

AIDS: Need for Policy in the Workplace

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Résumé de l'article

Cet article traite des conséquences résultant de la présence de sidéens en milieu de travail et du rôle des directeurs de personnel sur la question du SIDA et sur la nécessité d'établir des programmes d'éducation et des normes écrites en cette matière.

Le syndrome immuno-déficitaire acquis (SIDA) est causé par un virus qu'on nomme le rétrovirus HIV lequel attaque et détériore gravement le système immunitaire du corps humain, principale défense de l'organisme contre la maladie. Le virus se communique de trois façons: 1) toute personne infectée peut le transmettre lors de relations sexuelles, quand le sperme, les fluides vaginaux ou le sang passent dans l'organisme d'une autre personne; 2) l'échange d'aiguilles ou de seringues hypodermiques contaminées peut aussi infecter ainsi que, ce qui est moins fréquent, les transfusions et les dérivés du sang; enfin, dans de rares cas, une mère infectée peut transmettre le HIV à son bébé avant sa naissance ou pendant l'accouchement.

Aux États-Unis, si le SIDA est reconnu comme un «handicap» c'est-à-dire une altération de la santé physique ou mentale qui limite substantiellement les capacités d'un individu: la loi interdit aux employeurs de faire de la discrimination à l'égard des victimes. Au Canada, en vertu de la législation fédérale ou provinciale, on considère cette maladie comme un incapacité physique. Les lois et la *Charte canadienne des droits et libertés* prohibent la discrimination non autorisée pour motif d'incapacité physique.

La crainte du SIDA a pris les proportions d'un état de crise en milieu de travail en Amérique du Nord, surtout aux États-Unis. Pour beaucoup, cette hantise repose sur l'incompréhension et le manque d'informations médicales et juridiques. Les peurs des collègues des victimes sont compréhensibles si l'on considère que les mythes et les idées fausses sur cette maladie sont fort répandus dans le public. Les employeurs doivent donc se montrer réceptifs face à ces préoccupations. Ils doivent établir des normes écrites qui tiennent compte tant des droits des victimes que droits et craintes de leurs compagnons et de leurs compagnes de travail de façon à s'assurer que le milieu de travail est sûr. Les employeurs ont l'obligation de se tenir bien informés sur les développements les plus récents concernant les problèmes reliés au SIDA et de renseigner leurs salariés adéquatement. C'est dans leur propre intérêt de mettre en place des mesures qui puissent concilier les droits des victimes du SIDA et les craintes de leurs collègues de manière à s'épargner des dissensions au sein de leur personnel et un fléchissement de la productivité.

AIDS: Need for Policy in the Workplace

Hem C. Jain

This paper deals with the workplace implications resulting from the incidence of AIDS for employers, AIDS victims, and co-workers of AIDS virus sufferers in North America. It discusses myths and misconceptions about AIDS as well as the medical facts and the legal aspects of the AIDS controversy. It examines the role of human resource management specialists in handling AIDS concerns, such as testing job applicants, terminating employees with the AIDS virus, developing educational programmes, and writing policy statements. Finally, it makes recommendations on how to effectively deal with the AIDS crisis in workplace settings.

The story of Eric Smith, a teacher and an Acquired Immune Deficiency Syndrome (AIDS) carrier illustrates the fact that the fear of contracting this incurable disease has reached a crisis proportion in workplace settings in North America. Eric Smith was an elementary school teacher in a rural community in Nova Scotia when he learned in September, 1986, that he had been exposed to the AIDS, Human Immuno-deficiency Virus (HIV). He continued to teach after experts assured him that there was no danger of passing the virus on to others in the school environment. In June 1987, a secretary at the local medical clinic leaked information that publicly exposed Mr. Smith as a homosexual and a carrier of the AIDS virus. Due to the pressure from local residents, Mr. Smith did not return to the class room and was assigned non teaching duties in the Fall of 1987.

In March, 1988, Nova Scotia's task force on AIDS, upon visiting the rural community where the school was located, found that opposition to Mr. Smith's return had intensified. The town Municipal Council passed a resolution in favour of banning all homosexual teachers from local schools. They also voted in favour of banning all HIV (AIDS) carriers from the

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schools. The former Nova Scotia Minister of Education, Tom McInnis, was caught off guard by the issue and was described as having abdicated his authority in favour of the local school board after concluding that «there was little popular support for the official policy of keeping AIDS carriers in schools» (Donham, 1988). Mr. Smith stated that the Royal Canadian Mounted Police had asked him to give notice of his return to his home community so that additional officers could be put on duty.

