

# HIV and AIDS Related Employment Discrimination in China

Policy research and information division of the National Center for AIDS/STD  
Control and Prevention, China CDC  
International Labour Office for China and Mongolia

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“...if we do not appreciate the nature and impact of stigma and discrimination, none of our interventions will be successful. AIDS is probably the most stigmatized disease in history <sup>[1]</sup>”. Edwin Cameron

## **1. Background and Key Findings**

\*Please note, the background and key findings represent the views of the International Labour Office for China and Mongolia only and are not necessarily those of the Chinese CDC.

Considerable progress has been made at the international level and in China to address HIV and AIDS stigma and discrimination in the workplace. In 2001 the International Labour Organization (ILO) introduced the Code of Practice on HIV and AIDS and the World of Work (the Code), which put forward a set of simple principals for addressing HIV and AIDS in the workplace. This Code has been broadly adopted globally and includes several principals on HIV related stigma and discrimination for workers and their families such as:

- No mandatory HIV testing for workers under any circumstance or for any purpose;
- No denial of job opportunities for workers with HIV in any area of work;
- No discrimination of workers such as denial of promotions or shifting job responsibilities; and,
- Guaranteed confidentiality with regards to HIV status in the workplace.

In June 2010, the ILO passed an international labour standard on HIV and AIDS (the Standard) in an effort to strengthen implementation of the Code at the country level. The Standard was designed to better protect the rights of workers with HIV and AIDS by guiding member states to eliminate any remaining areas of discrimination against people with HIV. The Standard also updates the code by:

- Including migrant labourers and sex workers;
- Calling for the provision of HIV treatment, care and support for workers; and,

- Calling for the use of dispute resolution mechanisms to resolve cases of employment discrimination.

China has made solid progress in developing policies and programs to address stigma and discrimination. It is one of the few countries globally where top leaders took a public stand to eliminate stigma associated with people with HIV at an early stage of the epidemic. China has also developed numerous policies, described in this report, to protect the rights of people with HIV to retain their jobs without discrimination. However, like many countries, there have been challenges in turning policies into practice and providing employment protection to all people with HIV.

This report summarizes a broad body of existing research as well as reviews new research conducted by the ILO and Marie Stopes International. The findings point to a trend of increasing discrimination against workers that contradicts both national policies and international standards. This body of work highlights numerous cases of employment discrimination in several key practices including:

- Mandatory testing of workers and the denial of job opportunities – particularly in the services sector, healthcare sector and the civil service;
- Forced (or pressured) resignation of people with HIV by management and/or coworkers;
- Mandatory shifting and/or downgrading of job positions as a result of HIV status;
- Breaches of confidentiality that led to discrimination; and,
- Barriers to accessing health insurance schemes for HIV treatment due concerns about confidentiality.

This report also identifies areas where policies in China do not protect the

rights of people working in certain professions. For example, health qualification tests are required for all people working in the China civil service. Those who test positive for HIV are prohibited from working for the government in any capacity, including as teachers. Similarly, guidelines on “public sanitation” prevent people with HIV or sexually transmitted infections from working in hotels, cafes, bars and beauty salons. Routine medical tests in the health sector also prevent people with HIV from working in hospitals, clinics and other health facilities.

These policies contradict the overall spirit of the 2006 national AIDS regulation, which prohibits employment discrimination against people with HIV. The practice of creating exceptions for certain professions is also in direct conflict with international standards such as ILO Recommendation 200.

As a member of the International Labour Organization, China should take steps to bring its policies and laws in line with ILO Recommendation 200 on HIV and AIDS and the World of Work and Convention 111 concerning Discrimination in Respect of Employment and Occupation, which it has ratified.

This report therefore reviews the current state of HIV and AIDS workplace discrimination in China and puts forward a set of recommendations aimed at improving the situation.

## **2. Introduction**

Developing a better understanding of HIV and AIDS related stigma and discrimination in China is essential for identifying the root causes of the problem and developing solutions to address them. This report will help achieve this through a literature review that explores HIV and AIDS related

stigma and discrimination in China, particularly as it relates to employment.

This research was jointly conducted by the Policy Research and Information Division of the National Center for AIDS/STD Control and Prevention, the China Center for Disease Control and the Beijing Office of the International Labour Organization (ILO).

