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**Report V(1)**

# **HIV/AIDS and the world of work**

**Fifth item on the agenda**

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## CONTENTS

	<i>Page</i>
INTRODUCTION.....	1
OFFICE COMMENTARY ON THE PROPOSED TEXT .....	3
PROPOSED RECOMMENDATION ON HIV/AIDS AND THE WORLD OF WORK.....	9



## INTRODUCTION

At its 298th Session in March 2007, the Governing Body decided to place an item on HIV/AIDS and the world of work on the agenda of the 98th Session (2009) of the International Labour Conference for a double discussion leading to the adoption of an autonomous Recommendation.<sup>1</sup> It was decided that it was necessary to adopt an international labour standard on this subject in order to increase the attention devoted to HIV/AIDS at the national and international levels, to promote united action among the key actors on HIV/AIDS, and to increase the impact of the ILO code of practice on HIV/AIDS and the world of work adopted in 2001 (the “code of practice”), as well as to review developments since 2001.<sup>2</sup>

In accordance with article 39, paragraph 1, of the Standing Orders of the Conference, the Office prepared Report IV(1).<sup>3</sup> That document contained a questionnaire related to the issues discussed in the report and was communicated in January 2008 to the governments of the member States of the International Labour Organization, which were invited to send their replies not later than 31 August 2008. Based on the replies received, the Office prepared Report IV(2),<sup>4</sup> which was thereafter communicated to governments in March 2009. These two reports formed the basis for the first discussion by the Conference held in June 2009.

On 18 June 2009, the International Labour Conference, meeting in Geneva in its 98th Session, adopted the following resolution:<sup>5</sup>

The General Conference of the International Labour Organization,

Having adopted the report of the Committee appointed to consider the fourth item on the agenda,

Having in particular approved as general conclusions, with a view to the consultation of governments, proposals for a Recommendation concerning HIV/AIDS and the world of work,

Decides that an item entitled “HIV/AIDS and the world of work” shall be included in the agenda of its next ordinary session for second discussion with a view to the adoption of a Recommendation.

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<sup>1</sup> ILO: *Date, place and agenda of the International Labour Conference: Agenda of the 98th Session (2009) of the International Labour Conference*, Governing Body, 298th Session, Geneva, March 2007, GB.298/2.

<sup>2</sup> ILO: *Minutes of the 298th Session*, Governing Body, March 2007, GB.298/PV.

<sup>3</sup> ILO: *HIV/AIDS and the world of work*, Report IV(1), International Labour Conference, 98th Session, Geneva, 2009.

<sup>4</sup> ILO, *HIV/AIDS and the world of work*, Report IV(2), International Labour Conference, 98th Session, Geneva, 2009.

<sup>5</sup> ILO: *Report of the Committee on HIV/AIDS*, in *Provisional Record* No. 15, International Labour Conference, 98th Session, Geneva, 2009.

In the light of this resolution and in conformity with article 39, paragraph 6, of the Standing Orders of the Conference, the Office has prepared the text of the proposed Recommendation. The text is formulated on the basis of the first discussion by the Conference and takes into account the replies received to the questionnaire contained in Report IV(1). Pursuant to article 39, paragraph 6, of the Standing Orders, this text is now to be communicated to governments and should reach them not later than two months from the closing of the 98th Session of the Conference. The purpose of this report is to transmit the proposed Recommendation to governments in accordance with the Standing Orders.

Governments are hereby asked to inform the Office within three months from receipt of this report, and after consulting the most representative organizations of employers and workers, whether they have any amendments to suggest or comments to make. Pursuant to article 39, paragraph 6, of the Standing Orders of the Conference, the replies should be communicated to the Office in Geneva as soon as possible and in any case not later than **19 November 2009**.

Governments are further requested to inform the Office by the same date whether they consider that the proposed text provides a satisfactory basis for the second discussion by the Conference at its 99th Session in June 2010. Pursuant to article 39, paragraph 6, of the Standing Orders, governments should also indicate which organizations of employers and workers they have consulted before finalizing their replies. It should be noted that such consultations are also required by Article 5(1)(a) of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), for countries that have ratified this Convention. The results of the consultations should be reflected in the governments' replies.

## OFFICE COMMENTARY ON THE PROPOSED TEXT

The text of the proposed autonomous Recommendation on HIV/AIDS and the world of work is set forth below. It is based on the Conclusions adopted by the International Labour Conference following its first discussion at its 98th Session in June 2009 (“the Conclusions”).