Mr. Smith's story illustrates the problems which human resource specialists have to face. These include the conflict between the employer's legal obligation to protect the health and safety of workers and others who have access to the workplace with respect to the civil rights of an individual. Mr. Smith's story also points out the need for an employer to develop an appropriate and effective policy on AIDS related issues, that is well-founded, understood and accepted by employees.

This paper examines the workplace implications resulting from the incidence of AIDS for employers and the fear of contracting AIDS from fellow workers. To begin with, this paper defines the AIDS disease, i.e. what is AIDS; what causes it; how is it spread; the myths and misconceptions about AIDS. It will then examine the legal aspects of the AIDS crisis in the workplace by reviewing provincial and state laws; awards given by the Human Rights Commission concerning the rights of AIDS victims, fellow workers and employer's rights. Finally it will examine the role of a human resource management specialist in handling AIDS concerns, such as testing, education, and formulation of company policy. Recommendations for dealing effectively with the AIDS crisis in work settings will also be made.

AIDS DEFINITION: MYTHS AND MISCONCEPTIONS

AIDS is caused by a virus called HIV which attacks and seriously disrupts the body's immune system, which is the body's defence against disease. The virus is spread in the following ways:

- Any person infected with HIV can transmit the virus through sexual activity where semen, vaginal fluids or blood enter the other person's body.
- Sharing contaminated hypodermic needles or syringes can pass infected blood from one person to another.
- Less commonly, through transfusions of blood or blood products.
- In rare cases an infected mother may transmit HIV to her baby before or during birth. (Health and Welfare — Canada, 1987).

According to Ontario's Ministry of Health, (1986) not everyone infected with the HIV virus has AIDS or will develop AIDS. Some people who are exposed to the virus, carry it in their blood streams and have no symptoms; some may develop mild symptoms; others may have more persistent symptoms known as persistent lymphadenopathy syndrome (PLS) or AIDS related complex (ARC). These individuals may develop symptoms such as persistent fatigue, weight loss, swollen lymph nodes, and some decreased effectiveness of the immune system. A small number of people who have been infected with the AIDS virus will develop the most severe form of AIDS, which is fatal in most cases.

The risk of being exposed to the AIDS virus in the work place depends on the type of services performed. There is potential risk only if the workers, such as health care workers and laboratory staff, come into direct contact with the client's blood, and handle other body fluids, such as semen, feces and urine of AIDS patients. There is then an opportunity for the virus to enter the worker's blood stream. Studies have shown that, even in cases where health workers have accidentally struck themselves with needles contaminated with blood infected with the AIDS virus, they found that the chance of becoming infected with the AIDS virus was very small — well over 100 times less than with hepatitis B (Ontario Ministry of Health, 1986).

In the U.S.A. some national polls found that one-third of the people polled believed that AIDS could be spread casually through sneezing, sharing drinking glasses, and eating food handled by AIDS victims. There is no evidence that this is true. The AIDS virus has not been transmitted through air, water, or food or by touching the skin of a person with AIDS, or by touching any object handled, touched, or breathed on by a person with AIDS. In short, HIV infection cannot be caught through casual, every day contact.

In spite of restricted modes of transmission there is a great concern around the world about the spread of the disease. At a recent conference held in Stockholm, the World Health Organization reported 94 000 cases, world wide. The true figure is believed to be twice that. It is estimated that between five and ten million people have been infected (*Globe and Mail*, June 20, 1988). The U.S. Public Health Service estimates that between 1,5 and 2 million Americans have been infected with HIV (U.S. Department of Health, 1987). In Canada about 1 760 cases of AIDS had been diagnosed as of May, 1988, but an estimated 50 000 other Canadians harbour HIV in their bodies (*Globe and Mail*, June 20, 1988). In a national survey on AIDS in business in Canada, 67% of the respondents, i.e. corporate decision makers, expressed concern about AIDS. More than 20 companies admitted

that they have employees, who are dying or are already dead from AIDS. Another 21% of the respondents said that they probably have AIDS cases in the workplace but are not aware of them. Forty percent of the companies indicated that AIDS will have an impact on their business in the future. Executives fear increased medical and disability costs, lawsuits, workplace disruptions, or lost business (*Canadian Business*, May, 1988).

