

EMPLOYEE RELATIONS MEMO

No. 92-1

July 9, 1992

SUBJECT: AIDS in the Workplace

The Unified Court System is committed to a policy of nondiscrimination concerning nonjudicial employees who have Acquired Immunodeficiency Syndrome ("AIDS") or who are infected with the AIDS virus ("HIV") or who are perceived to be infected with HIV. This memorandum provides court managers and supervisors with guidelines, based on present medical knowledge, for implementing this policy with applicants and employees.

Some Facts about AIDS¹

- ▶ *AIDS is a disease complex characterized by weakening of the body's natural immunity against disease.* Because of this failure of the immune system, patients with AIDS are vulnerable to unusual infections or cancers that do not pose a threat to anyone whose immune system is working normally.
- ▶ *Not everyone who tests positive for the AIDS virus (human immunodeficiency virus or "HIV") has AIDS.* People infected with HIV may remain in good health for years before developing the symptoms of full-blown AIDS.
- ▶ *The AIDS virus is not easily transmittable.* All evidence indicates that HIV is spread through sexual contact, needle sharing or other blood-to-blood or semen-to-blood contact.

There is no known risk of HIV transmission through casual contact in the workplace. There is no evidence that HIV can be transmitted through sneezing, coughing, eating or drinking from common utensils, using the same lavatory or telephone or other office equipment as an infected person or from being around an infected person for a long time.

- ▶ *There are many myths and misunderstandings about AIDS.* To help employees understand how the AIDS virus is spread and to reduce unrealistic fears of contracting AIDS in the workplace, the UCS has conducted statewide training sessions on AIDS in the workplace. If there is a particular need to repeat such

¹These are based on materials prepared by the NYS Department of Health and the AIDS Council of Northeastern New York.

training, the OCA Education and Training Unit should be contacted by the appropriate court manager.²

AIDS and Employment

State and federal laws and UCS policy prohibit employment discrimination based on disability, which includes AIDS.³ Persons who have AIDS; persons perceived to have AIDS, whether they have the disease or not; persons belonging to groups perceived to be particularly susceptible to AIDS, whether they have the disease or not; persons related to or residing with or otherwise known to associate with individuals having AIDS; and persons who have tested positive for AIDS antibodies, all must be afforded the same employment opportunities as other nonjudicial employees or applicants for UCS positions.

This nondiscrimination policy applies to all employment practices, including:

- ▶ recruitment, advertising and job application procedures;
- ▶ hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
- ▶ compensation and fringe benefits;
- ▶ job assignments, job classifications, lines of promotion and seniority lists;
- ▶ leaves of absence, sick leave or any other leave;
- ▶ selection and financial support for training, including professional meetings and conferences;
- ▶ UCS-sponsored social and recreational programs; and

²For this purpose, the court manager is the Executive Assistant, NYC Chief Clerk or OCA Unit Director. For assistance in obtaining educational brochures, flyers and posters, court managers may contact the OCA Employee Relations Unit. Copies of the Surgeon General's brochure *Understanding AIDS* are available from the US Government Printing Office.

³Both the NYS Human Rights Law and the federal Americans with Disabilities Act prohibit discrimination on the basis of disability, including AIDS. For a more detailed summary of these statutes, see Component F, Program II of the *Participant's Manual* for the Cultural Diversity training program, available through the Diversity Liaisons

- ▶ any other term, condition or privilege of employment.

The UCS Internal Discrimination Claim Procedure, an informal means of resolving employment discrimination claims through the intervention of the local Anti-Discrimination Panels or the OCA Equal Employment Opportunity ("EEO") Office, is available to employees or applicants who believe that they have been discriminated against on the basis of disability, including AIDS. Information on this procedure and on procedures for filing claims under the NYS Human Rights Law and other statutes is available through the Diversity Liaisons or the EEO Office.

- ▶ The UCS will not subject individuals to AIDS screening as a condition of prospective or continued UCS employment. Questions about an individual's HIV status may not be asked in the course of the employment/promotion interview process.
- ▶ Because there is no known risk of AIDS virus transmission through ordinary workplace contact, an individual's HIV status may not be considered in making decisions concerning hiring, promotion, job assignment or access to training opportunities. In making such decisions, the focus must be on each individual's present abilities and job qualifications. For example, it would be discriminatory to exclude an employee who has tested positive for HIV from training opportunities, because he/she might become disabled by AIDS in the future.

