

BLTF *Business Leadership Task Force of the Bay Area*
Presents a Symposium on

AIDS

in the workplace

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AIDS in the Workplace

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I. Policies/Guidelines

Note:

The policy/guidelines included in this section were written using the current medical information available at the time they were written. We have dated the policies as a point of reference for you.

I. Policies/Guidelines

A. Organizations

Bank of America

(Revised October 1985)

Assisting Employees with Life-Threatening Illnesses

BankAmerica recognizes that employees with life-threatening illnesses including but not limited to cancer, heart disease, and AIDS may wish to continue to engage in as many of their normal pursuits as their condition allows, including work. As long as these employees are able to meet acceptable performance standards, and medical evidence indicates that their conditions are not a threat to themselves or others, managers should be sensitive to their conditions and ensure that they are treated consistently with other employees. At the same time, BankAmerica has an obligation to provide a safe work environment for all employees and customers. Every precaution should be taken to ensure that an employee's condition does not present a health and/or safety threat to other employees or customers.

Consistent with this concern for employees with life-threatening illnesses, BankAmerica offers the following range of resources available through Personnel Relations:

- o Management and employee education and information on terminal illness and specific life-threatening illnesses.
- o Referral to agencies and organizations which offer supportive services for life-threatening illnesses.
- o Benefit consultation to assist employees in effectively managing health, leave, and other benefits.

Guidelines

When dealing with situations involving employees with life-

threatening illnesses, managers should:

1. Remember that an employee's health condition is personal and confidential, and reasonable precautions should be taken to protect information regarding an employee's health condition.
2. Contact Personnel Relations if you believe that you or other employees need information about terminal illness, or a specific life-threatening illness, or if you need further guidance in managing a situation that involves an employee with a life-threatening illness.
3. Contact Personnel Relations if you have any concern about the possible contagious nature of an employee's illness.
4. Contact Personnel Relations to determine if a statement should be obtained from the employee's attending physician that continued presence at work will pose no threat to the employee, co-workers or customers. BankAmerica reserves the right to require an examination by a medical doctor appointed by the Company.
5. If warranted, make reasonable accommodation for employees with life-threatening illnesses consistent with the business needs of the division/unit.
6. Make a reasonable attempt to transfer employees with life-threatening illnesses who request a transfer and are experiencing undue emotional stress.
7. Be sensitive and responsive to co-workers' concerns, and emphasize employee education available through Personnel Relations.

8. No special consideration should be given beyond normal transfer requests for employees who feel threatened by a co-worker's life-threatening illness.
9. Be sensitive to the fact that continued employment for an employee with a life-threatening illness may sometimes be therapeutically important in the remission or recovery process, or may help to prolong that employee's life.
10. Employees should be encouraged to seek assistance from established community support groups for medical treatment and counseling services. Information on these can be requested through Personnel Relations or Corporate Health.

Summary of Center for Disease Control Guidelines on AIDS in the Workplace (November 1985)

1. The CDC has recently issued recommendations to provide employers with guidance on the health risks of employing a person with AIDS.
2. The basic recommendation is that an employee with AIDS need not be restricted from work in any area unless they have evidence of other infections or illnesses for which any employee in that area of work should also be restricted.
3. Personal service workers whose services require needles or other instruments that penetrate the skin are urged to follow infection control recommendations that have been issued for health care workers. Instruments that penetrate the skin, e.g., tattooing and acupuncture needles or ear piercing devices, should be used once and disposed of or be thoroughly cleaned and sterilized. Instruments not intended to penetrate the skin, but which may become contaminated with blood (e.g., razors) should be used for only one client and disposed of or thoroughly cleaned and disinfected.

No special precautions are required for personal service workers whose services do not involve a risk of blood contamination.

4. The CDC does not recommend a prohibition on employment of a person with AIDS working in food services. No evidence exists of transmission of either the AIDS virus or hepatitis B virus during the preparation or serving of food or beverages.
5. Workers with AIDS in a setting such as an office, school, factory or construction site have no known risk of transmitting the infection to co-workers, clients or consumers.

6. The CDC finds the greatest risk of transmission of HTLV-III/LAV in the health care work place, especially those health care workers who take part in invasive procedures, such as surgery. It is the CDC's position that even health care workers who are known to be infected with HTLV-III/LAV, but who do not perform invasive procedures, "need not be restricted from work unless they have evidence of other infection or illness for which any (health care worker) should be restricted." The CDC intends to issue further guidelines on health care workers who perform invasive procedures.

Chevron

(January 1986)

Guidelines for Handling Issues Related to AIDS

Chevron recognizes that Acquired Immune Deficiency Syndrome (AIDS) is a life-threatening illness. Due to the nature of the disease concern continues to build worldwide. It is further recognized that employees with AIDS, as with other life-threatening illnesses, may wish to continue to engage in as many of their normal activities, including work, as their condition permits. As long as employees with AIDS are able to meet acceptable performance and attendance standards and medical evidence indicates that their condition and actions pose no threat to the health and safety of themselves or others, efforts should be made to treat them as other employees with defined illnesses. Chevron also recognizes that it has the responsibility of providing a safe work environment for all of its employees. In view of this, every effort should be made to ensure that any employee illness, including AIDS, does not pose a health or safety risk to other employees.

Consistent with the above, the following guidelines should be used throughout the Company for dealing with AIDS-related employment issues:

1. Recognize that medical information is personal and confidential and take all reasonable steps to assure strict confidentiality.
2. Be sensitive to employees' concerns about AIDS and make educational material on this condition readily available to them. Contact Medical Services or Human Resources for available educational materials if you believe you or your employees need information on AIDS.
3. Contact Medical Services if you become aware that an employee has or may have AIDS. Medical Services will obtain the necessary medical information to determine if the employee is

able to continue working without threat to the health and safety of the employee or co-workers.

4. Remember, when dealing with employees who have AIDS, that they may be covered by the laws and regulations that protect handicapped people against discrimination. Additionally, some cities have passed laws specifically prohibiting discrimination against employees with AIDS. The Human Resource Staff should be consulted before making any employment decisions regarding an employee with AIDS.
5. Be sensitive to the fact that employment for an individual with AIDS can be an important factor in determining the quality of life for that individual.
6. Advise employees who are known to have AIDS that information on and referral to agencies and organizations which offer supportive services for this condition are available through the Medical Services' Employee Assistance Program.
7. Advise employees who are known to have AIDS that consultation on disability plans and other benefits to assist them in effectively managing their situation is available through Human Resources.

Pacific Gas & Electric Company
(January 1986)
Letter from Senior Management

Many questions have recently been raised regarding the Company's position concerning employees who may have Acquired Immune Deficiency Syndrome (AIDS). Based upon extensive research into the subject and consultation with health experts in this field, the Company's position is that employees afflicted with AIDS do not present a health risk to other employees in the work place under normal working conditions. Employees with AIDS are entitled to the same working conditions as others. This includes meeting the Company's performance requirements for their assigned positions with the normal assistance of their supervisors and co-workers, and coverage under the Company's various support and benefit programs, if eligible.

Many of you may have learned AIDS is a blood borne, sexually transmitted disease that is not spread by casual contact. Current medical statistics reveal that about 15,500 AIDS cases have been diagnosed thus far within the United States, and educated predictions suggest the number of cases will dramatically increase.

In the last two years, several PGandE employees have contracted or died of AIDS. As with the untimely death of any employee, the Company recognizes the sense of loss this tragedy brings to family, friends, and co-workers. PGandE supervisors and employees should be prepared to approach the AIDS issue, as it relates to the Company work settings, with accurate information and not with unjustified fear or ignorance. The most recent and accurate information about AIDS has been developed for your education and information. These materials, which are attached to this letter, should familiarize you with current medical information on AIDS. We are also developing training materials, including a videotape, which you can use to provide more information about AIDS to your employees.

Please review the attached materials thoroughly. While medical information about AIDS is constantly changing, we have endeavored to provide you with the most up-to-date information and will supplement that information when any significant new information is developed.

Policy Statement and Guidelines on Aids in the Workplace

In keeping with two of our corporate objectives to ensure a safe, healthy work environment for our employees and the public we serve, and to prohibit all forms of arbitrary discrimination in employment, we have developed the following policy statement and guidelines on how to handle personnel matters related on employees afflicted with AIDS. The policy statement and guidelines are based on the most current medical information on this subject available. If any significant medical developments occur, we will advise the statement and these guidelines accordingly.

Policy Statement

It is PGandE's position that employees afflicted with AIDS do not present a health risk to other employees in the workplace under normal working conditions. Employees with AIDS are subject to the same working conditions and performance requirements as any other employee. However, if there is supervisory concern that an employee with AIDS is not able to perform assigned duties, a medical clarification examination may be required to determine the employee's fitness for work. Lastly, employees with AIDS, provided that they are otherwise eligible, are entitled to coverage under the Company's sick leave, medical leave of absence, disability benefits, and equal employment opportunity policies.

Guidelines

1. Employees afflicted with AIDS should be treated the same as any other Company employee. However, if their medical or physical condition affects their ability to perform their assigned

duties, they should be treated as any other employee who has a disability that prevents them from performing the duties of their job.

2. If a supervisor has a reasonable basis to believe that an employee with AIDS is unable to perform the duties of their position, the supervisor may request the employee undergo a medical clarification examination. The results of the medical clarification examination shall guide future personnel decisions affecting the employee.
3. Employees afflicted with AIDS, to the extent they are otherwise eligible, are entitled to coverage under the Company's sick leave, medical leave of absence, disability benefits, and equal employment opportunity policies. When requested, supervisors and personnel department representatives should furnish information regarding those policies to affected employees.
4. If employees who share the same work environment with an employee with AIDS express concerns over their personal safety and health, supervisors must explain that, based on guidelines issued by the United States Public Health Service and expert medical opinions, casual contact with a co-worker with AIDS poses no threat of transmission. If necessary, supervisors should contact an appropriate Employee Assistance program counselor to arrange for more comprehensive educational efforts for the work force.

Questions and answers about AIDS

What is "AIDS"?

"AIDS" stands for "Acquired Immune Deficiency Syndrome," a disease first recognized by the medical profession in 1981. AIDS is caused by a virus, commonly known as HTLV-III (human T-lymphotropic virus type III)*, which infects and destroys T-helper lymphocytes, a type

*LAV (lymphotropic associated virus)

of white blood cell which maintains a person's immune system. By destroying T-helper lymphocytes, the HTLV-III/LAV virus causes a severe suppression of the affected person's immune system, thereby leaving that person vulnerable to a variety of opportunistic infections and malignancies. Some of the opportunistic illnesses which a person afflicted with AIDS may suffer include Kaposi's Sarcoma (a rare form of skin cancer) and Pneumocystic carinii pneumonia (also a rare illness). There is currently no known cure for AIDS.

How is AIDS transmitted?

Current medical information establishes that the transmission of AIDS has occurred only through the exchange of blood, blood products, or semen, between individuals. The exchange of those specified bodily fluids is normally associated with sexual intercourse, blood transfusion, and sharing of hypodermic needles by intravenous drug users. No evidence exists to indicate that the AIDS virus can be transmitted by the types of casual person-to-person contact that takes place within the household, school, or work environment.

The AIDS virus has also been found in bodily fluids such as saliva, urine, and tears. However, there has been no case reported where those fluids have been found to transmit the AIDS virus from one person to another.

How widespread is the AIDS disease?

As an initial point of clarification, federal guidelines basically specify that an individual must suffer from one of the opportunistic infections or malignancies which normally afflict AIDS patients before an AIDS diagnosis is made. Based on those guidelines, as of the end of 1985 there were 15,500 reported cases of AIDS nationwide. Almost one-third of those cases were reported during the first nine months of 1985. Based on current trends, the number of AIDS cases

can be expected to double over the next twelve months. About 7,000 AIDS patients have died since their diagnosis, and approximately 80 percent of those deaths occurred within two years of the diagnosis.

Medical statistics compiled thus far also reveal that, for every patient diagnosed with AIDS, perhaps five to ten individuals suffer from milder forms of the disease called AIDS-Related Complex (ARC). Some of the symptoms of ARC patients are generalized swelling of lymph nodes, unexplained weight loss, unexplained fevers, and a general persistent feeling of ill health. It is unclear at this time whether ARC patients will eventually develop AIDS or whether they will continue to suffer from their current symptoms as a milder variant of AIDS.

Is it safe to work with AIDS patients?

Based on guidelines issued by the United States Public Health Service (USPHS) on November 14, 1985, and several studies conducted by medical experts in this field, the answer is yes. Specifically, the USPHS guidelines make the following points regarding this issue:

- No known risk of transmission to co-workers, clients, or consumers exists from individuals with AIDS in work settings such as offices, schools, factories, and construction sites.
- AIDS infection is spread by sexual contact with infected persons, injection of contaminated blood or blood products, and by prenatal transmission.
- Workers with AIDS should not be restricted from work solely because they suffer from AIDS. Moreover, they should not be prohibited from using telephones, office equipment, toilets, showers, eating facilities, and water fountains.

University of California Personnel Policies and Procedures
with Regard to AIDS

(October 1985)

Introduction

The AIDS/ARC (Aids Related Complex) epidemic has generated controversy, concern, and anxiety in the work place. The University's main thrust should be the development of educational programs designed to prevent misunderstandings associated with AIDS/ARC. Other employers have found it highly beneficial to educate their employees that the disease is not transmitted by casual contact. Current knowledge about the disease establishes that living in the same house, eating food handled by an infected person, using the same bathroom, or working in the same office with a person with AIDS/ARC does not present a recognized risk of infection to healthy individuals in the general population.