RIGHTS AND OBLIGATIONS OF PARTIES AFFECTED BY AIDS

In the U.S.A., if AIDS is determined to be a handicap, then employers are legally prohibited to discriminate against AIDS victims solely on the basis of the disease, provided that the employee can perform the job in question. Most states have some type of handicap laws.

A common definition of a handicapped person, at the state level, is one «Who has a physical or mental impairment which substantially limits one or more of such person's major life activities» (Wing, 1986). It remains to be seen how the courts in the U.S.A. will interpret AIDS under various handicap statutes, but the general feeling among legal experts is that probabilities are high that the courts will consider AIDS as falling under the handicap category. In a recent Florida case Mr. Todd Shuttleworth, a county budget analyst with AIDS, was fired because he was considered to pose a risk for co-workers who came into contact with him. The Florida Commission on Human Rights ruled that Mr. Shuttleworth was a victim of handicap discrimination. The Commission noted that employers could only discriminate based on a handicap, if the absence of disability is a bonafide occupational qualification necessary to perform the job. This case was recently settled out of court, with the State of Florida agreeing to pay Mr. Shuttleworth back pay, attorney fees, medical bills and reinstatement of his health and life insurance (International Personnel Management Association, 1987).

LEGAL ASPECTS OF AIDS IN CANADA

In the Canadian context¹, common law, as it has developed over the centuries since Henry II (Stephenson, 1972), guarantees basic individual rights, such as freedom of speech and freedom from arbitrary action against one's legitimate interests, a right which is now usually referred to as

¹ Information on the legal aspects of AIDS in Canada is based on an unpublished paper: «Workplace Policies on AIDS Related Issues» by R. Danzinger, I. Harvie, F. McGinn and M. Van Eden, March 1988.

freedom from discrimination. In Canada these rights have recently been written into the *Canadian Charter of Rights and Freedoms* (Schedule B, 1982), which acts as a constitutional restraint on the actions of government at all levels, but does not apply to the private sector employer.

The particular common law rights which deal with HIV-infected persons have been described by a committee of the Canadian Bar Association-Ontario (1986) as follows:

At stake are the legitimate interests of individuals in controlling the generation and dissemination of information about them (privacy), the individual's interest in carrying on with the normal activities of one's life unlimited by unwarranted restraints based on one's medical condition (liberty) and the right not to be discriminated against with regard to employment, accommodation and such matters because of an unjustified perception that the individual poses a significant risk to others (non-discrimination).

The committee does not regard the civil rights of the HIV-infected person as absolute, but as rights to be balanced against the rights of the public to be protected from an incurable and fatal disease. The recommended guiding principles for the balancing of these interests are:

- That the law must be evaluated on the basis of current medical and scientific knowledge concerning AIDS;
- That the balance to be struck must be consistent with the basic values of our legal and social order;
- That interferences with the liberty or rights of the individual will be accepted only to the extent that they can be demonstrably justified in terms of protecting health.

Throughout its report the committee repeatedly argues that it does not preclude effective action to protect public health but simply requires that such action be justified on medical and scientific facts.

In addition to the *Canadian Charter of Rights and Freedoms*, individual rights can be found in the human rights legislation of each province. All provincial and federal human rights legislation prohibits unwarranted discrimination on the basis of a physical disability. There is no explicit reference to AIDS, of course, so the question is: «Does AIDS constitute a physical disability?», «Does HIV infection with no symptoms constitute a physical disability?».

The *Ontario Human Rights Code* (S.O., 1981, c. 53,9(b)), precludes discrimination if a person, «has or has had or is believed to have or have had [...] any degree of physical disability [...]». The Ontario Bar Association Committee concluded that the wording would certainly cover AIDS and ARC, and, because of the wording «or is believed to have or have had», would probably cover an HIV-infected person with no symptoms.

The *New Brunswick Human Rights Act* (R.S.N.B., 1973, c. H-11) prohibits discrimination in respect of employment because of physical disability. Physical disability means «any degree of disability, infirmity [...] caused by [...] illness [...]». The words of the provision do not appear to protect a person such as Eric Smith who is not at all disabled or infirm. There is, however, an argument based on case law that the New Brunswick wording would apply when the discrimination was based on a perceived rather than a real disability, an argument that was used by the Ontario Bar Association (*Report of the AIDS Committee*, 1986) in reference to the federal *Human Rights Act*.