In accordance with the consistent practice since 1988, the report of the Committee on HIV/AIDS appointed by the Conference to consider this item is being sent to member States in its entirety, together with the record of the discussion held in the plenary session of the Conference.<sup>1</sup>

A number of drafting changes have been incorporated in the text of the proposed instrument in the interests of greater clarity, and in order to bring the two official language versions of the texts into better alignment with one another, harmonize certain provisions, and avoid possible inconsistencies with terminology used in other ILO instruments.

### PROPOSED RECOMMENDATION

#### PREAMBLE

*(Point 3(a)–(o) of the Conclusions)*

The Office has established a standard preambular text that incorporates point 3(a) to (o) of the Conclusions. Point 3(k) has been moved to the end of the preamble for purposes of clarity.

The preamble notes the serious impact of HIV/AIDS and draws attention to the link between poverty and the pandemic. The fifth paragraph of the preamble has been reworded to remove the geographical focus on areas with high levels of poverty and establish more directly the causal link between poverty and heightened risk of HIV transmission. The Office further notes that it has also included a reference to lack of adherence to treatment, on the basis of several of the replies to the questionnaire, in order to highlight the fact that this factor, in addition to the others listed, increases the risk of HIV transmission. In this regard, the Office recalls that the viral load of an HIV-positive person who is undergoing treatment will be lowered, thus decreasing the risk of HIV transmission. Therefore, not only does lack of adherence to treatment pose a risk of continued spread of the pandemic, but lack of universal access to treatment also presents an obstacle to the goal of halting and beginning to reverse the spread of HIV worldwide, as envisaged in the Millennium Development Goals.

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<sup>1</sup> ILO, *Provisional Record* No. 15, International Labour Conference, 98th Session, Geneva, 2009; and *Provisional Record* No. 20, 98th Session, Geneva, 2009.

The sixth and seventh paragraphs of the preamble emphasize that stigma and discrimination are barriers to the development and implementation of an effective national response to the pandemic, and in particular that HIV/AIDS has a more severe impact on vulnerable groups. In this context, the Office has included a reference to the term “at-risk groups” in conjunction with the reference to the term “vulnerable groups”. This addition is intended to capture the notion that some groups may require heightened protection, even though they do not belong to a particular category deemed to be more vulnerable to the risk of HIV transmission, because they are nevertheless at risk as a result of other social or cultural factors.

The Office has removed the reference, in the seventh paragraph of the preamble, to women as a vulnerable group in order to avoid any appearance of discriminatory stereotyping (referring to women and minor children together as intrinsically vulnerable). Moreover, the Office notes that the increased vulnerability of women and girls to the risk of HIV infection is in any event addressed separately and in greater depth in the eighth paragraph of the preamble.

## **PART I. DEFINITIONS**

### *Paragraph 1 (Point 4(a)–(j) of the Conclusions)*

The text of the definitions of the terms “HIV” and “AIDS” has been bracketed to indicate that it will be the subject of further technical consultations. The results of such consultations will be incorporated into the final text of the proposed Recommendation communicated to governments prior to the second discussion by the 99th Session of the Conference in June 2010.

The definition of “stigma” in point 4(d) of the Conclusions (now Paragraph 1(d) of the proposed Recommendation) has been reworded in the interests of greater clarity.

It should be noted that, while definitions of the terms “workers” and “workplace” were included in this section of the Conclusions as adopted by the Conference, neither definition appears necessary in the light of the statement of coverage, adopted later in the discussion, of all workers and all workplaces. Moreover, these terms are not used in the proposed Recommendation in a manner that would require special definition for the purposes of this proposed instrument.

## **PART II. SCOPE**

### *Paragraph 2 (Point 5(a)–(e) of the Conclusions)*

Paragraph 2 of the proposed Recommendation (point 5 of the Conclusions) has been expanded to make it clear that the Recommendation is intended to cover persons in any employment or occupation, using wording modelled on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). As established under that Convention, the reference in Paragraph 2(a) of the proposed Recommendation to “all workers at all workplaces” should be understood to include those in managerial and supervisory positions. In addition, to respond to concerns expressed in the Committee that the proposed Recommendation should cover all those seeking employment, the Office has included a reference to jobseekers in addition to job applicants. Governments are invited to indicate whether, in their view, the current wording of the text sufficiently



captures all persons who are of economically active age, but may be temporarily unemployed.

