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AIDS HELPLINE: 0800-0123-22 Prevention is the cure

GOVERNMENT NOTICE

DEPARTMENT OF LABOUR**No. 1349****19 November 2004****COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASES ACT No.
130 of 1993, AS AMENDED****DRAFT CIRCULAR INSTRUCTION REGARDING COMPENSATION FOR
OCCUPATIONALLY ACQUIRED HIV**

The Director-General of the Department of Labour intends to approve Circular Instruction No. 183 regarding compensation for occupationally acquired HIV infection and AIDS as a policy in the Compensation Fund. Any person, who wishes to comment on the proposed instruction, should submit such comments not later than **31 January 2005** in writing to:

Fax: (012) 323 8627

E-mail: info@wcomp.gov.za

The Compensation Commissioner
P O Box 955
Pretoria
0001

Or

The Compensation Commissioner
Compensation House
Corner of Soutpansberg Road and Hamilton Street
Pretoria
0001

Circular Instruction No. 183

DRAFT CIRCULAR INSTRUCTION REGARDING THE COMPENSATION FOR OCCUPATIONALLY ACQUIRED HIV INFECTION AND AIDS**THE COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASES ACT, 1993 AS AMENDED**

The following circular instruction is issued to clarify the position in regard to compensation of claims for occupationally acquired Human Immunodeficiency Virus (HIV) infection and Acquired Immune Deficiency Syndrome (AIDS) and supersedes all previous instructions regarding compensation for occupationally acquired HIV infection and AIDS.

1. DEFINITION:

Occupationally acquired HIV infection is an infection contracted as a result of exposure to an HIV infected source in a workplace, resulting in progressive weakening of the immune system of an individual leading to the AIDS. The HIV infection must have been arisen out of and in the course of employment.

2. DIAGNOSIS:

The diagnosis of occupationally acquired HIV infection must be confirmed by any internationally acceptable test at any given time and must meet the following criteria:

- a) An occupational exposure to HIV infected source.
- b) Documented (Proof of a reported) work-related incident/accident involving a potential HIV infected source.
- c) Blood test (laboratory) results of the affected employee done within 72 hours of the incident/accident, confirming the absence of HIV antibodies.
- d) Confirmation that the source was HIV infected as far as reasonably practicable.
- e) Confirmatory blood test (laboratory) results of the affected employee confirming HIV infection (seroconversion) at six and/or twelve weeks or 6 months after the date of the work-related incident/accident

3. **IMPAIRMENT:**

3.1 Assessment of impairment shall be determined after maximal medical improvement has been reached i.e. when the treating medical practitioner considers that no further improvement is anticipated on available medical treatment.

3.2 Confirmed diagnosis of occupationally acquired HIV infection and one of the following conditions listed below will equate to 100% impairment:

3.2.1 Advanced immunocompromised stage characterised by an AIDS-defining condition(s) that is Clinical stage IV as defined in the World Health Organisation Staging System for HIV infection and Disease in Adults and Adolescents.

3.2.2 When Highly Active Antiretroviral Therapy (HAART) and other therapies are no longer anticipated to produce significant clinical improvement.

3.3 Permanent functional impairment due to residual and permanent sequelae of an HIV/AIDS related condition(s) shall be assessed according to the system and /or organ(s) affected.

4. **BENEFITS:**

Benefits will be payable according to the Compensation for Occupational Injuries and Diseases Act. Eligibility for benefits will lapse if there is no seroconversion after 6 months from the date of the incident.

a. **Temporary total disablement:**

Payment for reasonable temporary total or partial disablement shall be made for as long as such a disablement continues but not for a period exceeding 24 months.

b. **Permanent disablement:**

Permanent disablement will be assessed once the treating doctor has furnished a comprehensive Final Medical Report (W.Cl. 5), to the Compensation Commissioner. A confirmed diagnosis of occupationally acquired HIV infection shall equate to 15% permanent disablement and confirmed diagnosis with advanced Acquired Immunodeficiency Syndrome (AIDS) and/or poor response to HAART shall equate to 100% permanent disablement. Permanent disablement due to impairment as a result of permanent sequelae of an HIV/AIDS related condition(s) shall be assessed according to the other relevant instruction(s).

c. **Medical aid:**

Medical expenses shall be provided for all reasonable treatment from the date of the definitive diagnosis. The medical aid covers the costs of diagnosing HIV infection and any necessary treatment, including antiretroviral drugs, provided by any healthcare provider. The Compensation Commissioner will decide on the need for, the nature of and the sufficiency of the medical aid supplied. The immediate cost of post-exposure prophylaxis (PEP) will not initially be paid under COIDA and will be the employer's responsibility. The Office of the Compensation Commissioner will pay reasonable medical expenses including PEP expenses once liability of the claim has been accepted.