In a case (*Brideau v. Air Canada*, 1983) heard under the federal *Human Rights Act*, the tribunal found that it had jurisdiction to hear an allegation of discrimination because of physical disability although there was no actual physical disability involved because: «It is the perception an employer has of the employee's physical condition that must be considered, not the physical condition itself».

This broad interpretation is supported by a Supreme Court of Canada decision in which Mr. Justice McIntyre stated that the Court will «give to the human rights code an interpretation which will advance its broad purposes [...] It is for the Court to seek out its purpose and to give it effect. It is prudent, therefore, for employers to conclude that HIV-infected persons, with or without symptoms of AIDS, have, in addition to their common law civil rights, explicit rights under the Human Rights Act».

Contractual Rights

The employer must also look at the employment contract or at the terms of the collective agreement to determine obligations towards HIV-infected employees.

In the one decided Canadian case (*Re Pacific Western Airlines Ltd. v. Canadian Air Line Flight Attendants Association*, 1987), a grievance under a collective agreement was heard by a federal arbitration board. The griever, a flight attendant, was suspended with pay after the employer had reason to believe that the attendant had contracted AIDS. The Board held that the suspension from work with pay was a breach of the collective agreement; the employee had the right to continue to work as long as he was physically able to do the job and did not pose a risk to others. The arbitration board in the above case described the degree of risk necessary to permit the removal of a person from work duties in these words:

What the employer sought to achieve in this dispute was not the elimination of risk, but the elimination of any theoretical possibility of risk. Theories that there is a possibility of risk of the transmission of AIDS through casual contact, on the evidence we heard, are subjective and embrace the most conservative of medical theories as one end of the spectrum and the hysterical obsession of uninformed persons as the other end. Those theories do not justify the extreme response of removing employees from flight duties.

ROLE OF HUMAN RESOURCE MANAGEMENT SPECIALISTS IN HANDLING AIDS RELATED CONCERNS

In the public and private sector, human resource management specialists are expected to play an important part in educating management and the workforce, regarding AIDS in the workplace issues. Legal and moral consequences may flow from any decision made by management concerning an employee or job applicant who may have contracted AIDS. Therefore personnel specialists need to become fully familiar with the legal, educational and policy considerations associated with AIDS.

Recruitment

If AIDS is considered to be a handicap in the U.S.A., and a disability in Canada, then an employer should not ask a job applicant if he or she has AIDS or tested positive for the AIDS virus. However, employers may ask all applicants if they are capable of working a normal workday, or if they have any reason why they can not perform all the duties assigned to them. After hiring, if the employer finds that the employee has AIDS and cannot perform the job, the employer is justified in discharging the employee.

Since AIDS cannot be transmitted by everyday casual contact in the workplace, there is no need for employers and co-workers to know. The person with AIDS has a legal right to privacy and confidentiality. An employer can only request medical information from an employee that is relevant to his or her job. An employer can confirm this information with a physician only with the employee's expressed consent (Ontario Ministry of Health, 1986).

Testing

In 1987, President Reagan, addressing an international conference on AIDS, called for routine use of HIV antibody testing on a widespread basis,

as well as for mandatory testing of immigrants to the U.S., and federal prisoners and patients admitted to veterans' hospitals. This approach was described as being superficially attractive (Osborn, 1988).

The main argument against mandatory testing is that it does not control the spread of the disease, because limiting the spread of virus depends on voluntary changes in behaviour, and persuasion. This means that the most effective way to control the spread of the disease is to obtain the cooperation of the persons at greatest risk. The most commonly used test, known as the ELSA test, has come under heavy criticism for its high rate of error and this test only indicates the presence or absence of AIDS antibodies. In other words, this test cannot predict with certainty that a person who is tested positive for the exposure to the virus will eventually succumb to the fatal AIDS disease. Commenting on the predictive value of the antibody tests, the International Personnel Management Association in its newsletter concluded that «there appears to be, at this time, little evidence in general to support the utility of screening for the virus for the purpose of detecting potential AIDS victims among applicants and employees (International Personnel Management Association, February, 1988).

