

TRANSFORMING
THE UK'S
RESPONSE
TO HIV



Advice for employees
living with HIV

A photograph of a computer workstation. The central focus is a white computer monitor on a clear plastic stand. The monitor's screen is black and displays the text 'HIV @Work' in a large, white, sans-serif font. In the foreground, a black computer keyboard is visible on a light-colored wooden desk. To the left, another computer monitor is partially visible, and a keyboard is also present. The background is a plain, light-colored wall.

HIV
@Work

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Trust for London
Tackling poverty and inequality



Advancement in treatment means that most people living with HIV can expect to have an active and fulfilling work life. Most can also expect to find their employer to be supportive, adopting workplace policies and practices where necessary to make it easier for them to manage their condition at work. Although some people experience discrimination related to their HIV status, they are now in the minority.

Recent updates to equality legislation mean that people living with HIV are now offered greater protection from discrimination in recruitment and employment. This booklet provides people living with HIV, whether in work or thinking of returning to work, with advice and information about their rights in the workplace, and what to do if they need support in accessing these rights. NAT has also developed a companion guide looking at issues for people to consider during the recruitment process – *HIV+Recruitment: Advice for job applicants living with HIV*.

This guide provides pointers to your rights under equality legislation in the workplace, but it is not a substitute for professional legal advice.

Experiences of people living with HIV at work

NAT carried out some research with City University looking at the experiences of those in employment. The research included a survey of over 1,800 HIV positive gay men in employment.¹

Respondents were working across a range of sectors, professions and trades, with the largest proportion working in hospitality (10%), healthcare and medicine (9%), retail (7%) and education (7%). Over half of respondents were satisfied with key aspects of their work such as being able to use their initiative and satisfaction with the work itself. In fact, over half of these men said that their HIV status had no impact on their working life. Of those that had disclosed their status (62%), for over three quarters the response to their HIV status was a positive one. However, 7% of respondents had experienced some type of HIV-related discrimination in their current job.

If you've recently been diagnosed with HIV, are about to start treatment while working, or you are thinking of returning to work after a break

from employment, you may be concerned about whether you will face discrimination or about how flexible your employer will be about managing your condition. These worries and concerns are to be expected. However, as these findings show, most people living with HIV have a good experience at work.

Positive attitudes amongst employers

Many employers have a positive approach to disability. Employers not only want to be fair in their employment practices, they want to be seen to be fair. A high profile discrimination case can be damaging for an organisation's reputation and is 'bad for business.' In addition, many people are now committed to the business case for equality and diversity. They want to recruit and retain the best workforce they can, and will often be enthusiastic about taking steps to make sure they attract a diverse staff, including people living with HIV.

Employers displaying the 'Positive About Disabled People' or 'Two Ticks' logo on their job advert or on their website have made a commitment

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

to employing disabled people and this includes those living with HIV.² In addition, some employers will have a diversity and equality policy or an HIV policy setting out commitments to promote good practice in areas such as disability, race equality and sexual orientation. You can ask about these policies, or look on an employer's website.

Legal protections for people living with HIV in work

As someone living with HIV you are protected in the same way as other disabled people under equality legislation. The Equality Act 2010 protects disabled people at work from discrimination in the UK.³ For people living with HIV, this protection applies from the moment they are diagnosed.

The Equality Act 2010 replaces the Disability Discrimination Act 1995 and 2005. 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.

Your employer must not treat you worse than another member of staff because of your HIV status.

Such treatment is known as **direct discrimination**. For example, your employer must not exclude you from certain activities (training opportunities or social events) because of your HIV status.

Your employer must also make sure that their standard ways of treating staff do not inadvertently have a discriminatory impact against someone with HIV. Some management styles and 'blanket' policies may have a worse impact on people living with HIV. The Equality Act 2010 also protects against such cases of indirect discrimination.

An example of a 'blanket' human resources policy which could discriminate against someone living with HIV would be if your workplace had a promotion policy which required staff to spend extended periods of time working abroad in order to

² Further information about the 'Two Ticks' scheme can be found at www.direct.gov.uk.

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.

qualify for an executive role. You 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 you promotion on these grounds alone would be discriminatory unless the employer could clearly justify why the policy was essential for the role of their business.

Employers must also ensure that they do not have management practices or workplace policies which result in unfavourable treatment of an individual member of staff living 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 the employer knows, or could be reasonably expected to know, about the employee's HIV status.

In addition, an employer must not 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, if an employer wrongly assumes a gay man is HIV positive, they must not treat this person differently because they think he is living with HIV. Discriminating against someone in this way is known as **perceptive discrimination**.

As an employee, you are protected from **harassment** and your employer must make **reasonable adjustments** to help you manage your condition at work. These two areas are looked at in more detail below.

Finally, your employer must not treat you badly or **victimise** you because you 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).

Protected Characteristics

As well as disability, the Equality Act 2010 protects against discrimination relating to age, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex and sexual orientation.