Although UC personnel policies are adequate to deal with employees who are ill and disabled, the AIDS/ARC epidemic places new responsibilities on the University to reduce anxiety about the public health aspects of the disease, to be sensitive to both employees with AIDS/ARC and the concerns of their colleagues, and to apply all University policies in a non-discriminatory manner, as well as to comply with all applicable laws.

Hospital in-service training and infection control programs should be developed for AIDS/ARC as they are for other infectious diseases, to insure the quality of patient care and the safety of health-care employees. A report issued by the Centers for Disease Control states that procedures for the control of the hepatitis B virus are appropriate for the AIDS virus.

Personnel policies

The following University policies have immediate relevance and are those most likely to be invoked in dealing with employees with AIDS/ARC:

Non-Discrimination

At present, it appears that AIDS/ARC is substantially more prevalent among male homosexuals than any other population subgroup. As a result, there may be a tendency for fear of AIDS/ARC to express itself as homophobia. University policy prohibits discrimination in employment based on sexual orientation and provides for resolution of discrimination complaints through the applicable grievance or appeal procedure. (Staff Personnel Policy 200.1.)

In addition, persons with AIDS/ARC are also entitled to the same protection from discrimination applicable to other individuals with physical or mental handicaps. (Staff Personnel Policy 200.1.)

Employment

According to policy, each employment decision should be made on the basis of job related criteria; (Staff Personnel Policy 211.1) however, care should be taken to ensure that assigned duties can be carried out in a manner that safeguards the welfare of the individual and others. (Staff Personnel Policy 211.15.) It is illegal to require a blood test for the AIDS antibody or to use the results of such a test as the basis of any employment decision.

Probationary period

Employees with AIDS/ARC who are in probationary status should be treated as any other employee on probation. Time off work, e.g. for illness, extends the probationary period, giving the department head a full evaluation period. (Staff Personnel Policy 250.1.)

Grievances and appeals

As stated under the preceding non-discrimination policy section, employees can appeal discrimination on the basis of sexual orientation or physical handicap. Employees can also appeal

misapplication or discriminatory application of the sick leave, leave of absence, separation, and records policies, or the applicable sections of collective bargaining agreements. (Staff Personnel Policies 280 and 290.)

Sick leave and leaves of absence for illness

Sick leave (Staff Personnel Policy 410) and leaves of absence for illness (including AIDS/ARC) (Staff Personnel Policy 430) should be administered according to current practice and the appropriate academic or staff personnel policy or Memorandum of Understanding. A leave of absence should not be denied for the sole reason that it is not expected that the employee will return to work.

Staff Records

According to policy and law, personal information (which includes medical information) in University employee records cannot be released to the public. (Staff Personnel Policy 605.18). It can be released to other University employees, but only if such information is necessary to the performance of that person's assigned University duties. Such duties are generally associated with the processing of disability claims filed by the employee. (Staff Personnel Policy 605.16.)

A department head, according to University practice and procedure, may not request a medical diagnosis as the nature of an illness is not necessary to administer sick leave. (Staff Personnel Policy 605.1.) As with all cases of employee illness, management must respect privacy and, therefore, not request a diagnosis of AIDS/ARC patients except as required for accommodation or medical disability claims. As appropriate, an employee may be asked to provide a physician's certification of ability to work, whether there are any work restrictions, or amount of time needed for medical leave. (Staff Personnel Policy 410.6c.)

Rehabilitation

It is University policy to provide information about rehabilitation services and reasonable accommodation to persons with handicapping conditions including AIDS/ARC. Such accommodation may include work schedule changes or time for medical treatment. (Staff Personnel Policy 764.)

Medical separation

Separation may be pursued only if an employee can no longer perform the essential functions of the job even with reasonable accommodation (Staff Personnel Policy 765), the employee has exhausted sick leave and any personal leave, and if the separation will not jeopardize the right to apply for disability benefits provided by the employee's retirement system. (Staff Personnel Policy 765.6.)

Workplace safety

It is the policy of the University to maintain a safe work environment. Persons with AIDS do not pose a health risk for co-workers as there is no evidence of transmission of the virus under ordinary social or occupational conditions. Should a staff or academic employee refuse to work in such an environment, the employee should be directed to an expert in the etiology and transmission of the AIDS virus where the employee's concerns can be fully addressed. Employees must understand that refusal to work with a person with AIDS/ARC is not a valid excuse from fulfilling assigned responsibilities. (Staff Personnel Policies 270 and 740.)

B. Additional Illustrative Policies

Personnel Directive on AIDS Disease Overview

Overview

The following will outline the Company's policy and procedure for handling employees who have life-threatening diseases of the Acquired Immune Deficiency Syndrome, AIDS Disease. This policy's purpose is to ensure that employees have the necessary medical information to understand their medical risk in contracting this feared illness and to learn prevention steps to avoid contracting it. Secondly, to ensure the physical and emotional health of all employees in the workplace, maintain productivity levels by minimizing work disruption and employee morale problems, and demonstrate our continued commitment to our affirmative action goals by providing work for physically handicapped employees medically approved and fit to work.

This policy development recognizes the need for accurate medical information in light of the increasing media attention and public concern regarding the spread of this disease which decreases the individual's immunity to infection and serious illness and often leads to death.

After thorough consultation with medical experts from the San Francisco Department of Health and Atlanta's Centers for Disease Control, we have adopted the following policy concerning the handling of employees known ill with diseases collectively known as Acquired Immune Deficiency Syndrome (AIDS).

General Policy

We are committed to minimizing the social and work consequences related to maintaining employment for employees with AIDS Disease.

Recognizing our commitment to maintain a healthy work environment, it is our policy to allow employees with AIDS Disease who are deemed medically fit to work to continue employment by providing reasonable work accommodation for them while accommodating the needs for public safety of all employees.

Medical Overview

The following brief medical overview on AIDS Disease will be followed by specific procedures and steps to be taken by all personnel officers and managers when an employee is medically identified as having AIDS Disease.

There are 1,600 nationally known cases of persons contracting AIDS Disease at this time. The four largest concentrations of AIDS victims have occurred in the following major cities in descending order from highest to lowest: New York, San Francisco, Los Angeles and Miami. There are 203 known cases of AIDS Disease in San Francisco which primarily reflects the higher male homosexual population in this area, estimated to be between 80 - 100,000 people. Thus, the incidence rate for this illness is 203 per 100,000 homosexual men compared to the approximate total male population of 330,000 in San Francisco.

AIDS Disease causes a breakdown in a person's normal protection against infection and the development of tumors. The cause is unknown although a virus infection is suspected.* The mortality is high with approximately 75% of the AIDS victims dying within two years after the first symptoms.

Since early medical evidence suggests that AIDS Disease can take up to a twenty month incubation period for symptoms to appear after contracting this illness, it is possible that some of our employees whose personal health history may have broken down their normal protection against infection may already have contracted it but still be symptom free.

* (The cause was not known at the time this policy was written. The cause has been identified as HTLV-III/LAV virus.)

Medically recognized experts on AIDS Disease have informed us that there is no known risk of AIDS transmission between such an affected employee and other staff employees while involved in their normal work activity which may involve close contact in the workplace. Additionally, this illness is not transmitted through breathing the same air or through use of the bathroom lavatories. This illness which primarily has affected homosexual and bi-sexual individuals and Haitians, is known to be transmitted through intimate sexual contact through direct contamination with blood or bodily secretions from a person with AIDS Disease, or by sharing hypodermic needles used in injecting street drugs. These methods of contamination (risk factors), are not experienced in the workplace. Even for healthy people with such poor hygienic practices as drinking out of someone else's cup or sharing a cigarette, the risk of contamination through oral secretions is not considered a recognized risk of AIDS infection in a healthy person.

Normally healthy persons need not fear infection through contact with AIDS victims by riding the same public transportation, eating in the same public places, living in the same house or working in the same office. Their normal immune protection against infection can cope and does cope with ordinary infectious agents everyday. People with AIDS Disease, however, are at much greater risk of developing infections from normally healthy persons, as the AIDS victim's resistance to illness is greatly decreased*.

Specific Procedures

The physical and emotional health and well-being of all employees must be protected and reasonable accommodation for the medically rehabilitated employee with AIDS Disease must be provided. To ensure that both of these goals are met the following guidelines are to be followed:

- * There's no evidence to date to substantiate this claim.

1. After the manager or personnel officer is notified by medical authorities that an employee is being treated for AIDS Disease, they should immediately inform each other and then notify the Personnel Division's Employee Relations Department and the Employee Assistance Department, as well as any other departments as required in the normal conduct of one's job.
2. The AIDS Diseased employee, when requested by a management representative, must obtain a written medical opinion that his/her illness is noninfectious to other persons in ordinary office contact and that the employee is medically fit to work.**
3. The manager and personnel officer will assess, with the help of Employee Relations and Employee Assistance, the necessary job modification or job transfer for the AIDS Diseased employee to minimize the employee's exposure to further infections.
4. If a healthy employee refuses to work with AIDS Diseased employees who have been medically approved fit to work, job transfer or other work accommodation for the healthy employee will only occur when medically indicated by order of his/her physician. This medical order must be a signed medical statement requesting this job change. In the absence of a medical order, normal transfer procedures will be followed.

All disputes will be referred to Employee Relations for final disposition.

5. To ensure that all employees have accurate medical information regarding contracting AIDS Disease and reduce unnecessary fear, the manager will distribute brochures on AIDS Disease to all employees in their work group. Additionally, medical consultation to any concerned employee(s) can be obtained through the Employee Assistance Program upon request.

** Management has the right to select a medical expert and obtain a second opinion when deemed necessary. (Modified April 1985)

Model Policy Regarding Acquired Immune Deficiency Syndrome (AIDS) -
Schachter, Kristoff, Ross, Sprague & Curiale

The unfortunate spread of AIDS in recent years has caused us to consider and adopt a policy regarding the employment of those who have, or may have, this disease. We have consulted medical experts and are satisfied that, according to the best medical evidence available to date, casual workplace contact with employees who have AIDS, or who have been exposed to the AIDS virus, will not result in the transmission of AIDS to others.

Therefore, effective immediately, our normal policy will be to employ employees or applicants who have AIDS, or are suspected of having AIDS, so long as such persons remain qualified to perform their jobs in accordance with our standards. Some exceptions or deviations to this policy may be necessary for certain positions, but our intent will be to maximize the employment opportunities of AIDS victims, while at the same time preserving the safety and morale of all our employees.

We will stay abreast of the latest medical knowledge regarding this disease. Should it ever appear that implementation of our policy may present a danger to our employees, we will make appropriate revisions to the policy.

If you have any questions about this policy, please contact _____ . If you wish to review medical information upon which the policy is based, we would be glad to make it available upon request.

C. San Francisco Municipal Ordinance

FILE NO _____

ORDINANCE NO _____

1 (AIDS Discrimination; Amended by amending section 3801.)
2 AMENDING PART II, CHAPTER VIII, (POLICE CODE) OF THE SAN
3 FRANCISCO MUNICIPAL CODE BY ADDING ARTICLE 38 THERETO TO PROHIBIT
4 DISCRIMINATION AGAINST PERSONS SUFFERING FROM THE MEDICAL
5 CONDITION AIDS OR ANY MEDICAL SIGNS OR SYMPTOMS RELATED THERETO.

6 Be it ordained by the People of the City and County of San
7 Francisco:

8 Section 1. Part II, Chapter VIII, (Police Code) of the San
9 Francisco Municipal Code is hereby amended by adding Article 38
10 thereto, to read as follows:

11 NOTE: Additions are not underlined; all sections
12 are entirely new.

13 ARTICLE 38

14 PROHIBITING DISCRIMINATION ON THE BASIS

15 OF AIDS AND ASSOCIATED CONDITIONS

16 SEC. 3801 Policy
17 SEC. 3802 Findings
18 SEC. 3803 Employment
19 SEC. 3804 Housing
20 SEC. 3805 Business Establishments and Public Accomodations
21 SEC. 3806 Educational Institutions
22 SEC. 3807 City Facilities and Services
23 SEC. 3808 Association and Retaliation
24 SEC. 3809 Testing
25 SEC. 3810 Liability
26 SEC. 3811 Enforcement
27 SEC. 3812 Limitation on Actions
28 SEC. 3813 Definitions
29 SEC. 3814 Severability
30 SEC. 3815 Non-Waiverability
SEC. 3816 Application to the City and County of San Francisco

31 SEC. 3801. POLICY. It is the policy of the City and County of
32 San Francisco to eliminate discrimination based on the fact that
33 a person has AIDS or any medical signs or symptoms related
34 thereto. In adopting this ordinance, the Board of Supervisors
35 does not intend to proscribe any activity the proscription of
36 which would constitute an infringement of the free exercise of
37 religion as guaranteed by the United States and California
38 constitutions.

39 SEC. 3802. FINDINGS. After public hearings and consideration of
40 testimony and documentary evidence, the Board of Supervisors

SUPERVISOR BRITT

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C. San Francisco Municipal Ordinance

1 finds and declares that the medical condition described as
2 acquired immune deficiency syndrome, and commonly known as AIDS,
3 is a deadly disease which has the potential to affect every
4 segment of the City's population. AIDS was first recognized in
5 1981. It is now seen as the top priority of the United States
6 Public Health Service.

7 AIDS is the most severe manifestation of a spectrum of
8 clinical disease caused by a virus, variously known as human
9 T-lymphotropic virus type III, lymphadenopathy-associated virus,
10 or AIDS-associated retrovirus, which attacks and cripples the
11 body's immune system by killing T-helper lymphocytes, thereby
12 leaving the body vulnerable to opportunistic infections and
13 malignancies. A person afflicted with AIDS can suffer a variety
14 of viral, bacterial, fungal, and protozoal infections and
15 malignancies which eventually lead to death, usually within one
16 year after diagnosis.