### **PART III. GENERAL PRINCIPLES**

#### *Paragraph 3 (Point 6(a)–(j) of the Conclusions)*

The introductory clause has been reworded to provide that the general principles enumerated in this Paragraph should be mainstreamed into all action to address HIV/AIDS in the world of work. It should also be noted that in the proposed Recommendation, the Office removed one of the points (6(j)) listed in this section of the Conclusions because the protection of workers in occupations particularly exposed to the risk of HIV transmission is already addressed elsewhere, in the operative provisions adopted later in the Committee discussions (Paragraph 28, based on point 33 of the Conclusions).

### **PART IV. NATIONAL POLICIES AND PROGRAMMES**

#### *Paragraphs 4–33 (Points 7–36 of the Conclusions)*

While the Committee decided to use the term “member States” in several points of the Conclusions, instead of the more usual “Members”, the Office has restored the term “Members” in this draft. Over the last 90 years, the term “member States” has been used on only four occasions in ILO Recommendations and once in a Convention, for reasons that are not readily apparent in the preparatory work. As the Constitution of the ILO refers to “Members”, and as no confusion has arisen through the use of the term in other standards, the term “Members” is understood to refer to the same concept as “member States”. There does not appear to be any reason to introduce possible confusion as to whether this instrument refers to a different concept than other ILO standards.

As concerns the term “competent authorities”, the Committee introduced the term “competent authorities of member States” in the Conclusions. In this case as well, the Office, in drafting the proposed instrument, has reverted to the established ILO practice of referring to the national authorities responsible for action relating to an ILO standard as simply “the competent authorities”. This term is taken from the ILO Constitution (see article 19). Because the proposed instrument would leave the assignment of responsibility for action at the national level, in accordance with the relevant national structures and usages, the competent authorities could only be those of the Member in question. If considered necessary, this term could be defined in the definitions section of the Recommendation (Paragraph 1), but there is no ambiguity in any case in which it is used.

#### *Discrimination and promotion of equality of opportunity and treatment*

The wording of Paragraph 9 retains the wording of point 12 of the Conclusions. The Office text would have asked States to extend protection under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), to discrimination based on real or perceived HIV status. The Office considers that the argument expressed during the Conference discussion, that the Office text was not appropriate because Convention No. 111 does not already explicitly cover discrimination on grounds of health, is based

on a misunderstanding of the legal effect of Article 1(1)(b) of Convention No. 111. That provision explicitly states that the Convention's coverage may be extended to include other grounds not already explicitly mentioned in the Convention. A number of Members have made use of this provision. In addition, the Office wishes to point out that the expression "protection equivalent to" now used in Paragraph 9 is a lower standard than Convention No. 111 would provide, in two respects: first, "equivalent to" does not carry the same weight as "equal to"; and second, it would not allow the ILO supervisory bodies to examine the effect given to such protection for the great majority of ILO Members that have ratified Convention No. 111, should they decide to extend the application of that Convention to HIV/AIDS status (at the time of preparation of this report, all but 15 ILO Members have ratified that Convention). The Office therefore suggests that the constituents re-examine whether their intention is in fact to provide this lower status to protection against discrimination, as such a result would appear to be inconsistent with other conclusions adopted by the Conference which would prohibit discrimination in stronger terms.

With respect to the reference in paragraph 17(d) of the Conclusions, corresponding to Paragraph 14(c) of the proposed Recommendation, to the role of men as "gatekeepers", the Office notes the Conference discussions on this point, in which it was pointed out that men are often in control of access to information and to the means of protection from HIV transmission. In such situations, women are often in a more vulnerable position, especially as regards reproductive rights and access to economic empowerment. It is in this sense that the reference to men as "gatekeepers" was made. However, this is also a term that may lend itself to misinterpretation. It could also be perceived as paternalistic and as perpetuating the very gender inequalities that promote the spread of the pandemic. The term "gatekeepers" also presents significant difficulties for purposes of translation. Therefore, the Office has omitted this reference in this draft of the proposed Recommendation.