In Canada, any mandatory testing is considered a serious intrusion on individual rights. Mandatory AIDS tests for employees or prospective employees are forbidden under the new rules of the Canadian Human Rights Commission. Tests might be considered for health care workers who, through an injury in the workplace, have been exposed to infected blood or body fluids. In those cases, testing is for the benefit of the employee and should be voluntary. The Royal Society of Canada (1988) in its recent report recommended «the carefully considered use of voluntary and anonymous testing as an adjunct to education and public health initiatives for controlling further spread of the disease». It further suggested that «the finding of a positive result in a screening test for HIV bodies must always be considered as tentative and that a person must not be reported as seropositive unless the screening test result is validated by one or more confirmatory tests».

Dismissal of AIDS Victims

Eric Smith, an AIDS carrier, did not constitute a risk to students in his classrooms. Therefore, he was entitled under his contract to return to his teaching duties. However, due to strong opposition from many people in his home community, teaching in that area became impossible for him, both from the point of view of the contribution he could make in such a hostile environment, and from the point of view of his own well being. If an

employer is faced with such a dilemma, what response should management make? Can the organization legally dismiss the employee who has just been diagnosed as an AIDS carrier? Should the organization terminate the services of an AIDS victim?

Legally speaking, since AIDS is considered a handicap under the statutes of many states in the U.S., and a disability under the Canadian legislation, it is not prudent for the employer to terminate the services of an employee solely on the basis of his or her being diagnosed as having AIDS. In Mr. Smith's case, he was assigned non-teaching duties. In another recent case, Mr. Ron Lentz, a nurse with AIDS, was reinstated by Toronto Western Hospital after he was dismissed six months earlier. The Ontario Human Rights Commission «found that Mr. Lentz was terminated because of his disability». The Ontario Human Rights Commission said: «This case should send a strong signal to the public and to persons with AIDS that they have the right not to be discriminated against in the work place» (*Globe and Mail*, June 29, 1988).

Normally an employer justifies dismissal of employees for reasons, such as: threat or danger posed to other employees, poor quality of job performance and budgetary constraints. Since AIDS can not be transmitted through casual contact, the threat or danger of infection posed to other employees in the workplace would not constitute a valid excuse for dismissal. However, if it is well documented that an employee with AIDS cannot perform his or her duties on the job, then the employee can be dismissed on account of his or her inability to perform, but not on the basis of being diagnosed as having AIDS. If increased medical or insurance costs occur as a result of keeping an AIDS carrier on the pay roll, the employer cannot use these costs as an excuse for financial constraints and dismiss an employee with AIDS.

What should an employer do when co-workers refuse to work with an employee who has AIDS or who has been infected with AIDS? Can employees request reassignment of themselves from the AIDS victim? In Canada and in the U.S., health and safety laws allow workers to refuse to do a job that threatens their health. However, there has not been a single incident reported of someone becoming infected with AIDS virus through non-sexual contact with a co-worker. Therefore, there is no medical reason to refuse to work with someone who is infected with AIDS virus. Mainly because of fear and misunderstanding, is AIDS panic very real in the workplace.

HUMAN RESOURCE MANAGER'S DILEMMA

What should a human resource manager do when he is told by an employee that he has AIDS? Here are excerpts from a true story as told by Karen Pope, human resource manager for a Canadian retail chain. (The story was published in *Canadian H. R. Reporter*, Oct. 19, 1987.)

«When Allen told me that he had AIDS, my first thought was, 'Oh my God', did I shake his hand when he came to my office [...] I am ashamed of that reaction now. But when I stopped to think about it, I realized just what kind of problems Allen was going to experience at work if the news got out. And what job I had ahead of me in terms of self education before I could even begin to think about an education programme for employees.»

Allen was sent by his supervisors. He had been absent a lot because of sick days, and doctor's appointments. His performance was low even when he was at work... I don't know why he finally broke down and told me that he had AIDS but he could not tell his managers. He was gay and did not think his boss knew or would like it if he did. He did not want to quit and was afraid he would be fired. After checking the legislation, Pope met Allen's supervisor. His supervisor demanded that Allen be fired immediately. He was not concerned with the fact that the disease might be contagious, although he did bring up the matter of water-fountains in the washrooms. Pope managed to convince him that there was no risk. Allen's supervisor was concerned with the disruption in his department if the news spread. Unfortunately the supervisor proved right. Pope did convince the supervisor to let Allen work as long as he was physically able. But six weeks later, Pope, the human resource manager, received an urgent summons to the office of Allen's supervisor. Upon arriving, Pope was confronted by the manager and another of his employees — a woman, who was five months pregnant, who angrily accused the human resource manager of keeping a secret that could «endanger her baby». Pope was appalled by her ignorance about AIDS. It took an hour to calm her down but the whole department was upset and of course it spread from there. The majority of the employees were pretty reasonable but a few threatened to quit or not to come to work as long as Allen was there. And that meant disciplinary action and more bad feelings.

