The fear of AIDS



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Because the fear of AIDS causes extraordinary tension and stress at work, it is now a problem for management. Consider these examples:

☐ A manager observes company cafeteria workers whispering in the hallway. When she asks what the trouble is, they angrily reply that they are afraid a coworker has AIDS. The manager tries to reassure them, but in the following days rumors spread. Suddenly absenteeism among the workers soars, and other company employees boycott the cafeteria. Near-hysterical family members call the office of the company president and demand answers.

☐ James, the head of a large bank's international division, tells Dave, the bank's president, that he is going into the hospital. He explains that he has AIDS. After James leaves the office, Dave feels nauseated and sits down. He is appalled at the images that suddenly flood his mind. With a sense of unreality and self-mockery, he carefully covers James's ceramic coffee cup with a napkin and drops both in the wastebasket.

☐ The marketing vice president sits in shock in the company ombudsman's office and recounts last night's phone call with his sick son. What will he tell his colleagues? Will they avoid him? Will the CEO let him present the new sales promotion at the next board meeting if word gets out?

The fear of AIDS springs from very deep, sometimes irrational, feelings about sexuality, chastity, and death, which we would rather not have invade the workplace. And no one likes a medical problem that seems out of control. To understand the problem's scope, ask several colleagues how they would deal with an employee who is upset about a coworker with AIDS. You are likely to find sharp disagreement, high emotion, considerable fear and anger, and little comprehension of the epidemiological data or the legal issues.

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While the Centers for Disease Control (CDC) in Atlanta consider AIDS a "fragile virus" unlikely to be transmitted by ordinary workplace activities, many managers are not yet prepared to handle AIDS-related fear and conflict among employees calmly and responsibly.

The fear of AIDS (acquired immunodeficiency syndrome) has many causes. The disease thus far has been universally fatal. It is closely associated with sex (including homosexual sex among men) and with illegal, intravenous drug use. And much still needs to be learned about the virus, so many people feel very cautious. Much of what we know comes from epidemiological studies done by public health departments like the CDC and the National Cancer Institute (see the insert entitled "What Are AIDS & ARC?").

While the latest epidemiological facts may help managers dispel some of their own fears, most managers will never before have confronted an epidemic that upsets themselves and others so much. As a result, managers dealing with AIDS may doubt their own capacity to make rational, responsible decisions. In light of this fear, managers must stay well informed and must talk with colleagues: about what they can do to cope with their own fears of AIDS; about the legal climate, to avoid discrimination claims and liability; and about helping their companies plan for managing fearful employees.

Legal concerns

One question in many managers' minds is, "Can I be sued for negligence by an employee or a member of the public who contracted AIDS from a worker I knew or thought had AIDS?" As with most AIDS-related questions, the legal answer depends heavily on the epidemiological facts. Accordingly, since at this time all available medical evidence, including the November 15, 1985 guidelines issued by the CDC, indicates that AIDS cannot be spread through casual workplace contact, an employer need not be concerned about negligence liability. Indeed, an employer may incur liability by taking certain measures against employees who have or are suspected of having AIDS. In many states, applicable handicap discrimination laws will protect AIDS victims from forms of disparate treatment.

Handicap discrimination laws limit what an employer can and

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What are AIDS & ARC?

AIDS (acquired immunodeficiency syndrome) and ARC (AIDS-related complex) are believed to be caused by a virus called LAV or HTLV-III. The incubation period appears to range from a few weeks or months to five or more years. AIDS attacks the immune system, leaving a person vulnerable to rare, opportunistic infections (for example, unusual forms of pneumonia and tumors). Dementia and other serious nervous system disorders are also linked to the AIDS virus. ARC may appear in a variety of less serious ways, including swollen lymph glands, weight loss, and increased susceptibility to many new or latent infections.

Both secondary infections and the immune system can be treated, but so far AIDS has been incurable and fatal. Because AIDS appears to behave differently in different people, because infection patterns vary from country to country, and because medical research is moving so fast, precise definitions of these syndromes will probably change. The following facts we know for certain:

☐ To date AIDS and ARC are known to be spread only by intimate sexual contact where bodily fluids are exchanged, contaminated needles, transmission of blood and blood products, from mother to unborn child, and perhaps to nursing infants. The virus has never been known to spread by ordinary human contact, toilet seats, swimming pools, sneezing, shaking hands, or ordinary family life.