Point 17(a)–(i) has been reworded and re-ordered in Paragraph 14 of the proposed Recommendation. In addition, point 17(i) on behaviour change has been incorporated in new subparagraph (g) of Paragraph 16, which retains and reinforces the reference to behaviour change in point 19(b) of the Conclusions. The reference to harm reduction, as a necessary element of an effective workplace prevention programme, is now a stand-alone item in subparagraph (f) of Paragraph 16.

The sub-heading "Measures for prevention, treatment, care and support, and privacy" has been removed from the proposed Recommendation in order to make it clear that all these elements should be integrated into the national policies and programmes. The text that previously fell under this sub-heading now falls within Part IV on national policies and programmes, following the section headed "Discrimination and promotion of equality of opportunity and treatment".

#### *Privacy and confidentiality*

The Office has removed the exclusionary clause contained in the bracketed text in point 29 of the Conclusions (Paragraph 25 of the proposed Recommendation). While the Office is aware of the practice in some member States whereby certain exceptions are made to the general prohibition against compulsory testing and disclosure of confidential information regarding an individual's HIV status, it would pose significant problems to include such a clause in the proposed Recommendation. This position would not be in conformity with the ILO's obligations as a Co-sponsor of the Joint UN Programme on HIV/AIDS (UNAIDS), which does not support either mandatory testing or mandatory disclosure, in any circumstances, of confidential medical data relating to HIV/AIDS

status.<sup>2</sup> Moreover, the Office notes that the exclusionary clause would not be in conformity with safeguards provided for under existing international labour standards and human rights law.

Concern was expressed by the Workers' group that Paragraph 26 of the proposed Recommendation (point 30 of the Conclusions) as adopted might imply tacit approval for the testing of migrant workers. From a legal point of view, migrant workers are fully covered by Paragraph 23 of the proposed Recommendation (point 27 of the Conclusions). The Office has therefore maintained the text as adopted.

#### *Treatment and care*

Point 22 of the Conclusions has been partially integrated into Paragraph 17 of the proposed Recommendation.

#### *Children and young persons*

Paragraphs 32 and 33 (points 35 and 36 of the Conclusions) have been modified in that the third sentence of point 36 of the Conclusions has been moved to the end of Paragraph 32 in the proposed Recommendation, to indicate clearly that this provision applies to children, as the ILO has no standards addressing young persons – who may well be young adults – and sex work. In addition, the reference to “sex work” has been replaced by “commercial sexual exploitation”, a term that is commonly used to refer to the worst forms of child labour involving sex work of this kind.

#### *Occupational safety and health*

The section on occupational safety and health has been re-ordered to begin with general principles, and the reference in Paragraph 28 (point 33 of the Conclusions) to health sector workers has been replaced by a more comprehensive general reference to occupations most at risk, in order not to establish a possibly limiting enumeration of occupations.

## **PART VI. FOLLOW-UP**

### *Paragraphs 46 and 47*

#### *(Points 49 and 50 of the Conclusions)*

The Office has omitted, in Paragraph 47 of the proposed Recommendation, the first phrase in point 50 of the Conclusions, which refers to reporting to the ILO under article 19 of the ILO Constitution. The Office notes that this reference to article 19 appears to be inconsistent with the focus of Paragraph 47, which provides for follow-up at the national level as well as under relevant international instruments. Moreover, following the adoption of the ILO Declaration on Social Justice for a Fair Globalization, 2008, the modalities of application of article 19, concerning periodic reviews that may be requested by the Governing Body on matters dealt with in a Recommendation, are to be adapted, and their effect is not yet entirely clarified.

In addition, this section on follow-up at the national level is somewhat cursory. The Office therefore invites Members to consider whether the text of the section on Monitoring and Implementation contained in the Employment Relationship Recommendation, 2006 (No. 198), may provide the basis for a more effective and comprehensive text for this section of the proposed Recommendation.

<sup>2</sup> OHCHR/UNAIDS: *International guidelines on HIV/AIDS and human rights*, 2006 consolidated version, Geneva, para. 20(b).