17 The spread of the virus has occurred only through the
18 exchange of body fluids, that is blood, blood products, or semen,
19 between individuals. No evidence exists to indicate that the
20 virus can be spread by casual person-to-person contact. Medical
21 studies of families in which one or more members have been
22 infected with HTLV-III/LAV/ARV show no spread of the virus other
23 than through sexual intercourse or from mother to fetus in
24 utero. Medical studies of hospital personnel caring for AIDS
25 patients show no spread of the virus other than through needle
26 sticks. The public health danger presented by the virus and its
27 subsequent manifestations of AIDS-related complex and AIDS is
28 caused by a lengthy asymptomatic period of infection during which
29 an apparently healthy individual may unknowingly spread the
30 disease to other persons through the exchange of blood,

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C. San Francisco Municipal Ordinance

1 products, or semen. AIDS is concentrated primarily in urban
2 areas, with the City and County of San Francisco having the
3 largest incidence of the disease in the country. In the opinion
4 of the scientific, medical, and public health communities, AIDS
5 will continue to increase at a high rate within our City for the
6 foreseeable future.

7 AIDS and AIDS-related complex by their nature have created
8 a discreet and insular minority of our citizens who are afflicted
9 with a seriously disabling condition whose ultimate outcome is
10 fatal. Individuals infected with the virus represent a
11 significant segment of our population particularly victimized due
12 to the nature of their infection and to the present climate of
13 misinformation, ignorance, and fear in the general population.
14 Discrimination against victims of AIDS and AIDS-related
15 conditions exists in the City and County of San Francisco.
16 Persons with AIDS or AIDS-related conditions are faced with
17 discrimination in employment, housing, business establishments,
18 city facilities, city services, and other public accommodations.
19 This discrimination cuts across all racial, ethnic, and economic
20 lines. Such discrimination poses a substantial threat to the
21 health, safety, and welfare of the community. Existing state and
22 federal restraints on such arbitrary discrimination are
23 inadequate to meet the particular problems of this city and
24 county.

25 **SEC. 3803. EMPLOYMENT.**

26 (a) Prohibited Activity. It shall be unlawful for any
27 person to do any of the following acts as a result of the fact,
28 in whole or in part, that a person has AIDS or any of the
29 associated conditions covered by this Article:

- 30 (1) By an employer: To fail or refuse to hire, or to

C. San Francisco Municipal Ordinance

1 discharge any individual; to discriminate against any individual
2 with respect to compensation, terms, conditions or privileges of
3 employment, including promotion; or to limit, segregate or
4 classify employees in any way which would deprive or tend to
5 deprive any individual of employment opportunities, or otherwise
6 adversely affect his/her status as an employee;

7 (2) By an employment agency: To fail or refuse to
8 refer for employment any individual; or otherwise to discriminate
9 against any individual;

10 (3) By a labor organization: To exclude or expel from
11 its membership or to otherwise discriminate against any
12 individual; or to limit, segregate or classify its membership; or
13 to classify or fail or refuse to refer for employment any
14 individual in any way which would deprive or tend to deprive such
15 individual of employment opportunities, or would limit such
16 employment opportunities, or otherwise adversely affect his/her
17 status as an employee or as an applicant for employment;

18 (4) By an employer, employment agency or labor
19 organization;

20 (i) to discriminate against any individual in
21 admission to, or employment in, any program
22 established to provide apprenticeship or other
23 training or retraining, including any on-the-job
24 training program;

25 (ii) to print, publish, advertise or disseminate in
26 any way, or cause to be printed, published,
27 advertised or disseminated in any way, any notice or
28 advertisement with respect to employment, membership
29 in, or any classification or referral for employment
30 or training by any such organization, which indicates

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1 an unlawful discriminatory act or preference.

2 (b) Bona Fide Occupational Qualification Not Prohibited:
3 Burden of Proof.

4 (1) Nothing contained in this section shall be deemed
5 to prohibit selection or rejection based upon a bona fide
6 occupational qualification.

7 (2) In any action brought under Section 3811 of this
8 Article (Enforcement), if a party asserts that an otherwise
9 unlawful discriminatory practice is justified as a bona fide
10 occupational qualification, that party shall have the burden of
11 proving:

- 12 (i) that the discrimination is in fact a necessary
13 result of a bona fide occupational qualification; and
14 (ii) that there exists no less discriminatory means
15 of satisfying the occupational qualification.

16 (3) The capacity of an individual to perform his or her
17 duties without endangering his or her health or safety, or the
18 health or safety of others is a bona fide occupational
19 qualification.

20 (c) Exceptions. Nothing in this section shall be
21 construed to prohibit any act specifically authorized by the laws
22 of the State of California or any actions taken by or under the
23 direction of the San Francisco Department of Public Health in
24 order to protect the public health.

25 SEC. 3804. HOUSING.

26 (a) Prohibited Activity. It shall be unlawful for any
27 person to do any of the following acts as a result of the fact,
28 in whole or in part, that a person has AIDS or any of the
29 associated conditions covered by this Article:

- 30 (1) To interrupt, terminate, or fail or refuse to initiate

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1 or conduct any transaction in real property, including but not
2 limited to the rental thereof; to require different terms for
3 such transaction; or falsely to represent that an interest in
4 real property is not available for transaction;

5 (2) To include in the terms or conditions of a
6 transaction in real property any clause, condition or restriction;

7 (3) To refuse to lend money, guarantee the loan of
8 money, accept a deed of trust or mortgage, or otherwise refuse to
9 make available funds for the purchase, acquisition, construction,
10 alteration, rehabilitation, repair or maintenance of real
11 property; or impose different conditions on such financing; or
12 refuse to provide title or other insurance relating to the
13 ownership or use of any interest in real property;

14 (4) To refuse or restrict facilities, services, repairs
15 or improvements for any tenant or lessee;

16 (5) To make, print, publish, advertise or disseminate
17 in any way, or cause to be made, printed or published, advertised
18 or disseminated in any way, any notice, statement or
19 advertisement with respect to a transaction or proposed
20 transaction in real property, or with respect to financing
21 related to any such transaction, which unlawfully indicates
22 preference, limitation or discrimination based on AIDS.

23 (b) Exceptions.

24 (1) Nothing in this Article shall be deemed to permit
25 any rental or occupancy of any dwelling unit or commercial space
26 otherwise prohibited by law.

27 (2) Nothing in this section shall be construed to
28 prohibit any act specifically authorized by the laws of the State
29 of California or any actions taken by or under the direction
30 of the San Francisco Department of Public Health in order to

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1 protect the public health.

2 SEC. 3805. BUSINESS ESTABLISHMENTS AND PUBLIC ACCOMMODATIONS.

3 (a) Prohibited Activity. It shall be an unlawful practice
4 for any person to deny any individual the full and equal
5 enjoyment of the goods, services, facilities, privileges,
6 advantages and accommodations of any business establishment or
7 public accommodation as a result of the fact, in whole or in
8 part, that a person has AIDS or any of the associated conditions
9 covered by this Article.

10 (b) Advertising. No person shall make, print, publish,
11 advertise or disseminate in any way any notice, statement or
12 advertisement with respect to any business establishment or
13 public accommodation which indicates that a person is doing or
14 will do anything which this section prohibits.

15 (c) Exceptions. Nothing in this section shall be
16 construed to prohibit any act specifically authorized by the laws
17 of the State of California or any actions taken by or under the
18 direction of the San Francisco Department of Public Health in
19 order to protect the public health.

20 SEC. 3806. EDUCATIONAL INSTITUTIONS.

21 (a) Prohibited Activity. It shall be an unlawful
22 educational practice for any person to do any of the following:

23 (1) To deny admission, or to impose different terms or
24 conditions on admission, as a result of the fact, in whole or in
25 part, that a person has AIDS or any of the associated conditions
26 covered by this Article.

27 (2) To deny any individual the full and equal enjoyment
28 of, or to impose different terms or conditions upon the
29 availability of, any facility owned or operated by or any service
30 or program offered by an educational institution as a

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1 result of the fact, in whole or in part, that a person has AIDS
2 or any of the associated conditions covered by this Article.

3 (b) Exceptions.

4 (1) It shall not be an unlawful discriminatory practice
5 for a religious or denominational institution to limit admission,
6 or give other preference to applicants of the same religion.

7 (2) Nothing in this section shall be construed to
8 prohibit any act specifically authorized by the laws of the State
9 of California or any actions taken by or under the direction of
10 the San Francisco Department of Public Health in order to protect
11 the public health.

12 SEC. 3807. CITY FACILITIES AND SERVICES.

13 (a) Prohibited Activity. It shall be an unlawful practice
14 for any person to deny any person the full and equal enjoyment,
15 or to impose different terms and conditions on the availability,
16 of any of the following:

17 (1) Use of any City facility or City service as a
18 result of the fact, in whole or in part, that a person has AIDS
19 or any of the associated conditions covered by this Article.

20 (2) Any service, program or facility wholly or
21 partially funded or otherwise supported by the City and County of
22 San Francisco, as a result of the fact, in whole or in part, that
23 a person has AIDS or any of the associated conditions covered by
24 this Article.

25 (b) Exceptions. Nothing in this section shall be
26 construed to prohibit any act which is specifically authorized by
27 the laws of the State of California or any actions taken by or
28 under the direction of the San Francisco Department of Public
29 Health in order to protect the public health. SEC. 3808.

30 ASSOCIATION AND RETALIATION.

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1 (a) Association. It shall be unlawful for any person to
2 do any of the acts described in Sections 3803(a), 3804(a),
3 3805(a), 3805(b), 3806(a) or 3807(a) as a result of the fact that
4 a person associates with anyone who has AIDS or any of the
5 associated conditions covered by this Article.

6 (b) Retaliation. It shall be unlawful for any person to
7 do any of the acts described in Sections 3803(a), 3804(a),
8 3805(a), 3805(b), 3806(a) or 3807(a) or to retaliate against a
9 person because a person:

- 10 i) has opposed any act or practice made unlawful by
11 this Article;
12 (ii) has supported this Article and its enforcement;
13 (iii) has filed a complaint under this Article with the
14 San Francisco Human Rights Commission or any court;
15 (iv) has testified, assisted or participated in any
16 way in any investigation, proceeding, or litigation
17 under this Article.

18 SEC. 3809. TESTING.

19 (a) No person shall require another to take any test or
20 undergo any medical procedure designed to show or help show that
21 a person has AIDS or any of the associated conditions covered by
22 this Article.

23 (b) Subsection (a) does not apply to an employer who can
24 show that the absence of AIDS is a bona fide occupational
25 qualification.

26 (c) Nothing in this section shall be construed to prohibit
27 any act specifically authorized by the laws of the State of
28 California or any actions taken by or under the direction of the
29 San Francisco Department of Public Health in order to protect
30 the public health.

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1 SEC. 3810. LIABILITY.

2 Any person who violates any of the provisions of this
3 Article or who aids in the violation of any provisions of this
4 Article is liable for each and every such offense for the actual
5 damages, and such amount as may be determined by a jury, or a
6 court sitting without a jury, up to a maximum of three times the
7 amount of actual damage but in no case less than one thousand
8 dollars (\$1000), and such costs and attorney's fees as may be
9 determined by the court. In addition, punitive damages may be
10 awarded in a proper case.

11 SEC. 3811. ENFORCEMENT.

12 (a) Human Rights Commission. Any person who believes that
13 he or she has been discriminated against in violation of the
14 provisions of this Article may file with the Human Rights
15 Commission a request to have the Commission investigate and
16 mediate his or her complaint under the provisions of the
17 Administrative Code of the City and County of San Francisco.

18 (b) Civil Action. Any aggrieved person may enforce the
19 provisions of this Article in a civil action.

20 (c) Equitable Relief.

21 (1) Any person who commits, or proposes to commit, an
22 act in violation of this Article may be enjoined therefrom by any
23 court of competent jurisdiction.

24 (2) An action for equitable relief under this
25 subsection may be brought by any aggrieved person, by the
26 District Attorney, by the City Attorney, or by any other person.

27 (d) Bar. A complaint to the Human Rights Commission is
28 not a prerequisite to the filing of a civil action under this
29 section. The pendency of a complaint before the Human
30 Rights Commission shall not bar any civil action under this

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1 section, but a final judgment in any civil action shall bar any
2 further proceedings by the Human Rights Commission.

3 SEC. 3812. LIMITATION ON ACTIONS. Judicial actions or requests
4 to the Human Rights Commission under this Article must be filed
5 within two years of the alleged discriminatory acts.

6 SEC. 3813. DEFINITIONS. As used in this Article, the following
7 words or phrases shall have the meanings indicated:

8 (a) The word "AIDS" shall mean the condition which occurs
9 when an individual is infected with the virus known as
10 lymphadenopathy-associated virus or human T-lymphotropic virus
11 type III or AIDS-associated retrovirus including, but not limited
12 to, acquired immunodeficiency syndrome (AIDS), AIDS-related
13 complex, progressive generalized lymphadenopathy, lymphadenopathy
14 syndrome, and asymptomatic infection. It also includes anyone
15 who has any medical condition as a result of having any of the
16 above. It also includes any perception, whether real or
17 imaginary, that a person is suffering from AIDS, any of the
18 conditions described above, or the perception, real or imaginary,
19 that a person is at risk for any of the conditions described
20 above.

