

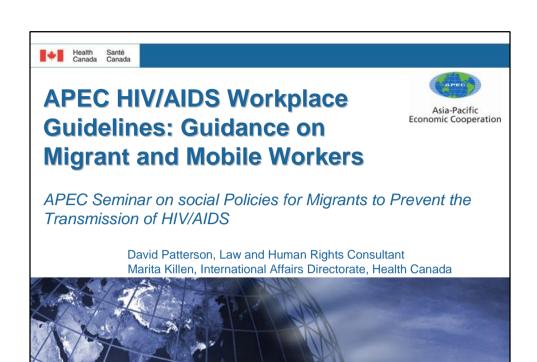
HTF 07/2008A/11

APEC HIV/AIDS WORKPLACE GUIDELINES: GUIDANCE ON MIGRANT AND MOBILE WORKERS

Submitted by: Canada

APEC SEMINAR ON SOCIAL POLICIES FOR MIGRANTS TO PREVENT THE TRANSMISSION OF HIV/AIDS

Ha Noi, Viet Nam 18 – 19 September 2008



>Why APEC HIV Workplace Guidelines?

- Build on work of ILO and other guidance
- Cover extra issues relevant to the region
- Engage government trade and industry sector
- Engage the business sector
- Promote government regulatory and legislative role
- Use regional forum to share best practices

Commission on AIDS in Asia report (2008): importance of addressing workplace discrimination

Canada

➢ How were the APEC Guidelines developed?

- 2004 APEC Leaders Statement 'Fighting AIDS...'
- 2005: Health Working Group consultations
 HIV in the workplace (Bangkok),
 - •Migrant workers and HIV (Manila)
- 2006: Survey of APEC members and stakeholder advisory committee (APN+, APBCA...)
- 2007: Guidelines endorsed at APEC Leaders Summit

3

APEC HIV/AIDS Workplace Guidelines: Migrant Workers

What do the Guidelines contain?

- Principles (from ILO Code)
- Legal and policy framework
- Domestic codes of practice
- Gender sensitive occupational health and HIV programmes
- Protection of children who work*
- Factory and labour inspection, labour courts and tribunals
- Health care, social security and insurance
- Migrant and mobile workers*
- Accreditation schemes*

*new areas, not in ILO Code

ie.

11. Migrant and mobile workers (MMP)

- Ratify relevant conventions
 - Migrant Workers Convention
 - > ILO Convention No. 97
- 2. Develop strategies for HIV prevention, care and treatment programs for MMP (e.g. Thailand, Vietnam)
- 3. Remove restrictions on access to health and social services for internally mobile workers and families
- 4. Facilitate access to health services for undocumented migrants and families

5

APEC HIV/AIDS Workplace Guidelines: Migrant Workers

11. Migrant and mobile workers (MMP)

- Include HIV impact assessment in planning large projects
- 6. Integrate HIV prevention programs in contracts for large projects (e.g. Cambodia)
- 7. Pre-departure and post-arrival HIV orientation for overseas workers, including officials
- 8. HIV training for personnel involved in recruiting, employing and controlling migrant workers (including police, immigration officials...)

> From 'Leaders Statement' to implementation

- October 2007 Member survey on implementation
- Emerging issue: HIV as an episodic disability
 ARV: still periods of unpredictable illness for some people
 Similar to cancer, diabetes, lupus, multiple sclerosis,
- Law in some APEC economies requires employers to help people with disabilities stay in the workforce
- 11 APEC economies have signed UN Convention on the Rights of Persons with Disabilities

7

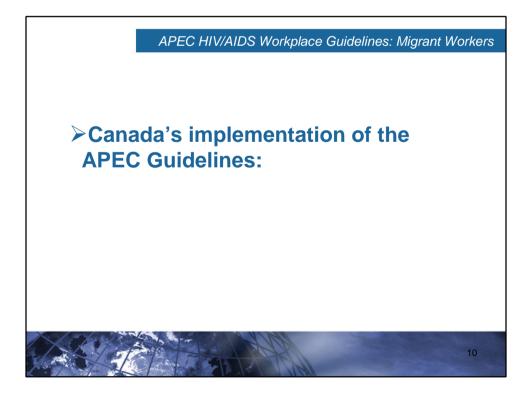
APEC HIV/AIDS Workplace Guidelines: Migrant Workers

