health care service provided in the workplace;
  - In the event of an occupational accident carrying a risk of exposure to blood or other body fluids;
  - for the purposes of applying for compensation following an occupational accident involving a risk of exposure to blood or other body fluids.
- 5.1.4 Subject to the provisions of paragraph 5.1.1. supra testing may be done only at the initiative of an employee. Such testing must be carried out by a suitably qualified person or institution registered with the Medical and Dental Control Council, and with observance to the following-
- express written consent by the employee shall be obtained before a test for HIV/AIDS is undertaken;
  - no testing shall be undertaken without pre- and post-test counselling by a suitably qualified person or helping professional as defined by the Department of Health's National Policy on Testing for HIV ;
  - results shall be treated confidentially; and
  - results will only be conveyed to the employee concerned.
- 5.1.5 Voluntary testing by an employee must be based on her/his informed consent. This implies that the employee has been provided with information , understands it, and based on this has agreed to undertake the HIV test. The employee understands what the test is, why it is necessary, the benefits, risks, alternatives and any possible social implications of the outcome.
- 5.1.6 Surveillance testing, the anonymous unlinked testing done to determine the prevalence of HIV to provide information on its control, prevention and management, and the epidemiological study of HIV patterns, causes, distribution and mechanisms of control, may be undertaken if in accordance with ethical and legal principles regarding such research. Where such research is done, the information obtained may not be used to unfairly discriminate against any employee. Testing will not be considered anonymous if there is a reasonable possibility that an employees's HIV status can be deduced from the results.

## 5.2. Confidentiality

- 5.2.1 Employees have the right to confidentiality regarding their HIV/AIDS status and cannot be compelled to disclose their HIV/AIDS status to SAPS or any other employee.
- 5.2.2 Where an employee chooses to voluntarily disclose her/his HIV status to any other employee, this information may not be disclosed to others without the employee's express written consent. Where written consent is not possible, steps must be taken to confirm that the employee wishes to disclose her/his status.
- 5.2.3 Medical information regarding the HIV/AIDS status of an employee or prospective employee gained by a medical, dental or helping professional under contract to the employer, pension fund trustee or any other person, shall not be disclosed without the consent of the employee concerned.
- 5.2.4 No flags or any other type of indicator shall be used on employee's personal files to indicate the employee's HIV/AIDS status.

## 5.3 Employment

- 5.3.1 Employees living with HIV/AIDS shall be governed by the same contractual obligations as all other employees.
- 5.3.2 No employee with HIV/AIDS shall be unfairly discriminated against within the employment relationship or any employment policies or practices with regard to -
- recruitment procedures, advertising and selection criteria;
  - appointments, and the appointment process, including job placement;
  - job classification or grading;
  - remuneration, employment benefits and terms and conditions of employment;
  - employee assistance programme;
  - job assignments;
  - training and development;
  - performance evaluation systems;
  - promotion, transfer and demotion;
  - termination of services.
- 5.3.3 The HIV/AIDS status of an employee, whether it is voluntarily made known by the employee or not, shall not be a basis for refusing to conclude or to continue or to renew an employment contract.
- 5.3.4 HIV infected employees must be able to continue working under normal conditions under their current employment for as long as they are medically fit to do so. Their utilisation must be determined by their health condition in relation to the operational requirements of the respective job. Any changes in the nature of the job shall be based on existing criteria of equality of opportunity, merit and capacity to perform to expected standards.
- 5.3.5 HIV/AIDS status shall not be used as a justification for the exclusion of an employee from performing any particular duty.
- 5.3.6 Where it is necessary, employees living with HIV/AIDS shall, in consultation with the employee, be rotated to duties and working conditions that are more appropriate to the circumstances of the employee with minimal risk to their health condition.
- 5.3.7 All reasonable steps must be taken to accommodate an employee in a suitable post until it is necessary to convene a medical board.




#### **5.4 Leave, absenteeism and ill-health**

- 5.4.1 Employees who become ill with AIDS should be treated like any other employee with a comparable life threatening illness and be entitled without prejudice to available sick leave benefits.
- 5.4.2 Commanders and managers shall support employees living with HIV/AIDS in having access to appropriate health care. It must be ensure that medical aid schemes do not unfairly discriminate against employees of SAPS on the basis of their state of health.
- 5.4.3 Normal medical board rules and relevant codes of good practice shall apply

#### **5.5 Termination of employment**

- 5.5.1 No employee shall be dismissed or have their employment terminated solely on the basis of their HIV/AIDS status.
- 5.5.2 However where there are valid reasons related to their capacity to continue working and fair procedures have been followed, their services may be terminated in terms of applicable Codes of Good Practice and prevailing instructions.

