

# HIV/AIDS WORKPLACE POLICY FOR OVERSTRAND MUNICIPALITY

## 1. THE ORGANISATION

Overstrand Municipality is a local municipality created in terms of the Constitution of South Africa and other relevant legislation pertaining to local government and comprises the areas of Hermanus, Stanford, Gansbaai and the Kleinmond and Hanglip areas.

## 2. PREAMBLE

Overstrand Municipality is committed to develop and comply with a HIV/AIDS policy for its employees in accordance with the vision of the Government of South Africa. The municipality also adopts the Country Guideline on HIV and Aids for Local Government as a guiding document in the development of the response plans of Overstrand Municipality.

## 3. BACKGROUND

The HIV/AIDS epidemic is now a global crisis, and constitutes one of the most formidable challenges to development and social progress. The HIV/AIDS epidemic, which is increasingly becoming an AIDS epidemic, has an impact across all sectors of our population.

Overstrand Municipality has developed this policy as a response to the crisis imposed by HIV/AIDS. The policy aims to not only to manage employees who are infected and affected by HIV/AIDS, but to prevent further infections of HIV within the Overstrand Municipality.

Overstrand Municipality, in its development of the HIV/AIDS policy, has consulted with management, employees and union representatives within the Overstrand Municipality and will continue to do so as the need arises. If and when necessary, consultation will also be pursued with identified stakeholders outside of Overstrand Municipality that are directly and indirectly involved with the issues relating to HIV/AIDS.

Overstrand Municipality has established an HIV/AIDS committee consisting of employees from different directorates, union representatives and management to monitor implementation and to ensure the communication of the policy to all employees within Overstrand Municipality. The committee will also oversee and coordinate the implementation of the policy and the relevant workplace programme. The said committee will advise management on steps that they deem to be important and will from time to time suggest appropriate interventions within Overstrand Municipality.

When approved, the Overstrand Municipality will allocate funds and human resources for the implementation and communication of the policy to all employees within the Overstrand.

#### 4. AIM OF THE POLICY

The policy is intended to:

- Protect its most important asset, human resources, and is committed to their protection and health and the maintenance of a healthy working environment.
- Eliminate unfair discrimination and dismissal in the workplace based on HIV/AIDS status.
- Promote a non-discriminatory workplace in which employees living with HIV and AIDS are able to be open about their HIV/AIDS status without fear of stigma or rejection.
- Promote effective and appropriate ways of managing HIV/AIDS in the workplace and offer a supportive environment that can maximise the productivity of those who are living with HIV/AIDS.
- Acknowledge the importance of HIV/AIDS with regards to the future of the municipality and minimise its effects on the municipality and its employees.
- Create a supportive environment so that HIV/AIDS infected employees are able to continue working under normal conditions in their current employment for as long as they are medically fit to do so.
- Protection human rights and dignity of employees living with HIV/AIDS is essential to the prevention and control of HIV/AIDS.
- Acknowledge and respect human rights and dignity of employees living with HIV/AIDS.
- Contribute to the prevention and control of HIV/AIDS.

#### 5. PRINCIPLES

- 5.1 Overstrand Municipality acknowledges the seriousness of the HIV/AIDS epidemic, that HIV/AIDS is not only a health problem, but an issue that impacts on the productivity and wellbeing of the individuals in the workplace.
- 5.2 Overstrand Municipality thus commits itself to making the prevention and management of HIV/AIDS a priority in the workplace, by creating a work environment in which infected and affected employees are not discriminated against, and are treated, justly, humanely and in a life-affirming manner.
- 5.3 Overstrand Municipality further commits itself to address the aspects of HIV/AIDS in the workplace so as to enable management, trade unions and all employees to actively contribute towards the prevention, control and management of the disease.

- 5.4 Overstrand Municipality commits itself to creating awareness amongst its employees, management and trade unions about HIV/AIDS and Sexually Transmitted Infections (STI) in order to reduce the spread of the disease and prevent new infections.