21 (b) The phrase "business establishment" shall mean any
22 entity, however organized, which furnishes goods or services to
23 the general public. An otherwise qualifying establishment which
24 has membership requirements is considered to furnish services to
25 the general public if its membership requirements consist only of
26 payment of fees or consist of requirements under which a
27 substantial portion of the residents of this City could qualify.

28 (c) The word "person" as used in this Article shall mean
29 any individual, person, firm, corporation, or other organization
30 or group of persons however organized.

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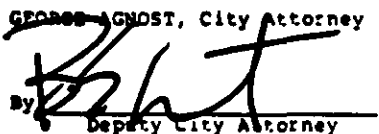
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1 SEC. 3814. SEVERABILITY. If any part or provision of this
2 Article, or the application thereof to any person or circumstance
3 is held invalid, the remainder of the Article, including the
4 application of such part or provision to other persons or
5 circumstances, shall not be affected thereby and shall continue
6 in full force and effect. To this end, provisions of this
7 Article are severable.

8 SEC. 3815. NON-WAIVERABILITY. Any written or oral agreement
9 which purports to waive any provision of this Article is against
10 public policy and void.

11 SEC. 3816. APPLICATION TO THE CITY AND COUNTY OF SAN FRANCISCO.
12 All the provisions of this Article apply to the City and County
13 of San Francisco.

14

15 APPROVED AS TO FORM:
16 GEORGE AGNOST, City Attorney
17 
18 By Deputy City Attorney
19 01625
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Case Studies: Local Ordinance

- A City contracting printer refused to make reasonable accommodation to the needs of a Gay man diagnosed with AIDS related conditions (ARCS). The employee needed only to be allowed to arrive 20 minutes late in mornings when he prepared complicated types of medications or was slow because of being awake the night before with complications and symptoms of the disease, such as nightsweats, etc. It was actually quite easy for the employer to cover this lapse in the shift with another available worker from his staff and he made a verbal promise to do so. He promised also to extend time off for the employee for medical appointments. One morning, the employee came late to work, well within the agreed upon time limit, and was told by the employer: "If you're sick, I don't want you here, go home." He left and was then informed, by letter, of his termination, because of abandonment of the job, poor performance and tardiness. The complainant was hospitalized shortly afterwards with stress related complications of the ARC symptoms. He then filed with the HRC who then set up a mediation aimed at settling the complaint. Because the HRC cannot act as an advocate and must remain impartial, the complainant was advised to seek assistance from an attorney to represent his interests. An attorney with the Employment Law Center assisted, but no agreement was able to be reached in this session, therefore, the complaint will be pursued into investigation.

- A Gay accountant worked for five years in an international property leasing and brokerage company. He performed well throughout his employment and was reviewed above average on all evaluations. In April of 1985, his lover died of AIDS. The employer was aware of this fact for he had known that the complainant was taking off some morning hours in order to care for his ailing partner before the day nurse arrived to take over. After the death, the employer denied the complainant bereavement leave, notifying him of this fact by mail on the third day after the funeral. The reason given was the lover was not family. In June, 1985 the complainant received a poor

evaluation. He was then abruptly fired in July with cause given as tardiness and poor performance. In light of the fact that the complainant had backlogged extensive amounts of overtime credit hours, tardiness makes little sense in a company where flextime is the rule. The HRC has filed the complaint and is presently pursuing investigation. The complainant has additionally been advised to file with State and Federal agencies. It is important to do this on the State level in order to place on record the numbers of complaints received at the agency, which may eventually determine jurisdiction under physical disability statutes. Filing on the Federal level is also important in this case because there may be Federal contracts existing that give jurisdiction under Sections 503 or 504 of the Federal Rehabilitation act.

II. General Resource Materials

A. Company Newsletter Articles

1. Bank of America
2. Levi Strauss
3. Pacific Telesis
4. United Way
5. Wells Fargo Bank

On Your Behalf

Understanding AIDS

by Molly Laughlin

Irresponsible headlines call out in huge type from news stands across the nation: "Now No One is Safe from AIDS" and "AIDS: The Epidemic is Spreading Like Wildfire." We read newspaper and magazine stories about parents who refuse to send their children to school because another child is afflicted with AIDS. Recently, prompted by the death of Rock Hudson from AIDS, the Screen Actors Guild in Hollywood issued new guidelines about actors involved in on-screen kissing scenes.

No disease in modern times has created such fear, largely fueled by misinformation. Dr. Mervyn Silverman, former director of the San Francisco Department of Public Health, says, "The primary way to prevent further spread of the disease is by education and information. The more we know about it, the more we can protect ourselves and can show compassion and understanding toward those with this deadly illness. For one thing is clear: AIDS is everyone's concern."

AIDS: A background

AIDS stands for Acquired Immune Deficiency Syndrome. The AIDS virus, known variously as HTLV-III and LAV, was identified in 1981. Since then, some 15,000 people have been diagnosed as having the disease. The AIDS virus enters the body and cripples lymphocytes, white blood cells necessary for immunity. The weakened immune system then becomes susceptible to a wide range of infections and tumors.

Toll-free AIDS hotlines

Northern California 800-FOR-AIDS
TDD—(415) 864-8806

Southern California 1-800-922-AIDS

National Public Health Service 800-342-AIDS

U.S. Centers for Disease Control 1-800-447-AIDS

many of which are serious and potentially fatal. Among the most common of these is a parasitic lung infection, *Pneumocystis carinii*, and an unusual form of cancer, Kaposi's sarcoma.

The illness can run a short, aggressive course lasting weeks or a few months, or may last for years.

Although there is no current cure for the disease AIDS, there are several available treatments for most of the afflictions suffered by the AIDS patient during the course of the illness. However, because AIDS so destroys the immune system, medications cannot be boosted by the body's natural defense system, and will eventually lose their effectiveness.

Fiction: *I could get AIDS from someone on the bus or by using the telephone of a co-worker with AIDS.*

Fact: AIDS is very difficult to catch and no evidence points to transmission through casual contact, such as that found in the workplace. The virus is fragile and requires a warm, moist environment to survive. Exposure to the air kills it. Dr. James Curran, a world-renowned AIDS expert from the Center for Disease Control in Atlanta, says, "No scientific evidence supports AIDS transmission by casual contact, by the airborne route (such as colds and flu), by objects handled by persons with AIDS, or by contaminated environmental surfaces." Medical experts agree that AIDS is far less contagious than hepatitis, colds, and flu. Despite this, a *New York Times*/CBS News poll showed that nearly half the population thinks they can catch AIDS by sharing a glass with a person with the disease.

So how is the virus transmitted? By direct transmission of blood or blood-contaminated tissue fluids from a person with the virus to one without it. Typically this occurs through the use of shared intravenous needles where blood is exchanged and through sexual contact with an infected person. But, says Dr. Linda Hawes Clever, Chairman of the Department of Occupational Health at Pacific Presbyterian Medical Center in San Francisco and an expert in the field of AIDS, "The virus has to enter the body through one of two places—the skin or through a damaged mucous membrane. In addition,

researchers believe the virus usually strikes someone whose immune system already is exhausted or weak due to previous infectious illnesses or substance abuse."

The AIDS virus may be present not only in blood and semen, but also in other body fluids, including saliva, tears, and sweat. However, medical experts believe that daily activities—working in a group setting, shaking hands, swimming at public pools, and eating at public restaurants—pose no AIDS threat. This is because the AIDS virus is so fragile and it must get outside of the bloodstream of an infected person, into the bloodstream of another person.

Fiction: *Only homosexual men and drug abusers get AIDS.*

Fact: This is not true. Others not considered in the "high risk" groups also have contracted AIDS. However, up to now, researchers have found most people with AIDS are either homosexuals or drug users. Of the reported cases of AIDS in the United States, about 73 percent are homosexual or bisexual men; 17 percent are intravenous drug users; 2 percent are recipients of blood transfusions where the blood contained the AIDS virus; 1 percent are heterosexuals who have had sexual contact with an infected carrier; another 1 percent are hemophiliacs who may have had blood transfusions; and 6 percent are classified as "other/unknown." This last group reflects mainly the patients who have not had a history taken, or who choose not to disclose their private lives or habits.

Current statistics show that 90 percent of the stricken adults are between the ages of 20 and 49; 94 percent are men. Children also may get AIDS. Usually, these are infants whose mothers were infected with the AIDS virus and passed it on during pregnancy or hemophiliac children who become infected through a blood transfusion. However, Dr. Clever points out that the chance of contracting AIDS through a blood transfusion was minuscule. Today, as blood banks carefully screen all blood donations, the chances are reduced further.

Fiction: *If I am infected with the virus, I will get AIDS.*

Fact: You might, but you also might not. Many healthy people will develop antibodies to the virus,

and display none of the symptoms of AIDS, though they might transmit the disease to others. About 10 to 15 percent may develop what is called ARC (AIDS Related Condition), characterized by mild to severe illnesses. Finally, another 10 or 15 percent may develop AIDS. It can take anywhere from a few months to several years after infection for diseases to develop.

Prevention is key

Because the primary transmission of AIDS is through sexual contact and intravenous drug use, it is imperative that individuals practice safe sex habits and refrain from sharing needles. Those in the high risk groups should protect themselves and their sexual partners in the same way they would for other sexually transmitted diseases. The referral agencies listed in the accompanying sidebar may provide assistance in methods of protection.

How one lives his or her life also plays a preventive role. Substance abuse, including alcohol abuse, poor nutrition, and inadequate rest and activity may contribute to the development of AIDS. "The point is that AIDS is predominantly a sexually transmitted disease, and that means it's a disease of lifestyle," says Dr. Silverman. "People who don't do certain things very likely will not get it. People who do certain things risk getting it." He adds that the same points are true for intravenous drug users.

Fiction: *People with AIDS should not be allowed to work.*

Fact: Employees with AIDS, like persons with other life-threatening illnesses, should be allowed to work if they choose, as long as their condition does not interfere with their job.

Bank America's policy states that as long as employees with any life-threatening illness, including AIDS, are able to meet acceptable performance standards and medical evidence indicates they are not a health threat to themselves or others, they may work.

Often, says Dr. Clever, an employee with AIDS may have to adopt a work schedule to accommodate a greater susceptibility to fatigue. "The most important point is for everyone in the work site to show a caring attitude and

Continued on page 2

Levi Strauss & Co.

Health & Fitness

N E W S

None of these will give you AIDS.



There is no evidence that a person can get AIDS from handshakes, dishes, toilet seats, door knobs or from daily contact with a person who has AIDS.

Calming the Panic

As the AIDS epidemic spreads within its risk groups, as the virus turns up in blood, spit and tears, the public worries desperately: is it a threat to the rest of us?

Not much, insists the experts. As the number of cases doubles each year, the possibility of its spread to the general population also grows. But it's primarily through intimate contact with infected bisexual men or intravenous drug addicts. The percentage of AIDS cases among those not in known risk groups — 6% — is not rising.

The blood-bank problem is largely solved. Blood screening, which began in April, appears to have significantly reduced if not totally eliminated the chance of getting the virus through blood transfusions.

As for tears and saliva, secretions in which the AIDS virus has been found, there have been no documented cases of AIDS transmission by that route, says Dr. Harold Jaffe, chief of epidemiology in the AIDS program at the Centers for Disease Control.

The CDC studied the housemates of AIDS patients. Though they share kitchens and bathrooms, the CDC found the only people showing infection are sexual partners of AIDS patients, plus kids born to infected mothers.

"If saliva or tears were transmitting the disease in a casual situation, presumably we

would see it in a household before we'd see it in a school or workplace," Jaffe says. "We haven't detected it." Still, the CDC has advice:

- AIDS can be sexually transmitted between heterosexuals — men to women, women to men.
- Having sex with someone in a risk group increases the chance of infection.
- Whether contact with prostitutes is a risk is unknown, but many prostitutes use I.V. drugs.
- Gays should cut down on the number of sexual partners, use condoms and avoid exchange of bodily secretions, including intimate kissing.
- For children, casual contact at school poses no risk, though parental concern is understandable. But the CDC does suggest that AIDS-infected preschoolers and neurologically handicapped kids — whose control of bodily secretions is limited — should be in more restricted settings.

Besides avoiding sex with risk-group members, including bisexuals, does AIDS call for any other sexual restraint by heterosexual adults? Jaffe thinks not: "We don't have anything that constitutes evidence calling for universal monogamy based on fear of AIDS."

— Terry Murray, reprinted from *American Health Fitness of Body & Mind* copy 1986 American Health Partners

AIDS

In a Contra Costa office, Jane sits at her desk processing service orders. Jim, her coworker of several months, slides a form onto her desk. Glancing up, Jane is startled to see purple blotches on his arm.

The mental note is etched.

As far as she knows, Jim is single, though he rarely talks about his personal life. Jane knows he just bought a home with "a friend" and remembers that he'd seem relieved to get out of the city and settle down.

On the train home, Jane grows anxious. She thinks of her family. What if Jim has something contagious? Could she catch it and what if it can't be cured? Why should she be subjected to risks?

In Los Angeles, George had never had any problems with his coin collecting job. But recently, one of the bars along his route had closed. The owner died rather suddenly and George was shocked. He'd seen the guy several times — though not in the past few months. He'd seemed fairly young.

After the bar closed, George decided to call his supervisor. He'd been getting nervous about going into that bar and other ones along his route, about handling the phones. Once, George saw someone passing out AIDS pamphlets. Though curious, he wasn't sure he should touch even those.

Richard spent a week in Hawaii trying to shake the fatigue, fever and swollen glands that had plagued him for the last few months. When he returned to his Stockton office, tan and thin, everyone thought he looked better.