➤ Next steps for 2008-2009

mental illness

- Stakeholder survey on implementation and HIV/AIDS as an episodic disability
- Regional workshop, Thailand, November 2008
- Compilation of best practices
- Networking, dissemination of best practices, resource mobilization

APEC HIWAIDS Workplace Guidelines: Migrant Workers Where to find the APEC Guidelines: www.apec.org ⇒Working Groups ⇒ Economic and Technical Working Group – Health Health Canada website (English, French, Spanish) (forthcoming) contact: marita_killen@hc-sc.gc.ca david.patterson@videotron.ca



- Entry of foreign nationals is managed under the Immigration and Refugee Protection Act
- Temporary residents (< 6 months) are not required to disclose their HIV status or be tested.
 - Exception: anyone seeking to work in Canada in an occupation in which the protection of public health is essential needs an IME and anyone who appears ill at a port of entry can be asked to undergo an IME. Simply being HIV-positive is not basis for requiring an IME.
- All other categories of applicants are required to undergo an immigration medical exam (IME), which includes an HIV test for individuals 15 years or at any age if known risk factors.
 - Confidential
 - Pre- and post-test counselling

1

APEC HIV/AIDS Workplace Guidelines: Migrant Workers

- Canada has no HIV-related restriction on entry, stay or residence based on HIV status only.
- Canadian government policy is that people living with HIV/AIDS do NOT represent a danger to public health or safety by virtue of their HIV status.
- People living with HIV/AIDS may be excluded based on excessive demand
 - HIV/AIDS is treated the same way as any health condition in terms of concerns about potential health and social costs and impact on waiting list relating to the person with the condition

>HIV in the workplace in Canada:

- Employers are NOT allowed to test for HIV as a condition of employment
- Canadian courts have confirmed that AIDS and HIV seropositivity, and suspicion of these conditions, constitute "disability".
- Disability is a protected ground under provincial and territorial human rights legislation. This protection brings with it a set of obligations that each employer must comply with or risk human rights complaints and investigation.

13

- Equal treatment with respect to employment
- Employer Obligations
 - Confidentiality, respect and equality are fundamental principles of a rights based approach to policy development.
 - The employer must take the steps necessary to foster an environment that is free from discrimination and/or harassment and protect and uphold the rights of all persons with a disability.
- The Code guarantees equal treatment to all persons capable of performing the essential duties or requirements of the job or service. No one can be judged incapable of performing those duties until efforts have been made to accommodate the individual.

Duty to Provide Reasonable Accommodation

- Reasonable accommodation often involves a simple and inexpensive change to how something is done in the workplace.
- It takes into account a need a person has that is based on a protected ground.
- Accommodation must be provided in a manner that most respects the dignity of the person, if to do so does not create undue hardship to the employer.
 - Dignity encompasses the individual's self-respect and selfworth, how accommodation is provided and the individual's participation in the process.

