

PART II - PROTECTION OF THE RIGHTS OF PEOPLE LIVING WITH AND AFFECTED BY HIV AND AIDS FROM DISCRIMINATION ON THE BASIS OF THE HIV STATUS

3. Non-Discrimination on the basis of HIV status

(1) People living with and affected by HIV and AIDS have a right to freedom from discrimination on the basis of their HIV status concerning access to and continued employment, conditions of employment, employment benefits, comprehensive health services, education and other social services, provided by the employer, individual, community, government and any other establishment..

(2) Individuals, communities, employers and employees have a mutual responsibility to prevent discrimination on the basis of HIV and AIDS in the society.

4. Protection of the rights of people living with HIV

(1) Every individual, community, employer shall take steps to protect the human rights of people living with and affected by HIV and AIDS by eliminating HIV and AIDS-based discrimination in all employment policies and or practices.

(2) Every individual, community, employer shall take steps to promote equality and non-discrimination on the basis of HIV status and other related diseases.

5. Right to take affirmative action

(1) No individual, community, employer or employee shall discriminate, directly or indirectly, against any person in the society on the basis of the person's HIV status or perception of same in employment, delivery of services and other benefits.

(2) It is not discrimination for the purpose of this Act to –

- (a) take affirmative action consistent with the purpose of this Act; or
- (b) distinguish, exclude or prefer any person on the basis of an inherent requirement of a job or any other services.

(3) Affirmative action in accordance with the purpose of this Act shall include measures designed to -

- (a) ensure that suitably qualified people living with and affected by HIV and AIDS have equal opportunities;
- (b) identify and eliminate barriers which adversely affect people living with and affected by HIV and AIDS; and
- (c) further diversity (including gender diversity) in the society based on equal dignity and respect for all people.

(4) Nothing in this section shall require an individual, community, employer, employee to take any decision concerning policies and or practices that would establish a barrier to the continued enjoyment of personal and or constitutionally guaranteed rights on the basis of their HIV status.

6. Acts amounting to discrimination

It shall be an offence to discriminate against any person on grounds of actual or perceived HIV status by-

- (a) denying or removing from such person, any treatment, medication or any supporting and enabling facility for their functioning in the society;
- (b) refusal to accept and offer treatment by a medical personnel;
- (c) failure to remove, eliminate or ameliorate any obstacle that unfairly limits or restricts such a person from enjoying equal opportunities or failing to take steps to reasonably accommodate the needs of such a person;
- (d) refusal to admit into school or not allowing them to continue In an educational institution;
- (e) denial of access to and use of religious or worship areas and services;
- (f) denial of access to and use of communal places, residential spaces and other social facilities;
- (g) depriving such persons of the right to an elected or appointed public/private office or admission to a public/private function;
- (h) denial of access to credit, loans and insurance services so long as the person has disclosed, where required, in utmost good faith, his or her status to the insurance company or financial institution;
- (i) denial of access to any other places of human endeavour;

provided that the status, nature or conduct of the person so concerned is not such as may expose other persons to the danger of contracting the virus.

7. Provision of reasonable accommodation

(1) An individual, community or employer shall provide "reasonable accommodation" to support people living with HIV .

(2) In the determination of what is "reasonable accommodation", relevant authorities shall be mindful of the gender dimensions of social roles in particular, the burden of care placed on women in society.

8. Disclosure of HIV/ AIDS status

Prior to accessing any public/private delivered services, employment and any other opportunities, no individual or bodies shall require a person to disclose his or her HIV status by asking questions, orally or in writing, directly or indirectly provided that the status, nature or conduct of the person so concerned is not such as may expose other persons to the danger of contracting the virus.

9. HIV testing

(1) No employer, individual or bodies shall require an HIV test as a precondition to the offer of employment, access to public/private services and opportunities, except where it is shown, on the certification of two competent medical authorities at the tertiary level to the court, that failure to take such a test constitutes a clear and present danger of HIV transmission to others.

(2) For the purpose of subsection 1 of this section, the compilation of the list of competent medical authorities shall be the responsibility of the Ministry of Health.