## **PROPOSED RECOMMENDATION ON HIV/AIDS AND THE WORLD OF WORK**

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Ninety-ninth Session on .. June 2010, and

Noting that HIV/AIDS has a serious impact on society and economies, the world of work, workers, their families and dependants, the social partners and public and private enterprises;

Considering that HIV/AIDS increases and intensifies poverty and that poverty increases and intensifies HIV/AIDS, undermining the attainment of decent work and sustainable development, and creating conditions that make people more vulnerable to HIV;

Noting that high levels of poverty, lack of information and awareness and lack of adherence to treatment, increase the risk of HIV transmission, mortality levels, the number of children who have lost one or both parents and the number of workers engaged in informal work;

Noting that stigma, discrimination and the threat of job loss suffered by persons affected by HIV/AIDS are barriers to knowing one's HIV status, thus increasing the vulnerability of workers and undermining the right to social benefits;

Noting that HIV/AIDS has a more severe impact on vulnerable or at-risk groups, including children, youth, migrants and persons with disabilities;

Believing that HIV affects both men and women, although women and girls are at greater risk and are more vulnerable to HIV infection and disproportionately affected by the HIV pandemic compared to men as a result of gender inequality, and that women's empowerment is therefore a key factor in the global fight against HIV/AIDS;

Recalling the importance of safeguarding workers through comprehensive occupational safety and health programmes;

Reaffirming the importance of the International Labour Organization's role in addressing HIV/AIDS in the world of work and the need for the Organization to strengthen its efforts to achieve social justice and to combat discrimination and stigmatization with regard to HIV/AIDS in all aspects of its work and mandate;

Recalling the high value of the *ILO code of practice on HIV/AIDS and the world of work*, 2001 (code of practice), and the need to strengthen its implementation given that there are significant limits and gaps in its implementation;

- Noting the need to promote the international labour Conventions and Recommendations and other international instruments that are relevant to HIV/AIDS and the world of work;
- Recalling the specific role of employers' and workers' organizations in promoting and supporting national and international efforts on HIV/AIDS in and through the world of work;
- Noting the important role of the workplace as regards information about, and access to, prevention, treatment, care and support in the national response to HIV/AIDS;
- Affirming the need to continue and increase international cooperation, in particular in the context of the Joint United Nations Programme on HIV/AIDS (UNAIDS), to support efforts to give effect to this Recommendation;
- Recalling the value of collaboration at the national, regional and international levels with the relevant structures in the health sector and with relevant organizations, especially those representing persons living with HIV;
- Affirming the need to set an international standard in order to guide governments and the social partners in defining their roles and responsibilities at all levels;
- Having decided upon the adoption of certain proposals with regard to HIV/AIDS and the world of work; and
- Having determined that these proposals shall take the form of a Recommendation; adopts this .. day of June of the year two thousand and ten the following Recommendation, which may be cited as the HIV/AIDS Recommendation, 2010.

#### I. DEFINITIONS

1. For the purposes of this Recommendation:

- (a) "HIV" means the Human Immunodeficiency Virus, a virus that weakens the body's immune system and, if not properly treated, ultimately causes AIDS in most cases;
- (b) "AIDS" means the Acquired Immune Deficiency Syndrome, caused by HIV, which is a set of medical conditions including opportunistic infections and cancers for which there are treatments, although there is no cure for the HIV infection to date;<sup>1</sup>
- (c) "persons living with HIV/AIDS" means persons infected with HIV;
- (d) "stigma" means the pejorative perception of a person infected or affected by HIV, usually causing marginalization and stigmatization;
- (e) "discrimination" means any distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation, as referred to in the Discrimination (Employment and Occupation) Convention (No. 111) and Recommendation (No. 111), 1958;
- (f) "affected persons" means persons whose lives are changed in any way by HIV/AIDS owing to the broader impact of the pandemic;
- (g) "reasonable accommodation" means any modification or adjustment to a job or to the workplace that is reasonably practicable and will enable a person living with HIV/AIDS to have access to, or participate or advance in, employment; and

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<sup>1</sup> Subparagraphs (a) and (b) have been bracketed to indicate that they will be subject to further technical consultations.

- (h) “vulnerability” means the unequal opportunities, social exclusion, unemployment or precarious employment, resulting from the social, cultural, political and economic factors that make a person more susceptible to HIV infection and to developing AIDS.

## II. SCOPE

2. This Recommendation covers:

- (a) all workers at all workplaces, including:
  - (i) persons in any employment or occupation;
  - (ii) persons in vocational training;
  - (iii) jobseekers and job applicants; and
  - (iv) laid-off workers;
- (b) all sectors of economic activity, including the private and public sectors and the formal and informal economies; and
- (c) armed forces and uniformed services.