15

APEC HIV/AIDS Workplace Guidelines: Migrant Workers

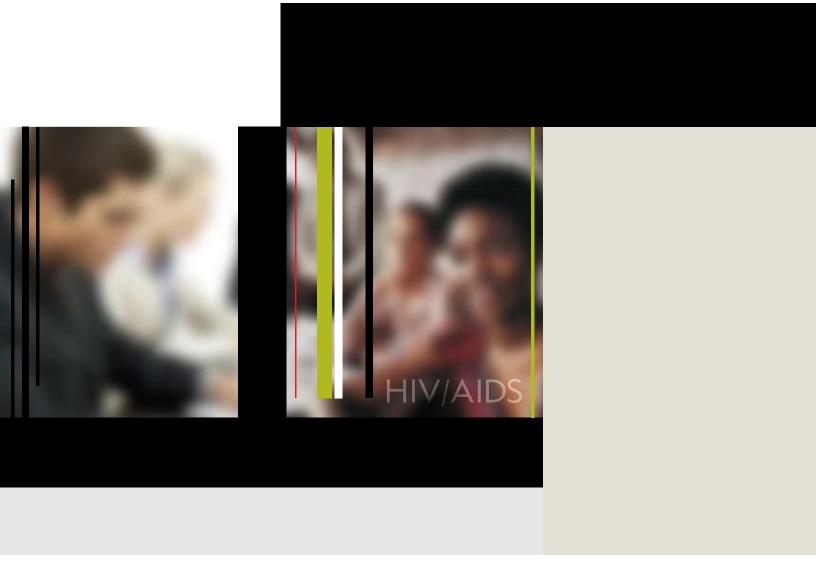
≻Considerations:

- HIV/AIDS considered in the same way as comparable health conditions
- Need to consider migration as a determinant of health
- Foreign workers employed in Canada have the same rights as Canadian workers
- Specific human rights legislation, which inter alia protects the rights of people with a disability, and which imposes a duty on the providers of service to accommodate their special needs.
- HIV/AIDS constitutes "disability"

➤ Next steps for 2008-2009

- Assess the recommendations of the UNAIDS International Task Team on HIV-related Travel Restrictions
- Department of Foreign Affairs and International Trade is developing comprehensive HIV/AIDS workplace guidelines for Canada's overseas missions

Guidelines for Creating an Enabling Environment for Employers to Implement Effective Workplace Practices for People Living with **HIV/AIDS**







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Introduction

In the 2004 statement Fighting Against AIDS in APEC, it was noted that the APEC should complement and add value to the work undertaken by competent international and regional organizations. These guidelines are therefore based on the guidance provided by the ILO Code of Practice on HIV/AIDS and the World of Work and the experience of member economies in addressing HIV and AIDS in the workplace.

While acknowledging that the public sector is a major employer in all member economies, the guidelines are also intended to address the policy environment and incentives that encourage private sector businesses to create a positive working environment for workers living with HIV, as well as to prevent HIV transmission. Workers in the informal economy, including home-based workers can, in many ways, be more vulnerable to HIV transmission. These guidelines therefore recognize a 'workplace' as any place where people carry out economic activities.

The guidelines make specific reference to the role of employers in addressing HIV and AIDS among migrant and mobile workers. Large-scale internal mobility and international migration for work are present in many APEC member economies. This movement of peoples not only drives economic development, but also contributes to the spread and impact of HIV and AIDS. Mobile populations may have more ready cash to buy alcohol, illegal drugs and sex. Often far away from their homes, families and communities, mobile populations may be physically and emotionally more vulnerable to sexual abuse and exploitation. Sometimes undocumented, they often work in less regulated sectors where information on HIV and AIDS is less readily available.

The guidelines also address the specific needs of women and girls, men and boys in work-place settings, and recognize that children who work have special needs for protection. Finally, the guidelines include voluntary accreditation and acknowledgement provisions, which have proved successful in highlighting employers' policies and good practices.

2. Purpose

The purpose of these guidelines is to assist APEC member economies to create an enabling environment for employers to implement effective workplace practices on HIV. Effective workplace practices should aim to ensure the rights of workers living with HIV, prevent HIV transmission in workplace settings, eliminate stigma and discrimination on the basis of real or perceived HIV status, and mitigate the impact of HIV and AIDS on the world of work.

A key principle of the guidelines is that the process of policy development and implementation should be the result of consultation and collaboration between all concerned parties based on social dialogue and including, to the extent possible, workers living with HIV and their representatives. The guidelines take a human rights-based approach to *HIV and AIDS*, as promoted by the Declaration of Commitment adopted by the United Nations General Assembly in 2001, and the international community at large.

3. Scope and Contents

The guidelines are intended for the governments of APEC member economies, public and private employers, business associations, workers, trade unions and other worker organizations, organizations of people living with HIV, and all other groups with responsibilities and activities related to HIV and AIDS in workplace settings.