## **6. LEGAL FRAMEWORK**

This policy shall be read in conjunction with the Constitution of South Africa, 1996 and other relevant legislation, which includes the following:

### **6.1 THE CONSTITUTION, 1996**

The Bill of Rights provides every person with the right to equality and non-discrimination, privacy and fair labour practice. In particular the right to privacy implies an employee's right to confidentiality regarding medical information, including HIV status.

### **6.2 EMPLOYMENT EQUITY ACT, 1998 (Act No. 55 of 1998)**

This Act aims to promote equal opportunity by eliminating unfair discrimination directly or indirectly, against an employee in any employment policy or practice, including discrimination on the grounds of HIV status.

### **6.3 LABOUR RELATIONS ACT, 1995 (Act No. 66 of 1995)**

The Act protects employees against arbitrary dismissal. A dismissal is only fair if it is related to an employee's conduct or capacity or it is based on the operational requirements. The implication of the Act regarding HIV is that an employee cannot be dismissed solely because he/she is HIV positive.

### **6.4 OCCUPATIONAL HEALTH AND SAFETY Act, 1993 (Act No. 85 of 1993)**

The Act requires of the employer, as far as it is reasonably practicable, to create a safe working environment for the employees. The implication of the Act regarding HIV is that the employer needs to ensure that the risk of possible infection in the workplace is minimized.

### **6.5 BASIC CONDITIONS OF EMPLOYMENT Act, 1997 (Act No. 75 of 1997)**

The Act sets out the minimum employment standards for working hours; leave etc. The implication of the Act for HIV is that an employer needs to establish policies regarding extended sick leave and leave of absence for other reasons.

## **7. KEY PRINCIPLES UNDERLYING THE POLICY**

### **7.1 NON-DISCRIMINATION**

Employees living with HIV/AIDS shall be afforded the same rights and privileges, and will have the same obligations, as all other employees.

Employees living with HIV/AIDS or any life threatening disease will not be discriminated against in terms of employment or advancement in employment, or in respect of participation in any benefits (except where a person is on legal grounds excluded). Discrimination, whether direct or indirect, on the grounds of HIV/AIDS, shall be considered serious misconduct as stipulated in the legislative framework.

## **7.2 VOLUNTARY COUNSELLING AND TESTING**

There will be no pre-employment HIV/AIDS testing in Overstrand Municipality. Employees will however be encouraged to undergo Voluntary Counselling and Testing (VCT) at public sector sites, or by private health care professionals. To be pro-active in the face of the epidemic, Overstrand Municipality has developed a workplace strategy to combat HIV/AIDS. A critical component of the strategy is the encouragement of employees to undergo counselling and testing on a voluntary basis. Overstrand Municipality will ensure, where possible, that when employees wish to have HIV/AIDS testing, this is done with the required pre and post-test counselling. Cost for Voluntary Counselling and Testing will be free of charge to Overstrand Municipality employees as part of the HIV/AIDS workplace strategy. If an employee chooses a private doctor or medical institution for testing it would be for his/her own cost.

## **7.3 CONFIDENTIALITY AND DISCLOSURE**

The employees within Overstrand Municipality have the constitutional right to confidentiality about their HIV/AIDS status. All employees shall treat information of an employee's HIV status as confidential and shall not disclose that information to any other person without the employee's written consent.

Overstrand Municipality will ensure that Human Resources records are confidential. Overstrand Municipality will establish support structures such as EAP; trained counsellors and a referral system wherein employees can feel safe to disclose their HIV status.

An employee within Overstrand Municipality, or a prospective employee, is under no obligation to inform management or anybody within Overstrand Municipality about his/her HIV/AIDS status.

Overstrand Municipality will ensure the confidentiality of medical information of its employees.