It is unlawful to discriminate in relation to one of these “protected characteristics”.

Disclosing your HIV status at work

There are many things to consider when thinking about whether to disclose your status at work. Changes to equality legislation mean that, except in very limited circumstances, it is now illegal for a potential employer to ask you about your HIV status before the offer of a job has been made.⁴ To find out more about your rights in recruitment see NAT’s companion guide *HIV+Recruitment: Advice for people living with HIV*. In addition, it is best practice for employers not to ask applicants about their HIV status even after a job offer has been made. It is therefore very possible that you may have a job but

not had to disclose your status to your employer.

NAT’s employment research found that over 60% of respondents had disclosed their status to someone at work. Over three quarters had had a positive response. Those who did not disclose their HIV status most frequently said they simply saw no need to (65%). However, breaches of confidentiality (57%) or fear of poor treatment at work (53%) were also important factors in why respondents chose not to disclose.

⁴ Or before you have been included on a group of successful candidates to be offered a job when a vacancy becomes available.

Healthcare and the armed forces

For almost all jobs there is no requirement to proactively disclose your HIV status, and the fact that you are living with HIV should not create any barrier to taking a job. However, there are specific conditions for HIV positive healthcare workers who perform exposure-prone procedures, for example dentists, surgeons and midwives. People living with HIV can work in these roles but they have to be on antiretroviral treatment, with an undetectable viral load, and to be regularly monitored by their HIV and occupational health physician.

People living with HIV are also restricted from some roles in the front-line armed forces. This is not specifically because of their HIV status, but because they need to access medication regularly. The same restrictions apply to other long-term conditions which require regular treatment.

Should I proactively disclose?

Some of the rights covered under equality legislation are only available to people who have made their employer aware of their HIV status. For example, it is not possible to ask for reasonable adjustments to make it easier for you to carry out your role without disclosing your status to somebody at work. The section below looks in more detail at some of the advantages reasonable adjustments can bring.

Ultimately the decision as to whether or not you disclose is yours – there is no right answer for you but there are several things to consider. It is also worth remembering that you may decide to disclose after you have been in your job for some time - you don't have to disclose straight away. If at a later date, changes to your treatment cause side effects which would be easier to manage with some support from your employer, you might want to consider again whether you disclose your status.

What am I disclosing?

Of course you are disclosing the fact that you are living with HIV, but many people know little about what that means in reality. You may wish to emphasise periods of good health,

perhaps explaining that your health is well maintained by HIV treatment for example. You may find it helpful to provide your employer with printed information about HIV and work, such as this booklet.

To whom should I disclose?

Some people are happy to be entirely open about their HIV status. Others prefer to disclose on a 'need-to-know' basis. This might depend on your individual circumstances and the type of work you do. If you do disclose to someone, you have a right to specify your preferences about who is informed and insist that no onward disclosure takes place.

In practice, if you are disclosing because you wish to access reasonable adjustments, only your Human Resources (HR) manager or immediate manager who may need to authorise time off for attending medical appointments may need to know. Unless you wish it, other colleagues do not need to know about your HIV status and you should not be pressured into allowing a wider disclosure if you believe it is not appropriate or necessary. The choice is yours. The section below provides more information about your rights to confidentiality under the Data Protection Act 1998.

It might help to talk through how and who you disclose to at work with a trusted friend or adviser from an organisation supporting people living with HIV. The most important thing to remember is that you are in charge of the disclosure process.

Removing barriers to work: reasonable adjustments

Equality legislation ensures that disabled people, including people living with HIV, have the same access, as far as is reasonable, to everything involved in doing a job as non-disabled people. To ensure this happens, your employer must make reasonable adjustments to remove barriers that, because of your HIV status, make it more difficult for you to work.

Although NAT's employment research showed that for the majority of respondents HIV had no impact on their working life, there are some reasonable adjustments an employer can make to assist someone living with HIV at work. In the vast majority of cases these adjustments will be inexpensive and therefore they should be easy for your employer to accommodate.

You may find that at some point in time your HIV medication has some side-effects such as fatigue, nausea, sleep disturbance and diarrhoea, or you experience illness directly related to your HIV, which means you require reasonable adjustments at work. You are more likely to experience these side effects when starting treatment for the first time or when changing to a new type of medication. Our employment research found that the most commonly requested adjustments were for time off to attend hospital or doctor's appointments, flexibility in working hours and the request to work at home occasionally.

Your employer will have to meet your request unless it can be shown to be unreasonable. What would be considered unreasonable will depend on the type and size of employer you work for, your role and the nature of your request. Encouragingly, NAT's research found that 89% of requests for reasonable adjustments were fully or partially granted.

If you make a request for a reasonable adjustment and your employer does nothing, you could bring a claim against them in an Employment Tribunal. See below for more information about the redress process.