Despite the antagonism from some of his co-workers, Allen tried working part-time for a few more months before finally giving in and going on disability. The company has now developed a policy on AIDS and an employee education program (*Canadian H.R. Reporter*, Oct. 19, 1987, p. 3).

The increasing incidence of stories like Allen's, as well as the extensive publicity about AIDS, has created one of the major social and medical issues in the workplace, one to which human resource managers must assign priority. It is incumbent upon human resource managers to be sensitive to the rights of both the AIDS victim and the fears of co-workers; to keep abreast of the latest medical and legal developments and educate the workforce. When an employee learns that he or she has AIDS, the employee is likely to be under severe emotional pressure. The employee is worried about the reactions of his fellow workers, family and friends, and about the distinct possibility of being fired and eventually the tragic reality of his or her impending death.

Medical Benefits for AIDS Victims

While an employer may not refuse to hire an AIDS carrier, it may refuse to provide life, health and pensions benefits to the AIDS infected person at the time of hiring. The Imperial Life Assurance Company has such a policy. However, in most instances, if a person already employed becomes infected with the AIDS virus, the employee is entitled to the regular benefit package. In Canada, the province of British Columbia has a policy which states that a pre-existing condition of HIV infection may make the employee ineligible for benefits under its long term disability plan. In the U.S., which does not have Medicare, the economic consequences for public health care facilities to look after AIDS victims are enormous. It is estimated that New York City is currently spending about \$1 million per week for the care of AIDS patients. AIDS costs are likely to increase for taxpayers as the number of victims increases. Many private insurance companies are already trying to restrict coverage in what they consider to be high risk populations, which means that health insurance premiums are likely to rise for government employees and workers in the private sector (Pierce, 1985). The results of an actuarial study conducted by the American Insurance industry indicated that AIDS — related claims could total \$50 billion in the U.S.A. by the year 2000 and in Canada it could amount to \$2.3 billion (*Canadian H. R. Reporter*, Oct. 1987, p. 2).

Workplace Policy on AIDS

In a survey of companies regarding AIDS policy-statements, in the U.S., the Bureau of National Affairs (BNA) reported that only 2% of the respondents had any policy statement (Myers and Myers, 1987). In Canada a few employers have developed policies on AIDS related issues. The major

reasons for employers not preparing AIDS policy statement are: (1) They believe that there is no need for a policy since AIDS is treated like any other disease or condition. (2) Issuing policy statement may obligate the employer to a course of action that future events may prove unwise. (3) It is too early to prepare a policy statement since legal and medical facts are still changing.

Need for Policy

In spite of these reservations several factors suggest that human resource managers face the prospect of AIDS becoming more common and hence they believe there is a need to have written policies and employee education programmes. First, the projected growth statistics of AIDS and ARC diseases presents a telling demographic argument. The Atlanta based Centre for Disease Control in the U.S.A. estimate that there are 50 carriers for every reported case of AIDS. This means that 60,000 Canadian are infected with HIV, which can last in one's blood stream without apparent symptoms for up to 15 years. Secondly, most of the Canadian provincial human rights commissions have declared that AIDS victims have a right to work as long as they are physically able to perform their duties. Thirdly, employers may be found liable for harassment of the AIDS victim by other employees: which includes discriminatory actions by supervisors and managers, acts of discrimination by an employee about which the employer knew or «ought to have known». Finally, it is in the employer's self enlightened interest to have written policies to provide guidance in dealing with AIDS related issues because if AIDS is not checked, the cost in benefits, health care, work disruptions and loss of productivity, can be enormous (*Canadian H. R. Reporter*, Oct. 1987, pp. 2-3).