#### **5.6 Counselling and support programmes**

- 5.6.1 The SA Police Service is committed to provide counselling and support services to employees living with HIV/AIDS and their dependants through the Employee Assistance Programme. The SA Police Service shall, if requested, assist an employee living with HIV/AIDS and her/his dependants to obtain professional counselling
- 5.6.2 All employees have the right to continuous education and information about the modes of transmission of HIV/AIDS, the means of preventing such transmission, the need for counselling and care, and the social impact of infection on those affected by HIV/AIDS.
- 5.6.3 The National Forum for HIV/AIDS, comprising representatives of the Helping Professions and union representatives, shall manage HIV/AIDS as a collective effort addressing policy issues, education and awareness campaigns, and the implementation of special programmes. This must be done in conjunction with government and non-governmental organisations with expertise in HIV/AIDS education, counselling and care. The Department of Health's HIV/AIDS and Sexually Transmitted Diseases prevention campaign must be supported by making condoms, information brochures, posters, information on Post Exposure Prophylactics and details of local services for people affected by or living with HIV/AIDS available at the workplace.
- 5.6.4 Such programmes should incorporate-
- ongoing sustained prevention of the spread of HIV among employees and their communities;
  - management of employees with HIV so that they are able to work productively for as long as possible;
  - strategies to deal with the direct and indirect costs of HIV/AIDS in the workplace; and
  - strategies to combat discrimination and irrational responses to HIV/AIDS in a non-stigmatising manner.
- 5.6.5 Awareness activists/peer educators, trained under the auspices of the National Forum, must be utilised in education and prevention programmes. As HIV/AIDS impacts disproportionately on women, this should be taken into account in the development of related programmes.
- 5.6.6 Mechanisms should be created to encourage openness, acceptance and support for those employees who voluntarily disclose their HIV status in the workplace, including -




- encouraging employees openly living with HIV/AIDS to conduct or participate in education, prevention and awareness programmes;
- encouraging the development of support groups for employees living with HIV/AIDS;
- extending bereavement counselling to families ; and
- ensuring that employees were open about their HIV/AIDS status are not unfairly discriminated against or stigmatised.

5.6.7 Compulsory education and prevention programmes for all employees (including management) shall be undertaken during paid working hours at all workplaces, taking into account the languages spoken and levels of education/literacy at each workplace. Employees must be informed of the provisions of employment codes on HIV/AIDS and the rights and duties of employees.

5.6.8 Regarding operational duties, working areas and specialised training courses where there is a possibility of accidental exposure, first aid instruction shall be prominently displayed explaining the universal precautions that need to be followed when dealing with blood and other bodily fluids and other precautionary measures that should be undertaken. Effective training of employees must minimise any potential hazards. Safe working conditions must be promoted and appropriate protective equipment must be provided in all relevant workplaces such as client service centres, police vehicles and first aid kits. Employees must be educated to treat all situations as potentially hazardous where bodily fluids are exposed.

## 5.7 Exposure in the workplace

5.7.1 The National Commissioner shall provide guidelines regarding the implementation of precautionary health and safety measures to minimise the risk of exposure to HIV.

5.7.2 The provisions of the Compensation for Occupational Injuries and Diseases Act and Occupational Health and Safety Act must be followed with regard to infection with HIV in the course and scope of an employee's duties in order that such infection may qualify as an injury on duty. Where an employee is exposed to possible infection in the performance of her/his duties, such employee should report the accident and submit to a medical test to determine her/his baseline HIV status without delay - notwithstanding that such test is entirely voluntary. Testing must be pre-authorised and the incident reported in terms of current provisions regarding injuries on duty.

5.7.3 If the employee was negative at the time of accident , she/he should be re-tested at three and six months intervals after the accident.

5.7.4 If she/he sero-converts during this period, an application for compensation may be made.

5.7.5 Any employee of the SA Police Service who, in the course of performing their duties, is exposed to HIV shall be offered access within 24 hours to anti-retroviral medication (post-exposure prophylactics) to reduce the incidence of sero-conversion in exposed persons.

5.7.6 Post-exposure prophylactics shall be provided to the employee and according to the procedure on Post-Exposure Prophylactics, which provides for pre- and post-HIV test counselling and support.

## 5.8 ASSESSING THE IMPACT OF HIV/AIDS ON THE WORKPLACE

5.8.1 Appropriate strategies must be developed to understand, assess and respond to the impact of HIV/AIDS on the effective delivery of policing services.

5.8.2 Such impact assessment should include -

- risk profiles;

- assessment of the direct and indirect cost of HIV/AIDS.

**5.8.3 Risk profiles must include an assessment of -**

- the vulnerability of individual employees or categories of employees to HIV infection;
- potential risks related to infection during the performance of operational services ; and
- an assessment of the impact of HIV/AIDS on continued service delivery.

**5.8.4 The assessment should also consider the impact of the HIV/AIDS epidemic on-**

- direct costs such as costs to employee benefits, medical costs and increased costs related to staff turnover such as training and recruitment and the costs of implementing an HIV/AIDS programme; and
- indirect costs such as costs incurred as a result of increased absenteeism, employee morbidity, loss of productivity, a general decline in workplace morale and possible workplace disruption.

**5.9 Grievance and disciplinary procedures**

**5.9.1 No person may be unfairly discriminated against on the basis of their HIV/Aids status. Employees living with HIV/AIDS shall be protected from any form of stigmatisation or discrimination.**

**5.9.2 Any contravention of the provisions of this policy shall amount to unfair discrimination and must be addressed through the appropriate dispute resolution procedures.**

Discrimination against an employee on the basis of that employee's HIV/AIDS status amounts to misconduct and appropriate disciplinary steps must be taken.

The confidentiality of any employee regarding their HIV/AIDS status involved in any grievance or disciplinary process must be protected.

**6 Implementation**

**6.1 The application of this policy must be done in conjunction with the application of related employment practices and procedures.**

**6.2 This policy is dynamic and must be reviewed annually in terms of operational needs and the development of codes of good practice on key aspects of HIV/AIDS and employment.**

**6.3 Related programmes must be reviewed on a regular basis to ensure their continued relevance and effectiveness.**

**6.4 A comprehensive communication and marketing strategy must be introduced in support of these policy provisions and related programmes.**