Overstrand Municipality shall strive through its directorates, and through the unions, to develop a working environment in which employees can feel safe to disclose their HIV/AIDS status, or that of their partners and their family members. Creating a climate of openness about HIV is an effective prevention and care strategy that Overstrand Municipality will pursue.

## **7.4 COUNSELLING, CARE AND SUPPORT**

Overstrand Municipality will ensure that all employees who can obtain professional counselling when they so require.

Information will be made available to all employees regarding counselling services provided by other service providers outside of the Overstrand Municipality.

## **7.5 MANAGEMENT RESPONSIBILITY**

Management has responsibilities to:

- participate and show leadership in the responsible management of the pandemic in the workplace.
- be educated and informed about the pandemic including developments in respect of prevention and treatment
- together with all supervisors, implement this policy, as well as to continuously disseminate information about HIV/AIDS to all employees. It is, however, the responsibility of employees to take appropriate action on being informed about HIV/AIDS, to protect themselves and their families and to seek counseling in case of uncertainty.

## **8. HUMAN RESOURCE ISSUES**

### **8.1 MANAGEMENT OF PEOPLE INFECTED BY HIV**

***Section 8 should be read in conjunction with the Overstrand Municipality Policy on Ill Health/Incapacity as approved by Council on 26 of November 2008.***

#### **8.1.1 INFECTED EMPLOYEES**

Infected employees should be treated empathetically in exactly the same way as other terminally ill staff or other staff who have serious injury or health problems. If a situation arises where an employee is found to be HIV positive and where his performance is affected, it is management's duty to ensure that they are not simply discharged. This would be an unfair labour practice. Management has a duty nevertheless to ensure that productivity and morale is not disrupted, and should take one of the following alternatives into consideration when it becomes clear that the employee is no longer able to carry out his present function or where it would be insensitive to colleagues or customers to leave the employee in his present position

#### **8.1.2 OTHER STAFF**

Should there be negative reactions from colleagues of infected staff each situation will be assessed and dealt with appropriately as it arises. It may also be necessary to arrange for an informed professional to educate the staff. It is necessary to be sensitive and responsive to colleagues concerns.

However, where there is no risk to other employees, and employees remain unwilling to work with an HIV positive colleague, after reassurance and with all appropriate safety and health precautions having been taken by the Overstrand Municipality, and the employee has been informed and educated by a professional he will be warned that such behaviour is unreasonable, and scientifically unjustified and that his own employment situation may be placed in jeopardy. If an infected employee is being victimised or harassed at work, making working life intolerable or impossible, the Overstrand Municipality has a duty to support the employee in order that he may work without disruption or harassment from fellow workers.

Officials / counsellors and co-workers who administer tests and/or counselling have the right to be protected and assisted through standard best medical practices as well as health and safety legislation and regulations, when conducting testing and/or counselling.

### **8.1.3 RECRUITMENT: PRE-TESTING**

The Overstrand Municipality does not require applicants for employment to be tested for life threatening diseases or HIV. The criterion to use is "suitability to fulfil the job requirements". However, the health section of the Medical Aid Application Form and the Employment Application Form must be accurately completed.

### **8.1.4 TESTING OF EMPLOYEES**

*Cost for Voluntary Counselling and Testing will be free of charge to Overstrand Municipality employees as part of the HIV/AIDS workplace strategy. If an employee chooses a private doctor or medical institution for testing it would be for his/her own cost.*

Testing will only be undertaken on a voluntary basis when requested by the employee and will be for the employee's own cost. However, in the event of prolonged or repeated sick leave, the Overstrand Municipality (at its cost) may request a medical examination by a medical practitioner of its choice as is the case with any other chronic or serious illness. The results of such an examination will be divulged to the Overstrand Municipality but must be handled on a confidential basis.

Where required, professional counselling services should be made available.

This counselling service should also be used when a job performance problem indicates that testing for HIV is necessary.

### **8.1.5 AIDS INFORMATION**

The National Aids Information Service number is 0800 112322 as well as the HIV available resources provided for in of this policy.