The qualifications of an individual who has an AIDS-related disability must be evaluated on his/her ability to perform the essential functions⁴ of the job, with or without reasonable accommodations.

Reasonable accommodations must be provided if they will afford a disabled employee equal employment opportunity. For an employee with an AIDS-related disability, reasonable accommodations might include a part-time or alternative work schedule; an assignment to in-title work requiring less physical exertion; a reassignment to a work location with less exposure to communicable diseases or to an in-title job assignment where necessary absences would have the least impact upon court operations. The OCA Equal Employment Opportunity Office is available to advise court managers regarding reasonable accommodations for disabled employees. Assistance also is available from the UCS Americans with Disabilities Act Coordinator, who may be reached at (518) 474-7469.

- ▶ Because there is no known risk of HIV transmission through ordinary workplace contact, *there is no reason to restrict HIV-positive employees or employees with AIDS from using the same facilities as other employees.*

⁴Court managers may contact the OCA Personnel Office for assistance in determining what duties comprise the "essential functions" of the various job titles.

Just as with any other employee who has an infectious disease, if there is reason to believe that an employee with AIDS has developed a secondary infection, such as tuberculosis, and is in a stage of the disease during which he/she could spread it to co-workers and/or the public, the employee should be placed on a leave of absence until reliable medical documentation has been presented that he/she no longer poses a health danger.⁵ If such an employee insists on working, he/she may be placed on an involuntary leave of absence. For the procedures to be followed in such a situation, see Employee Relations Memo 86-9, Incapacitated Employees.⁶

- ▶ Again, because there is no known risk of HIV transmission through ordinary workplace contact, *employees with AIDS will be allowed to continue to work so long as medically able to do so.* As with other employees with serious illnesses, all reasonable efforts will be made to accommodate such employees, if necessary, to enable them to continue working.

An employee who is necessarily absent from work due to AIDS is entitled to the same leave benefits and considerations as any other employee incapacitated due to a non-work related illness or injury.

Confidentiality

*The law requires the UCS to maintain the confidentiality of persons who have AIDS or who have tested positive for the AIDS virus.*⁷ Employees with AIDS are encouraged to share information with management concerning their ability to perform assigned work in order that management may make reasonable accommodation for the employee's limitations. If an employee does disclose that he/she is HIV positive or has AIDS, only those individuals specifically authorized in writing by the employee may be privy to that information.

The health status of any employee or group of employees is not a subject for public

⁵An employee who could return to work but for the fact the he/she is infectious to others, may charge his/her absences to quarantine leave without charge to leave credits. If the employee cannot work because he/she is disabled by personal illness, then the absences must be charged to sick leave.

⁶Employee Relations Memo 86-9 details procedures under the Incapacitated Employees provision of the collective Agreements and the Rules of the Chief Judge. These provisions address such issues as when the UCS can require an employee to submit to a physical examination; what can be done when an employee's physical condition poses a danger to others in the workplace; and what can be done when an employee is chronically absent due to a disability. Court managers may request copies of this memorandum from the OCA Employee Relations Unit.

⁷If, however, an employee asks for reasonable accommodation for a disability, he/she may be required to provide medical certification of that disability or to undergo a physical examination, which may result in disclosure of the employee's HIV status to the court managers who have the authority to make the reasonable accommodations.

comment. Any questions from the media or other outside groups (including union representatives) regarding the HIV status of employees should be referred to the OCA Communications Office.

Common Questions from Supervisors

- ▶ *What should I do if one of my employees is rumored to have AIDS?*

Treat such a rumor as you would any other rumor that may be disruptive to workplace operations. Deal with the source of the rumor, if known, and take steps to stop it. Contact your court manager⁸ for further guidance on how to proceed in specific cases.

Note that any harassment of employees with AIDS or perceived to have AIDS is inappropriate in the UCS workplace and is cause for disciplinary action.

- ▶ *May I ask an employee if he/she has AIDS?*

It is improper to ask an employee if he/she has tested positive for HIV or has AIDS, and an employee may not be directed to undergo a physical examination solely to determine if he/she has AIDS or is HIV-positive.

If there is reason to believe that the employee's physical condition is affecting job performance, you may inquire generally into his/her physical well-being in the context of counseling him/her concerning proper performance. You also may contact your court manager to discuss whether a physical examination should be scheduled to determine the employee's ability to perform the duties of his/her position.