☐ Both heterosexuals and homosexuals can get AIDS. In some countries nearly half the victims are women.

☐ Widely available "AIDS tests" test for *antibodies* (exposure to the virus), not for the virus itself. Tests for the virus are expensive and available only through medical researchers.

☐ The CDC estimate that many people with positive antibodies will develop AIDS, many will develop ARC, some or many may remain symptom free.

☐ AIDS antibody tests can give false positives and false negatives. Some AIDS victims appear no longer to have the virus toward the end of their illness; some people may die of AIDS before antibodies ever appear.

☐ As of the end of June 1986, about 22,000 cases of AIDS have been reported in the United States by the CDC. A somewhat higher number have been reported worldwide. Perhaps ten times as many people have ARC. As many as two million Americans may carry antibodies; possibly five times this number carry AIDS antibodies elsewhere in the world. The "doubling time" for numbers of cases appears to be lengthening, as sexual practices and I.V. drug use practices change.

cannot do to an employee afflicted with the disease. Because statutory language among jurisdictions varies considerably, employers should carefully ascertain if, and how, they are subject to state and/or federal handicap laws. Most handicap statutes prohibit discrimination against "otherwise qualified handicapped individuals," that is, against individuals who can meet the essential requirements of their jobs though perhaps with some accommodation for their disability.

In most cases, these laws protect not only the handicapped but also those with a record of having been handicapped and those whom others (including any employer) may *perceive* as handicapped, such as homosexuals and people with ARC.

Under most such laws an employer may deny employment to, or otherwise discriminate against, a handicapped person only if the employee cannot do the job, if the employer cannot reasonably accommodate the handicap, or if a reasonable probability of substantial injury to the individual or others exists. Usually, an employer has none of these defenses.

Employers, then, must treat employees with AIDS as they would workers with other long-term illnesses. An employer may take action against an employee with AIDS only if the disease is severely debilitating and the person cannot perform the job's essential tasks. Such AIDS victims, however, are likely to be at an advanced stage of the disease and in most cases will already have left work. If they have not, the employer may still have a burden under most handicap statutes to accommodate the handicap by altering work responsibilities or by granting an extended medical or disability leave.

The obligation to accommodate the handicapped individual means that an employer will probably never be justified in discriminating against an AIDS victim who only sporadically misses work for medical treatment or because of episodes of serious infection. An employer could scarcely characterize these or most other forms of accommodation as unduly disruptive or expensive.

Finally, based on CDC guidelines, AIDS infection would probably not so interfere with a worker's duties as to risk seriously injuring either the victim or his or her coworkers. Moreover, employers will probably not be deemed competent to determine whether and how an employee's work would endanger his or her health (by exposure, for example, to various infections in the workplace). Barring clear direction from a doctor to keep an AIDS victim from working, the employer will have a continuing obligation to employ and accommodate the victim by reassigning certain duties and the like.

AIDS testing. Although the AIDS antibody test has become essential for certain purposes – like ensuring the purity of blood banks – it is severely limited as a diagnostic tool. Employers as well as the general public must realize that even a foolproof antibody test could not reveal whether an asymptomatic person has developed, or will develop, active AIDS.

Legal dangers also abound. Even presuming that a technology could accurately isolate those with AIDS or ARC from those merely exposed to the virus, under most handicap statutes tests would be impermissible because many employees with

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Resource list

The Centers for Disease Control (CDC), under the Department of Health and Human Services, are the central federal agency for medical and epidemiological information about AIDS and for federal guidelines and recommendations on the workplace aspects of AIDS. Your company medical department may wish to subscribe to the CDC's *Morbidity and Mortality Weekly Report*, a publication that includes updates on research, new cases reported, and public health recommendations. *MMWR* subscriptions are available from MMS Publications, C.S.P.O. Box 9120, Waltham, MA 02154. The CDC also produce periodic public information fact sheets on AIDS. Centers for Disease Control Information Office, 1600 Clifton Road, Atlanta, GA 30333. The CDC AIDS hot line number is 800-342-AIDS.