The duty to make reasonable adjustments also applies to the recruitment process – for more information please see NAT's companion resource *HIV and recruitment: advice for people living with HIV*.

Harassment at work

Your employer must protect you from harassment at work.

In the Equality Act 2010 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, for example, include written or spoken abuse (verbal conduct), graffiti, physical gestures or jokes or pranks related to somebody's disability (non-verbal conduct).

Even if it is not your employer that it is behaving in this way, but a colleague, your employer is responsible for protecting you from this type of behaviour. Your employer is responsible

if they know that you have been harassed by a member of staff and they fail to take action to protect you from this harassment.

Your employer should make clear that harassment of staff is not acceptable and it would be good practice for them to have an equality and diversity policy which includes a section on harassment. It is important to note that this protection extends beyond workplace premises. So, if you face abuse from a colleague at a work party or social event in a venue outside the office, your employer should still protect you from this behaviour.

If you experience harassment related to your HIV status, speak to your manager who should take steps to resolve the situation. If they do not, contact your union or the Equality and Human Rights Commission, as your employer can be held responsible for such harassment if they do not act appropriately to stop this behaviour.

Confidentiality at work

If you wish to access reasonable adjustments and most forms of protection from discrimination, you will have to disclose your HIV status to your employer.

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 and 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.⁵ The Information Commissioner's Office has produced a code of practice for employers and can also advise where people believe that their rights have been infringed.⁶

Your employer is liable for keeping information obtained about you 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. In some very specific circumstances, your employer 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 HR manager or the person in charge

of implementing any reasonable adjustments. Explicit consent should be sought from you by your employer when sensitive information is processed by an organisation. Sometimes your manager may need colleagues' co-operation to implement a reasonable adjustment on your behalf, but confidential details must not be disclosed without your consent.

What to do if you experience discrimination at work

HIV-related discrimination at work is not common. However, should you experience discrimination, there are several ways you can seek redress:

- Complain informally to your employer
- Bring a formal complaint
- Make a claim to the Employment Tribunal

It is important to be aware that if you do decide to make a claim to the Employment Tribunal you need to tell them about your claim within three months (less one day) of what happened.

⁵ 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

⁶ The Information Commissioner's Office 'The Employment Practices Code' (2005) is available at www.ico.gov.uk

Complaining informally to your employer

If you have a good relationship with your employer, this may be the most straightforward way of dealing with your complaint. Your employer can investigate what happened and decide with you what to do without the need to follow the formal grievance procedure.

It may be that all that needs to happen is for the person who is discriminating against you to be made aware of how it is affecting you and that the situation is being taken seriously by your employer and that the situation can be resolved.

If you are not happy with the outcome of this approach, you can take things further by making a formal complaint.

Bringing a formal complaint

Your employer should be able to provide you with information about how to submit a formal complaint. If not, Acas (the Advisory, Conciliation and Arbitration Service) can provide you with a standard procedure which both you and your employer can use. For information on how to contact Acas see 'Further information, advice and resources'.

The Equality and Human Rights Commission also provide information on alternative dispute resolution which involves finding a way to sort out your complaint without a formal tribunal hearing.

Remember, under the Equality Act 2010, your employer must not victimise you because you have made a complaint about being discriminated against or helped somebody else make a complaint.

Things to think about when considering whether to go to tribunal

Only you can decide whether you want to take your case to tribunal.

It is worth remembering that making a claim can be very demanding. Before you start this process, look into whether you have a good chance of succeeding. Whilst remaining aware of the time limit for going to tribunal, you may want to see if there is a better way of resolving your complaint.

For further advice on the Employment Tribunal process, contact the Employment Tribunal Service which has information about what to expect when you make a claim. For information on how to contact the Employment Tribunal Service see 'Further information, advice and resources'.

You may want to speak to your union representative or an organisation supporting people living with HIV before you begin this process.

Some final thoughts

The majority of people whose HIV status is known in their workplace do not experience discrimination – fear of discrimination should not stop you taking up an employment opportunity.

The Equality Act 2010 builds on previous disability discrimination protections, meaning you now have additional rights in the workplace.

Think carefully about disclosing your status. You may not need to disclose now but, at a later date, disclosure can help you access support to make it easier to manage your condition at work (for example if you change treatment and need to access reasonable adjustments to manage any new side effects).

If you do experience discrimination there is support to help you access redress.

If you are not currently employed but are thinking of returning to work, you may find NAT's companion guide *HIV and recruitment: advice for job applicants with HIV* useful. This is available from our website (www.nat.org.uk).



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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.

www.tuc.org.uk

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.direct.gov.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

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.

Helpline: 0303 123 1113
or 01625 545745
www.ico.gov.uk

Advice for businesses

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

England- Business Link
Helpline: 0845 609 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
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

Disability Rights UK

The largest national pan-disability organisation in the UK led by disabled people which campaigns for disability equality and human rights.

www.disabilityrightsuk.org