The guidelines cover key principles, domestic codes of practice, legal and policy frameworks, issues relating to gender and occupational health, children, enforcement, health care and social security, migrants and mobile populations, and voluntary accreditation mechanisms.

4. Key Principles

APEC member economies should consider endorsing the key principles in the ILO Code of Practice on HIV/AIDS and the World of Work:

- Recognition of HIV/AIDS as a workplace issue
- Non-discrimination based on real or perceived HIV status
- · Gender equality
- · Healthy work environment
- Social dialogue
- No HIV testing for purposes of exclusion of employment or work processes
- Confidentiality of HIV-related data
- Continuation of employment relationship and adaptation of work
- Prevention
- Care and support

The full text of the key principles is contained in Annex 1 to these Guidelines.

5. Legal and Policy Framework

- 5.1. APEC member economies should consider ratifying international and, where applicable, regional human rights conventions and implement them as they apply to HIV and AIDS in the workplace, including the International Covenant on Economic, Social and Cultural Rights, 1966 and the International Covenant on Civil and Political Rights, 1966. APEC member economies should also consider ratifying the ILO Occupational Safety and Health Convention, 1981.
- 5.2.APEC member economies should consider developing or strengthening, as necessary, domestic legal and policy frameworks that protect in the workplace the rights and dignity of persons living with and affected by HIV and AIDS and those at the greatest risk of HIV or AIDS. This should occur in consultation with representatives of employers, workers, and people living with HIV, and be consistent with the ILO Code of Practice on HIV/AIDS and the World of Work and other established international guidelines on HIV and AIDS in the workplace.¹
- 5.3. Legislation or other measures concerning HIV and AIDS in the workplace should consider covering, as a minimum:²
- prohibition of discrimination at work related to real or perceived HIV status
- prohibition of mandatory HIV testing in the context of employment, except in the particular situation where such testing³ is determined to be (1) clearly justified by the inherent requirements of a particular job as consistent with up to date, scientific, and internationally-accepted medical knowledge about HIV and AIDS and their treatment, and (2) applied equally and without discrimination to all applicants in the context of the particular job concerned.
- confidentiality and the protection of HIV-related data ⁴
- prevention of HIV transmission, including through gender sensitive occupational health and HIV programmes
- reasonable accommodation for the impact of HIV on workers and their families

- grounds for early retirement related to medical unfitness to carry out any form of adapted work
- benefits, including early retirement options, insurance services, medical coverage and funeral schemes
- prohibition of sexual harassment and any form of violence at work
- workplace grievance and disciplinary procedures
- appropriate training of labour inspectors and workplace-based occupational health and safety (OHS) officers, OHS representatives and personnel officers, which ever is applicable to the individual workplace.
- jurisdiction of labour courts or commissions
- penalties for non-compliance
- implementation mechanisms.
- 5.4.Legislation or other measures may also provide for the establishment of workplace HIV committees.⁶
- 5.5. Legislation or other measures should apply to workers in government, parastatal and private sectors, large corporations, small and medium enterprises, not-for-profit organizations, and the informal sector as appropriate.⁷
- 5.6.Legislation or other measures should encourage the development and implementation of comprehensive gender sensitive occupational health and HIV prevention programmes, and consider providing financial and tax incentives for employers and workers to encourage this.
- 5.7. Legislation or other measures should permit and facilitate the legal recognition of domestic and local organizations of employers and workers responding to HIV and AIDS, and organizations of people living with HIV and other vulnerable groups to address HIV and AIDS in the workplace.
- 5.8. Legislation should be accompanied by fully-costed domestic plans for multisectoral implementation, with timeframes and targets, accountability mechanisms, and supported by high level ministerial leadership.

