

Law on HIV

This law (in Portuguese, Lei n5/2002) was adopted by the Parliament of Mozambique on 29 November 2001 and approved by the President on 5 February 2002. Among other things, it prohibits pre-employment HIV testing and dismissal

based on HIV status. It also requires that employers provide employees with HIV education and advice.

Excerpts

Section 1: Definitions

For the purposes of this Act the following terms have the meaning hereby provided

AIDS (Acquired immunodeficiency syndrome) group of infections caused by HIV, which attack and destroys certain cells in the body which are essential to the immune system;

HIV (Human Immunodeficiency Virus) virus which transmits AIDS;

HIV positive person individual infected by the human immunodeficiency virus HIV;

Person with AIDS HIV positive individual with clinical manifestations;

Employee one who, in exchange for remuneration, is obliged to dedicate his intellectual activity or manual activity to another person, whether collective or

singular, public or private, under such person's authority and direction;

Employer one who employs another, whether in public administration, a public or private entity.

Section 2: Purpose

The present Act establishes the general principles aimed at guaranteeing that all

employees and job applications may not be discriminated against in the workplace

on the basis of being or suspected to be HIV positive or suffering from AIDS.

Section 3: Scope of application

The present Act applies, without any discrimination, to all employees and job applicants, in public administration and other public or private areas, including

domestic workers.

Section 4: Prohibition on testing

It is prohibited to test employees or job applicants for HIV without their consent. It

is prohibited to test employees or job applicants for HIV for the purpose of

training

courses or promotions.

#### Section 5: Privacy and confidentiality

Employees living with HIV enjoy the right to confidentiality regarding their condition of being HIV positive, in or outside of the workplace. Health care professionals, from the public service or private sector, are obliged to maintain

confidentiality regarding information about employees that are HIV positive.

#### Section 6: Consent of the employee

No employee may be obliged to inform his or her employer of his or her HIV positive or negative status. The employee may voluntarily request an HIV test, which must be done by a qualified place at an authorised health post.

#### Section 7: Equal opportunities

Employees shall enjoy worker's rights without any discrimination on any ground.

The principle of right to equal opportunities with regard to merit and ability to

exercise one's duty shall apply to all employees.

#### Section 8: Infection at the workplace

An employee who becomes infected with HIV in the workplace, within the course of his or her employment, has the right to guaranteed medical assistance and adequate medication in terms of the Employment Act and other relevant legislation, at the cost of the employer. The employer must guarantee adequate medical assistance approved by the National Health Services and medication available on the national market. Employers whose activities involve laboratory

services, medical clinics, health sectors or other shall take necessary protective

measures to avoid HIV transmission.

#### Section 9: Professional orientation

The employer has the duty to train and re-assign every worker infected with HIV or

suffering from AIDS who is not capable of fulfilling his or her work duties.

#### Section 10: Medical assistance and medication

The employer has the duty to maintain medical assistance owed to the employee infected with HIV, according to the policy of psychosocial medical assistance and

medication adopted for all employees and in light with the National System of Social Security.

#### Section 11: Absence and licences

Absence due to illness by an employee infected with HIV is deemed justifiable.

#### Section 12: Unfair dismissal

Every worker dismissed on the mere ground of his or her HIV positive status is deemed by the Employment Act to have been unfairly dismissed. The employee dismissed in terms of the above subsection is not only entitled to

compensation but  
has to be reinstated.

#### Section 13: Compensation

Compensation is doubled if an employee is unfairly dismissed. Job applicants, who are not admitted for being HIV positive, are entitled to compensation equivalent to six months salary corresponding to the position applied for.

#### Section 14: Information service and counseling

Employers in conjunction with competent service providers shall make HIV/AIDS information, prevention and counseling services available at their workplaces.

#### Section 15: Risk of infection

Employees living with HIV shall abstain from behaviour which might put other employees at risk of contamination.

#### Section 16: Sanctions

Anyone who violates the provisions of section 4 of the present Act is liable to a fine

equivalent to fifty minimum salaries. The fine imposed in the previous subsection is

aggravated if it is a second violation or subsequent to this.

Anyone who violates the confidentiality provided for in sections 5 and 11 of this Act

is liable to a fine equivalent to fifty minimum salaries, if a more severe penalty is

inappropriate.

Anyone who violates subsection 1 of section 6 and the first part of section 11 of the

present Act is liable to a fine equivalent to one hundred minimum salaries.

Anyone who violates section 7 of the present Act incurs a fine of one hundred and

fifty minimum salaries.