The Bureau of National Affairs began publishing a biweekly update, *AIDS Policy and Law*, in January 1986. It covers legal developments and analyses, guidelines, and employer policies. Available from Buraff Publications, P.O. Box 19710, Washington, DC 20036, phone: 202-452-7889.

The Bar Association for Human Rights publishes a newsletter that covers AIDS-related legal issues. *Lesbian/Gay Law Notes*, P.O. Box 1899 GCS, New York, NY 10163.

Some state health departments, such as those in New York, California, and Massachusetts, produce public information materials on AIDS. Their mailing lists may be uncertain; it is best to make periodic calls to secure the latest materials and policy statements.

Reports and resource materials are available from a number of recent conferences on AIDS. *AIDS in the Workplace, a Three-Hour Teleconference*, sponsored in March 1986 by PBS and the Bureau of National Affairs, covers legal, medical, human resource, and insurance issues. For the videotape, call 800-344-3337; for the data report, 800-452-7773; for resource materials, 800-372-1033.

AIDS: The Workplace Issues is a briefing book prepared for the 1985 American Management Association conference. AMA, 135 West 50th Street, New York, NY 10020. 212-586-8100

AIDS in the Workplace is an information packet that covers legal issues, legislation, and workplace policy. It is available from the International Personnel Management Association, 1617 Duke Street, Alexandria, VA 22314.

The New York City Department of Health has produced *AIDS: A Resource Guide for New York City*. It is useful for company medical and employee assistance personnel who need to refer employees who are sick or fearful. NYCDH, 126 Worth Street, New York, NY 10013.

The Truth About AIDS, by Ann G. Fettner and William A. Check, MD (New York: Holt, Rinehart & Winston, 1984), was updated in 1985 and gives a readable history of the AIDS crisis, a clear presentation of medical and epidemiological data, a glossary, and a resources section.

A detailed review of legal issues can be found in Arthur S. Leonard, "Employment Discrimination Against Persons with AIDS," *The University of Dayton Law Review*, Spring 1985, vol. 10, no. 3. 300 College Park, Dayton, OH 45469.

Company medical departments can refer employees to and/or get information from hospitals and clinics in a number of cities. Two that provide comprehensive AIDS assessment, technical assistance for physicians, and medical care and counseling are The Community Health Center in New York City, phone: 212-675-3559; and the AIDS clinic at San Francisco General Hospital, phone: 415-821-8830.

AIDS or ARC would still be able to perform the essential functions of their jobs. Action taken against an employee on the basis of test results would almost invariably constitute *prima facie* handicap discrimination. In many jurisdictions, if employers administered the test, courts could find them liable for invasion of privacy.

If, for example, cafeteria employees demand that a coworker be tested for AIDS, the manager should politely refuse and direct the employees' attention, by way of a strong educational program, to the current epidemiological facts pointing to the absence of a risk of workplace contagion. Managers should steer clear of AIDS testing for job applicants as well as employees because the same problems would arise.

Moreover, an employer may not ask if a job applicant has AIDS or any other particular illnesses or disabilities. While technically the employer may ask if the applicant has a condition that would interfere with his or her ability to do the job, unless the person is already quite sick such inquiry serves no rational purpose, as courts have held that risk of future incapacitation does not constitute a sufficient basis for a refusal to hire.

Privacy. In a crisis, coworkers may clamor for a manager to disclose the identity of, and medical information about, an employee with AIDS—especially if, for example, the sick employee uses a common telephone or kitchen. In no way should employers succumb to such pressure; if they do, they face tremendous potential liability to the AIDS victim, who could sue on the basis of the handicap laws, defamation, invasion of privacy, and perhaps even violation of civil rights. The manager must remember that only certain medical people have a right to such information and usually only with the victim's consent; the consequences of any other consensual disclosures must be carefully weighed.

