

Positively Employed

An end to HIV discrimination at work



From 5 December 2005, it is unlawful to discriminate against people living with HIV in the workplace, effectively from the point of diagnosis.

This is because the Disability Discrimination Act 2005 comes into effect.



The Disability Discrimination Act 2005 (DDA 2005) is an update to disability discrimination law covering employment, trade union membership and the provision of goods, services and facilities, including the letting and selling of property. This leaflet tells you what this means for people at work, including where to get more information and advice.

Why do people living with HIV need legal protection at work?

Sarah is a childminder. During an interview for a job she was well qualified for, she was asked whether she was generally fit and well, since working with children could be physically demanding. She replied that she was generally physically fit and decided to mention being HIV positive. There was an awkward silence and the interview was brought to a quick end. A few weeks later Sarah saw the job re-advertised in the local paper.

Whether it's fear and ignorance about how HIV is transmitted, dislike of groups of people most affected or disapproval of other people's behaviour, HIV discrimination is a real issue in the workplace. But people don't have to put up with it.

What does the law say?

The law already provides protection from sexual, racial or homophobic discrimination at work. From 5 December 2005, the DDA 2005 extends disability discrimination protection to people living with HIV, *effectively from the point of diagnosis*. This means that people living with HIV are protected from discrimination at work and can safely ask for 'reasonable adjustments' (see over) if they need them.

People living with HIV don't have to call themselves disabled or tell their employer that they have HIV (unless they're a healthcare worker doing 'invasive procedures'). The DDA 2005 simply extends existing disability discrimination protection to ensure that all people living with HIV are covered, effectively from the moment they are diagnosed HIV positive.



What counts as discrimination?

The DDA is clear about what is meant by discrimination in employment. This is:

- Direct discrimination.
- Failure to make 'reasonable adjustments' (see below).
- Treating disabled people less favourably.
- Subjecting disabled people to harassment and/or victimisation.

This means that people living with HIV can't be harassed or discriminated against in recruitment; in employment terms and conditions; in chances for promotion, transfer, training or other benefits; through unfair dismissal or less favourable treatment than other workers. Trade unions are also covered regarding membership and benefits. Remember, employers are not only responsible for their own practice but for taking steps to deal with discrimination or harassment by colleagues and others in the workplace.

Chris is a chef. He told his manager in confidence that he had HIV. Imagine his shock and anger when his manager started telling people at work to avoid him and insisted everything he touched was excessively cleaned. The final straw was getting the sack with no notice and no reason.

What does 'reasonable adjustment' mean?

Employers also have to make 'reasonable adjustments' to alter features of the workplace that put people living with HIV (or other disabilities) at a substantial disadvantage. This could include changes to the physical workplace or working practices.

Angelique is an Administrative Assistant for a library. A change in her HIV treatment could make her sick and easily tired at first, so she negotiates with her employer to work at home for a brief period.



How can people assert their rights?

Ultimately, the choice about whether to tell others about their HIV status belongs to individuals. But there may be good reasons to disclose to others on a 'need-to-know' basis. This makes it especially important to ensure that confidentiality is respected where disclosures are made.

Antonio works for a parcel delivery firm. He has been HIV positive for a number of years, without any symptoms. Recently, he's noticed that early morning shifts are becoming difficult due to serious tiredness. He tells Sarah, the Occupational Health Officer, about his HIV status and how it may be linked to the fatigue. Antonio's right to confidentiality is observed and they discuss the various options. An agreed change in shift-patterns helps Antonio with the tiredness.

Not everyone living with HIV will experience discrimination or harassment at work. But for those who do, specialist advice is crucial. Trade union representatives and Human Resource Managers will often be the first point of call and can help with things like:

- Finding solutions with managers and colleagues.
- Making use of workplace grievance procedures and/or external mediation services.
- Consulting trade union legal advisors, ACAS or the Disability Rights Commission.
- Taking a case to an employment tribunal.

Abeni is a maintenance worker in a DIY superstore. He and his wife were both living with HIV and her death came as an awful shock. Returning from compassionate leave, he finds a supervisor has been careless in discussing his circumstances so that his situation has become common knowledge. Some co-workers have been sympathetic but Drew has made nasty remarks and now refuses to work with Abeni, saying that it isn't safe. Abeni talks to Mick, the workplace union representative, about what is happening. Together they speak to the Human Resources Manager to get some action taken.



What can I do to support people living with HIV in my workplace?

One of the best ways to deal with discrimination against people living with HIV is to arm yourself with the facts. Make sure that you can correct any misinformation in your workplace about what HIV is and how it is (and is not) transmitted. For accurate information, see NAT's factsheet: 'HIV and AIDS - Basic Information' at www.nat.org.uk.

There are many ways you can support people living with HIV in your workplace. Here are just a few of them:

- Check to see that your workplace has an up-to-date policy that deals with HIV and includes protection for people living with HIV. NAT's comprehensive toolkit HIV@Work provides more details (www.areyouhivprejudiced.org).
- Join your trade union and campaign for the rights of all workers for a safe, fair workplace, including those living with HIV (www.tuc.org.uk).
- Encourage your employer to get involved in Ensuring Positive Futures. This is a partnership between HIV sector agencies, employers and trade unions to raise awareness about HIV in the workplace and enable people living with HIV to get into or stay in work (www.e-pf.org.uk).

Why is this an issue for us all?

In the end, why does discrimination against people living with HIV at work matter? Because it is unfair, creates an anxious and divided workforce, and wastes the talents and abilities that people living with HIV can bring to the workplace. It is also illegal and employers who fail to take their responsibilities seriously can face expensive legal action. We all want a fair deal at work - the DDA 2005 is a critical new extension of legal protection for people living with HIV.



Where can I get further advice and information?

HIV and AIDS

UK Coalition of People Living With HIV and AIDS (UKC)

Leads the Ensuring Positive Futures Partnership
Tel: 020 7564 2180
E-Mail: cearl@ukcoalition.org
Web: www.ukcoalition.org

National AIDS Trust (NAT)

Tel: 020 7814 6767
E-Mail: info@nat.org.uk
Web: www.nat.org.uk

Terrence Higgins Trust (THT)

Helpline: 0845 12 21 200
Tel: 020 7831 0330
E-Mail: info@tht.org.uk
Web: www.tht.org.uk

Disability and Employment

Disability Rights Commission (DRC)

Tel: 08457 622 633
Textphone: 08457 622 644
Online Enquiry Form:
www.drc-gb.org/whatwedo/helplineenquiry.asp
Web: www.drc-gb.org

Employers Forum on Disability

Tel: 020 7403 3020
Textphone: 020 7403 0040
Online Enquiry Form:
www.employers-forum.co.uk/
www/contact.htm
Web: www.employers-forum.co.uk

The Disability Law Service

National Legal Advice Line:
020 7791 9800
Textphone: 020 7791 9801
Email: advice@dls.org.uk
Web: www.dls.org.uk

Employment Issues

Trades Union Congress (TUC)

Know Your Rights Line:
0870 600 4882
Tel: 020 7636 4030
E-mail: info@tuc.org.uk
Web: www.tuc.org.uk

ACAS

ACAS Helpline:
08457 47 47 47
Textphone: 08456 06 16 00
Web: www.acas.org.uk