Domestic Codes of Practice on HIV and AIDS in the Workplace

- 6.1. APEC member economies should consider application of the ILO Code of Practice on HIV/AIDS and the World of Work to domestic contexts, through social dialogue with representatives of governments, employers, workers, and people living with HIV. If appropriate, implementation of domestic codes should be considered.
- 6.2. APEC member economies should ensure that domestic codes of practice respect the principle of non-discrimination. There should be no discrimination against workers on the basis of real or perceived HIV status.⁸

7.Gender sensitive occupational health and HIV programmes 9

- 7.1. APEC member economies should consider ratifying and implementing the UN Convention on the Elimination of all Forms of Discrimination against Women, 1979.
- 7.2. APEC member economies should work to ensure that occupational health and HIV programmes include updated information on:
- the nature and modes of transmission of HIV infection:
- access to voluntary and confidential counselling and testing services;
- access to the means of HIV prevention (including male and female condoms, diagnosis and treatment of sexually transmitted infections, prevention of mother to child transmission (PMTCT) of HIV infection, and sterile injection equipment); and
- access to health and other services for care, treatment and support for workers and their families living with HIV.
- 7.3. APEC member economies should ensure through legislation, relevant policies or other measures that occupational health and HIV programmes are sensitive to gender and sexual orientation. This includes addressing the different needs

- of both women and men (including men who have sex with men) explicitly, or addressing either women or men in separate programmes, taking into account the different types and degrees of risk for male and female workers, particularly young women. ¹⁰
- 7.4. APEC member economies should ensure that sexual harassment and violence within the world of work are recognized as HIV risk factors to be strictly prohibited, and treated accordingly.

8. Special needs and protection of children who work

- 8.1. APEC member economies should consider ratifying and Parties should implement the UN Convention on the Rights of the Child. APEC member economies should also consider ratifying and Parties should implement the ILO Minimum Age Convention, 1973 (No.138), and the ILO Worst Forms of Child Labour Convention, 1999 (No.182).
- 8.2. APEC member economies should, as appropriate, through legislation and other measures, including regional and international cooperation, protect children from all forms of economic and sexual exploitation, including ensuring they do not fall prey to sexual exploitation networks, and that they are protected from performing any work likely to be prejudicial to, or to interfere with, their education, health, or physical, mental, spiritual, moral or social development.¹¹

9. Factory and labour inspection, labour courts and tribunals

9.1. APEC member economies should, as appropriate, take such actions as may be necessary to ensure that competent authorities supply technical information and advice to employers and workers concerning the most effective way of complying with legislation and regulations applicable to HIV and AIDS in workplace settings.¹²

9.2. APEC member economies should strengthen factory and labour inspection, labour courts and equal opportunity commissions or tribunals, as appropriate, to ensure they can enforce legislation relevant to HIV and AIDS in workplace settings. This may include training on HIV and AIDS in the workplace for inspectors, arbitrators and judges.13

10. Health Care, Social Security and Insurance

- 10.1. APEC member economies should, as appropriate, take such actions as may be necessary to ensure that all public health care, pension and other social security services apply fairly and equally to all workers, including migrant and mobile workers and informal economy workers, irrespective of HIV status.
- 10.2. APEC member economies should ensure that health insurance and other health schemes for workers and their families include treatment for all sexually transmitted infections.
- 10.3. APEC member economies should, as appropriate, take such actions as may be necessary to ensure that where additional benefits schemes are provided by employers (including sick pay; health, salary and life insurance; pension and workers' compensation plans), these schemes apply fairly and equally to all workers.14
- 10.4. APEC member economies should, as appropriate, take such actions as may be necessary to ensure that HIV testing is not required as a condition of eligibility for social security schemes, general insurance policies, occupational schemes, health insurance and pension plans - whether these are public and statutory, or privately provided.15
- 10.5. APEC member economies should, as appropriate, take such actions as may be necessary to ensure that insurance companies do not require HIV testing before agreeing to provide cover for a given workplace. They should base their cost and revenue estimates. and their actuarial calculations on available epidemiological data for the general population.¹⁶