Safety. Coworkers, fearing for their own safety, may collectively refuse to work with an employee thought to have AIDS. This situation, which has occurred in health care institutions, raises the specter of an economic, as well as a managerial, crisis. Under the National Labor Relations Act, this action might constitute "protected con-

certed activity" for which employees could not be disciplined if they had a "good faith" belief about the existence of a hazard.

Legal experts sharply disagree on this question, although an employer could probably fire or otherwise discipline protesting employees who showed "bad faith" by stopping work in spite of careful dissemination of the epidemiological facts about communicability. Nevertheless, until the National Labor Relations Board rules on the matter, the safer course may be to hire temporary or permanent replacements for the striking workers rather than to fire them.

Clients and customers. Employers are obliged not to discriminate against clients or customers who may be AIDS sufferers. Refusal to serve an AIDS victim properly may violate certain handicap discrimination laws and, depending on the business involved, public accommodation statutes. In this situation, as in so many others concerning AIDS in the workplace, an employer's best strategy is to educate his or her employees about the disease, try to understand their fears, and address those fears directly.

What the manager can do

While the handicap statutes outline the legal parameters of dealing with AIDS at work, case-by-case administrative and personal issues are much more difficult to handle. Wise managers will acknowledge and discuss their own fears about AIDS before a crisis arises so that their decisions may be compassionate and responsible. Because attitudes toward AIDS range from moral outrage to quiet sympathy, managers need to prepare themselves for the unexpected.

In many companies, the human resource and medical departments have literature on AIDS. Excellent training programs are now widely available; these are especially helpful if an AIDS case suddenly arises at work (see the insert entitled "Resource List"). Along with keeping up-to-date about the legal issues and handicap laws through consultation with in-house counsel, it's a good idea to read at least one major informational booklet before a case actually crops up. Employers should consider cooperating with other companies, both locally and regionally, to support AIDS research and resource and public education programs.

The manager confronted with a rumor or a case of AIDS among employees should first get advice from company professionals or outside resources, and then should deal with employees in a gentle, direct way. One may begin by going to the individual thought to have AIDS, discuss rumors, perhaps recommend resources, and offer support. As the legal guidelines make clear, in most jurisdictions the manager must respect confidentiality and privacy.

A manager may, however, suggest to the sick employee that misconceptions abound and may ask for consent to discuss the matter openly at work and to bring a training program into the department. Management should also seek medical opinion on any issue of protecting coworkers or, more likely, protecting the immune-compromised employee from infection from coworkers.

Most authorities also recommend an approach that deals with AIDS victims on a case-by-case basis. (In support of rational rather than fearful thinking, we do not recommend having a special "AIDS policy" but a general policy for all catastrophic illnesses and accidents.) Since cases vary widely, the case-by-case method emerges as most humane, least expensive, and most practical. Making it work, however, requires meticulous internal communications and teamwork.

If a medium-sized or a large company has not yet pulled together a task force, it should do so before the first case occurs at work. This process must include top management to ensure that all important decision makers have enough good data before a crisis occurs.

Top executives should gather together representatives from the human resource, equal opportunity, employee assistance, medical, and legal departments. They should also include those offices dealing with benefits, safety issues, any kind of complaint handling (on company hot lines or in ombudsman offices), and security (for example, on-site emergency medical technicians and police). This task force may need to continue even after initial company planning is accomplished.

First-order tasks will include a review of the medical and legal issues, policy making, management training and communications plans, and plans for dealing with expressions of concern and complaints. Companies should especially plan for the possibility that some line and human resource managers may need to spend a lot of time with employees who are afraid and angry about AIDS.

Managers need to initiate and support task forces and training programs inside their own companies. Until effective vaccines and treatment are available, prevention of the spread of the disease is the most powerful weapon against AIDS. Experience also shows that education in the workplace can sharply reduce fear and stress.

Executives' hardest task will be to face their own fears about the disease. They must try to do this, however, if they can – by talking with family, friends, or colleagues, by reading literature or attending seminars. Once that is accomplished, the job of dealing with the fear of AIDS at work will be much easier. Good tools for this job do exist: education, compassion, and rational discussion are among the most valuable.