The basic purpose of a written policy is to inform and educate employees about AIDS related matters and how the organization is responding to these matters. Most written policies state that a person with AIDS or a person who has been tested HIV antibody positive, will be able to continue working as long as that person can do the job and does not pose a real risk to others in the workplace. For example the policies of two hospitals, i.e. Women's College Hospital in Toronto and Dr. Everett Chalmers Hospital in Fredericton, clearly state that health care workers who are HIV — infected may continue to work as long as they can perform their jobs without posing a risk to others. The Fredericton Hospital further specifies that health care workers with proven ARC or AIDS should be removed from direct patient care to protect patients from other infections they may acquire.

If a written policy on AIDS has to be effective, it must emphasize the importance of workplace education programmes to prevent the spread of the disease, and to increase employee understanding and acceptance. Major elements in the successful implementation of a policy include the following (Myers and Myers, 1987).

- Commitment on the part of management to support the policy and its implementation, i.e. to set an example by not discriminating against persons who have AIDS or who have been infected with the HIV virus.
- Assurance on the part of management, to employees who have AIDS or are diagnosed with the AIDS virus, that they will remain employed provided they are able to meet customary job performance standards without hazard to themselves or to others.
- Commitment to provide a safe working environment to all employees and to protect the health and well being of all employees.
- Statement on recruitment procedures for AIDS victims, including the assurance to maintain confidentiality of medical information.
- Guidelines for supervisors in handling AIDS cases, including provisions of reasonable accommodation and job modification for AIDS sufferers when appropriate.
- Commitment to keep policy medically and legally updated and provide the latest information and educational programmes on AIDS to all employees.
- Statement of a benefit programme to AIDS victims and on sources of assistance in the community on matters regarding AIDS.
- Formation of a task force of key personnel with employee and union representatives to develop, advise and monitor policy developments and educational efforts.

A sample policy with respect to AIDS based on the policy developed by the municipality of Metropolitan Toronto, is given in the appendix to this paper.

CONCLUSION

The fear of contracting AIDS has reached crisis proportion in the workplace in North America, especially in the U.S. Much of the fear is based on misunderstanding and lack of medical and legal information. Co-workers' anxieties concerning working with AIDS victims are understandable, considering the myths and misconceptions about AIDS so widespread among the general public. Management must be sensitive to such

concerns. Management should have written policies, which should give adequate consideration to the rights of the AIDS victims as well as to the rights and concerns of fellow employees and provide a safe working environment. Employers have an obligation to keep up to date with the latest medical and legal developments on AIDS-related issues and educate their employees about AIDS. It is in the enlightened self interest of employers to have policies aimed at finding solutions which could accommodate the rights of AIDS victims and the fears of fellow employees in order to prevent workplace disruptions and loss of productivity.

REFERENCES

- «AID Special Survey», *Canadian Business*, May 1988, pp. 60-61.
- Brideau v. Air Canada*, (1983) 4 *Canadian Human Rights Reporter*, 1314.
- CANADIAN BAR ASSOCIATION — ONTARIO, *Report of the AIDS Committee*, April 1986.
- Canadian H.R. Reporter*, October 19, 1987, pp. 2, 3, 16.
- DONHAM, Parker, «Eric Smith», *Chatelaine*, April 1988, pp. 88-89, pp. 219-223.
- HEALTH AND WELFARE, Canada, *AIDS: The New Fact of Life*, December 1987.
- U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, *International Conference on AIDS, Summary Report*, Washington, D.C., June 1, and June 5, 1987.
- INTERNATIONAL PERSONNEL MANAGEMENT ASSOCIATION, «AIDS Case Settled», 1 *PMA News*, January 1987, February 1988.
- MYERS, S. Phyllis and D.W. MYERS, «AIDS: Tackling a Tough Problem Through Policy», *Personnel Administrator*, April 1987.
- ONTARIO MINISTRY OF HEALTH, *AIDS and the Work Place*, Fact sheet, June 1986.
- OSBORN, June, M.D. «AIDS, Politics and Science», *The New England Journal of Medicine*, 318 (7), February 1988.
- Pacific Western Airlines Ltd v. Canadian Air Line Flight Attendants Association*, (1987) 28 *Labour Arbitration Cases* (3d) 291.
- PIERCE, Neil, R., «AIDS: High Costs for Government», *Public Administration Times*, 8 (24), December 1985.
- ROYAL SOCIETY OF CANADA, *Summary Report and Recommendation: AIDS a Perspective for Canadians*, Ottawa, April 1988.
- STEPHENSON, Carl, (Ed)., *Sources of English Constitution History*, New York, Harper and Row, 1972, p. 12.
- WING, David, «AIDS the Legal Debate», *Personnel Journal*, 65 (8), August 1986.