### **8.1.6 WHEN RESULTS ARE POSITIVE**

Employees receiving HIV positive results are not under any obligation to inform the Overstrand Municipality. However, HIV positive employees who work in the kitchens or whose work performance is affected are urged to inform either the Supervisor or their immediate Manager, so that the problem can be dealt with and employee assisted. When the employee discloses test results to the Overstrand Municipality, and where counselling has not taken place, this should be arranged and medical aid assistance should be explained. Counselling may also be required for the employee's family.

The results of tests are to be kept strictly confidential. Only management who need to know should be informed confidentially with the consent of the infected employee. Disclosure or a breach of confidence could be regarded as an unfair labour practice or a violation of the rights of the employee.

### **8.1.7 FIRST AID**

Every First Aid Box must contain disposable gloves for use by the First Aider when dealing with cuts and abrasions so that they cannot be infected. Employees providing assistance should wash their hands thoroughly with disinfectant, soap and water afterwards and destroy the gloves.

### **8.1.8 CONTINUED EMPLOYMENT**

Aids will be treated like any other life threatening disease and employees may continue to work for as long as their condition allows, provided that they meet required performance standards and are not a threat to their own safety or that of others.

### **8.1.9 SUPERVISOR'S RESPONSIBILITIES**

The Overstrand municipality and its management/supervision should strive to protect the physical and emotional health and well-being of all employees.

Management and Supervisors must endeavour to offer reasonable workplace for the medically impaired employee with an AIDS virus-related condition, as long as the employee is able to meet acceptable performance standards.

To ensure these goals are met, the following guidelines are to be followed:

Any employee diagnosed with an AIDS condition is entitled, as is any other employee, to confidentiality of their medical condition and medical records. If an employee with an AIDS condition requests job accommodation for his/her medical condition, the employee must obtain a written medical opinion that he/she

- (a) is medically able to work and
- (b) needs reasonable job accommodation in order to maintain employment.

If it is deemed medically necessary, based upon current physical impairment, Overstrand Municipality and the employee's supervisor will work to bring about any reasonable job modification or job transfer of the employee with a diagnosed condition of AIDS. If a healthy employee refuses to work with an employee who is diagnosed with an AIDS condition and is medically approved as able to work, job transfer or other work accommodation for the healthy employee will only occur when medically indicated by written order of his/her physician.

The medical order must be a signed medical statement requesting this job change. In the absence of a medical order, normal transfer procedures will be followed.

Overstrand Municipality and its employee representatives will ensure that all occupational benefits are available to its employees. The employer will ensure that the following benefits are non-discriminatory.

#### **8.1.10 SICK LEAVE**

The normal sick leave benefits in terms of relevant legislation and standard conditions of service shall apply.

#### **8.1.11 PENSION FUND**

HIV/ Aids should be treated in the same way as any other terminal illness by the Retirement Fund. Ill-health retirement because of Aids will be handled in the same way as any other case of ill-health retirement, death or ill-health retirement is thus covered with no exclusions. An employee with HIV/AIDS is entitled to normal benefits.

#### **8.1.12 ADJUSTMENT OF WORKING TIMES/ MORE FLEXIBILITY RE WORKING TIMES TO FACILITATE ATTENDANCE OF COUNSELLING TREATMENT ETC.**

Flexibility of working hours could be offered to all employees to accommodate medical and counselling appointments.

#### **8.1.13 AVAILABILITY OF COUNSELLING**

Overstrand Municipality will establish support structures such as EAP; trained counselors and a referral system wherein employees can feel safe to be counselled.

### **8.1.14 GRIEVANCES**

All grievances about issues related to HIV/AIDS will be handled according to the standard policy that exists within Overstrand Municipality to deal with complaints and grievances from employees.

## **8.2 CREATING A NON-DISCRIMINATORY ENVIRONMENT**

### **8.2.1 HIV/AIDS EDUCATION**

Overstrand Municipality will promote and provide education and training to all employees on a regular basis in HIV/AIDS issues and are in possession of facts relating to HIV/AIDS.