But, rather than feeling rested, Richard could barely drag himself to work. After arriving at the office late several mornings in a row, Richard faced the fact that he had to see a doctor.

What he heard sent chills down his spine and drained the color from his face. The diagnosis was AIDS.

Offering what consolation he could, the doctor gave Richard the name of the nearest AIDS counseling center, and suggested he move closer to San Francisco, where treatment might be more advanced.

His immediate symptoms could be treated and, for the time being, he'd be well enough to return to work. Richard wanted to work. He didn't want to stay home, alone with his illness — to admit to himself he was very sick.

But, returning to the office was overwhelming.

As a gay man, Richard had known it would be difficult when he took the promotion and transferred, alone, to a smaller, unfamiliar town.

People at the office had been surprisingly friendly, yet, while casually socializing with his coworkers, Richard had never let it be known that he was gay.

Panic gave way to depression.

The scenarios above are not the experiences of three particular individuals but rather a compilation of the ways AIDS can affect employees at Pacific Bell. They're a starting point for the questions that arise from people everywhere, across the state and around the country.

With 75,000 employees from all walks of life, Pacific Bell is a city of sorts, sharing many of a city's concerns for the financial, psychological and physical well-being of its inhabitants. With the AIDS epidemic gradually affecting more and more people in a variety of ways, only knowledge and understanding can separate myth from fact, reduce the undercurrent of anxiety, and lessen the problems encountered by the individuals with the disease and those around them.

What is AIDS?

AIDS stands for Acquired Immune Deficiency Syndrome. It is a disease caused by a virus that attacks the body's immune system, leaving it vulnerable to certain types of infection.

But it isn't the disease called AIDS that kills directly.

John Lorenzini, founder of People With AIDS Alliance, explains, "The infections that develop are what kills, not the AIDS virus itself. So, what the person with AIDS exhibits are the symptoms from these infections — not one specific to the disease called AIDS."

Due to the number of infections, the AIDS symptoms vary — fever, night sweats, swollen glands, unexplained weight loss, yeast infections, diarrhea, persistent coughs, fatigue and loss of appetite. (It should be noted, of course, that these symptoms can indicate many different illnesses — not just AIDS.)

Two infections have appeared more frequently than any others in people with AIDS: *Pneumocystis carinii pneumonia*, a lung infection caused by a parasite, and *Kaposi's Sarcoma*, a rare form of cancer.

They are not usually found in people whose immune systems are normal.

Who is likely to get AIDS?

As a relatively new disease, AIDS statistics are constantly changing. Research turns up new evidence all the time, but findings show consistently that the number of people stricken has been multiplying. Many sources agree that this may only be the beginning.

As of April, 1985, physicians and health departments in the United States reported 10,000 patients meeting the "surveillance" definition for AIDS. Although the first case was reported in the spring of 1981, over half have been reported within the last twelve months.

According to the U.S. Department of Health, AIDS cases are divided into the following groups:

- homosexuals/bisexuals (73.4 percent of the total number stricken)
- IV drug users (17 percent)
- transfusion recipients (1.4 percent)
- heterosexual contact (0.8 percent)
- hemophiliacs (0.7 percent)
- others/unknown (6.7 percent)

Current statistics show that 90 percent of the stricken adults are between the ages of 20 and 49; 94 percent are men.

Commenting on these figures, Jackson Peyton, Education Director of the San Francisco AIDS Foundation, points out, "It's important to understand that AIDS is not just a gay man's disease. It's affecting a broad spectrum of people.

"Historically, it has not been confined to the homosexual population. We know that in Africa, AIDS is spread through heterosexual sexual contact. So AIDS is everyone's concern."

The fear of contracting AIDS

The U.S. Department of Health, the AIDS Foundation, our own Medical department, as well as the Communications Workers of America all agree on one point: *AIDS is not casually transmitted.*

Katherine Lord, at Atlanta's Center for Disease Control, states, "We know of no work-related cases associated with AIDS, no casual household transmissions, nor of transmission to any health care workers who have dealt with AIDS patients in all stages of illness. We do know AIDS is transmitted by sexual intercourse and by intravenous injection and that the risk increases, for both homosexuals as well as heterosexuals, with the frequency of sexual partners."

Peyton states, "We know enough about AIDS to say that it is transmitted by sexual contact in the same manner as other sexually transmitted diseases. And it is transmitted by blood-to-blood contact. There are no special precautions to take in the workplace."

Pacific Bell's San Francisco Medical Director, Richard Merchant, M.D., emphasizes, "Coworkers are not at risk in the workplace while performing any work-related activities. Transmission can only occur through sexual contact or blood contact."

Sharing telephones and breathing the same air pose no risk to coworkers. Common sense precautions are recommended that most people practice with regard to hygiene. Sharing items such as cigarettes, coffee cups, and eating utensils has always increased the risk of transmitting a variety of illnesses, including hepatitis.

If anyone has to worry it is the people with AIDS. Their immune systems no longer protect them from germs that healthy people shrug off every day.

"The hazard is caused by the other people with an infection who might come in contact with an AIDS person," adds Dr. Merchant. "The person with AIDS is at great risk of getting even a minor infection from us, which then becomes a serious illness due to their inability to fight it off."

Through Feedback and direct inquiry, Pacific Bell's Medical and Safety departments have received questions from employees whose jobs bring them in close contact with AIDS patients — for example, a coin collector who picks up coins on the AIDS ward of a hospital.

Jean Taylor, program director of Pacific Bell's Employee Counseling Program, replies, "Basically, what those people are being advised to do is to take the same precautions that other people are taking in those environments.

"Though there is no risk of contagion in the work environment, the fear of transmission is understandable."

Following a joint Health and Safety committee meeting with Pacific Bell, Joan Moore, Communications Workers of America's San Francisco secretary, reported that the union "saw no need to establish a company policy on the issue of AIDS...no specialized protective clothing, devices or equipment were necessary to protect people on the job." Moore emphasizes that "the company and the union should work together to dispel myths and misinformation and endeavor to create a caring and understanding environment for people with AIDS and their loved ones."

The emotional toll

No one disputes that AIDS is frightening. Fears are understandable.

These fears, however, tend to bring out some subtle and some not-so-subtle prejudices that inflict emotional discomfort precisely on those ill people who can handle it least.

So, letting people know about an AIDS diagnosis is a double-edged sword.

Peyton elaborates, "A person may have a lifestyle that coworkers don't know about. So there is the issue of being gay compounded with the fact that people don't know how to deal with someone who has a terminal illness."

Besides dealing with the possibility of dying, people with AIDS sometimes have to cope with the fear of losing their job — and possibly their support systems of friends.

On occasion, Medical department counselors have found the need to speak directly to work groups.

"There's a lot of panic reaction in the workplace," says Taylor. "In small-group discussions, we try to provide supervisors with enough factual information so those reactions are calmed. Fortunately, the union is extremely supportive and takes an approach that helps to diminish the panic when a member of a work group comes down with AIDS."

Anxiety isn't the only emotion to surface.

Friends, relatives and coworkers can go through the same emotional stages as the person with AIDS. Once their panic subsides, there is sadness and a feeling of helplessness.

"A lot of employees care a great deal about their coworker's well-being," says Taylor. "It's an emotional hardship for the work group that wants to be supportive but doesn't know how.

"Some wonder if it's OK to stay in contact with someone who has gone out on disability because of AIDS.

"It can be awkward because you don't know what to say: whether to ask how they are or tell them they're missed."

Some AIDS patients come back to work and some deteriorate rapidly.

"I would encourage employees to send cards and stay in touch on the level each individual coworker can handle best."

Taylor has noticed an upswing in the number of company cases being counseled around the AIDS issue: people with the disease, those worried about contracting it, cases involving friends and loved ones.

Dr. Merchant reveals that employees concerned about AIDS have been coming to the Medical department to seek counsel from company physicians and for referral to appropriate outside treatment centers to assist in their concern about any AIDS symptoms.

Proper attention to symptoms and accurate diagnosis can allay anxieties which alone may be enough to cause symptoms of illness.

In contrast, self-diagnosis and incorrect diagnosis by both the medical community and peers has fueled the AIDS rumor-mill.

"There is an awful lot of diagnosis by coworkers," says Peyton. "A common phenomenon is for a coworker to be out several days with the flu and presumed to have AIDS."

Likewise, Peyton talks about a phenomenon called "pseudo AIDS": "A person from a high-risk group with non-specific

symptoms of a minor illness walks into a medical setting and is automatically diagnosed with AIDS. There have been some real tragedies where otherwise treatable illnesses have been misdiagnosed."

This problem and others point to the need for careful consideration of the facts. In the words of Dr. Mervyn Silverman, former director of San Francisco's Department of Public Health, "The only way to prevent further spread of the disease is by education and information."

It doesn't matter how close you are to the AIDS problem — whether you have the illness yourself, or you are a friend, lover or coworker of someone who does — whether you interact with AIDS patients on the job or react from a distance. "There are no dumb questions about AIDS," emphasizes Peyton. The important issue is to understand.

— Stefanie Kalmin

The U.S. Department of Health, the AIDS Foundation, our own Medical department, as well as the Communications Workers of America all agree on one point: AIDS is not casually transmitted.

what EVERYONE needs to know about AIDS

An educational resource for everyone
concerned about the spread of Acquired
Immune Deficiency Syndrome



United Way



A disease shrouded in MYTHS.

Fear and ignorance are causing misconceptions and unnecessary anxiety about AIDS.

Since AIDS was first recognized in 1981, researchers have acquired an extraordinary amount of information about the disease. Obviously there is still much to be learned and more is being discovered every day. However, based on currently available information, we are able to dispel the following misconceptions.

MYTH: AIDS is a disease of gay men only. NO!
While 73 percent of the persons with AIDS are homosexual males, bisexuals can also transmit the disease to their heterosexual partners. Heterosexual intravenous drug abusers and their sex partners are similarly at risk. The AIDS virus does not differentiate between gay men, heterosexual men, drug abusing women, etc. The virus can attack anybody but requires that a mode of transmission be present. In Africa, AIDS strikes primarily heterosexuals, and is found equally among men and women.

MYTH: You can get AIDS just by being near a victim or someone who carries the virus—at the office or in a theater, for example. NO!
AIDS is transmitted only through body fluids during sexual contact or contact with the blood of an infected person. There is no evidence that it is spread through talking or shaking hands or casual touching.

MYTH: A person must have symptoms of AIDS to infect others. NO!
Many doctors believe anyone infected with the virus may be contagious for long periods, even if that person has no symptoms. In fact, some experts suspect the infection may be present long before the symptoms appear.

MYTH: There is a high risk of acquiring AIDS from a blood transfusion. NO!
Since March 1985, all units of blood have been tested for the presence of antibody to HTLV-III/LAV, the virus that causes AIDS. If a unit of blood tests positive, it is destroyed. With the introduction of this testing, transfusion transmitted AIDS should

be virtually eliminated. At the present time, about 1.5 percent of the AIDS cases in this country have occurred from blood transfusions. These transfusions were given from 1980 to 1982, before the problem of transfusion transmitted AIDS was recognized. Since AIDS may have an incubation of several years, some of these persons who received transfusions in these years have only recently become ill. It should be very safe to receive a blood transfusion today since HTLV-III/LAV antibody testing has greatly reduced the risk of acquiring AIDS from blood transfusion.

MYTH: It is still possible to get AIDS from donating blood. NO!
This is impossible. All collection equipment is sterile and never reused. You cannot get AIDS or any other viral disease from donating blood. The health and comfort of the blood donor are a primary concern of all voluntary blood collection organizations.

MYTH: Women cannot transmit AIDS even when they have the disease or are carrying the virus. NO!
If they are pregnant, their children will possibly be born with the virus. Women can also pass AIDS to their sex partners.

MYTH: Homosexuals who have one or only a few sex partners don't get AIDS. NO!
The risk of getting AIDS increases with multiple exposures, but it is still possible to acquire it from a single partner.

health & wellness



Myths about AIDS

Editor's note: This column is sponsored by Wells Fargo's Health Promotion Task Force.

By Kim Kellogg

In recent years, one of the most disturbing and unfortunate misunderstandings among the public has been the mistaken idea that you can get Acquired Immune Deficiency Syndrome (AIDS) by donating blood.

"Nothing is further from the truth," stresses Dr. Bryan Lawton, vp and director, Employee Assistance Services. "Because Wells Fargo encourages employees to be blood donors, it is important that they know the facts."

AIDS is a serious medical condition that results in a defect in the natural immune system against disease. Patients afflicted by it suffer from a variety of infections often caused by harmless germs that cannot produce disease in healthy individuals. For someone to contract AIDS — which is passed through intimate bodily fluids or shared hypodermic needles — the infectious viral agent must get under the skin and penetrate the blood system of the victim.

What seems to have confused the

public is the difference between donating and receiving blood. "There is no danger of getting AIDS from donating blood," says Lawton. "Blood banks use sterile equipment and disposable needles, so there is no way a needle used for one donor would be used for another."

What has been publicized in the media is the rare possibility of receiving a transfusion of blood infected with the AIDS virus and subsequently developing AIDS from that contaminated blood. The odds of this happening are one in a million or even less now that blood donations are screened for the AIDS virus.

"Wells Fargo is concerned about the safety of its employees and also of any future patients who will receive blood," says Lawton. "We participate in blood drives because we know there is no possibility that by giving blood a person can contract AIDS. We also know how desperately blood is needed because of the current public misconception, which has stopped people from donating blood."

Before donations are accepted, blood bank staff members review an employee's medical and social history and give a mini-physical to screen out anyone who might be in a high risk

group. After the blood donation, the lab tests a sample of the blood for syphilis, hepatitis and the AIDS antibody. Blood reacting positively to those tests is not used for transfusions and the donor no longer is eligible to give blood in the future.