11. Migrant and mobile workers

- 11.1. APEC member economies should consider ratifying and implementing the UN Convention on the Protection of the Rights of All Migrant Workers and their Families, 2003 and the ILO Convention No. 97 (Migration for Employment), 1949.
- 11.2. APEC member economies should develop and implement domestic, regional and international strategies that facilitate access to HIV prevention, care and treatment programmes for migrant and mobile workers, including the provision of information on health and social services in host economies.¹⁷
- 11.3. APEC member economies should remove any restrictions on access to health and other social services for internally mobile workers and their families. Particular attention should be paid to the needs of ethnic minorities.
- 11.4. APEC member economies should consider strengthening and implementing arrangements to facilitate access to health and related services for undocumented migrants and their families.
- 11.5. APEC member economies should, as appropriate, take such actions as may be necessary to ensure that large construction, mining, transport and other infrastructure projects have an environmental and social impact assessment which includes an HIV impact assessment as part of the feasibility study phase.18
- 11.6. APEC member economies should, as appropriate, take such actions as may be necessary to ensure that comprehensive gender sensitive occupational health and HIV prevention programmes be integrated as a precondition for construction and infrastructure development contracts bidding and approval.19

- 11.7. APEC member economies should, as appropriate, take such actions as may be necessary to ensure that workers travelling to other countries, as well as diplomatic, military, trade and labour officials and staff who will be assigned abroad, receive standardized pre-departure HIV training and post-arrival HIV orientation from labour recruiting agencies or other accredited sources.
- 11.8. APEC member economies should develop and implement strategies that provide for the education and training of police and immigration officials and staff, diplomatic, trade, transport and hospitality workers and other personnel in the position of recruiting, employing, hosting, controlling, assisting or supervising migrant workers on HIV prevention and the human rights of migrant workers. This education and training should include the HIV vulnerability of migrant workers, particularly young migrant workers and female migrant workers.

12. Accreditation Schemes

- 12.1. APEC member economies should, as appropriate, consider developing or encouraging domestic, regional or local accreditation programmes in partnership with representatives of employers, workers and people living with HIV to certify employers that adopt, implement and monitor workplace standards on HIV prevention; non-discrimination policies; and care, treatment and support programmes for workers and their families living with or affected by HIV.
- 12.2. In consultation with representatives of workers and people living with HIV, accredited organizations can be acknowledged through annual awards and other forms of social recognition.



Annex 1

ILO Code of Practice on HIV/AIDS and the World of Work, 2001

Key Principles

1. Recognition of 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. This is necessary not only because it affects the workforce, but also because the workplace, being part of the local community, has a role to play in the wider struggle to limit the spread and effects of the epidemic.

2. Non-discrimination

In the spirit of decent work and respect for the human rights and dignity of persons infected or affected by HIV/AIDS, there should be no discrimination against workers on the basis of real or perceived HIV status. Discrimination and stigmatization of people living with HIV/AIDS inhibits efforts aimed at promoting HIV/AIDS prevention.

3. Gender equality

The gender dimensions of HIV/AIDS should be recognized. Women are more likely to become infected and are more often adversely affected by the HIV/AIDS epidemic than men due to biological, socio-cultural and economic reasons. The greater the gender discrimination in societies and the lower the position of women, the more negatively they are affected by HIV. Therefore, more equal gender relations and the empowerment of women are vital to successfully prevent the spread of HIV infection and enable women to cope with HIV/AIDS.

4. Healthy work environment

The work environment should be healthy and safe, so far as is practicable, for all concerned parties, in order to prevent transmission of HIV, in accordance with the provisions of the Occupational Safety and Health Convention, 1981 (No. 155).

A healthy work environment facilitates optimal physical and mental health in relation to work and adaptation of work to the capabilities of workers in light of their state of physical and mental health.

5. Social dialogue

The successful implementation of an HIV/AIDS policy and programme requires cooperation and trust between employers, workers and their representatives and government, where appropriate, with the active involvement of workers infected and affected by HIV/AIDS.

6. Screening for purposes of exclusion from employment or work processes

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

7. Confidentiality

There is no justification for asking job applicants or workers to disclose HIV-related personal information. Nor should co-workers be obliged to reveal such personal information about fellow workers. Access to personal data relating to a worker's HIV status should be bound by the rules of confidentiality consistent with the *ILO Code of practice on the protection of workers' personal data*, 1997.

