

TRANSFORMING
THE UK'S
RESPONSE
TO HIV



Advice for employers

A photograph of a computer workstation. The main monitor is in the foreground, displaying the text 'HIV @ Work' in large, white, sans-serif font on a black background. A second monitor is visible in the background to the left. A keyboard is partially visible in the foreground at the bottom of the frame.

HIV
@ Work

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Trust for London

Tackling poverty and inequality



As a responsible employer, you will want to ensure your employees are treated fairly and that those living with HIV are protected from discrimination in the workplace. Improvements in HIV treatment mean the vast majority of people living with HIV will continue to form a critical part of your talent pool and as an employer you will want to ensure that you are able to attract, develop and retain these employees.

This guide looks at managing employees living with HIV. It sets out how you can avoid unlawful discrimination and ensure you provide appropriate support for staff. It is not a substitute for professional legal advice, but it does provide pointers both to the requirements of the law and to agreed best practice which will help you to support valued employees who are HIV positive.

For advice specifically about the recruitment process please see NAT's companion guide *HIV+Recruitment: Advice for employers*.

Working with HIV

The introduction of effective HIV treatment (known as antiretroviral therapy or ART) means people living with HIV can have a normal life-span and lead active, working lives. There are two main ‘flash points’ when someone’s HIV is more likely to impact on work life: when they are diagnosed; and when they start or switch treatment.¹ Outside of these times, most employees with HIV will only need very occasional reasonable adjustments at work, such as flexible hours or some leave for a clinic appointment.

NAT carried out research in partnership with City University into the employment experiences of people living with HIV.² This included a survey of over 1,800 HIV positive gay men in employment. The research found that respondents were employed across a diverse range of sectors, professions and trades. Over half said that HIV had no impact on their working life and the data showed that there was no significant difference in the number of days leave HIV positive men took compared with HIV negative men for non-HIV related illness. In fact, the majority of respondents had taken no HIV-related sickness

days in the last year. It’s important to remember that people living with HIV are able and entitled to work just like anyone else. There is no risk of HIV transmission through everyday work contact for either colleagues or the public. In order to avoid unnecessary operational and reputational risk, you need to obey the law in your employment practices, dealing with people fairly and without discrimination. This will also ensure you retain and support the best workforce you can, which may well include someone living with HIV.

HIV and equality legislation

As an employer managing employees, you are subject to equality legislation. This applies in the UK,³ regardless of the size of your organisation or the sector you work in.

The Equality Act 2010 protects disabled people at work from discrimination. For people living with HIV this applies from the moment they are diagnosed. The Equality Act 2010 replaces the Disability Discrimination Act 1995 and 2005.

¹ *Working with HIV: a summary of NAT’s employment research*, NAT, 2009

² *Working with HIV: a summary of NAT’s employment research*, NAT, 2009

³ The Equality Act 2010 does not generally apply in Northern Ireland, with a few exceptions. Northern Ireland has separate equalities laws in place. For information contact the Equality Commission for Northern Ireland.

Many of the rights contained within the Disability Discrimination Act are retained within the new Act, but it also provides disabled people, including those with HIV, with some additional protection.

As an employer it would be unlawful to treat someone living with HIV in a worse way than other employees because of their HIV status. This is called direct discrimination.

For example, you cannot refuse to allow an HIV-positive member of staff to attend training because you wrongly assume that because of their disability they will not progress or be promoted. This is direct discrimination owing to their HIV status.

You must also be aware that by treating all your staff in the same way you could still discriminate against staff members with HIV. Some management styles or blanket policies may have a worse impact on people living with HIV. The Equality Act also protects against such cases of indirect discrimination.

An example of a blanket human resources policy which could discriminate against people living with HIV is a promotion policy which requires staff to spend extended periods of time working abroad in order to qualify for an executive role. Someone living with HIV may be willing and able to do this work, but due to HIV-related immigration restrictions in certain countries may not be allowed to enter or stay for the necessary period of time. To deny promotion on these grounds alone would be discriminatory unless you could clearly justify why the policy was essential for the role or your business.

It is also unlawful if a management practice or workplace policy results in unfavourable treatment of an individual member of staff with HIV for a reason connected to their HIV status. This is called discrimination arising from disability. This concept is similar to, but legally distinct from, indirect discrimination. Discrimination arising from disability only applies if you know, or could be reasonably expected to know, about the employee's HIV status.

As an employer it would be unlawful to treat an employee worse than someone else because they are associated with a person living with HIV, for example if their partner or relative is HIV positive.

Such behaviour is known as **associative discrimination**. Similarly, **you must not treat someone differently because you assume they are HIV positive, for example because they are gay or from a country with a high HIV prevalence**. Discriminating against someone in this way is known as **perceptive discrimination**.