APPENDIX

SAMPLE POLICY

_____ recognizes and respects the rights of all its employees as these rights have been developed and defined under federal and provincial laws, collective agreements and management policies. The _____ has an obligation to provide a safe work environment for its employees and the safe delivery of services to its clients. At the same time, it is recognized that employees handicapped by illness have a right to pursue those activities which their conditions allow, including continuing to work. As long as these employees are able to perform the essential duties of their jobs in a satisfactory manner, and medical evidence indicates that their continuing to work does not pose a safety or health hazard to themselves or others, the _____ will deal with them, if and when the need arises, according to the usual procedures governing personnel decisions.

It is recognized that **AIDS** is an extremely serious medical condition, and that no medical cure, nor a vaccine to prevent its spread, has yet been found. For these reasons, many people have deep concerns about contracting AIDS, and need assurance that their safety will be protected.

The _____ is committed to addressing these concerns with sensitivity, and through an ongoing programme of information and education for its employees.

While the best available medical opinion indicates that aids cannot be contacted through casual contact or most workplace activities, _____ will review all situations where employees may, in the course of their duties, be exposed to the bodily fluids of others, and co-ordinate the implementation and regular review and amendment of safety procedures, and the provision of clothing and devices to give effect to such procedures.

Where procedures have been duly established, _____ will give its full support to the taking of precautions and the use of protective clothing and equipment called for by the procedures.

As with other diseases, the worst enemies in battling **AIDS** are fear and ignorance. _____ undertakes to obtain and utilize the most up-to-date and authoritative medical information available for the purpose of educating and protecting its employees and members of the public with whom they deal.

Source: Policy with respect to AIDS — For the municipality of Metropolitan Toronto.

Le SIDA: pertinence d'une politique en milieu de travail

Cet article traite des conséquences résultant de la présence de sidéens en milieu de travail et du rôle des directeurs de personnel sur la question du SIDA et sur la nécessité d'établir des programmes d'éducation et des normes écrites en cette matière.

Le syndrome immuno-déficitaire acquis (SIDA) est causé par un virus qu'on nomme le rétrovirus HIV lequel attaque et détériore gravement le système immunitaire du corps humain, principale défense de l'organisme contre la maladie. Le virus se communique de trois façons: 1) toute personne infectée peut le transmettre lors de relations sexuelles, quand le sperme, les fluides vaginaux ou le sang passent dans l'organisme d'une autre personne; 2) l'échange d'aiguilles ou de seringues hypodermiques contaminées peut aussi infecter ainsi que, ce qui est moins fréquent, les transfusions et les dérivés du sang; enfin, dans de rares cas, une mère infectée peut transmettre le HIV à son bébé avant sa naissance ou pendant l'accouchement.

Aux États-Unis, si le SIDA est reconnu comme un «handicap» c'est-à-dire une altération de la santé physique ou mentale qui limite substantiellement les capacités d'un individu: la loi interdit aux employeurs de faire de la discrimination à l'égard des victimes.

Au Canada, en vertu de la législation fédérale ou provinciale, on considère cette maladie comme un incapacité physique. Les lois et la *Charte canadienne des droits et libertés* prohibent la discrimination non autorisée pour motif d'incapacité physique.

La crainte du SIDA a pris les proportions d'un état de crise en milieu de travail en Amérique du Nord, surtout aux États-Unis. Pour beaucoup, cette hantise repose sur l'incompréhension et le manque d'informations médicales et juridiques. Les peurs des collègues des victimes sont compréhensibles si l'on considère que les mythes et les idées fausses sur cette maladie sont fort répandus dans le public. Les employeurs doivent donc se montrer réceptifs face à ces préoccupations. Ils doivent établir des normes écrites qui tiennent compte tant des droits des victimes que droits et craintes de leurs compagnons et de leurs compagnes de travail de façon à s'assurer que le milieu de travail est sûr. Les employeurs ont l'obligation de se tenir bien informés sur les développements les plus récents concernant les problèmes reliés au SIDA et de renseigner leurs salariés adéquatement. C'est dans leur propre intérêt de mettre en place des mesures qui puissent concilier les droits des victimes du SIDA et les craintes de leurs collègues de manière à s'épargner des dissensions au sein de leur personnel et un fléchissement de la productivité.