### **3. Definition of HIV and AIDS related stigma and discrimination**

Discrimination refers to the exclusion, differentiation or unjustified denial of equal rights of an individual or group. Definitions of discrimination commonly refer to ‘unfairness’<sup>[2]</sup>. However, legally speaking, discrimination is an unlawful act committed against an individual or group. The discriminated individual or group is unable to enjoy basic human treatment and is denied the ability to realize their own freedom and happiness <sup>[3]</sup>.

Discrimination is a form of behaviour motivated by stigma. Stigma is a “stereotyped attitude or view which is unfounded and fixed, in most cases a kind of denial and exclusive attitude” <sup>[4]</sup>. As such, while ‘stigma’ refers to an attitude or belief, ‘discrimination’ describes the actual behaviour that violates the rights and interests of the individual or group to which it is directed.

### **4. Employment Related Stigma and Discrimination**

Employment discrimination describes the denial of equal opportunities to an individual in the work arena. This may be the denial of employment, denial of career development opportunities or even social isolation and marginalisation in the workplace.

Employment discrimination can occur in a number of areas including, but not limited to, recruitment, promotion, salary, training opportunities, labour protection, termination of employment and social insurance. In all cases, it is extremely detrimental to an individual's ability to exercise equal employment rights <sup>[5]</sup>.

Employment discrimination on the basis of HIV and AIDS status is classed as a form of health discrimination. This kind of health discrimination occurs in spite of the fact that the individual is qualified for the job and their health status is not a risk to public health <sup>[6]</sup>.

#### **4.1 Denial of Employment**

Generally speaking, the public is aware of the different modes of HIV transmission. However, many people still harbor doubts about transmission methods and the majority do not tolerate people with HIV in their workplaces. This was illustrated in a 2007 survey conducted by the Chinese University of Political Science and Law on "public attitudes towards employing people living with HIV". Of the 1,000 respondents, only 47.7% recognized equal rights to employment for people with HIV whilst 48.8% believed that people with HIV should be deprived of equal employment and 4.5% gave no clear answer <sup>[7]</sup>.

Business managers show an even stronger opposition to employing people with HIV than the general public. Among the 200 respondents who were business managers, 65% believed that people with HIV should not have equal employment opportunities. Some stated that they would be reluctant to hire anyone with a serious disease, regardless of whether they could perform the job and many specifically stated in their employment advertisements that "potential employees should be clear of infectious diseases such as HIV and AIDS"<sup>[13]</sup>. This is clear work-related discrimination.

Employment discrimination against people with HIV is particularly difficult to tackle given it is embedded in some policies and rules advocated by the Chinese government. For example, the Guideline for the Implementation of “Public Places Sanitation Regulation” developed in 1991 disqualifies people with STIs from working in certain public places such as hotels, cafes, bars, beauty salons and hairdressers. This was then incorporated into the HIV Prevention and Control regulation which states that “based on the Public Places Sanitation Regulation, workers in public services must conduct a medical check-up regularly and obtain a certificate for their health. Employers are not allowed to employ any person without a health certificate”.

A further example can be found in the 18<sup>th</sup> item on the health qualification of civil servants, which specifies that “those who suffer gonorrhea, syphilis, chancroid, venereal lymphogranuloma, HPV, Genital Herpes or HIV will be disqualified from being civil servants.” Similarly, the 13<sup>th</sup> item of the health qualification for hiring policemen dictates that “those who suffer gonorrhea, syphilis, chancroid, venereal lymphogranuloma, HPV, Genital Herpes, and HIV should not be hired as policemen.” The handbook on health qualification of civil servants explains that “different from those who carry Hepatitis B, people living with HIV have a 100% chance of developing AIDS, and most of them will die within 2 years of developing the disease given no anti-HIV therapy. Therefore, once HIV infection is detected, whoever carries the virus will be disqualified.”

In May 2010, a man named ‘Wu’ (pseudonym) applied for a teacher’s job at a school in Anhui province. After passing the written exam and interview he was found to be HIV positive and subsequently denied recruitment. The Oct. 21, 2010 edition of the “South China Weekly” reported a similar case where 27-year-old Xiaojun (pseudonym) from Liangshan was denied employment at

a local education bureau in Panzhihua after testing positive for HIV. In both these cases, the health criteria for the civil service had been applied to employees within the education system <sup>[8]</sup>.