In addition, as an employer you must protect your staff from **harassment** and also make **reasonable adjustments** to assist disabled employees at work. These two areas are looked at in more detail below.

Finally, you must not treat an employee badly or **victimise** them because they have made a complaint about being discriminated against or helped somebody else make a complaint.

For more detailed advice on the different types of discrimination in the Equality Act 2010 contact the Equality and Human Rights Commission (details provided in the 'Further information, advice and resource' section).

Making people feel comfortable in the workplace

The vast majority of people living with HIV have a very positive workplace experience, and just get on with their job like any other employee. As an employer it is very unlikely that you will ever face a discrimination case to do with someone living with HIV, but it is important that you are aware of your legal obligations.

It helps to be aware and sensitive to the possible apprehensions of some people living with HIV about disclosing their status and managing their condition at work. Since the beginning of the epidemic there has been stigma and discrimination against people living with HIV and some employees may have concerns about how work colleagues will respond if they decide to disclose their status.

You can help address these concerns and send out an important message about your commitment to diversity and equality by taking some simple steps. Possible actions include:

- ▶ Developing an equality and diversity policy which makes clear your commitment to disabled people, including those living with HIV
- ▶ Ensuring staff, particularly managers, have equality and diversity training which includes information about HIV and how to sensitively manage staff living with HIV (particularly issues around confidentiality)
- ▶ Helping to end stigma and discrimination by improving staff knowledge about HIV (for example, by marking World AIDS Day on 1 December.)

Reasonable adjustments

Equality legislation ensures that disabled people have the same access, as far as is reasonable, to everything involved in doing a job as non-disabled people. To ensure this happens, employers must make reasonable adjustments to remove barriers for disabled people, including those living with HIV.

NAT's employment research showed that for the majority of respondents,

HIV had no impact on their working life, but a small proportion of people living with HIV did identify some reasonable adjustments that an employer could make to assist them at work. In the vast majority of cases these adjustments will be inexpensive and easy to accommodate.

HIV medication can have some side-effects such as fatigue, nausea, sleep disturbance and diarrhoea, which can sometimes require reasonable adjustments at work. NAT's research found that the most common request for adjustments were for time off to attend hospital and clinic appointments, flexibility in working hours and the request to work at home occasionally. Most employers would have little difficulty accommodating the adjustments that HIV positive employees might require.

If an employee asks you to make reasonable adjustments and you do nothing, they could bring a claim against you in an Employment Tribunal. It is important to remember that the need to make an adjustment for an employee is not a reason not to promote them or dismiss them, provided the adjustment required is reasonable.

What is considered reasonable depends on things such as the size and type of your organisation. The costs of any reasonable adjustment for an employee living with HIV are likely to be minimal. However the Government scheme Access to Work can help with extra costs where it would not be reasonable for an employer to meet these.⁴ You only have to make changes if you know or could be reasonably expected to know that an employee is a disabled person.

It is good practice to ensure information about how to access reasonable adjustments is made available to all staff at an early stage of their employment. This will reassure them that you take a positive attitude to assisting disabled people at work and will respond appropriately to requests for adjustments should an employee need them (and they are reasonable).

The duty to make reasonable adjustments also applies to the recruitment process – for more information please see NAT's companion resource *HIV+Recruitment: Advice for employers*.

Preventing harassment at work

Clearly an employer must take steps to ensure their employees do not face discrimination in the workplace. As part of this, you have responsibilities around harassment at work. In the Equality Act harassment is defined as unwanted behaviour related to a person's disability which either violates that person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment.

Unwanted behaviour can include, for example, written or spoken abuse (verbal conduct), graffiti, physical gestures, jokes, or pranks related to somebody's disability (non-verbal conduct).

Although you may not be the person behaving in this way, you may be held responsible for harassment of disabled staff by people who work for you unless you can show that you took all reasonable steps to prevent this happening. Make sure you make it clear to your staff that you will not tolerate harassment of disabled colleagues, including those living with HIV.

⁴ Further information about the Access to Work scheme can be found at www.direct.gov.uk.

For example you could:

- put in place a harassment policy (this might be part of a wider equality and diversity policy)
- make sure the policy states clearly that harassment will not be tolerated and will be treated as a disciplinary offence
- inform staff about the policy and their responsibility in relation to it.

You can also be held responsible for harassment of an employee by a third party. You are responsible if you know that a member of your staff has been harassed by somebody even if they do not work for you (for example a customer) on more than one occasion and you fail to take reasonable steps to protect your employee from further harassment. This is known as 'third party harassment'.