(3) HIV testing under this section shall be carried out with the informed and full consent of the person concerned.

(4) Nothing in sub-section 1 of this section shall prevent the medical testing of persons for fitness for work and any other responsibility as a precondition for the offer of employment and any other responsibility as provided in any existing law.

10. Provision of testing on request

(1) An employer or relevant body may provide HIV testing in compliance with the National Voluntary Counseling and Testing Guidelines to any person who has requested a test in the following circumstances-

- (a) as part of a health care service
- (b) in the event of an occupational accident or other incidents carrying a risk of exposure to blood or other body fluids;
- (c) for the purposes of applying for compensation following an occupational accident or other incidents involving a risk of exposure to blood or other body fluids.

(2) The tests referred to in subsection (1) shall only take place within the following defined conditions-

- (a) at the instance of an individual who voluntarily requests;
- (b) within a health care worker and employee-patient relationship; and
- (c) with informed consent and pre- and post-test counseling provided by the employer and other relevant bodies.

(3) Where a person chooses to voluntarily disclose his or her HIV status to the employer, other employees and /or other relevant bodies this information shall not be disclosed to other persons without the written consent of person(s) making such disclosure. Provided that where such written consent is not possible, the employer or body in receipt of the disclosure shall take all necessary steps to confirm that such person wishes to disclose his or her status.

11. Prohibition of disclosure of status without consent

(1) No person shall, except with the written consent of the individual to whom the information relates, disclose any information relating to the HIV status of that individual, unless the disclosure is required by law.

(2) For the purposes of section 11, a person/institution shall be deemed to have breached confidentiality where an individual who receives information about another individual's HIV positive status in the course of their relationship discloses such to a third party without the written consent of the HIV positive employee.

12. Anonymous HTC testing not precluded

(1) Nothing in' the foregoing sections shall preclude anonymous, unlinked surveillance or' epidemiological HIV testing provided that such is undertaken in accordance with ethical and legal principles regarding such research and the information obtained shall not be used to discriminate against individuals or groups of persons.

(2) Testing will not be considered anonymous if there is a reasonable possibility that a person's name or personal identifying features can be linked to the test. .

13. Confidentiality

(1) All persons living with HIV or affected by AIDS shall have the right to privacy with respect to their health and medical records.

(2) "any health worker who intentionally, carelessly or negligently reveals the health status of any person living with HIV and affected by AIDS thereby breaching confidentiality of a Patient shall be suspended and may be relieved of his/her duties unless the disclosure is required by law.

(3) any person who fails to comply with the provisions of S.13 of this Law commits an offence and or shall be liable to conviction to a fine not exceeding N 500,000 for an individual and N1million for an institution or for a term not exceeding two years, or to both fine and imprisonment.

14. Eligibility for Social Security, Care, and Support Benefits

(1) Subject to any existing law, the HIV status of an individual shall not affect his or her eligibility for any occupational or other benefit schemes provided for employees.

(2) Where in terms of any existing law, the eligibility of a person for any occupational or other benefit scheme is conditional upon an HIV test, the conditions attaching to HIV and AIDS shall be the same as those applicable in respect of comparable chronic conditions.

(3) Where an employee decides not to undergo an HIV testing for the purposes of subsection (2), no inferences concerning the HIV status of the employee may be drawn from such exercise .

(4) Where an employee undergoes an HIV testing for the purpose of subsection (2), the employer shall not, unless the occupational or other benefit scheme is operated by the employer, be entitled to information concerning the HIV status of the employee concerned.

(5) Every person living with HIV and affected by AIDS shall be assured of freedom from unlawful termination of his employment by reason of his Status

15. Occupationally acquired HIV infection

Every employer has a duty, as far as is practicable, to provide a workplace with universal safety tools and this shall include ensuring that the risk of occupational exposure to HIV is minimized.