## III. GENERAL PRINCIPLES

3. The following general principles should apply to all action involved in the national response to HIV/AIDS in the world of work:

- (a) combating HIV and AIDS contributes to the realization of human rights and fundamental freedoms for all, including workers, their families and their dependants;
- (b) HIV/AIDS should be recognized and treated as an issue that affects the workplace and should be addressed as one of the essential elements of the national, regional and international response to the pandemic with full participation of employers’ and workers’ organizations;
- (c) there should be no discrimination or stigmatization against workers, in particular job applicants, on the basis of either real or perceived HIV status, or on the grounds that they belong to segments of the population perceived to be at greater risk of or more vulnerable to HIV infection;
- (d) prevention of all means of HIV transmission should be a fundamental priority;
- (e) workers, their families and dependants should have access to and benefit from prevention, treatment, care and support in relation to HIV/AIDS; the workplace can play a role in facilitating access to these services;
- (f) workers should benefit from programmes to prevent specific risks of occupational transmission of HIV and other related transmissible diseases;
- (g) workers should enjoy protection of their privacy, including confidentiality related to HIV/AIDS, in particular with regard to their own HIV status;
- (h) no workers should be required to undertake an HIV test or disclose their HIV status; and
- (i) measures to address HIV/AIDS in the world of work should be part of national development policies and programmes, including those related to labour, education and health.

#### IV. NATIONAL POLICIES AND PROGRAMMES

4. Members should:

- (a) adopt national policies and programmes on HIV/AIDS and the world of work and on occupational safety and health, where they do not already exist; and
- (b) integrate their policies and programmes on HIV/AIDS and the world of work in development plans and poverty reduction strategies, as appropriate.

5. In developing the national policies and programmes, the competent authorities should take into account the code of practice and any subsequent revisions thereof, other relevant ILO instruments, and other relevant documents.

6. The national policies and programmes should be developed by the competent authorities, in consultation with the most representative employers' and workers' organizations, taking into account the views of the health sector, as well as of organizations representing persons living with HIV/AIDS.

7. In developing the national policies and programmes, the competent authorities should take into account the role of the workplace in prevention, treatment, care and support, including the promotion of voluntary counselling and testing, in collaboration with the local communities.

8. Members should take every opportunity to disseminate information about their policies and programmes on HIV/AIDS and the world of work through employers' and workers' organizations, other relevant HIV/AIDS entities, and public information channels.

#### *Discrimination and promotion of equality of opportunity and treatment*

9. Governments, in consultation with the most representative employers' and workers' organizations, should consider affording protection equivalent to that available under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), to prevent discrimination based on real or perceived HIV status.

10. A person's real or perceived HIV status should not be a cause to prevent his or her recruitment or continued employment.

11. A person's real or perceived HIV status should not be a cause for termination of employment. Temporary absences from work because of illness or caregiving duties related to HIV or AIDS should be treated in the same way as absences for other health reasons, taking into account the Termination of Employment Convention, 1982 (No. 158).

12. When existing measures against discrimination in the workplace are inadequate for effective protection against discrimination in relation to HIV/AIDS, Members should adapt these measures or put new ones in place, and provide for their effective and transparent implementation.

13. Persons with HIV-related illnesses should be allowed to work for as long as they are medically fit to do so, in work reasonably adapted to their abilities. Measures to find other work through training or to facilitate their return to work should be encouraged in appropriate circumstances and when the person is able to do so, taking into consideration the requirements of the relevant ILO and United Nations instruments.

14. Measures should be taken in or through the workplace to reduce the transmission of HIV and alleviate its impact by promoting:



- (a) respect for human rights;
- (b) gender equality and the empowerment of women, as well as measures to prevent and prohibit violence and harassment in the workplace;
- (c) the active participation of both women and men in the response to HIV/AIDS;
- (d) the involvement and empowerment of all workers regardless of their sexual orientation and whether or not they belong to a vulnerable group;
- (e) the protection of sexual and reproductive health and sexual and reproductive rights of women and men; and
- (f) the effective confidentiality of personal data.

#### *Prevention*

15. Prevention strategies should be adapted to national conditions and the type of workplace, and should take into account gender as well as cultural, social and economic concerns.