To avoid this situation, make it clear that harassment of staff is not acceptable at your workplace. For example, you could:

- put up notices stating that you will not tolerate harassment of staff
- speak to the individual concerned and tell them that their behaviour is not acceptable

- if necessary stop that individual visiting your premises.

Remember, if you are aware that another member of staff or a customer is harassing an employee living with HIV, you must act immediately to stop this behaviour. You will be held legally responsible unless it can be shown you took all reasonable steps to prevent this harassment.

What to do if someone discloses their HIV status at work

Changes to legislation in the Equality Act 2010 mean that except in very specific circumstances it is now illegal for employers to ask people about their HIV status before they have been offered a job.⁵

It is therefore quite possible that you may have several staff living with HIV who have not disclosed their status to you. NAT's research found that nearly 40% of respondents had not disclosed their HIV positive status at work, most commonly because they simply saw no need to do so.

However, some people living with HIV may decide to disclose their status to their manager or a colleague at work.

⁵ Or before they have been included on a group of successful candidates to be offered a job when a vacancy becomes available.

This could be, for example, because starting or making changes to medication means that they now wish to access reasonable adjustments, or simply because they want to be open about their status.

If someone discloses their HIV status to you, or a member of your staff, it is important to respond in a sensitive manner. Remember, many HIV positive employees may fear that they will be discriminated against, so it is important to reassure them that you will respect their confidentiality and support them to manage their condition at work.

Make sure you remind people about their right to reasonable adjustments.

It is also good practice to record leave specifically related to an employee's HIV status as 'disability leave', keeping a record of this separate from their general sick leave. Finally, reassure people that you will not discuss their status with anybody without their permission. You can read more about the importance of confidentiality in the section below.

It is best practice to ensure all managers have training on how to respond appropriately if one of their

staff informs them that they have a disability. Managers should be made aware of the particular sensitivities around HIV because of the discrimination some people may have experienced related to the condition.

Confidentiality at work

In order to access reasonable adjustments and protection from discrimination, an employee will usually have to disclose their HIV status to their employer. However NAT's employment research showed that of people living with HIV who had not disclosed their status at work, more than half had not done so because of fears around their confidentiality.

The Data Protection Act 1998 (DPA) regulates how personal information is processed and protects all personal sensitive data disclosed by a job applicant or employee. This includes physical or mental health conditions. The Data Protection Act specifies that written consent is needed for personal sensitive information to be passed on.

Every responsible employer should have procedures in place to ensure that personal information about employees is properly handled.⁶

⁶ The term 'personal sensitive data' has a technical definition within the Data Protection Act (1998). More information about this and other aspects of Data Protection can be found at www.ico.gov.uk

The Information Commissioner's Office has produced a code of practice for employers and can also advise where people believe their rights have been infringed.⁷

As an employer you are liable for keeping information obtained about employees confidential. The Data Protection Act regulates how personal information is used and protects sensitive data such as ethnicity, political opinion, religious or other beliefs, trade union membership, physical or mental health condition, sex life, criminal proceedings or convictions.

Depending on individual circumstances, you might need to disclose this information to third parties. In this case, only personnel that 'need to know' should be informed of the situation. In practice, this will tend to include the Human Resources manager or the person in charge of implementing any reasonable adjustments. Explicit consent should be sought from employees when sensitive information is processed by an organisation. Sometimes you may need colleagues' co-operation to implement a reasonable adjustment, but confidential details must not be

disclosed without the consent of the employee concerned.

What to do if someone experiences discrimination at your workplace

If an employee says that you or a member of your staff have discriminated against them, it is important that you deal with the complaint in the right way.

If someone believes they have experienced unlawful discrimination they have the right to make an Employment Tribunal claim. This can be a long and expensive process. Having the right procedures in place to manage complaints can avoid the need to go to Tribunal - it is likely to be in everybody's interest to put things right before a claim is made to an Employment Tribunal. NAT's employment research found that nearly half of those who had sought redress at work when they experienced HIV-related discrimination had had the issue partially or completely resolved through an internal grievance process.

⁷ The Information Commissioner's Office 'The Employment Practices Code' (2005) is available at www.ico.gov.uk

If a member of staff makes a complaint, ask them if they would like to discuss this informally with you or a manager, or to go through a formal grievance procedure. Explain that complaining informally can be the most straightforward way of dealing with a complaint and that if it becomes clear that discrimination has occurred, you will take appropriate disciplinary action and if necessary alter office procedures so that the event does not occur again.

If your employee wishes to make a formal complaint, you should provide them with information about how to do this according to a formal grievance procedure. Further information about handling a formal complaint is available from Acas (for contact details see 'Further information, advice and resources' section).