Management within the Overstrand Municipality will ensure that there are regular workshops and briefing sessions regarding HIV/AIDS within the Overstrand Municipality and ensure that information is displayed on all notice boards.

### **8.2.2 AIDS AWARENESS**

Employees will be provided with information pertaining to HIV/AIDS. This is aimed at assisting employees to make informed decisions around HIV/AIDS and related issues. This information will be updated from time to time.

### **8.2.3 DISCIPLINARY PROCEDURE**

Should an employee reveal his/her HIV status, this information shall not be disclosed to any other employee, union member or management without the employee's written consent. Any breach of confidentiality shall be subject to disciplinary measures.

### **8.2.4 PARTNERSHIP**

Overstrand Municipality will forge linkages and partnerships with community organisations, women's groups, traditional healers, NGOs and all organisations that are directly and indirectly involved in HIV/AIDS issues, for example, home based care services run by NGOs that provide comprehensive services for HIV/AIDS infected and affected employees, in order to support Overstrand Municipality in the execution of this policy.

## **9. EDUCATION AND TRAINING**

Overstrand Municipality commits itself to educating and training programmes as the best way of preventing the spread of HIV/AIDS as well as managing HIV/AIDS in the workplace, by:

- Continuously implementing an ongoing, proactive education and training programme targeting all occupational levels and groups.

- Ensuring that employees with HIV/AIDS are not discriminated against by fellow employees
- Continuously informing employees on the implications of HIV/AIDS for them to understand that normal contact in the workplace cannot cause infection.
- Implementing systems to deal with prejudice and discrimination towards employees infected with HIV/AIDS
- Implementing systems for dealing with prejudice and discrimination towards employees infected with HIV/AIDS voluntary awareness programmes.
- Ensuring an education programme based on ways to develop and strengthen the immune system including courses on fitness, nutrition and vitamin supplements, information on improved living conditions and other basic health issues such as prevention of Sexually Transmitted Infections (STIs).

## **10. COORDINATION AND IMPLEMENTATION**

All employees in the Overstrand Municipality will be held responsible and accountable for complying with this policy.

All managers must ensure that all members of staff are aware of and understand the content of this policy on HIV/AIDS in the workplace.

All managers are responsible for implementing this policy, ensuring compliance with and knowledge of its provisions, and for taking immediate and appropriate corrective action where necessary.

The administration of any complaint procedures arising from this policy is assigned to the Department: Human Resources, which shall ensure that any disciplinary procedures are fairly and consistently applied. The Director Management Services (Human Resources) is responsible for ensuring that this policy is properly distributed in the office and that every employee has personally received a copy of the policy. New employees will receive a copy during the induction procedure.

## **11. HIV/AIDS PROGRAMME IN THE WORKPLACE**

The components of the workplace program within Overstrand Municipality will include the following:

- Awareness programmes
- Prevention programmes
- Care and support programmes
- Management programmes
- Human resource policies and systems
- Monitoring mechanisms

## 12. POLICY REVIEW AND EVALUATION

HIV/AIDS is not static; consequently policies addressing aspects of the pandemic as they affect the Overstrand Municipality will be revised from time to time.

Overstrand Municipality will review the policy on a regular basis to:

- Evaluate its effectiveness.
- Take cognizance of new initiatives around HIV/AIDS from National, Provincial or Local Government.

## 13. MONITORING

This policy will be reviewed on a regular basis, using the following indicators:-

- Staff turn over
- Absenteeism
- HIV prevalence
- Information distributed
- Training
- Interventions and courses held in terms of employee attendance
- Number of employees assisted
- Sick Leave prevalence
- Early retirement
- EAP referrals (treatment of STDs, counselling)

Policy Section	Human Resources
Current update	N/A
Previous review	N/A
Approval by Council	1 September 2009