There are four groups most at risk for AIDS: sexually active homosexual men, intravenous drug users who share hypodermic needles, hemophiliacs and Haitians.

On Aug. 8, Wells Fargo will hold an emergency blood drive in San Francisco on the 11th floor of Head Office, 420 Montgomery St.

"Anyone in those groups, or anyone who has had intimate sexual contact with someone from these groups, and anyone with any symptoms or signs of AIDS, should most definitely not give blood," notes Lawton.

"In the past, Wells Fargo employees have given generously of themselves during blood drives. We're counting on our employees to come through again."

II. General Resource Materials

B. General Information Articles

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Washington Business Group on Health

AIDS: EMPLOYERS' RIGHTS, RESPONSIBILITIES, AND OPPORTUNITIES

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Acquired Immune Deficiency (AIDS) has now been recorded in every state in the United States. It is a disease which will be addressed by each employer either in a preventive or crisis manner. AIDS represents a broad range of issues involving medical, economic, legal, disability, moral, productivity, and educational factors. AIDS will probably remain a tragedy for thousands of individuals afflicted with the disease, their friends, families, and co-workers. Ultimately however, AIDS can be addressed effectively and humanely at the workplace when all these factors are considered in light of the rights, responsibilities and opportunities employers have to manage this epidemic.

MEDICAL UPDATE

AIDS is a condition which suppresses the immune system leaving the body vulnerable to infection (1). Two of the most common infections which attack individuals with AIDS are *Pneumocystis carini* pneumonia, a lung infection, and Kaposi's sarcoma, a rare form of cancer. It is such "opportunistic" diseases, not the AIDS virus itself, which can result in death (2). A closely related illness, ARC, or AIDS related complex, appears to be a less severe form of AIDS in which fewer of the symptoms and opportunistic infections are present (3).

During the incubation period, there may be no telltale signs that suggest a person is suffering from AIDS or ARC. As the illness progresses, some of the following either recurrent or persistent symptoms develop: fever, including severe night-sweats; rapid weight loss for no apparent reason; swollen lymph glands in the neck, underarm and groin area; constant fatigue, unexplained diarrhea; white spots or blemishes in the mouth. These symptoms are also symptoms for many other illnesses. In the case of AIDS however, the symptoms are not explained by any other illness and persist for unusually long periods of time (4).

In later stages, the immune system of persons with AIDS becomes severely weakened, turning normally mild, harmless infections into potentially fatal conditions. For this reason a person with AIDS should be careful regarding their exposure to germs (5).

The virus which causes AIDS is alternately called HTLV-III or LAV.

Transmission of the virus has been demonstrated to take place through (a) intimate sexual contact involving the exchange of body fluids with an infected person (6,7), (b) sharing needles which are infected with the virus (8), (c) exposure to blood or blood products from infected persons (9)(10), and (d) from infected women to their newborns (11).

WORKPLACE RIGHTS AND RESPONSIBILITIES

One of the principle concerns for the workplace is whether AIDS can be transmitted in the work environment. All the scientific evidence thus far indicates that transmission is not possible through casual personal contact and activities which occur at the workplace. Supporting studies include the surveillance of over 300 household contacts where a person with AIDS is present and not a single case of transmissions (except from sexual contact or from infected mother to newborn) has been recorded. Many of those tested are children exposed to siblings who are infected and who shared beds, bottles, toothbrushes and eating utensils (12,13,14).

Furthermore, studies of 1750 health care workers with intense exposure to patients with AIDS have found no cases of individuals who have been infected that did not otherwise belong to high-risk groups. In fact, 600 health care workers who have accidentally stuck themselves with contaminated needles have not shown infection with the virus. In only one documented case, where a nurse actually received a microinjection of blood after an arterial puncture, has infection with the AIDS virus been demonstrated (15,16). The concensus among medical professionals that AIDS cannot be transmitted through casual contact will shape many of the legal rights and responsibilities of employers.

Employers have had the right to refuse to hire or fire individuals for any or no reason under the doctrine of "employment at will". This plenary authority has diminished however through specific legislative provisions and union contracts (17), particularly those involving disabled and handicapped workers. The Federal Vocational Rehabilitation Act of 1973 prohibits the federal government, federal contractors and companies which receive federal financial assistance from discriminating against the disabled and/or handicapped. The disabled and handicapped are also protected by state statutes which, though varying slightly in language from jurisdiction to jurisdiction, essentially propose that "an employer may not discriminate against an employee or applicant solely because of that employee's disability, unless the employer can show that the handicap or disability would adversely affect the employee's work performance" (18).

Although the question of whether AIDS falls under the Rehabilitation Act has not been answered in the courts, most legal commentators believe that AIDS is a protected handicap. State laws, which vary from state to state, tend to define a handicap or disability as one or more of the following: (a) a physical or mental impairment which substantially limits one or more major life activity (19), (b) a record of such an impairment, or (c) a condition regarded or perceived by others as such an impairment (20).

A decision in federal court of appeals which is likely to influence the classification of AIDS, concludes that tuberculosis, a contagious disease, qualifies as a handicap within the definition of the Rehabilitation Act of 1973. Another related decision in federal district court held that it is a

violation of the Rehabilitation Act to restrict handicapped children with hepatitis B, another contagious disease, to certain classes. The New York Division of Human Rights Policy has ruled that AIDS is a protected handicap under state law (21).

Presuming that AIDS will be classified as a disability or handicap, there are, according to Stuart Bompey, several clear answers concerning employer rights and responsibilities (22):

1. Q. Can an employer deny employment to an otherwise qualified applicant with AIDS?
 - A. No, unless the disease is so far advanced that the employee is incapable of performing the duties of the job applied for.

2. Q. Can an employer take adverse action against an employee with AIDS based on fear of contagion?
 - A. No. The medical consensus is essentially unanimous that AIDS cannot be spread through casual contact. For example, segregation, without solid medical justification, would probably violate statutory prohibitions against discrimination on the basis of a disability.

3. Q. Can an employer discharge a person with AIDS based on economic concerns that the employee may soon be incapacitated?
 - A. No. Case law interpreting disability statutes generally reject "future risk" arguments.

4. Q. Can an employer ask applicants if they have AIDS or have been exposed to the AIDS virus?

A. No. Disability statutes generally prohibit overly-broad pre-employment inquiries which are not job-related.

5. Q. May an employer require pre-employment physical examinations, which would include the AIDS blood test?

A. This test, which detects the presence of antibodies to the AIDS virus cannot determine whether a person has AIDS or will get AIDS. The test can only determine if the individual has been exposed to the virus and cannot determine if the virus is still present and/or whether the virus is currently active. Results from the HTLV-III test are severely circumscribed. With this in mind, an employer can require an applicant to take the HTLV III test if the test is part of a pre-employment physical. Such a physical would have to be required of all potential employees, since it would be considered discriminatory to request this of selected individuals, and would have to include tests other than just the AIDS test (23). It should also be kept in mind that once an employer has requested the HTLV-III test, it could be difficult to prove that an individual was not discriminated against because of the results of the test. Counseling is strongly advised before and after an HTLV-III test is conducted.

6. Q. May an employer force a person with AIDS to take a medical leave of absence?

A. No, not unless the employee is physically unable to perform his or her normal functions.

7. Q. What kind of accommodations are employers obliged to make for a person with AIDS?

A. Employers are legally bound to either provide reasonable accommodation or change the job of a disabled or handicapped person. Such "job restructuring" or job accommodation to meet the needs of a disabled person and can not cause unreasonable disruption to business (24).

8. Q. Is an employer obligated to communicate any information indicating that an employee has tested positive for the AIDS virus?

A. If an employer finds out that an employee has AIDS, AIDS related complex or has tested seropositive to HTLV-III (i.e., has been shown to have the HTLV-III antibodies present in their blood stream), the employer is not bound to disclose this information to other employees or anyone else. Not only is an employer advised not to disclose such information, but disclosure may compound the employer's legal and personnel problems. Employees may erroneously perceive that their work environment has become unsafe and try to invoke the labor relation laws (i.e., Taft-Hartley Act, National Labor Relations Act, and the Occupational Safety and Health Act), which grant the employee the right to refuse to work in a perceived safety-threatening situation (25).

9. Q. What actions can an employer take if an employee refuses to work with a person who has AIDS and/or demands that an employer take actions against the person?

A. Such a situation forces the employer to weigh the interests of the employee with AIDS, who is protected by discrimination laws, against those of co-workers, who, under the protection of the Taft-Hartley Act must be provided with a safe working environment (26). It clearly

would be a discriminatory action against the person with AIDS to resolve the conflict by isolating them. Since all the available medical data support the fact that AIDS is not contagious through casual contact, it is likely that the courts will uphold the rights of the person with AIDS. If, after educating the protesting employees on the minimal risk, they still refuse to work, an employer may threaten discipline and eventually permanently replace them (27).

EMPLOYER OPPORTUNITIES

AIDS presents a substantial set of responsibilities for employers to manage the workplace fairly and legally. However, AIDS also presents employers with opportunities to enhance their corporate health management strategy. Health education campaigns, established in conjunction with existing employee benefits communication programs, can contribute to the prevention of the spread of AIDS and the spread of the fear of AIDS. Educational campaigns can also enhance employer-employee relations, and can in many cases reassure employees of continued employer protection under their group health insurance policy. Additionally, employers who have not recently reviewed their methodology for managing health care costs have an opportunity to reconsider new, more cost effective ways of managing catastrophic illnesses through case management.

Education

A number of companies have been progressive in educating themselves and their employees concerning AIDS. Taking the lead is the Business

Leadership Task Force, which consist of 15 major employers based in Northern California. Member companies have joined their resources to provide credible and comprehensive AIDS education for employers. Levi Strauss, a member of the Task Force, has developed programs which include: lectures for managers by experts on AIDS; resource and support classes for persons with AIDS as well as anyone who knows or is related to a person with AIDS; a video presentation which can be checked out for home viewing; regular updates on AIDS in the company newsletter. Pacific Bell, another Task Force member, provides AIDS seminars in connection with the San Francisco AIDS Foundation and publishes information "not normally covered in a company vehicle," such as sexual activity and sexuality. Other Task Force member companies that are participating in this cooperative arrangement include Wells Fargo Corporation, Pacific Gas and Electric, Crocker National Bank, Chevron, Mervyn's, Bank of America, and SRI International.

Employers are encouraged to address the issue before an incident occurs at the workplace. The virtue of providing employee information before an incidence of AIDS occurs in the workforce is that the level of receptivity will be much higher. The general hysteria that exists about AIDS combined with a suspicion that managment may be deceiving employees can occur at the time of the first AIDS case in a workplace. Such distrust can cause employees to question the validity of the medical evidence provided for them.

Employers are advised to incorporate an AIDS information campaign into their existing employee benefits communication program. This provides employers an opportunity to remind employees of the protection being

provided for them and to reassure them of continued protection. According to the Health Insurance Association of America, HIAA, the insurance industry is treating AIDS just like any other disease. Employer-sponsored group health insurance coverage, which represents approximately 85% of insured workers, will treat AIDS as any other catastrophic illness. Such plans typically do not involve individual underwriting so that employees will not be subjected to medical questions or testing in order to qualify for group insurance (28).

Individual or small (under 25) group policies historically have utilized questions and testing to determine insurability. The insurance industry has indicated that it may try to test individual or small group applicants for the AIDS virus if no legal barriers exist. California, however, has passed laws to prohibit the use of HTLV-III antibody test results by insurers and business (29). Wisconsin similarly limits the use of HTLV-III antibody testing by requiring that such testing first receive approval from the state health department (30). Thus, an individual with AIDS or a life-style associated with a high risk group may find it difficult to get health insurance coverage through an individual or small group policy. **Small business managers must be prepared to consider alternative forms of health care cost management for their employees.**

Cost Management

The Centers for Disease Control has estimated the cost of hospital care for the first 10,000 AIDS cases to be \$1.47 billion. The average cost per case, according to CDC estimates, is \$147,000 (31). However, the average cost per case in San Francisco is \$25,000 - \$32,000. A major reason for

this discrepancy, according to the American Management Association, is the implementation of individual case management programs among West Coast health care purchasers (32).

Case Management

The typical health care plan is hospital based. However, it has come to the attention of employers and insurers that health care costs can be reduced by using alternatives to hospital care. Case management programs are designed to customize care for patients with catastrophic illnesses on a case by case basis. The process requires cost analysis and coordination; the costs and quality of care provided by health care programs within the community are compared with in patient hospital care costs; after a cost analysis and deliberation with the patient, family, and health care professionals, a cost effective and humane program of care is presented to the purchaser. This plan can be less expensive for the purchaser and is preferred by the patient (33).

Implimentation of case management for any catastrophic illness including AIDS, extends far beyond the diseased body of its victim and is unique in its demands upon resources:

* Joe, a 32 year old person with AIDS, after spending nine days in intensive care was too sick to go home alone but did not require intensive care facilities.

* Martha, a retired woman who lives in a retirement community in Texas, was visited by her 28 year old son who lived in West Virginia. While visiting, he was struck with an opportunistic disease.

* Sally, an upper level manager in a computer software company, when stricken with AIDS, became determined to finish a major project though she was becoming too weak to commute to her office every day.

In each case, a comprehensive and individualized health care plan calls for creative coordination of employer, family and community resources. For example, these cases, managed by a professional health care coordinator, might include solutions involving: home care assisted by a visiting nurse; training for family and friends who are caring for their sick and dying loved ones; job accommodations involving working at home. All of these alternatives can cost significantly less than the costs of equivalent time spent in intensive care in a hospital.