16. Prevention programmes should ensure:

- (a) that accurate and relevant information is made available to all in a culturally sensitive format and language through the different channels of communication available;
- (b) comprehensive education programmes to help women and men understand and reduce the risk of HIV transmission, including mother-to-child transmission, and understand the importance of behaviour change;
- (c) effective occupational safety and health measures;
- (d) measures to encourage workers to know their own HIV status through voluntary counselling and testing;
- (e) access to all means of prevention, such as guaranteeing the availability of necessary supplies, in particular, male and female condoms and information about their use, where appropriate, and post-exposure prophylaxis;
- (f) harm reduction strategies; and
- (g) effective measures to reduce high-risk behaviours for all workers, including most-at-risk groups, with a view to reducing the incidence of the HIV pandemic.

#### *Treatment and care*

17. All workers, including workers living with HIV/AIDS and their families and dependants, should be entitled to health services. These services should include access to free or affordable:

- (a) voluntary counselling and testing;
- (b) antiretroviral treatment and adherence education;
- (c) proper nutrition;
- (d) treatment for opportunistic infections and sexually transmitted infections, and any other HIV-related illnesses; and
- (e) support and prevention programmes for HIV-positive persons.

18. Members should ensure that workers living with HIV/AIDS and their dependants benefit from full access to health care, whether this is provided under social security systems or public provisions or private insurance schemes. Members should also ensure the education and awareness raising of workers to facilitate access to them.

19. There should be no discrimination against workers or their dependants based on real or perceived HIV status in access to social security systems and occupational insurance schemes, or in relation to benefits under them including for health care and disability, and death and survivors' benefits.

#### *Support*

20. Programmes of care and support should include measures of reasonable accommodation in the workplace for workers with HIV-related illnesses, with due regard to national conditions.

21. Where a direct link can be established between an occupation and the risk of infection, HIV/AIDS should be recognized as an occupational disease or accident, in accordance with national procedures and definitions, and with reference to the ILO List of Occupational Diseases Recommendation, 2002 (No. 194), as well as other relevant ILO standards.

22. Members should promote the retention in work and recruitment of persons living with HIV/AIDS and, where necessary, promote income-generating opportunities for persons living with or affected by HIV/AIDS.

#### *Privacy and confidentiality*

23. HIV testing or other forms of screening for HIV should not be required of workers, including job applicants.

24. The results of HIV testing should be confidential and not endanger access to jobs, job security or opportunities for advancement.

25. Workers, including job applicants, should not be required to disclose HIV-related information about themselves or others. Access to such information should be governed by rules of confidentiality consistent with the *ILO code of practice on the protection of workers' personal data*, 1997, and other relevant international data protection standards.

26. Migrant workers, or those seeking to migrate for employment, should not be excluded from migration on the basis of their HIV status, whether real or perceived.

#### *Occupational safety and health*

27. The working environment should be safe and healthy, in order to prevent transmission of HIV in the workplace, taking into account the Occupational Safety and Health Convention (No. 155) and Recommendation (No. 164), 1981, the Promotional Framework for Occupational Safety and Health Convention (No. 187) and Recommendation (No. 197), 2006, and other relevant international instruments, such as the joint ILO/WHO guidance documents.

28. Safety and health measures at work should include universal precautions, post-exposure prophylaxis and other safety measures to minimize the risk of contracting HIV, especially in occupations most at risk.

29. When there is a real possibility of exposure to HIV at work, measures should be taken to raise awareness concerning methods of transmission and to ensure that prevention, safety and health are guaranteed in accordance with the relevant standards.

30. Awareness-raising measures should emphasize that HIV is not transmitted by casual physical contact and that the presence of a person living with HIV should not be considered a workplace hazard.

31. Occupational health services and workplace mechanisms related to occupational safety and health should address HIV/AIDS, taking into account the Occupational Health Services Convention (No. 161) and Recommendation (No. 171), 1985, the *Joint ILO/WHO guidelines on health services and HIV/AIDS*, 2005, and other relevant international instruments.

#### *Children and young persons*

32. Members should take measures to combat child labour that may result from the death or illness of family members due to AIDS and to reduce the vulnerability of children to HIV, taking into account the ILO Declaration on Fundamental Principles and Rights at Work, 1998, the Minimum Age Convention (No. 138) and Recommendation (No. 146), 1973, and the Worst Forms of Child Labour Convention (No. 182) and Recommendation (No. 190), 1999. Special measures should be taken to protect children from sexual abuse and commercial sexual exploitation.