16. Duty to provide safety procedure against occupational transmission

Every employer engaged in business where there is a risk of occupational transmission of HIV within the workplace shall ensure that it adopts a safety procedure that provides-

- (a) appropriate training, awareness, education on the use of universal infection control measures so as to identify, deal with and reduce the risk of HIV transmission in the workplace;
- (b) appropriate equipment and materials to protect employees from acquiring or transmitting HIV.
- (c) the steps to be taken following an occupational accident including the appropriate management of occupational exposure to HIV and other blood borne pathogens, including access to post-exposure prophylaxis;
- (d) the procedures to be followed in applying for compensation for occupational infection;
- (e) adequate monitoring of occupational exposure to HIV to ensure that the requirements of possible compensation claims are met.

17. Report of occupationally acquired HIV infections to the minister

(1) Every employer shall ensure that all occupationally acquired HIV infections are reported to the Minister from the date of discovery.

(2) It shall be an offence for any employer to fail to comply with the provisions of subsection (1) of this section, or to knowingly or recklessly make any statement or produce any document that is false in any material particular unless such employer shows that he had taken all reasonable steps to ascertain the truth of the statement made or contained in any document so produced or to satisfy itself as to the genuineness of any such document.

(3) Any employer who contravenes subsection (2) of this section shall be guilty of an offence and liable on conviction to a fine of not less than N250,000 or to imprisonment for a period not exceeding one year or to both such fine and imprisonment.

(4) To protect the confidentiality of the infected employee, the report should be sent directly from employer to a designated desk officer at the office of the relevant minister.

18. Provision of support

An employer in whose workplace an employee becomes infected with HIV shall provide the employee with reasonable support prior to sero conversion and during sero conversion phases of the infection including costs of medical tests and supply of medicines and treatment for opportunistic infections.

19. Compensation

(1) Subject to the provisions of subsection (2) of this section, an employee who becomes infected with HIV in the course of employment shall be entitled to compensation

Provided that an employer shall not be liable for HIV infection arising from an act not done for the purpose of and in connection with the employer's business or trade.

(2) Notwithstanding the provisions of subsection (1) of this section, an employer shall not be liable to pay compensation under this Act if it is proved that the infection resulted from the willful act of self-injury or gross negligence of the employee.

(3) An employer shall take reasonable steps to assist employees with the application for compensation benefits including-

- (a) providing information to affected employees on the procedures that will need to be followed in order to qualify for a compensation claim; and
- (b) assisting with the collection of information which will assist in proving that employees were occupationally exposed to HIV infection..

20. Grievance procedures

An employer shall ensure that the rights of employees with regard to HIV and AIDS, and the remedies available to them in the event of a breach of such rights become integrated into existing workplace grievance procedures.

21. Workplace policies

(1) An employer of labour shall, in consultation with the employees or their representatives, adopt a written Workplace Policy that is consistent with the National HIV and AIDS Workplace Policy for its working environment.

Provided that an organization in business as at the commencement of this Act, shall be required to adopt such policy within twelve months of the passage of this Act and for an organization established after the commencement of this Act, within twelve months of

commencement of business.

(2) An employer shall lodge a copy of the organizations adopted HIV and AIDS Workplace Policy with the Minister within one month of its adoption for approval.

(3) Where a Co-operation Agreement between employers and employees' unions or representatives on HIV and AIDS workplace programming exists, an employer shall lodge a copy of such agreement with the Minister within one month of its adoption.

(4) Any employer who fails to comply with the provisions of this section shall be guilty of an offence and liable on conviction -

- (a) in the case of subsection (1), to a fine of ₦250,000 for the first year of default and ₦100,000 for each subsequent year or part thereof that the offence continues;
- (b) in the case of subsections (2) and (3), to a fine of N10,000 for everyday or part thereof that the offence continues.

(5) Any employer who, with intent to deceive, gives false information about the existence of a Workplace Policy or Co-operation Agreement shall be guilty of an offence and liable on conviction to a fine ₦500,000.

PART III – GENERAL OFFENCES

22. Threats, intimidation or offer of inducement;

(1) It shall be an offence under this Act to-

- (a) discriminate against any person or groups of persons who exercise any right under this Act;
- (b) threaten to, or prevent any person from exercising any right under this Act;
- (c) favour, or promise to favour any person in exchange for that person not exercising a right to formally report a contravention under this Act or participate in any proceedings in terms of this Act.