Should you not be able to resolve a complaint through your informal or formal grievance procedures, you can find more information about Employment Tribunals at Business Link (England), Business Gateway (Scotland), Flexible Support for Business (Wales) or NI Business Info (for contact details see 'Further information, advice and resources' section).

Once the incident has been resolved, it is important to review the situation to ensure no further unlawful discrimination occurs in future.

Best practice and HIV in the workplace

Throughout this guide we have provided some examples of best practice when managing staff living with HIV. This section provides a check list of things to consider to make sure you have proper procedures in place to support HIV positive employees:

- Ensure that all staff are provided with diversity and equality training, which includes information about HIV and the importance of confidentiality at work.
- Work with staff to develop a diversity and equality policy which includes information on disability and HIV – make sure all staff are aware of this policy and their responsibilities in relation to it.
- Record employees' leave related to their HIV status as 'disability leave', keeping this separate from general sick leave.
- Help to end stigma and discrimination by improving staff knowledge about HIV and raising awareness by marking World AIDS Day on 1 December.
- Ensure you have a harassment policy in place and that you act quickly to address any incident of harassment in your workplace (whether from a member of staff or a customer).
- Make sure you have information available about reasonable adjustments and support staff should they wish to access these.
- Ensure you have a clear informal and formal grievance procedure in place to assist people who feel they have been subjected to discrimination in the workplace.

Some final thoughts

As an employer you will want to have the policies and procedures in place that enable you to attract, develop and retain the best staff you can – this means ensuring that your workplace provides a supportive environment for people living with HIV.

The Equality Act 2010 has introduced some new protections for disabled people, including those living with HIV. It is important that you are familiar with the changes introduced by the Act and adapt your workplace policies to reflect these changes.

There are some specific issues to consider when recruiting staff – for more information see NAT's companion guide, *HIV+Recruitment: Advice for employers*.



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Further information, advice and resources

Equality and Human Rights Commission (EHRC)

The EHRC have a statutory remit to promote and monitor human rights; and to protect, enforce and promote equality across the seven “protected” grounds - age, disability, gender, race, religion and belief, sexual orientation and gender reassignment.

Helpline

- England: 0845 604 6610
 - Scotland: 0845 604 5510
 - Wales: 0845 604 8810
- www.equalityhumanrights.com

In Northern Ireland, you can contact the Equality Commission for Northern Ireland.

Enquiry Line : 028 90 890 890
www.equalityni.org

Trade Union Congress (TUC)

The TUC has 58 affiliated unions representing 6.2 million working people from all walks of life. The TUC campaigns for a fair deal at work and for social justice at home and abroad.

Know your rights line: 0870 600 4882
www.tuc.org.uk

Acas (Advisory, Conciliation and Arbitration Service)

Acas has a range of services which can help individuals or groups of employees to avoid or resolve problems and disputes in the workplace. The Acas helpline offers free, confidential and impartial guidance on employment rights and workplace issues. They provide general information on employment rights and responsibilities and can also help employees and employers who are involved in an employment dispute to identify

practical ways of sorting out the problem.

Helpline: 08457 47 47 47
www.acas.org.uk

Community Legal Advice

Community Legal Advice is a free and confidential advice service paid for by legal aid.

Helpline: 0845 345 4 345
www.communitylegaladvice.org.uk

Disability Law Service

The Disability Law Service is a national registered charity that provides confidential and free legal advice to disabled people and their families, carers and advocates.

Advice line: 020 7791 9800
www.dls.org.uk

Advicenow

Advicenow is an independent, not-for-profit website providing accurate, up-to-date information on rights and legal issues.

www.advicenow.org.uk

Information Commissioners Office

The Information Commissioner's Office is the UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.

www.ico.gov.uk

Advice for businesses

Free information, support and practical advice for businesses of all sizes:

England- Business Link

Helpline: 0845 600 9 006
www.businesslink.gov.uk

Scotland- Business Gateway

Helpline: 0845 609 6611
www.bgateway.com

Wales – Flexible Support for Business

Telephone: 03000 6 03000
fs4b.wales.gov.uk

Northern Ireland – NI Business Info

Telephone: 0800 027 0639
Website: www.nibusinessinfo.co.uk

THT Direct

Provides information, support and advice on HIV and sexual health

THT Direct: 0845 1221 200
www.tht.org.uk

NAM aidsmap

NAM's e-atlas can direct you to an HIV support organisation in your local area.

www.aidsmap.com

RADAR: The Disability Network

RADAR is the UK's largest disability campaigning organisation, with a membership of over 900 disability organisations and individual campaigners.

www.radar.org.uk