Anyone who violates subsection 3 of section 8 of the present Act incurs a fine of

fifty minimum salaries and the compulsory termination of his or her activities until

necessary protection and precaution measures are undertaken.

Anyone who violates the subsection in section 15 incurs a fine equivalent to one

hundred minimum salaries, if a more severe penalty is inappropriate.

#### Section 17: Destination of the fines

The following terms are attributed to fines resulting from the application of this

Act

60 per cent to the state budget;

40 per cent to the department of information, counselling and fight against HIV/AIDS.

- (d) social or economic status;
- (e) degree of physical or mental disability;
- (f) AIDS or HIV status; or
- (g) previous, current or future pregnancy.

...

#### 7. Disputes concerning fundamental rights and protections

(1) Any party to a dispute may refer the dispute in writing to the Labour Commissioner if the dispute concerns

(a) a matter within the scope of this Act and Chapter 3 of the Namibian Constitution; or

(b) the application or interpretation of section 5 or 6.

### CHAPTER 3 – Basic conditions of employment

#### Definitions relating to basic conditions of employment

...

(h) “sick leave cycle”

(i) means the period of 36 consecutive months’ employment with the same employer immediately following

(aa) an employee’ s commencement of employment; or

(bb) the completion of the last sick leave cycle; and

(ii) includes any period, or combination of periods, not exceeding a total of 36

weeks, during which an employee is on annual leave, sick leave or any other absence from work on the instructions, or with the permission, of the employer.

...

### PART D – Leave

#### 24. Sick and compassionate leave

(1) During any sick leave cycle, an employee is entitled to sick leave as follows

(a) during the employee’ s first 12 months of employment, one day’ s sick leave for

every 26 days worked; and

(b) thereafter

(i) not less than 30 working days, if the employee works not more than five days

during a week;

(ii) not less than 36 working days, in the case of any other employee.

(2) Subject to subsection 3, on the employee’ s agreed pay day, the employer must

pay that employee an amount equal to that employee’ s basic wage rate for each day’ s sick leave.

(3) Despite subsection 2, an employer is not required to pay an employee for sick

leave in any of the following circumstances:

- (a) if the employee
  - (i) has been absent from work for more than two consecutive days; and (ii) fails to produce a medical certificate by a medical practitioner;
- (b) to the extent that the employee is entitled to payment in terms of the Employees' Compensation Act, 1941 (Act No 30 of 1941), if the employee is absent from work during any period of incapacity arising from an accident or a scheduled disease;
- (c) to the extent that the employee is entitled to payment in respect of that sick leave from a fund or organisation
  - (i) designated by the employee, and in respect of which the employer makes contributions at least equal to that made by the employee;
  - (ii) that guarantees the payment of sick leave; or
- (d) to the extent that the employee is entitled to payment in respect of that sick leave under any other legislation.

(4) An employee is, during each period of 12 months that the employee is employed, entitled to five working days compassionate leave with fully paid remuneration.

(5) An employee is entitled to compassionate leave if there is a death or serious illness in the family.

(6) The Minister must prescribe the form and manner in which compassionate leave may be applied for by an employee and any other information which may be required to support the application.

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## PART F Termination of employment

### 32. Unfair dismissal

(1) An employer must not, whether notice is given or not, dismiss an employee

- (a) without a valid and fair reason

...

- (b) without following
  - (i) the procedures set out in section 33, if the dismissal arises from a reason set out in section 33(1); or
  - (ii) subject to any code of good practice issued under section 135, a fair procedure, in any other case.

(2) It is unfair to dismiss an employee because that employee

(a) discloses information that the employee is entitled or required under any law to disclose to another person;  
(b) fails or refuses to do anything that an employer must not lawfully permit or require an employee to do.

...

### 38. Employer duties to employees

(1) Every employer or person in charge of premises or place where employees are

employed must, without charge to the employees

(a) provide a working environment that

(i) is safe;

(ii) is without risk to the health of employees; and

(iii) has adequate facilities and arrangements for the welfare of employees;

(b) provide and maintain plant, machinery and systems of work, and work processes, that are safe and without risk to the health of employees;

...

(d) provide employees with adequate personal protective clothing and equipment if

reasonably necessary;

...

(i) take any other prescribed steps to ensure the safety, health and welfare of

employees at work.

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### 41. Employee's right to leave dangerous place of work

(1) If an employee has reasonable cause to believe that, until effective measures

have been taken, it is neither safe nor healthy to continue work in a place of work,

that employee may leave that place.



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