The pivotal person in case management is the coordinator, often a nurse, who orchestrates appropriate services from among those available throughout the community. The family members and friends, however, typically assume a great deal of the responsibility for direct care. Part of the cost of this orchestrated care is in providing emotional support and training for the family or friends who are engaged in direct care. Even so, coordinated care in San Francisco and in other areas where community and family resources are available, is cost effective for employers and preferred by AIDS patients and families.

In San Francisco, where a full array of community support systems exists and are supported by employers, AIDS patients typically stay in the hospital for only 11.4 days, compared to 31 to 50 days in many other locations. Only 10% of AIDS patients there spend a day or more in the

Intensive Care Unit. Many are cared for at home, with friends, at hospices and nursing homes. They and their families have access to practical, emotional and spiritual support from a variety of community organizations (34).

One of the resources for alternative care which can be integrated into individual case management is hospice care. According to the National Consumers League (35), hospice sponsored home care can be less costly than conventional care in hospitals because high-cost technology is used less and because family, friends and volunteers handle much of the care."

Conclusion

Most businesses are not in the business of health care or health education but it is to their advantage and to their credit to take the lead in this national health crisis. Even though employers and employees may feel awkward when dealing with the subject of AIDS and employees who have AIDS or ARC, they are legally and ethically bound to treat this disease like any other catastrophic and disabling condition.

Some companies have already demonstrated courage and innovation in their educational and health policies. For example, Bank of America acknowledges "the fact that continued employment for an employee with a life-threatening illness may sometimes be therapeutically important in the remission or recovery process, or may help to prolong that employee's life." Bank of America has also made a commitment to make "reasonable accommodations" for persons with AIDS and other illnesses (36). IBM and

Westinghouse cover AIDS under their policies on catastrophic illnesses. These employers, along with others who help normalize the disease, will ultimately be among those credited with eliminating the fear and discrimination of those people with AIDS who have already suffered enough.

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Social Issues

COMMENTARY

BY IRENE PAVE

FEAR AND LOATHING IN THE WORKPLACE: WHAT MANAGERS CAN DO ABOUT AIDS

It's time for employers to face up to the AIDS crisis. Some 14,000 Americans have contracted acquired immune deficiency syndrome since 1979. More than 7,000 have died of it, and an estimated 1 million have been exposed. Any large company, even one far from the high-risk centers of New York and San Francisco, probably has employees in at least one of these groups. And many employees are so afraid of AIDS that they resist working with suspected carriers.

Panic already grips some companies. At one, an executive phones a human resources consultant: "I've got 20 workers in my office demanding that we bar a gay employee from the cafeteria. What do I do?" At another, a decision to allow an AIDS patient to return to his job produces chaos. "How can you expect us to work with him?" ask his colleagues. At a third, top management considers the question: "Should we test everybody in the work force for AIDS antibodies [evidence of exposure] and fire those who test positive in order to protect the others?"

If these were only medical questions, the answers would be easy. The AIDS virus has been found in blood, semen, saliva, and tears, but no case of AIDS has ever been traced to fluids other than blood and semen, according to the Centers for Disease Control in Atlanta. That's why 90% of U.S. patients are homosexuals infected during sexual intercourse or drug abusers infected by dirty needles. The rest (for instance, infants born to infected mothers and heterosexual partners of AIDS patients) also caught the disease through blood or semen. So it makes no sense to avoid ordinary workplace contact.

ANXIOUS WORKERS. Antibody tests seem equally pointless. Some 5% to 20% of those exposed will contract AIDS, but no one knows who they will be—nor who may become a carrier without developing the disease. So testing for antibodies in the bloodstream, a procedure developed to safeguard

blood banks, stigmatizes the many who are safe and doesn't identify the dangerous few—who aren't dangerous in a workplace setting anyway.

At first blush, the legal answers also seem straightforward. The employer who segregates the gay or fires the AIDS patient could wind up in court, say lawyers. Although few jurisdictions bar discrimination against gays,

Court. That leaves employers where they started—with a human relations problem, not a medical or legal one.

A humane solution requires dealing compassionately with the AIDS victim while educating other employees, says the Washington Business Group on Health, a corporate policy group that has been fielding employers' questions for months. An example: The policy at

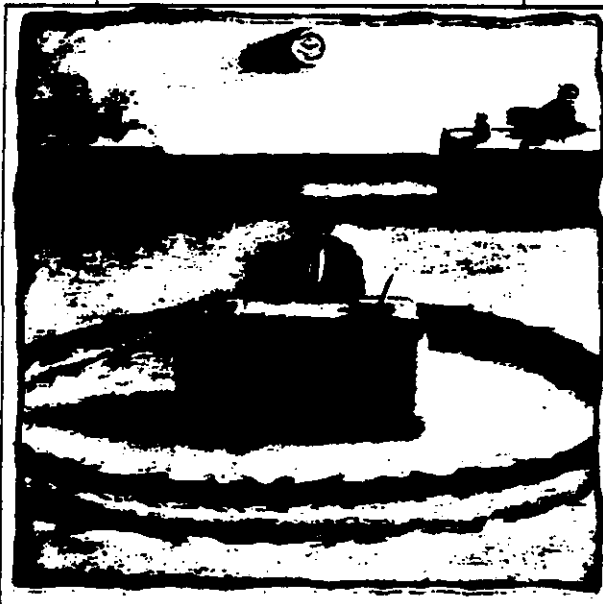
Wells Fargo & Co.—applied to 5 patients among 17,000 employees since 1983—permits the patient to work if two doctors certify his fitness. Co-workers are prepared for his return in briefing sessions about AIDS, intended both to ease acceptance of the patient and to assure his colleagues of Wells Fargo's concern for their safety. The company also distributes information on AIDS. It neither tests for antibodies nor singles out potential AIDS patients in any other way.

COOPERATION. A lower-key approach is in effect at International Business Machines Corp., which has used its policy on catastrophic illness to deal with "a handful" of AIDS patients among 400,000 employees. If they're medically

fit, they can work. If they want counseling, they get it. And if they feel their co-workers need counseling, IBM will give that, too. The same rules would apply if an employee had cancer.

More typically, companies pay medical costs but insist that the patient stop work. Since no company is likely to have many AIDS cases, employers apparently prefer to pay the bill—an average of \$100,000—rather than struggle with employees' reactions. Both patient and co-workers know what to expect, and the patient gets financial—if not psychological—support.

Most companies, however, have yet to come to grips with AIDS. But with cases expected to double in a year, no responsible employer can continue to duck the issue. The peace of mind of future AIDS patients and the stability of a company's work force depend on setting a fair policy without delay.



federal and state laws ban bias against the handicapped, who are usually defined as persons with actual or perceived impairments. By that definition, acts directed against gays as AIDS carriers are probably illegal.

If the employer takes another tack and disciplines his anxious workers, he risks other legal troubles and probably wastes his time to boot. Punishing employees too scared of AIDS to work smoothly with an AIDS victim won't quiet their fear, and the National Labor Relations Act protects "concerted action" such as the cafeteria protest.

Screening for AIDS antibodies or firing employees who flunk the test also invites trouble: rulings ranging from violation of privacy to intentional infliction of emotional distress. But all this is still theory, the lawyers add. Few AIDS cases have gone to court, and none has reached the U.S. Supreme

Predictions

□ Slow computer sales will last for a year or more. Actual plans of buyers differ sharply from predictions of computer vendors, who are expecting a faster rebound.

Industry survey by Decision Research Corp., 33 Hayden Ave., Lexington, MA 02173.

□ Office automation will continue to become cheaper and more sophisticated. *Coming soon:* Word processors that automatically edit documents; machines that operate on voice command. *Overall goal:* Office systems that allow employees to work on an integrated network instead of at individual work stations.

Management World, 2360 Maryland Rd., Willow Grove, PA 19090, monthly, \$18/yr.

□ Benefits: The next 20 years. Congress will slash Social Security payments and raise the eligibility age for retirement. Workers will pay for a larger portion of benefits. Flexible plans will be funded primarily by employees. Profit-sharing plans and IRAs will become increasingly popular retirement vehicles.

John Sutcliffe and Jay Schuster, partners, Schuster-Sutcliffe & Associates, benefits consultants, 3810 Wilshire Blvd., Los Angeles 90010

□ Commercial real estate values will begin to plummet by 1987. A new study by REIS Reports* says a huge glut will hit most top markets, producing vacancy rates of over 30% in some areas. *Reason:* Overinvestment in office property by top financial institutions. *Likeliest victims:* Austin, Palm Beach, Phoenix and Tampa.

**A real estate research firm, 250 W. 57 St., New York 10017.*

□ Nuclear plant construction will soon come to a halt, but reactor builders will stay in business. They'll have to maintain reactors already built, and there's still a healthy export market.

Kiplinger Washington Letter, 1729 H St. NW, Washington, DC 20006, weekly, \$48/yr.

□ Scheduled vehicle maintenance intervals will lengthen. *Encouraging signs:* Brakes and tires that last longer. Also, self-adjusting belts that will reduce repair or replacement costs are now being perfected.

Motor, 250 W. 55 St., New York 10019, monthly, \$2/yr.

INSIDE INFORMATION

Arthur S. Leonard, New York Law School

EMPLOYEES WITH AIDS

What companies can—and can't—do

In the coming months many businesses will have to deal with employees who are identified as having been exposed to AIDS, who have warning symptoms of the disease or who are clearly affected by acquired immune deficiency syndrome. There are already clear legal paths that companies can take in dealing with these workers.

Although legal rights of AIDS patients are being developed in a patchwork of federal, state and municipal law and in new regulations and court decisions, employers should be aware of a central legal point: Employees with AIDS are covered by laws and regulations that protect handicapped people against discrimination.

HIRING AND FIRING

In more than 40 states it's unlawful for a company to discriminate against people whose disability doesn't disqualify them from normal work. When it's working on a federally connected project or contract, a company is also usually barred from such discrimination. A few cities, including Los Angeles, have made it illegal specifically to discriminate against AIDS patients. Moreover, most legislation that protects the disabled also prohibits businesses even from discriminating against "perceived disabilities."

A company may be able to screen out job candidates who are intravenous drug abusers since these people are specifically excluded in most antidiscrimination laws. But a business that refuses to hire a person because it suspects he's at risk for AIDS, or even because it knows he has AIDS, is inviting a suit. A company isn't obligated to hire workers

with AIDS, of course. But a business can't refuse to hire them because of their disease.

Similarly, a company can't fire an employee on the basis that he has AIDS. To do so invites a lawsuit because of the law barring discrimination against those with disabilities.

REASON FOR CAUTION

A business can't discriminate against hiring homosexuals in 40 cities that have gay rights laws and in the state of Wisconsin. In other jurisdictions, a company that refuses to hire gay men because they're a high-risk group for AIDS can be sued on the basis that it discriminates against a perceived disability. There's no evidence that homosexual women are at any special risk for contracting AIDS.

Fellow employees probably can't refuse to work with a person who has AIDS. But there have been few legal cases on this point.

TAKING ACTION

Best policy: Grant sick leave to employees with AIDS on the same basis it's granted to other employees. (One company has granted one year's paid sick leave to several AIDS-afflicted employees.) An employee who's put on paid leave and asked not to come to work probably doesn't have grounds for a suit against the company.

But don't be reckless about such actions. One company, for instance, is being sued by an admittedly gay employee

Boardroom interviewed Arthur S. Leonard, associate professor of law, New York Law School, 57 Worth St., New York 10013. His article Employment Discrimination Against Persons With AIDS in the Spring 1985 issue of the University of Dayton Law Review has case citations on the AIDS issue.

Shrewd selling

□ Never ignore a new person who suddenly appears in the buying company's ranks, even if the sale appears to be closed. Any buying representative who's ignored is a *threat*. If a new technical consultant pops up, take time to convince him or her that your company deserves the order. Watch out for changes in the executive ranks. No sale is safe until the product leaves the loading dock.

□ Sell your customer a *solution to a problem*, not just a product. Analyze the end-users' need for a product first. View the purchasing agent in an *administrative role*, giving the *actual user*—who has the problem—the buying decision. Those line managers are more interested in results than in prices.

Don Beveridge, president, Beveridge Business Systems, 102 N. Cook St., Barrington, IL 60010.

□ Cold sales calls. Have salespeople set clear objectives for every sales call—including cold calls. "Seeing if they use our products" isn't good enough. *Better*: Talk to someone in engineering and leave a catalog with both engineering and purchasing, but only if volume potential justifies it.

□ Incentive sales programs still work if all sales reps have an equal shot at the reward. Avoid rewarding only the largest sales. That's unfair when sales territories have varying potential or are affected differently by business cycles. *Best*: Structure incentive programs to account for territorial differences, and reward reps who *did* the most, not *sold* the most.

Max S. White III, managing principal, Sibson & Co., 777 Alexander Rd., Princeton, NJ 08540.

□ Never leave a customer before asking yourself these questions: What happened during this visit? What will I do next? When will I do it?

□ The final authority to release dollars for a purchase moves higher up in a company as business conditions worsen. Start now to identify who might control the funds if a prospect's or customer's business begins to soften. Don't be left dealing with someone too far down the line.

put on paid leave because he said he had a *friend* who had AIDS.

At present a company could probably not successfully defend itself if it fired or denied benefits to an employee with AIDS by arguing that the danger of contagion is substantial.

CASUAL CONTACT

Current scientific evidence shows that AIDS isn't transmitted by casual contact, not even to family members who cared for, hugged and kissed members of their families who were afflicted with AIDS. (AIDS is a condition caused by a viral attack on the body's immune system, which leaves it vulnerable to cancer and other lethal diseases.)

