
The ILO and its instruments on HIV and AIDS and the world of work

May 2012

HIV and AIDS area of work

“Nine of every ten people living with HIV will get up today and go to work.”

Juan Somavia, Director-General of the ILO

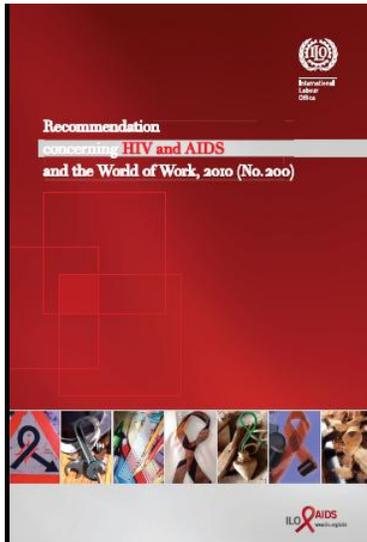
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Content

ILO International standards	3
1.1 Recommendation N. 200 concerning HIV and AIDS and the World of Work	3
1.2 The code of practice on HIV and the world of work	5
1.3 Discrimination (Employment and Occupation) Convention, 1958, N. 111	6
1.4 List of International Convention relevant to HIV	7
1.5 ILO education tools.....	10

ILO International standards

1.1 Recommendation N. 200 concerning HIV and AIDS and the World of Work



The HIV and AIDS Recommendation, 2010 (No. 200), adopted on 17 June 2010 at the 99th Session of the International Labour Conference, marks an important step in the HIV/AIDS sector.

It is the first International standard on HIV and AIDS and World of Work.

Recommendation 200 establishes that the workplace should play a role in the HIV response and calls for the adoption of **national workplace policies and programmes on HIV and AIDS** to facilitate access to HIV prevention, treatment, care and support services.

Recommendation No. 200, was adopted at the Conference by an overwhelming majority vote (439 votes in favour, equivalent to 96.6 per cent of the votes cast).

Recommendation R.200 calls for respect for the fundamental human rights of all workers, including observance of the principle of gender equality and the right to be free from compulsory testing and disclosure of HIV status, while encouraging everyone to undertake voluntary confidential HIV counseling and testing as early as possible.

The ILO Recommendation No. 200 highlights the critical role that the world of work should play in contributing to national responses to the epidemic. In particular underlines that the Ministry of Labour and employers' and workers' organizations, actively participate in the national HIV/AIDS response and that the world of work (i.e. workplaces) establishing prevention measures through information changes in behavior, knowledge and the creation of a non-discriminatory environment.

The ILO Recommendation on HIV and AIDS and the World of Work calls for the development of tripartite national workplace policies and programmes on HIV and AIDS and on occupational safety and health. These should be integrated into national HIV and AIDS strategies.

The Recommendation can be given effect by one or a combination of the following means (par. 37):

- national laws and regulations;
- collective agreements;
- national and workplace policies and programmes of action;
- sectoral strategies

Note: An ILO study is on going to support Jordan Government in Jordan, Lebanon and Syria and stakeholders to analyses national law in order to identify existing barriers to give effect to R.200.

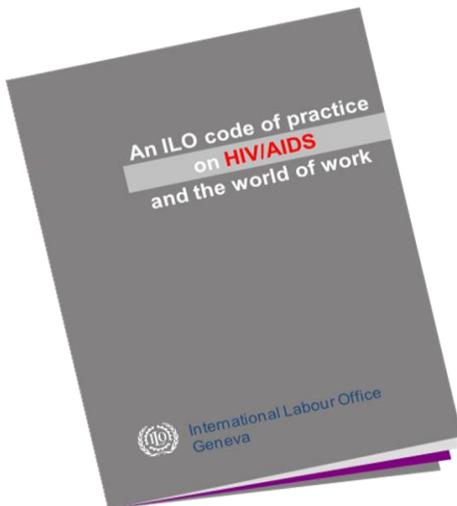
The Recommendation's General Principles:

- a- The response to HIV and AIDS should be recognized as contributing to the realization of human rights and fundamental freedoms and gender equality for all, including workers, their families and their dependants.
- b- HIV and AIDS should be recognized and treated as a workplace issue, which should be included among the essential elements of the national, regional and international response to the pandemic with full participation of organizations of employers and workers.
- c- There should be no discrimination against or stigmatization of workers, in particular jobseekers and job applicants, on the grounds of real or perceived HIV status or the fact that they belong to regions of the world or segments of the population perceived to be at greater risk of or more vulnerable to HIV infection.
- d- Prevention of all means of HIV transmission should be a fundamental priority.
- e- Workers, their families and their dependants should have access to and benefit from prevention, treatment, care and support in relation to HIV and AIDS, and the workplace should play a role in facilitating access to these services.
- f- Workers' participation and engagement in the design, implementation and evaluation of national and workplace programs should be recognized and reinforced.
- g- Workers should benefit from programs to prevent specific risks of occupational transmission of HIV and related transmissible diseases, such as tuberculosis.
- h- Workers, their families and their dependants should enjoy protection of their privacy, including confidentiality related to HIV and AIDS, in particular with regard to their own HIV status.
- i- No workers should be required to undertake an HIV test or disclose their HIV status.
- j- Measures to address HIV and AIDS in the world of work should be part of national development policies and programs, including those related to labor, education, social protection and health;
- k- The protection of workers in occupations that are particularly exposes to the risk of HIV transmission.

1.2 The code of practice on HIV and the world of work

The ILO in 2001 has issued “*the Code of Practice on HIV/AIDS and the World of Work*” (hereinafter referred to the “**Code**”). The Code provides useful guidelines to employers, trade unions and workers in the workplace. The Code, if adhered to, can make a difference in the way workers living with HIV/AIDS are protected from compulsory invasive tests, unwarranted disclosure of their HIV status, and unfair dismissals based on their HIV status. The Code also offers protections of workers against real or perceived unfair discrimination in matters of continuity of employment and benefits; it protects the workers against violation of their right to privacy and prevents compulsory HIV testing related to recruitment or retention of employment. The ILO Code is based on **ten key** principles:

1. **Recognition of HIV/AIDS as a workplace issue:** HIV/AIDS is a workplace issue, and should be treated like any other serious illness/condition in the workplace.
2. **Non-Discrimination:** In the spirit of decent work and respect for the human rights and dignity of persons, infected or affected by HIV/AIDS, there should be non discrimination against workers on the basis of real or perceived HIV status. Discrimination and stigmatization of people living with HIV/AIDS inhibits efforts aimed at promoting HIV/AIDS prevention.
3. **Gender Equality:** The gender dimension of HIV/AIDS should be recognized. Women are more likely to become infected and are more often adversely affected by the HIV/AIDS epidemic than men due to biological, socio-cultural and economic reasons. The greater the gender discrimination in societies and the lower the position of women, the more negatively they are affected by HIV. Therefore, more equal gender relations and the empowerment of women are vital to successfully prevent the spread of HIV infection and enable women to cope with HIV/AIDS.
4. **Healthy work environment:** The work environment should be healthy and safe, so far as is practicable, for all concerned parties, in order to prevent transmission of HIV, in accordance with the provisions of the Occupational Safety and Healthy Convention, 1981 (No. 155).
5. **Social Dialogue:** The successful implementation of an HIV/AIDS policy and program requires co-operation and trust between employers, workers and their representatives and governments, where appropriate, with the active involvement of workers infected and affected by HIV/AIDS.



6. **Screening for purposes of exclusion from employment or work processes:** HIV/AIDS screening should not be required of job applicants or persons in employment.
7. **Confidentiality:** There is no justification for asking a job applicant or workers to disclose HIV related personal information. Nor should co-workers be obliged to reveal such personal information about fellow workers. Access to personal data relating to a worker's HIV status should be bound by the rules of confidentiality consistent with the ILO's "*code of practice on the protection of workers' personal data*", 1997.
8. **Continuation of employment relationship:** HIV infection is not a cause for termination of employment. As many other conditions, persons with HIV related illnesses should be able to work for as long as medically fit in available, appropriate work.
9. **Prevention:** HIV infection is preventable. Prevention of all means of transmission can be achieved through a variety of strategies which are appropriately targeted to national conditions and which are culturally sensitive.
10. **Care and Support:** Solidarity, care and support should guide the response to HIV/AIDS in the world of work. All workers, including workers with HIV, are entitled to affordable health services. There should be no discrimination against them and their dependants in access to and receipt of benefits from statutory social security programs and occupational schemes.

The ILO Code itself is not a treaty and thus not legally binding on states.