5. **REPORTING:**

5.1 The following documentation should be submitted to the Office of the Compensation Commissioner or the employer individually liable or the mutual association concerned:

- a) **Draft** Initial report of occupational exposure to blood or other body fluids borne pathogens (W.CL.306). (**Annexure A**)
- b) Employer's Report of an Accident (W.CL. 2).
- c) Notice of Accident and Claim for Compensation (W.CL. 3).
- d) First Medical Report (W.Cl. 4) , and
- e) Progress Medical Report (to be submitted monthly to the Compensation Commissioner) - (W.CL. 5P).
- f) Final Medical Report (W.CL. 5F).
- g) **All other reports** that may be relevant to the diagnosis and treatment of the condition.

5.2 The following principles must be adhered to when reporting:

- a) Section 7(2) of the Employment Equity Act No. 55 of 1998 prevents an employer or employer-provided health service from testing an employee for HIV, without the Labour Court's authorization.
- b) The employer/employer-provided health services must obtain Labour Court authorization within 72 hours if they wish to test for employee's HIV status for compensation purposes, unless the test is voluntary and confidential.
- c) Informed consent must be obtained from the source before HIV testing occurs.
- d) During HIV testing for compensation purposes, it must be noted that "permissible" testing as defined in the Department of Labour's Code of Good Practice: Key Aspects of HIV/AIDS and Employment may only take place:
 - at the initiative of an employee(voluntary).
 - with informed consent;
 - within a health care provider and employee-patient relationship;
 - with pre- and post-test counselling
 - with strict procedures relating to confidentiality of the employee's HIV status.
 - in accordance with the Department of Health's policy on testing for HIV at any given time.

6. **CLAIM PROCESSING:**

The office of the Compensation Commissioner will consider and adjudicate upon the liability of all claims. The medical officers in the Compensation Commissioner's office are responsible for the medical assessment of a claim and for the confirmation of the acceptance or rejection of a claim.


DIRECTOR-GENERAL: LABOUR

Date: 18 October 2004

W.CL 306


ANNEXURE A

**INITIAL REPORT OF OCCUPATIONAL EXPOSURE TO BLOOD / OTHER BODY FLUIDS BORNE PATHOGENS (W.CL 306)
THE COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASES ACT, 1993 AS AMENDED**

This initial report form for accident/ incidents of percutaneous or mucocutaneous exposure to blood or other body fluids from a source known or subsequently found to be infected with HIV and/or other blood borne pathogens. It must be submitted within seven days of the incident/accident.

DECLARATION BY THE EMPLOYER OR AUTHORISED PERSON

I hereby declare that the particulars of this report are to the best of my knowledge and belief true and accurate

Signed on thisday of year  SIGNATURE.....

1. EMPLOYER:

Name of the employer where the incident/accident occurred
Registration number of this business with the Compensation Commissioner
Name of the reporting personnel and position.....
Street address Postal code
Postal address Postal code Tel No. (...)
Fax no. (.....)E-mail address
Nature of business, trade or industry

2. EMPLOYEE:

Surname: First name(s)
Marital status: Citizen of
Personnel No. Occupation:
Id No.
Street address: Postal Code:
Postal address: Postal Code:
Tel No.

3. DESCRIPTION OF THE INCIDENT

Date of incident/accident :

Time and place of the incident/accident

Date employee reported the incident/accident :

Time employee reported the incident:

Was the employee's action at the time of the incident in connection with your trade or business? YES NO

What task was the employee performing at the time of the incident?

.....

.....

.....

Brief explanation of how the incident occurred:

.....

.....

.....

4. ADDITIONAL INFORMATION:

4.1 Please indicate with an X in the relevant box

Type of Exposure

Instrument/ human/ animal Scratch		Percutaneous inoculation		Mucocutaneous exposure		Human /Animal Bite	
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Type of Sharp

Hollow bore needle		Gauge		Solid needle		Other sharp	
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Depth of Injury

Superficial (Surface scratch)		Moderate (Skin penetrated)		Deep (Deep penetrating wound with bleeding)		Deep (Deep penetrating wound without bleeding)	
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Material exposed to

Fresh blood		Dried blood		Blood stained fluid / tissue		Other fluids	
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4.2 Please indicate with an X in the relevant box

Was the device visibly contaminated with blood?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Unknown	<input type="checkbox"/>
Was the employee tested for HIV antibodies within 72 hours of the incident/accident?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Unknown	<input type="checkbox"/>
Was blood or other body fluid infected with HIV at the time of the incident/accident?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Unknown	<input type="checkbox"/>
Did the employee agree that he /she be tested for blood borne pathogens including HIV for compensation purposes?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Unknown	<input type="checkbox"/>
Was the employee informed that the blood test results would be forwarded to the Compensation Commissioner?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Unknown	<input type="checkbox"/>
Has the employee been given post exposure prophylaxis (PEP) for blood borne pathogens including HIV?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Unknown	<input type="checkbox"/>
Did the employee sign an informed consent?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Unknown	<input type="checkbox"/>
Were pre- and post-test counselling done in respect of blood testing?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Unknown	<input type="checkbox"/>