If all employers apply the same health criteria to their employees as are applied to civil servants, then it will be difficult for people with HIV to find work. Given it is the government that develops policies to protect the rights of people with HIV, it is unclear why the primary exception for these policies is the civil service.

#### **4.2 Limited career development opportunities**

While many people with HIV have no or limited access to job opportunities, still more are at risk of being deprived promotion or having their employment terminated as a direct result of their HIV status. This was illustrated in a 2009 UNAIDS survey on discrimination against people with HIV, which found that 14.8% of respondents had either been denied employment or fired as a result of their HIV status (16.3% of men and 13% of women). A further 16.7% had been forced to change jobs and 3.8% had been denied promotion <sup>[9]</sup>. Another survey released in the Chinese Journal of Clinical Psychology found that 89.47% of respondents had lost their jobs at least once as a result of their HIV status <sup>[10]</sup>.

These findings were echoed in a 2010 investigation into stigma and discrimination experienced by people living with HIV jointly conducted by the ILO and Marie Stopes International. Stigma and discrimination in the workplace emerged as a core theme during the course of this research with many respondents reporting voluntary and involuntary job loss and job change as a direct result of their HIV status. In many cases this was tied to resignation incentives.

“I was so stupid that I told my boss I got HIV. When he learned, he said “you should be quarantined...you got infectious disease. I have responsibilities for all workers’ health...think about it. You would better leave your work, don’t come anymore” (Male, 25 years, Beijing)

“...I told him that I had been infected. Upon hearing this, his attitude changed immediately, he asked me to leave and he would give some additional money. I had no choice at that moment, so I had to accept.” (Male, 36, Henan)

“I worked on an assembly line when I was healthy. After getting infected, my job was changed to a doorkeeper, and my salary decreased from 1,300 to 600 yuan. I am content enough for not being fired after all.” (Male, 36, Shannxi)

#### **4.3 Social isolation and marginalization in the workplace**

After their status was exposed, many people with HIV became the subject of gossip and were excluded by others. They commonly suffered isolation and marginalization in both their work and social lives. For example, one survey on enterprise employees published in the Chinese Health and Education Journal found that 53% of respondents would not take part in recreational activities with people with HIV. A further 50.6% said they would not shake hands with people with HIV and 80.8% said they would not buy any products made by people with HIV <sup>[11]</sup>. It is precisely this kind of exclusion and discrimination that leave people with HIV with little choice but to quit their jobs.

Once again, the 2010 joint ILO and Marie Stopes International China investigation into stigma and discrimination experienced by people with HIV supported these findings. Respondents reported prejudice, humiliation and the deterioration of workplace relationships.

“In 2005, I participated in blood donation organized by my company, and was found HIV positive. I used to get along very well with colleagues. Now, even I said hello, nobody responded...I heard their gossip, and it was mean...I had to leave.” (male, 32, Hebei)

“When I knew my infection, I wrote a resignation letter immediately. If my HIV status is known by others, I will be fired anyway, and I don’t want to see those faces of scorn.” (male, 21, Shannxi)

“When my HIV status was known in the company, I was asked to think about quitting my job, and I said the disease won’t transmit and if the company could organize a training session and then everybody would know it’s not a big deal. My boss said, knowledge was one issue, people’s attitude was another issue...My boss asked me to quit giving me half-year salary and said quit was better than getting fired” (male, 26, Hunan)

## **5. Causes of employment-related stigma and discrimination**

There are many underlying causes of work-related health discrimination and these are distributed across the social, economic, cultural, and political spheres. All are interlinked although often this is through a very complex relationship. The major factors influencing HIV and AIDS related employment discrimination are as follows:

### **5.1 Government laws, regulations and rules**

Since 2004, both central and local governments have either introduced or revised several laws, regulations and rules against HIV and AIDS related discrimination. For example, the Law of the People’s Republic of China on the

Prevention and Treatment of Infectious Diseases was amended in 2004 to add the following passage: “Employers and individuals should not discriminate against patients of infectious diseases, carriers of pathogens or those suspected of carrying an infectious disease”. In addition to this, the Regulation on the Prevention and Control of AIDS issued by the State council in 2006 provides that, “Employers and individuals should not discriminate against people living with HIV, AIDS patients or their family members. The rights and interests of people living with HIV, AIDS patients and their family members concerning their marriages, employment, healthcare and education are protected by law“. Similarly, the Employment Promotion Law stipulates that “Employers should not deny employment for the reason that the applicant carries pathogens of infectious diseases”. However, the law also states “Individuals should not do any jobs that may increase the communication of the disease and forbidden by laws, regulations and rules of health authorities, until they recover and the possibility of infection is dismissed.”

