



JSA Prism Employment Law

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HIV and AIDS Policy for Establishments 2022

The Ministry of Health and Family Welfare, Government of India, has notified the Model HIV and AIDS Policy for Establishment 2022 (“**Model Policy**”) on May 13, 2022 for all establishments engaged in production, supply or distribution of goods or services. The Model Policy has been notified in accordance with Section 12 of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 (“**HIV Act**”) read with Rule 3 of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Rules, 2018 (“**HIV Rules**”).

The Model Policy aims to spread awareness regarding HIV and AIDS, protect the rights of persons infected and affected with HIV and AIDS, including family members and cohabitants of infected persons (“**Protected Persons**”) and providing them conducive and non-discriminatory work environment in establishments. Objectives of the Model Policy also include preventing transmission and ensuring confidentiality of HIV-related data of Protected Persons.

Key Highlights:

1. **Adoption of Model Policy:** The Model Policy is to be adopted by each establishment, to the extent applicable, and uploaded on their websites to ensure wider access.
2. **Guiding Principles of Model Policy:** The Model Policy adopts three guiding principles as set out in the HIV Act, namely (a) non-discrimination, (b) confidentiality, and (c) grievance redressal mechanisms:

- (a) **Non-discrimination:** Establishments are required to ensure that there is no discrimination on basis of real or perceived HIV status of a person, such as denial of employment, preventing a person from holding public or private office, isolation/segregation in establishments, termination of employment and unfair treatment at an establishment. HIV testing as a pre-requisite for obtaining any employment is also strictly prohibited.

Further, the Model Policy contemplates termination of a HIV positive employee only in case of a significant risk of transmission or if the person is unfit to perform the assigned duties, setting out the nature and extent of financial/administrative hardship for not accommodating such person. Employers also should reasonably accommodate adequately qualified HIV positive persons, such as by way of making minor adjustments to the nature of work, to enable them in enjoying equal benefits or performing their duties.

Also, discrimination on the basis of HIV status against using public utilities and sharing of resources,

including access to accommodation, shops, hotels and places of public resort is also strictly prohibited.

- (b) Confidentiality: HIV infected person should not be forced to disclose their HIV status, or any other information related to HIV, including any information which may identify such persons or highlight their HIV status. Further, employers are responsible to ensure awareness in the staff in relation to confidentiality of HIV-related information.

All establishments keeping records of HIV-related information should adopt data protection measures and form Data Management Committee to review and recommend appropriate data protection measures. Standard operating procedures for disposal of HIV-related information and secured storage space for such information should also be ensured in such establishments.

- (c) Grievance redressal mechanism: The HIV Act and HIV Rules set out a robust grievance redressal mechanism for Protected Persons.

Establishments having 100 (one-hundred) or more persons, and healthcare establishments having 20 (twenty) or more persons, are required to appoint Complaints Officers to specifically address grievances in relation to violation of provisions of the HIV Act and HIV Rules. The Model Policy elaborates on the above mechanism and incorporates provisions regarding procedural requirements, timelines and duties/powers of Complaints Officers. Aggrieved persons associated with any establishment (including establishments having designated Complaints Officers) can approach the State level ombudsman for redressal of their grievances as well.

Further, establishments are required to maintain confidentiality of the identity of the Protected Persons involved in a complaint made to the Complaints Officer. Complaints Officers are also required to be trained with respect to the provisions of the HIV Act and HIV Rules for carrying out his/her duties efficiently.

The HIV Act mandates adoption of Model Policy by all establishments and lays down requirements to be followed by employers in this regard. This is a welcome step taken by the Government of India to address non-discrimination in establishments, including workplaces, and ensuring dignity and social inclusion for the persons impacted by HIV and AIDS.

Employment Practice

JSA has a team of experienced Employment Law specialists who work with clients from a wide range of sectors, to tackle local and cross-border, contentious and non-contentious employment law issues. Our Key areas of advice include (a) Advising on boardroom disputes including issues with directors, both executive and non-executive;(b) Providing support for business restructuring and turnaround transactions, addressing employment and labour aspects of a deal, to minimize associated risks and ensure legal compliance, (c) Providing transaction support with reference to employment law aspects of all corporate finance transactions, including the transfer of undertakings, transfer of accumulated employee benefits of outgoing employees to a new employer, redundancies, and dismissals, (d) Advising on compliance and investigations, including creating Compliance Programs and Policy, Compliance Evaluation Assessment and Procedure Development and providing support for conducting internal investigations into alleged wrongful conduct, (e) Designing, documenting, reviewing, and operating all types of employee benefit plans and arrangements, including incentive, bonus and severance programs, (f) Advising on international employment issues, including immigration, residency, social security benefits, taxation issues, Indian laws applicable to spouses and children of expatriates, and other legal requirements that arise when sending employees to India and recruiting from India, including body shopping situations.

JSA also has significant experience in assisting employers to ensure that they provide focused and proactive counselling to comply with the obligations placed on employees under the prevention of sexual harassment regime in India. We advise and assist clients in cases involving sexual harassment at the workplace, intra-office consensual relationships, including drafting of prevention of sexual harassment (POSH) policies, participating in POSH proceedings, conducting training for employees as well as Internal Complaints Committee members, and acting as external members of POSH Committees.

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