(2) Discrimination against any person under subsection 1(a) includes but is not limited to, prejudicing anyone because of a past, present or anticipated disclosure of information that he/she is lawfully entitled to or required to give in any proceedings in terms of this Act, exercising any right conferred by this Act or participating in any proceedings in terms of this Act.

23. Penalty for non- compliance

Subject to the provisions of this Act relating to other offences, any person or institution, who contravenes any provisions of this Act shall be guilty of an offence and liable on conviction to a fine not less than exceeding ₦500, 000 for individuals and N2,000,000 for organizations to

imprisonment for a period not less than one year or to both such fine and imprisonment. In this case, the head and/or board of the organization

PART IV – MONITORING AND LEGAL ENFORCEMENT

24. Minister's duty to ensure compliance

(1) It shall be the duty of the Minister of Justice to ensure compliance with, and enforce the provisions of this Act and for that purpose, the Minister of Justice shall have the power to –

- (a) conduct an Inquiry into any allegation of a contravention of this Act;
- (b) make necessary recommendations to an institution or individual pursuant to an inquiry carried out under paragraph (a) of this section; and
- (c) commence criminal proceedings against anyone in a court of competent jurisdiction.

(2) A person who has been affected by a contravention of this Act or who has knowledge of a contravention of this Act shall have the right to petition the Minister.

(3) Subject to the provisions of section 23 of this Act, the Minister of Justice shall cause an Inquiry to be instituted into the said contravention within two weeks of receiving the petition.

(4) The procedure for an Inquiry into a contravention under subsection 1 shall be specified in Regulations made under this Act by the Minister of Justice after consultation with all affected parties' representatives provided that such Regulations shall be adopted within three months of the commencement of this Act.

25. Recommendation based on inquiry

(1) Where at the conclusion of the Inquiry, it is shown that there has been a contravention, the Minister may make a recommendation to the contravening individual or institution stating-

- (a) steps that must be taken to redress the contravention, which steps may include but shall not be limited to-
 - (i) hiring or admitting the person adversely affected,
 - (ii) Reinstatement or reabsorbing of the affected person ,
 - (iii) restoration of benefits, entitlements or rights denied as a result of such contravention,
 - (iv) payment of compensation or damages to the person(s) affected by the contravention;

- (b) the period within which those steps must be taken; and
- (c) alternative recourse to be taken where the contravening person or institution refuses, fails or neglects, to implement recommendations.

Provided that nothing in this section shall preclude the Minister from exercising power to commence criminal prosecution against the contravening person or institution under section 25(1) (c).

26. Right of an individual or group to commence a civil suit

(1) Nothing in the foregoing sections of this Act shall limit the personal right of an individual or group affected directly by a contravention of this Act to bring a civil action in court against any person or institution provided that who so elects shall communicate his/her/their decision to the Minister in writing alongside the petition.

(2) Where an individual or group exercises the right to commence a civil suit under subsection (1) above and notifies the Minister accordingly, the Minister shall not conduct an Inquiry under section 25.

27. Civil remedies and sanctions of the Court

(1) Notwithstanding the express provisions of this Act relating to the imposition of criminal sanctions, where the court decides that an individual or group has been unfairly discriminated against, the Court may make any appropriate order that is just and equitable in the circumstances including-

- (a) payment of compensation to the affected person or group;
- (b) payment of damages to the affected person or group;
- (c) an order directing the individual or institution to take steps to prevent discrimination or other contraventions occurring in the future in respect of others ;
- (d) an order directing the deregistration of a corporate body and/or withdrawal of an individual professional license. body corporate; and

28. Constitutional right of redress

Nothing in this Act shall preclude a person living with HIV or affected by AIDS from seeking redress against any person or institution for any breach of his or her constitutional rights in accordance with the provisions of section 42 of the 1999 Constitution of the Federal Republic of Nigeria as amended.

29. Liability of a legal person

Any body corporate or unincorporated shall be liable for the acts of its officers

contravening the provisions of this Act, provided that nothing in this section shall exclude such officers from personal liability for their acts.