Steps have also been taken in the international arena by both the Chinese government and international organizations. One of the most noteworthy was in August 2005, when the Standing Committee of the National People’s Congress deliberated and approved “Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation (Discrimination Convention)”. More recently, in 2010, the ILO introduced a labour standard to the international community entitled “The ILO Recommendation on HIV and AIDS and the World of Work”. This Recommendation clearly states that HIV and AIDS status does not constitute grounds for employment discrimination and that this applies to both gaining employment as well as career development. The Recommendation also proposes that employers should enable people with HIV to continue working<sup>[12]</sup>.

However, there are currently no systematic legal provisions or measures to

address health discrimination in employment <sup>[13]</sup>. As such, there is a long way to go in improving the current laws and regulations. In fact, some existing rules and practices still run counter to international practice and Chinese law on the Prevention and Control of Infectious Diseases, Employment Promotion Law and the Regulation on AIDS Prevention and Treatment. Mandatory health check criteria for the employment of police and civil servants is a case in point.

Although there are other relevant laws and regulations, in many cases these are either unfeasible or cannot be implemented due to poor law enforcement. For example, existing regulations on employment discrimination are currently inadequate as they lack definitions on employment and occupation discrimination and are devoid of a wide scope of applications and provisions on legal liabilities. As a result, there is a distinct lack of references to law enforcement and supervision <sup>[9]</sup>.

## **5.2 Criteria for hiring employees**

Statistics show that a large number of people have faced discrimination at some point in their search for employment. In many cases this occurred at the point of recruitment through discriminatory employment policies and recruitment processes (including application, written exam and interviews). However, work related discrimination does not stop at the recruitment process. Rather, it can extend much further and affect salary levels, training opportunities, posting arrangements, labor protection, social insurance, welfare and dismissal.

Employment discrimination typically occurs when the demand for jobs exceeds the supply. This is the time when HIV and AIDS becomes a basis for discrimination in the work arena.

### **5.3 Weak awareness of the law among Government agencies, employers, people with HIV and the public**

Government officers, employers, people with HIV and the public typically have limited knowledge about employment related legislation frameworks and the regulations and rules surrounding HIV and AIDS. This means that authorities may not be aware they are harming the rights of people with HIV when making policy decisions, employers may not know that they are breaking the law when asking applicants to undertake HIV testing and people with HIV may not be aware when their rights are being violated.

This is particularly apparent when it comes to matters involving privacy as few people know and fight for their rights in this area. For example, the first case of HIV and AIDS related employment discrimination was only reported on October 13 2010. Since then, only one other similar case has been reported where a man from Liangshan was denied employment at a local education bureau after testing positive for HIV.

The situation is complicated by the lack of adequate anti-discrimination laws in China. This makes the defence of rights via legal avenues virtually impossible. As a result, the public has lost the confidence to fight for their rights.

## **6. How to address HIV and AIDS related employment discrimination**

The following suggestions should be taken into account when considering how best to tackle HIV and AIDS related employment discrimination:

### **6.1 Reform laws and regulations**

China should take steps to reform relevant laws and regulations to better

protect the rights of people with HIV. This would involve ensuring that there is no mandatory HIV testing for workers and no discrimination toward people with HIV in respect to recruitment, job placement or opportunities for advancement. China should also ensure the confidentiality of employee's HIV status in order to prevent workplace discrimination in any form.

The practice of creating formal exceptions where discrimination is allowed in national and local policies should be eliminated. As such, the health check criteria for hiring civil servants and policemen should be revised. Implementing these revisions will be central to protecting the employment rights for people with HIV and help to reduce HIV stigma in society.

## **6.2 Improve the implementation of laws, regulations and government supervision relating to employment discrimination**

Given that serious health related employment discrimination is known to exist in the Chinese labour market, the Chinese government must enhance the implementation and enforcement of relevant laws and regulations. Doing so will ensure that those with diseases such as HIV and AIDS and Hepatitis B are no longer subject to unlawful discrimination.