8. Continuation of employment relationship

HIV infection is not a cause for termination of employment. As with many other conditions, persons with HIV-related illnesses should be able to work for as long as medically fit in available, appropriate work.

9. Prevention

HIV infection is preventable. Prevention of all means of transmission can be achieved through a variety of strategies which are appropriately targeted to domestic conditions and which are culturally sensitive. Prevention can be furthered through changes in behaviour, knowledge, treatment and the creation of a non-discriminatory environment.

The social partners are in a unique position to promote prevention efforts particularly in relation to changing attitudes and behaviours through the provision of information and education, and in addressing socio-economic factors.

10. Care and support

Solidarity, care and support should guide the response to HIV/AIDS in the world of work. All workers, including workers with HIV, are entitled to affordable health services.

There should be no discrimination against them and their dependants in access to and receipt of benefits from statutory social security programmes and occupational schemes.



Endnotes

- ¹ See UN Declaration of Commitment on HIV/AIDS (2001), para. 69.
- ² See Implementing the ILO Code of Practice on HIV/AIDS and the World of Work (ILO, 2002). See also Handbook for Legislators on HIV/AIDS, Law and Human Rights (UNAIDS & IPU, 1999) 'Employment Law' pages 76-78.
- ³ See WHO Guidance on provider-initiated HIV testing and counselling in health facilities.
- ⁴ Including medical notes and information relating to counselling, care, treatment and receipt of benefits, which should be kept separate from the personnel file. See ILO *Code of Practice on the Protection of Workers' Personal Data* (1997).
- This 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. See ILO Code of Practice on HIV/AIDS and the World of Work, Section 5.2 (j). Reasonable accommodation.
- ⁶ Membership should include representatives of top management, supervisors, workers, trade unions, human resources department, training department, industrial relations unit, occupational health unit, health and safety committee, and persons living with HIV, if they agree. See ILO *Code of Practice on HIV/AIDS and the World of Work*. Appendix III.
- ⁷ Regarding the informal sector, see ILO *Code of Practice on HIV/AIDS and the World of Work*, Appendix I, footnote 1.
- ⁸ See ILO Code of Practice on HIV/AIDS and the World of Work, Section 4.2, Key principles.
- ⁹ See ILO Code of Practice on HIV/AIDS and the World of Work, Section 6.3, Gender specific programmes.
- ¹⁰ See ILO *Code of Practice on HIV/AIDS and the World of Work*, Section 6, Prevention through information and education.
- "See amend to add reference to the Committee thus 'See UN Committee on the Rights of the Child, General Comment No. 3 (thirty-second session, 2003) HIV/AIDS and the Rights of the Child, para. 36.'
- ¹² See ILO Code of Practice on HIV/AIDS and the World of Work, Section 5 General rights and responsibilities.
- ¹³ See ILO Code of Practice on HIV/AIDS and the World of Work, Section 7.5 Training for factory / labour inspectors.
- ¹⁴ See ILO Implementing the ILO Code of Practice on HIV/AIDS and the World of Work, Module 7 Care and support.
- ¹⁵ See ILO *Code of Practice on HIV/AIDS and the World of Work*, Section 8.2 Testing: prohibition for insurance purposes.
- ¹⁶ See ILO *Code of Practice on HIV/AIDS and the World of Work*, section 8.2 Testing: prohibition for insurance purposes.
- ¹⁷ See UN General Assembly Declaration of Commitment on HIV/AIDS, 2001. para. 50.
- Recommendation of the ASEAN Task Force on AIDS, 2003. ATFAO recommended that for projects with no HIV and AIDS impact assessment and where there is no allocation of funding for HIV prevention in infrastructure construction projects, the allocation of 1% of the project's budget for HIV and AIDS activities should apply.
- ¹⁹ See Chiang Rai Recommendation, ASEAN Task Force on AIDS, 1999. Comprehensive HIV prevention programmes include treatment for sexually transmitted infections.