If an employee does advise you that he/she has AIDS or has tested positive for HIV, you may not tell anyone else without the employee's specific permission.

- ▶ *What steps should I take if I become aware that one of my subordinates has AIDS?*

Treat him/her the same as you would treat someone who has any other serious disease, such as cancer. Be supportive and make any reasonable accommodations within your authority as a supervisor. Refer the employee to the UCS Employee Assistance Program for assistance in locating appropriate counseling and community support programs.

Again, if the employee's absences affect his/her work or if his/her work performance is suffering, consult with your court manager regarding possible

⁸Executive Assistant, NYC Chief Clerk or OCA Unit Director.

courses of action. If the employee has not authorized you to disclose that he/she has AIDS, discuss your concerns to the extent possible without specifying the employee's medical condition.

- ▶ *What do I do if other employees are afraid to work with a person who has the AIDS virus?*

Employees may be concerned that working with a person who has the AIDS virus puts them at risk of contracting the disease. Counsel such employees that there is no known risk of AIDS being spread through casual contact in the workplace. Emphasize the UCS policy that employees affected by AIDS are to be treated with respect, compassion and understanding. Ask co-workers to be sensitive to the needs of such employees and to recognize that continued employment is often life-sustaining and beneficial. Contact your court manager to request educational materials or AIDS training, if necessary.

Because AIDS is not known to be spread through casual contact, employees do not have a right to refuse to work with an HIV-positive co-worker. If after counseling and education, an employee still refuses direction to work with a co-worker on the basis of AIDS, he/she may be disciplined for insubordination.

- ▶ *What if my subordinates come in contact with members of the public whom they believe might have AIDS?*

Employees may not refuse to provide services to any members of the public because of a fear of AIDS. You may assure employees that, because the AIDS virus is spread through exposure to body fluids such as blood or semen, the type of contact with an HIV-positive individual that might occur at a desk or counter will not expose an employee to the AIDS virus. Counsel them that it is the law and UCS policy that members of the public with AIDS or perceived to have AIDS may not be denied equal access to court services.

The UCS provides training in eliminating or minimizing employee exposure to blood-borne pathogens, including HIV, to those employees, such as court security employees, who are reasonably anticipated to be exposed to contact with blood or body fluids in the course of performing their job duties.

- ▶ *What if one of my subordinates is caring for a loved one with AIDS?*

Remember that the law and UCS policy prohibit discrimination in employment on the basis of an association with people with AIDS, and that there is no medical evidence that one who cares for a person with or AIDS can transmit the virus through casual contact in the workplace.

Caregivers are under great pressure at home and on the job. Despite this, the caregiving employee must maintain acceptable attendance and performance and is not entitled to the "reasonable accommodations" that must be afforded a disabled

employee. A referral to the Employee Assistance Program for advice on community support programs for caregivers may be helpful. The caregiver may wish to request an alternative work schedule or a temporary change of job assignments, which may be granted at the discretion of the appropriate court manager.

Precautions against Infection⁹

- ▶ *The body fluids of all persons should be considered to contain potentially infectious agents.* To guard against AIDS, hepatitis B and other infectious agents, avoid direct skin contact with body fluids (including blood, urine, feces and vomit) from any person in the workplace, whether known to have an infectious disease or not.

Persons cleaning up body fluids are advised to wear gloves (available through court security) and to use a freshly-mixed solution of household bleach and water (diluted 1 part bleach to 10 parts water) as a disinfectant.

Detailed instructions on removing body fluids and for handling contaminated items (clothing, tissues, paper towels, etc.) are outlined in the UCS Exposure Control Plan, copies of which are available at each administrative office.

If unanticipated skin contact with body fluids occurs, exposed persons should wash their hands and other affected skin areas with soap and water as soon as possible.

- ▶ Report any exposure to body fluids in the workplace on an Unusual Occurrence Report. Confidential medical evaluation, including testing for blood-borne pathogens, will be made available to the affected employee(s) at UCS expense.

⁹The UCS Exposure Control Plan addresses elimination or minimization of employee exposure to blood-borne diseases such as AIDS and Hepatitis B that may occur in the course of employment, e.g., through exposure to defendants or litigants who may be infected. The Plan applies only to those employees who are reasonably anticipated in the course of performing their job duties to be exposed to contact with blood or other body fluids that are visibly contaminated with blood.