



REPORT ON THE REVISED SOUTH AFRICAN CODE OF GOOD PRACTICE ON HIV AND AIDS AND THE WORLD OF WORK

1. BACKGROUND

- 1.1. The Code of Good Practice: Key Aspects of HIV/AIDS and Employment ('the Code') was published in terms of section 30(1) of the Employment Equity Act on 1 December 2000.
- 1.2. In 2009 and 2010, the International Labour Organisation discussed HIV and AIDS in the World of Work which resulted in the adoption in June 2010 of Recommendation 200. The Recommendation bound member states to ensure measures to address HIV and AIDS in the World of Work. This necessitated the review of the Code.
- 1.3. Government indicated its intention to update the Code in 2009 and reported at the chamber meeting held in July 2011 that they were still busy incorporating the ILO Recommendation into the Code. Government undertook that after finalization the Code would be published and tabled at Nedlac for deliberation by the social partners.
- 1.4. In September 2011, the Minister tabled the draft of the Revised Code on HIV and AIDS and the World of Work, published for public comments, with Nedlac for social partners' deliberations.
- 1.5. The Labour Market Chamber then established a Task Team consisting of representatives from Government, Organised Labour, Organised Business and the Community Constituency to discuss and make inputs to the Revised Code.

2. INTRODUCTION

2.1. The Department of Labour presented the Draft Revised South African Code of Good Practice on HIV and AIDS and the World of Work and the ILO Recommendation at the task team meeting held on 18 November 2011.

2.2. The Task Team consisted of the following representatives:

Business:	Vikashnee Harbhajan; Tanya Cohen; Brad Mears; Vanessa Phala and Joy Beckett
Labour:	Jacqueline Bodibe; Bongani Dlamini; Lennox Mekuto; Busisiwe Tshabalala; Edna Bokaba and Phumzile Mashishi
Government:	Niresh Singh; Ntsoaki Mamashela; Vimla Singh; Masilo Lefika
Community:	Sylvia Stevens-Maziya; Emily Motaung; Mpho Radaba and Kedibone More
ILO:	Simpfiwe Mabhele; Evelyn Serima and Sindile Moitse

2.3. The task team met on the following dates:

- 18 November 2011;
- 31 January 2012; and
- 01 March 2012.

3. AREAS OF AGREEMENT

There was substantial agreement on the principles and areas of substance reflected in the text of the revised Code itself (attached as Annexure A to this report). The areas of agreement are set out below.

3.1 The social partners agreed with the principal of alignment of the Code to ILO Recommendation 200. In order to ensure alignment between the Code and other relevant legislation and ILO Recommendation, the following definitions should be aligned:

- 3.1.1. Definition of workers and employers to be aligned with the Recommendation;
- 3.1.2. Definition of world of work to be aligned with the scope in the Code; and
- 3.1.3. Definition of dependents to be aligned with s27 of the Basic Conditions of Employment Act (BCEA)

3.2 Social partners agreed to make reference to the Technical Assistance Guidelines ('TAG') as a document that would afford employees protection at the workplace and would unpack and clearly explain clauses in the Code:

- 3.2.1 Real and perceived discrimination would be dealt with in more detail in the Technical Assistance Guidelines; and
- 3.2.2 Section 6 dealing with elimination of unfair discrimination and promotion of equal opportunity and treatment should be unpacked in the TAG.

3.3 The social partners agreed to the following principles:

- 3.3.1 Respect for fundamental human rights, fundamental freedoms and equality
- 3.3.2 HIV and AIDS is a workplace issue
- 3.3.3 Reduce HIV-related stigma and unfair discrimination, equality of opportunity and treatment
- 3.3.4 Gender Equality
- 3.3.5 The right of access to continue in employment
- 3.3.6 Prevention
- 3.3.7 Treatment, Care and Support
- 3.3.8 Social Dialogue / Consultations
- 3.3.9 Occupational Health and Safety
- 3.3.10 Testing, confidentiality and disclosure

3.4 The meeting agreed that preamble should include success rate of the previous code. The meeting agreed to include section 20 of the National Health Act stating that Health Care Personnel should not be discriminated against due to their status.

4 AREAS OF DISAGREEMENT

The following areas of disagreement were identified:

4.1 Business supported the Code, but proposed that there be more emphasis on the following items:

- 4.1.1 Social partnership co-operation in addressing HIV and AIDS in the World of Work;
- 4.1.2 All workers taking responsibility in addressing HIV and AIDS in the workplace;
- 4.1.3 Reducing the regulatory burden in relation to monitoring and evaluation, particularly for SMMEs: and
- 4.1.4 Making the Code an accessible and best practice standard.

4.2 Government explained that Chapter 2 of the Employment Equity Act protects the job applicants in terms of unfair discrimination.

4.3 Labour proposed an inclusion of a paragraph that would clarify job applicants under 6.5.11 of the Code

5 RECOMMENDATIONS

The social partners agreed to schedule, at a later stage, a workshop outside the Nedlac processes to discuss and give input to the draft of the Revised Technical Assistance Guidelines to ensure that it was aligned to the Code and the ILO Recommendation.

6 CONCLUSION

6.1 It was agreed at the meeting held on 1 March 2012 that the meetings of the Task Team on the Draft Revised South African Code of Good Practice on HIV and AIDS and the World of Work (attached) had been concluded. Final inputs would be provided by constituents in writing. Once completed, the Code would be

recommended for approval by the NEDLAC Labour Market Chamber which would then be forwarded to the Minister of Labour.

6.2 Government explained further that should there be any further inputs that social partners would like to submit after the Nedlac process, these should be made through their representatives on the Commission for Employment Equity (CEE) seeing that this is the mandated body to approve and advise the Minister on the publication of Codes under the Employment Equity Act.

6.3 Government requested that social partners should take into cognisance of the fact that the CEE has to deliver the final Code to the Minister before end of March 2012 as per the Strategic Plan of the Department.