1.3 Discrimination (Employment and Occupation) Convention, 1958, N. 111

In the context of employment, the ILO has defined discrimination in the "Discrimination (Employment and Occupation) Convention, 1958, N.111"¹ (the "Convention 111") as "any distinction, exclusion or preference made on the basis of a race, color, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation"².

Under the Convention 111, "each member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof"³.

The Convention is premised on the basis that discrimination is a violation of human rights under the Universal Declaration of Human Rights.

¹ The Convention 111 was ratified by more than 195 member states of the ILO.

² Article 1 (a)

³ Article 2

1.4 List of International Convention relevant to HIV

Equality of opportunity and treatment (Discrimination and Gender Equality)

- Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and Recommendation, 1958 (No. 111)
- Equal Remuneration Convention, 1951 (No. 100) and Recommendation, 1951 (No. 90)
- Workers with Family Responsibilities Convention, 1981 (No. 156) and Recommendation, 1981 (No. 165)
- Maternity Protection Convention, 2000 (No. 183) and Recommendation, 2000 (No. 191)

Occupational Safety and Health

General provisions to guide measures to be taken for all workers and at all workplaces:

- Occupational Safety and Health Convention, 1981 (No.155), Protocol of 2002 and Recommendation, 1981 (No. 164)
- Occupational Health Services Convention, 1985 (No. 161) and Recommendation, 1985 (No. 171)
- Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) and Recommendation, 2006 (No. 197)
- Protection of Workers' Health Recommendation, 1953 (No. 97)
- Welfare Facilities Recommendation, 1956 (No. 102)
- List of Occupational Diseases Recommendation, 2002 (No. 194)

Provisions focusing on specific economic sectors, such as construction, mines, agriculture and commerce and offices:

- Hygiene (Commerce and Offices) Convention, 1964 (No. 120) and Recommendation, 1964 (No. 120)
- Safety and Health in Construction Convention, 1988 (No. 167) and Recommendation, 1988 (No. 175)
- Safety and Health in Mines Convention, 1995 (No. 176) and Recommendation, 1995 (No. 183)
- Safety and Health in Agriculture Convention, 2001 (No. 184) and Recommendation, 2001 (No. 192)

Provisions focusing on specific categories of workers, such as plantation workers, nursing personnel, hotel and restaurant workers, migrant workers, seafarers, fishers and domestic workers:

- Plantations Convention, 1958 (No. 110), Protocol of 1982 and Recommendation, 1958 (No. 110)
- Nursing Personnel Convention, 1977 (No. 149) and Recommendation, 1977 (No. 157)
- Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172) and Recommendation, 1991 (No. 179)
- Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) and Recommendation, 1983 (No. 168)

- Migration for Employment Convention (Revised), 1949 (No. 97) and Recommendation, 1949 (No. 86)
- Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
- Migrant Workers Recommendation, 1975 (No. 151)
- Maritime Labour Convention, 2006 (MLC, 2006)⁴
- Work in Fishing Convention, 2007 (No. 188) and Recommendation, 2007 (No. 199)⁵
- Domestic Workers Convention, 2011 (No. 189) and Recommendation, 2011 (No. 201)⁶

Social security

Comprehensive standards

- Social Security (Minimum Standards) Convention, 1952 (No. 102)
- Income Security Recommendation, 1944 (No. 67)

Different branches of social security:

▪ **Medical care and sickness benefit**

- Medical Care and Sickness Benefits Convention, 1969, (No. 130) and Recommendation, 1969 (No. 134)

▪ **Old age, invalidity and survivors' benefit**

- Invalidity, Old-Age and Survivors' Benefits Convention, 1967, (No. 128) and Recommendation, 1967 (No. 131)

▪ **Employment injury benefit**

- Employment Injury Benefits Convention, 1964, (No. 121) and Recommendation, 1964 (No. 121)

▪ **Unemployment benefit**

- Employment Promotion and Protection against Unemployment Convention, 1988, (No. 168) and Recommendation, 1988 (No. 176)

Social security for migrant workers

- Equality of Treatment (Social Security) Convention, 1962 (No. 118)
- Maintenance of Social Security Rights Convention, 1982 (No. 157) and Recommendation, 1983 (No. 167)

⁴ Not entered into force yet (24/08/2011: 15 ratifications and three ratification instruments received). Article VIII, paragraph 3 provides that it will enter into force 12 months after 30 member States have ratified MLC representing a total share of 33 per cent in the world gross tonnage of ships. MLC revises 36 Conventions, one Protocol and 29 Recommendations.