This could be partially achieved through enhanced employment inspection. Labour inspectors are responsible for monitoring the legality of workplace activities. They act as a bridge between the government and enterprises and typically have an in depth understanding of the laws and regulations concerning HIV and AIDS and employment discrimination. As such, they are in a unique position to advise enterprises about the best ways to legally resolve any discrimination related dispute and can also offer professional assistance to people with HIV if a violation of their rights has taken place. By enhancing and improving this kind of employment inspection, relevant laws and regulations

will be better implemented and more closely enforced.

The establishment of a regulating body would also go a long way to achieving better implementation of the relevant laws and regulations. This could, for example, be something along the lines of a “Committee on Equal Rights to Employment”. Ideally, any proposed regulating body should be affiliated to the Ministry of Human Resources and Social Security under the state council and be quasi official, composed of labour unions, employer associations, labour law specialists and so forth. It should also accompany the establishment of aid facilities in various provinces, cities and counties to act in a dispute settlement function. Similar institutions have already been established in Hong Kong and these have proved very effective in settling health discrimination disputes and reducing the likelihood of litigation.

Lastly, people with HIV should be entitled to equal rights to access social insurance. In China, employment and social insurance measures such as health insurance and pensions are intimately linked. This is because these social insurances schemes are based on a labour contract with employers where both employees and employers pay a proportion of insurance costs (employers are legally obligated to do this). Consequently, when people with HIV are deprived of their labour rights and denied jobs, they are also denied the attached social insurance. From this perspective, solving employment discrimination is essential to protecting not only the right to work, but also the other rights and interests of people with HIV <sup>[Error! Bookmark not defined.]</sup>.

### **6.3 Enhance privacy protection for people with HIV and improve the quality of VCT**

The right to privacy is an important civil right of all citizens. This includes privacy of personal information and the right to make personal decisions,

including the right to keep personal information confidential. Under privacy provisions, health institutions and medical personnel should never disclose any personal information about patients to a third party without consent <sup>[14]</sup>. Unfortunately, this is not always the case.

If the right to privacy were better protected then employment discrimination would be reduced and people with HIV would be better able to enjoy their right to employment. However, this cannot be achieved while employers are still being notified of their employee's HIV test results without their consent. It is crucial that those who perform voluntary counseling and testing services pay closer attention to safeguarding the privacy of people with HIV.

#### **6.4 Improve knowledge and awareness of the law among authorities, employers, people with HIV and the general public**

Eliminating prejudice is central to eliminating discrimination. However, the reality is that it takes time to change prejudicial attitudes towards people with HIV. To combat this, increased efforts are required to mobilize the government, mass media and society more generally against prejudice towards people with HIV. Similarly, public education initiatives are needed to inform officials, employers, people with HIV and the public about the rights and interests of people with HIV.

Although there are laws and regulations designed to protect the basic rights and interests of people with HIV, knowledge and awareness of these laws needs to be improved. This could be partially achieved through improved enforcement measures aimed at creating a culture where everyone respects and abides by the relevant laws and regulations. Legal assistance centers could also assist here by taking steps to enlist more help. If more lawyers become public lawyers, then there will no doubt be an increase in the provision

of professional, cheap, or possibly even free counseling services for those in need.

## **7. Conclusion**

The right to employment is one of the most important rights of any individual as it is closely linked to both well being and personal development. This is highlighted by research that examines the influence of employment on people with HIV. For example, a 2002 survey done by Blalock AC on 200 people with HIV showed that given the same health status, People with HIV who were employed were much better off and more satisfied with their health condition than those who were not. These findings are supported by a number of other domestic studies that show similar results. Simply put, people with HIV need jobs, and everyone should recognize their right to employment.

HIV and AIDS related employment discrimination is a complex social problem that has direct bearing on multiple disciplines including Medicine, Epidemiology, Sociology, Psychology, Economics and Law. To address this issue, we need to improve the legal system and raise awareness of the law among officials, medical personnel, employers and people with HIV. We must also support legal assistance centers, so that underprivileged groups can get professional support when their rights are violated at work. Following through on these recommendations will be central to combating HIV and AIDS related employment discrimination and go a long way towards protecting the rights and interests of people with HIV.

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