33. Members should take measures to protect young workers against HIV infection, and to include the special needs of children and young persons in response to HIV/AIDS in the national policies and programmes. These should include objective sex education, in particular the dissemination of information on HIV/AIDS through vocational training and in youth employment programmes and services.

#### V. IMPLEMENTATION

34. National policies and programmes on HIV/AIDS and the world of work should:

- (a) be given effect, in consultation with the most representative employers' and workers' organizations and other parties concerned, by one or a combination of the following means:
  - (i) national laws and regulations;
  - (ii) collective agreements;
  - (iii) national and workplace policies and programmes of action; and
  - (iv) sectoral strategies, with particular attention to sectors in which workers are most at risk;
- (b) involve the labour justice and labour administration authorities in the planning and implementation of the policies and programmes, and training in this regard should be provided to them;
- (c) provide for measures in national laws and regulations to address breaches of privacy and confidentiality and other protection afforded under this Recommendation;
- (d) ensure collaboration and coordination among the public authorities and services concerned;

- (e) encourage all enterprises, including those operating in export processing zones, to implement the national policies and programmes, with the participation of employers' and workers' organizations, including through their supply chains and distribution networks;
- (f) promote social dialogue, consultation, negotiation and other forms of cooperation among government authorities, public and private employers and workers and their representatives, taking into account the views of occupational health personnel, specialists in HIV/AIDS, and other parties such as organizations representing persons living with HIV;
- (g) be formulated, implemented, regularly reviewed and updated, taking into consideration the most recent scientific and social developments and the need to mainstream gender and cultural concerns;
- (h) be coordinated with, among others, national labour, social security and health systems; and
- (i) ensure that Members make reasonable provision for the means of their implementation, with due regard to national conditions.

#### *Social dialogue*

35. Implementation of the HIV/AIDS policies and programmes should be based on cooperation and trust among employers and workers and their representatives, and governments, with the active involvement, at their workplace, of persons living with HIV.

36. Employers' and workers' organizations should promote awareness of HIV/AIDS, including prevention and non-discrimination, through the provision of education and information to their members. These should be gender-sensitive and sensitive to all targeted groups.

#### *Education, training, information and consultation*

37. Training, safety instructions and any necessary guidance in the workplace related to HIV/AIDS should be provided in a clear and accessible form for all workers and, in particular, for newly engaged or inexperienced workers, including migrant workers, young workers and apprentices; these should be sensitive to gender and cultural concerns and adapted to the characteristics of the workforce, taking into account the risk factors for the workforce.

38. Up to date scientific and socio-economic information, and, where appropriate, education and training on HIV/AIDS should be available to employers, managers, and workers' representatives, in order to assist them in taking appropriate measures in the workplace.

39. All workers should receive training in HIV infection control procedures in the context of workplace accidents and first aid. Workers who may come into contact with human blood, blood products and other body fluids should receive additional training in prevention, registration procedures and post-exposure prophylaxis.

40. Workers and their representatives should have the right to be informed and consulted on measures taken to implement policies and programmes related to HIV/AIDS and to participate in workplace inspections in accordance with national practice.

*Public services*

41. The roles of the labour administration services, including the labour inspectorate, and of the labour justice system in the response to HIV/AIDS, should be reviewed and, if necessary, strengthened.

42. Public health systems should be strengthened and follow the *Joint ILO/WHO guidelines on health services and HIV/AIDS*, 2005, in order to ensure greater access to prevention, treatment, care and support, and to reduce the additional strain on public services, particularly on health workers, caused by HIV/AIDS.

*International cooperation*

43. Members should cooperate, through bilateral or multilateral agreements, or other effective means, in order to give effect to this Recommendation.

44. Measures to ensure access to HIV prevention, treatment, care and support services for migrant workers should be taken both by countries of origin and by countries of destination, and agreements should be concluded among the countries concerned, whenever appropriate.

45. International cooperation should be encouraged between and among Members and relevant international organizations and should include the systematic exchange of information on all measures taken to respond to the HIV pandemic.

VI. FOLLOW-UP

46. Members should ensure regular and periodic review at the national level of the actions taken to implement the policies and programmes.

47. A regular review of action taken on the basis of this Recommendation should be given consideration and could be included in national reports to UNAIDS and reports under relevant international instruments.