⁵ Has not entered into force yet (24/08/2011: one ratification). Revises four Conventions and replaces two Recommendations

⁶ Has not entered into force yet

Labour inspection/administration

- Labour Inspection Convention, 1947 (No. 81), Protocol of 1995 (No. 81) and Recommendation, 1947 (No. 81)
- Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82)
- Labour Inspection (Agriculture) Convention, 1969 (No. 129) and Recommendation, 1969 (No. 133)
- Labour Administration Convention, 1978 (No. 150) and Recommendation, 1978 (No. 158)

Social dialogue

- Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)
- Right to Organize and Collective Bargaining Convention, 1949 (No. 98)
- Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)
- Tripartite Consultation (Activities of the International Labour Organization), 1976 (No. 152)

Terms and conditions of employment

- Termination of Employment Convention, 1982 (No. 158) and Recommendation, 1982 (No. 166)

Children and Young Persons

- Minimum Age Convention, 1973 (No. 138) and Recommendation, 1973 (No. 146)
- Worst Forms of Child Labour Convention, 1999 (No. 182) and Recommendation, 1999 (No. 190)

Other relevant ILO instruments

- ILO Declaration on Fundamental Principles and Rights at Work (1998)
- ILO Decent Work Agenda (1999)
- ILO Declaration of Social Justice for a Fair Globalization (2008)
- ILO Social Protection Floor Initiative (2009)
- ILO Global Jobs Pact (2009)
- ILO Resolution concerning Gender Equality at the Heart of Decent Work (2009)

Relevant ILO codes of practices

- *ILO Code of practice on HIV/AIDS and the world of work* (2001)
- *ILO Code of practice on the protection of workers' personal data* (1997)
- *ILO Code of practice on managing disability in the workplace* (2002)
- *ILO Guidelines on Occupational Safety and Health Management Systems (ILO-OSH 2001)*

Other international texts

- OHCHR/UNAIDS, *International Guidelines on HIV/AIDS and Human Rights*, Consolidated version, 2006

1.5 ILO education tools

In addition to the ILO International Standards, Recommendation R. 200 and Code of Practice on HIV/AIDS and its Education and Training Manual, the ILO has developed a number of policy guidelines and tools to support its constituents their initiatives.

*Governments*⁷.

Tools to support the ministries of Labour:

- A handbook on HIV/AIDS for labour and factory inspectors -
- Guidelines on addressing HIV/AIDS in the workplace through employment and labour law Joint ILO/WHO guidelines on health services and HIV/AIDS –
- Implementing the ILO code of practice on HIV/AIDS and the world of work. An education and training manual -
- An HIV/AIDS Workplace Policy for the Education Sector in the Caribbean -
- An HIV/AIDS Workplace Policy for the Education Sector in Southern Africa -

*Employers organization*⁸

Tools to support employers:

- A Training Manual for Enterprises on HIV/AIDS Workplace Policy and Programmes & Public Private Partnerships -
- Using the ILO Code of Practice and training manual - Guidelines for employers
- Helping micro and small enterprises cope with HIV/AIDS - A handbook for small business associations and service providers
- A workplace policy on HIV/AIDS: what should be cover
- Employers' organizations and HIV/AIDS: information, tools and good practices in workplace action (available in CR-ROM)
- Tuberculosis: guidelines for workplace control activities -
- HIV/AIDS Behaviour Change Communication – A toolkit for the workplace –

*Workers organizations*⁹

Tools to support workers:

- Using the ILO Code of Practice and training manual - Guidelines for trade unions –
- A workplace policy on HIV/AIDS: what it should cover -
- Tuberculosis: guidelines for workplace control activities –
- HIV/AIDS Behaviour Change Communication – A toolkit for the workplace

⁷ Available at http://www.ilo.org/aids/Constituents/lang--en/WCMS_DOC_AIDS_DPT_MIN_EN/index.htm

⁸ Available at http://www.ilo.org/aids/Constituents/lang--en/WCMS_DOC_AIDS_DPT_EMP_EN/index.htm

⁹ http://www.ilo.org/aids/Constituents/lang--en/WCMS_DOC_AIDS_DPT_WRK_EN/index.htm

Additional resources - Additional guidance and examples of national workplace policies on HIV and AIDS may be obtained from the ILO at: www.ilo.org/aids