30. Interpretations

In this Act, unless the context otherwise provides-

"adverse action" includes, but is not limited to termination, admission, refusal to hire or admit, rehire, promote, or other discrimination in the terms or conditions of employment, admission, service provision, policies or practices based on an individual's HIV status;

“ADMISSION” means an act of allowing to enter, act or condition of being received or accepted in a position, institution, facility, profession, occupation, office or appointment

“CORRECTIONAL FACILITIES” a penal institution, prison, remand homes, detention camps

"AIDS" means Acquired Immune Deficiency Syndrome

“Court” means a court of competent jurisdiction.

"Discrimination" means discrimination as defined in section 42 of the 1999 constitution of the Federal Republic of Nigeria as amended and the International Human Rights Convention,

"Employee" includes any person, other than an independent contractor, his representative and agent-

- (a) who works for another person or for the state and who receives, or is entitled to receive any remuneration; and has entered into or works under a contract (whether expressed, implied, oral or written) with an employer, whether the contract is for manual labour, clerical work or for the discharge of administrative, executive, technical or professional functions and whether such contract is a contract of service or a contract personally to execute any work or labour;
- (b) who is an apprentice;
- (c) who is a volunteer; and
- (d) “employed” and “employment” shall have corresponding meanings;

"employer" means a person or association of persons, bodies corporate or unincorporated employing one or more persons under a contract (whether express, implied, oral or written), whether the contract is for manual labour, clerical work or for the discharge of administrative, executive, technical or professional functions and whether such contract is a contract of service or a contract personally to execute any work or labour and includes the federal, state or local governments of Nigeria and the legal personal representative of a deceased employer.

“Employment policy or practice” includes, but is not limited to -

- (a) recruitment procedures, advertising and selection criteria;
- (b) appointments and the appointment processes;
- (c) job classification and grading;
- (d) remuneration, employment benefits and terms and conditions of employment;
- (e) job assignments;
- (f) the working environment and facilities;

- (g) employee assistance programmes;
- (h) training and development;
- (i) performance evaluation systems;
- (j) promotion;
- (k) transfer;
- (l) demotions;
- (m) disciplinary measures other than dismissal; and
- (n) dismissal.

“FACILITY” means an institution designed, built or installed to serve a specific function affording a convenience or service. E.g. educational, transportation, research, rehabilitation, vocational, recreational, medical services etc

“HIV” means Human Immunodeficiency Virus

“HIV testing” includes any test, question, inquiry, direct analysis of the blood or other body fluid or any other means designed or which has the effect of enabling anyone to infer or determine the presence of HIV or other antibodies to HIV;

“informed consent” means that consent which is given or obtained only after the individual has been provided with information about what the test is, why it is necessary, the benefits, risks, alternatives and any possible social implications of the outcome, understands it and based on this has agreed to undertake the HIV test;

“Institution” means an organization establishment, foundation, society devoted to the promotion of a particular cause or program especially one of a public, educational or charitable character

“Minister” means the relevant Minister which might be Minister of Justice, Labour and Productivity or Health or howsoever the office may from time to time be designated;

“reasonable accommodation” means any modification or adjustment to a job description, school or workplace or institution that is reasonably practicable and will enable a person living with HIV or AIDS to have access to, participate or advance in his/her chosen endeavor ;

“people with HIV” mean persons who have tested positive to the virus HIV , even if they are asymptomatic and have no outward or manifest signs of illness;

“People affected by HIV and AIDS” mean persons who are have not tested –positive to HIV but who are direct relatives, associates or friends of persons living with HIV in particular their children, spouses, partners, parents, siblings and primary care providers

“sero-conversion” means the development of HIV antibodies. When people develop antibodies to HIV, the "sero-conversion" goes from antibody-negative to antibody-positive. It may take

from as little as from one week to several months or more after infection with HIV for antibodies to the virus to develop. After antibodies to HIV appear in the blood, a person should test positive on antibody test;

“Society” means the totality of Nigeria, i.e. a group of people sharing the same geographical or virtual territory subject to the same political authority

"workplace" includes all places where workers need to be or to go by reason of their work and which are under the direct or indirect control of the employer.

Short title

This Act shall be cited as HIV and AIDS anti Discrimination Act 2013