Caution: This is still a cloudy area. It's not yet understood at what point a person infected with AIDS is contagious. (It's possible, for instance, that those in the most advanced stages of the disease are *not* contagious because the virus has already destroyed all the T-cells in the immune system and no longer has a host in the body to keep it alive.)

Essential: Keep up with information in this area. Allay employees' fears that aren't supported by current medical research and evidence.

MORE LEGAL HAZARDS

Lack of confidentiality in dealing with employees with AIDS puts the company at legal risk. Companies must always be careful to keep medical information about their employees confidential, but in light of the public panic about AIDS, confidentiality is even more important with AIDS-afflicted employees.

In a case now before the courts, an employee with "warning" signs of AIDS asked his supervisor for time off for special treatment. The supervisor insisted on knowing what the treatment was for, and when the employee explained the reason, the supervisor made the information widely known throughout the plant. The employee is now suing for damages, *in addition* to charging discrimination.

In the interests of confidentiality, it's probably best to stop encouraging individuals to donate during the company's annual blood drive: Let those who want to donate do so, but don't press those who refuse.

DISABILITY BENEFITS

The Centers for Disease Control have developed a definition of AIDS based

on the appearance of certain symptoms. Employees with CDC-defined AIDS are automatically entitled to disability benefits, even though many of them are still capable of working. Employees on paid sick leave can generally be moved to disability coverage when they qualify.

There's a big potential area of danger here, though, for companies. Disability benefits are *lower* than an individual's salary. If the employee is capable of working, he could charge that he's being damaged by being put on disability.

INSURANCE PROBLEMS

Companies with employee benefit plans could be held responsible under ERISA for meeting the medical and hospital costs of AIDS employees if health insurance carriers refuse to cover such employees. In this case, companies may be required to self-insure.

The whole issue of health insurance coverage for AIDS victims is growing increasingly complicated. Costs are mounting because AIDS patients are living longer as a result of improvements in treatment. But these patients are also very likely to be living in hospitals because of community pressure against putting them in lower-cost nursing homes and hospices.

At present, most health insurance programs cover hospitalization costs for AIDS patients but don't cover many of the new treatments because they're classified as experimental. Some insurers also reject individual claims for hospitalization on the grounds that AIDS was a "preexisting" condition. The alleged justification for this is the long incubation period between infection with the AIDS virus and the first indication of symptoms.

In anticipation of an enormous swell in costs in the near future, the health insurance industry is pressuring the FDA to license the AIDS antibody test to be used to screen individuals.* And one of the companies producing the test says it will soon have a test that can be done at home.

DENYING BENEFITS

Some insurers want to use test results to deny coverage to individuals in a group. And some companies plan to write exclusionary clauses in group contracts that would provide *no* coverage for employees with AIDS.

*At present the test is licensed only to screen blood. Names of individuals aren't linked to the samples tested. The donor is given a number and can call in to find out the results by giving that number. □□

M M W R

MORBIDITY AND MORTALITY WEEKLY REPORT

- 681 Summary: Recommendations for Preventing Transmission of Infection with HTLV-III/LAV in the Workplace
- 682 Recommendations for Preventing Transmission of Infection with HTLV-III/LAV in the Workplace

Current Trends

Summary:
**Recommendations for Preventing Transmission of Infection
with Human T-Lymphotropic Virus Type III/
Lymphadenopathy-Associated Virus in the Workplace**

The information and recommendations contained in this document have been developed with particular emphasis on health-care workers and others in related occupations in which exposure might occur to blood from persons infected with HTLV-III/LAV, the "AIDS virus." Because of public concern about the purported risk of transmission of HTLV-III/LAV by persons providing personal services and those preparing and serving food and beverages, this document also addresses personal-service and food-service workers. Finally, it addresses "other workers"—persons in settings, such as offices, schools, factories, and construction sites, where there is no known risk of AIDS virus transmission.

Because AIDS is a bloodborne, sexually transmitted disease that is not spread by casual contact, this document does *not* recommend routine HTLV-III/LAV antibody screening for the groups addressed. Because AIDS is not transmitted through preparation or serving of food and beverages, these recommendations state that food-service workers known to be infected with AIDS should not be restricted from work unless they have another infection or illness for which such restriction would be warranted.

This document contains detailed recommendations for precautions appropriate to prevent transmission of all bloodborne infectious diseases to people exposed—in the course of their duties—to blood from persons who may be infected with HTLV-III/LAV. They emphasize that health-care workers should take all possible precautions to prevent needlestick injury. The recommendations are based on the well-documented modes of HTLV-III/LAV transmission and incorporate a "worst case" scenario, the hepatitis B model of transmission. Because the hepatitis B virus is also bloodborne and is both hardier and more infectious than HTLV-III/LAV, recommendations that would prevent transmission of hepatitis B will also prevent transmission of AIDS.

• Formulation of specific recommendations for health-care workers who perform invasive procedures is in progress.

HTLV-III/LAV - Continued

sexual contact, parenteral exposure to contaminated blood or blood products, and perinatal transmission from infected mothers to their offspring. Thus, some of the same major groups at high risk for HBV infection (e.g., homosexual men, IV drug abusers, persons with hemophilia, infants born to infected mothers) are also the groups at highest risk for HTLV-III/LAV infection. Neither HBV nor HTLV-III/LAV has been shown to be transmitted by casual contact in the workplace, contaminated food or water, or airborne or fecal-oral routes (5).

HBV infection is an occupational risk for HCWs, but this risk is related to degree of contact with blood or contaminated needles. HCWs who do not have contact with blood or needles contaminated with blood are not at risk for acquiring HBV infection in the workplace (6-8).

In the health-care setting, HBV transmission has not been documented between hospitalized patients, except in hemodialysis units, where blood contamination of the environment has been extensive or where HBV-positive blood from one patient has been transferred to another patient through contamination of instruments. Evidence of HBV transmission from HCWs to patients has been rare and limited to situations in which the HCWs exhibited high concentrations of virus in their blood (at least 100,000,000 infectious virus particles per ml of serum), and the HCWs sustained a puncture wound while performing traumatic procedures on patients or had exudative or weeping lesions that allowed virus to contaminate instruments or open wounds of patients (9-11).

Current evidence indicates that, despite epidemiologic similarities of HBV and HTLV-III/LAV infection, the risk for HBV transmission in health-care settings far exceeds that for HTLV-III/LAV transmission. The risk of acquiring HBV infection following a needlestick from an HBV carrier ranges from 6% to 30% (12,13), far in excess of the risk of HTLV-III/LAV infection following a needlestick involving a source patient infected with HTLV-III/LAV, which is less than 1%. In addition, all HCWs who have been shown to transmit HBV infection in health-care settings have belonged to the subset of chronic HBV carriers who, when tested, have exhibited evidence of exceptionally high concentrations of virus (at least 100,000,000 infectious virus particles per ml) in their blood. Chronic carriers who have substantially lower concentrations of virus in their blood have not been implicated in transmission in the health-care setting (9-11,14). The HBV model thus represents a "worst case" condition in regard to transmission in health-care and other related settings. Therefore, recommendations for the control of HBV infection should, if followed, also effectively prevent spread of HTLV-III/LAV. Whether additional measures are indicated for those HCWs who perform invasive procedures will be addressed in the recommendations currently being developed.

Routine screening of all patients or HCWs for evidence of HBV infection has never been recommended. Control of HBV transmission in the health-care setting has emphasized the implementation of recommendations for the appropriate handling of blood, other body fluids, and items soiled with blood or other body fluids.

TRANSMISSION FROM PATIENTS TO HEALTH-CARE WORKERS

HCWs include, but are not limited to, nurses, physicians, dentists and other dental workers, optometrists, podiatrists, chiropractors, laboratory and blood bank technologists and technicians, phlebotomists, dialysis personnel, paramedics, emergency medical technicians, medical examiners, morticians, housekeepers, laundry workers, and others whose work involves contact with patients, their blood or other body fluids, or corpses.

Recommendations for HCWs emphasize precautions appropriate for preventing transmission of bloodborne infectious diseases, including HTLV-III/LAV and HBV infections. Thus, these precautions should be enforced routinely, as should other standard infection-control precautions, regardless of whether HCWs or patients are known to be infected with HTLV-III/LAV or HBV. In addition to being informed of these precautions, all HCWs, including students

HTLV-III/LAV – Continued

perinatal transmission. Because of this risk, pregnant HCWs should be especially familiar with precautions for the preventing HTLV-III/LAV transmission (19).

Precautions for HCWs during home care of persons infected with HTLV-III/LAV. Persons infected with HTLV-III/LAV can be safely cared for in home environments. Studies of family members of patients infected with HTLV-III/LAV have found no evidence of HTLV-III/LAV transmission to adults who were not sexual contacts of the infected patients or to children who were not at risk for perinatal transmission (3). HCWs providing home care face the same risk of transmission of infection as HCWs in hospitals and other health-care settings, especially if there are needlesticks or other parenteral or mucous membrane exposures to blood or other body fluids.

When providing health-care service in the home to persons infected with HTLV-III/LAV, measures similar to those used in hospitals are appropriate. As in the hospital, needles should not be recapped, purposefully bent, broken, removed from disposable syringes, or otherwise manipulated by hand. Needles and other sharp items should be placed into puncture-resistant containers and disposed of in accordance with local regulations for solid waste. Blood and other body fluids can be flushed down the toilet. Other items for disposal that are contaminated with blood or other body fluids that cannot be flushed down the toilet should be wrapped securely in a plastic bag that is impervious and sturdy (not easily penetrated). It should be placed in a second bag before being discarded in a manner consistent with local regulations for solid waste disposal. Spills of blood or other body fluids should be cleaned with soap and water or a household detergent. As in the hospital, individuals cleaning up such spills should wear disposable gloves. A disinfectant solution or a freshly prepared solution of sodium hypochlorite (household bleach, see below) should be used to wipe the area after cleaning.

Precautions for providers of prehospital emergency health care. Providers of prehospital emergency health care include the following: paramedics, emergency medical technicians, law enforcement personnel, firefighters, lifeguards, and others whose job might require them to provide first-response medical care. The risk of transmission of infection, including HTLV-III/LAV infection, from infected persons to providers of prehospital emergency health care should be no higher than that for HCWs providing emergency care in the hospital if appropriate precautions are taken to prevent exposure to blood or other body fluids.

Providers of prehospital emergency health care should follow the precautions outlined above for other HCWs. No transmission of HBV infection during mouth-to-mouth resuscitation has been documented. However, because of the theoretical risk of salivary transmission of HTLV-III/LAV during mouth-to-mouth resuscitation, special attention should be given to the use of disposable airway equipment or resuscitation bags and the wearing of gloves when in contact with blood or other body fluids. Resuscitation equipment and devices known or suspected to be contaminated with blood or other body fluids should be used once and disposed of or be thoroughly cleaned and disinfected after each use.

Management of parenteral and mucous membrane exposures of HCWs. If a HCW has a parenteral (e.g., needlestick or cut) or mucous membrane (e.g., splash to the eye or mouth) exposure to blood or other body fluids, the source patient should be assessed clinically and epidemiologically to determine the likelihood of HTLV-III/LAV infection. If the assessment suggests that infection may exist, the patient should be informed of the incident and requested to consent to serologic testing for evidence of HTLV-III/LAV infection. If the source patient has AIDS or other evidence of HTLV-III/LAV infection, declines testing, or has a positive test, the HCW should be evaluated clinically and serologically for evidence of HTLV-III/LAV infection as soon as possible after the exposure, and, if seronegative, retested after 6 weeks and on a periodic basis thereafter (e.g., 3, 6, and 12 months following exposure) to determine if

HTLV-III/LAV – Continued

emergency cases and patients with short lengths of stay, and additional tests to determine whether a positive test was a true or false positive would be required in populations with a low prevalence of infection. However, this recommendation is based only on considerations of occupational risks and should not be construed as a recommendation against other uses of the serologic test, such as for diagnosis or to facilitate medical management of patients. Since the experience with infected patients varies substantially among hospitals (75% of all AIDS cases have been reported by only 280 of the more than 6,000 acute-care hospitals in the United States), some hospitals in certain geographic areas may deem it appropriate to initiate serologic testing of patients.

TRANSMISSION FROM HEALTH-CARE WORKERS TO PATIENTS

Risk of transmission of HTLV-III/LAV infection from HCWs to patients. Although there is no evidence that HCWs infected with HTLV-III/LAV have transmitted infection to patients, a risk of transmission of HTLV-III/LAV infection from HCWs to patients would exist in situations where there is both (1) a high degree of trauma to the patient that would provide a portal of entry for the virus (e.g., during invasive procedures) and (2) access of blood or serous fluid from the infected HCW to the open tissue of a patient, as could occur if the HCW sustains a needlestick or scalpel injury during an invasive procedure. HCWs known to be infected with HTLV-III/LAV who do not perform invasive procedures need not be restricted from work unless they have evidence of other infection or illness for which any HCW should be restricted. Whether additional restrictions are indicated for HCWs who perform invasive procedures is currently being considered.

Precautions to prevent transmission of HTLV-III/LAV infection from HCWs to patients. These precautions apply to all HCWs, regardless of whether they perform invasive procedures: (1) All HCWs should wear gloves for direct contact with mucous membranes or nonintact skin of all patients and (2) HCWs who have exudative lesions or weeping dermatitis should refrain from all direct patient care and from handling patient-care equipment until the condition resolves.

Management of parenteral and mucous membrane exposures of patients. If a patient has a parenteral or mucous membrane exposure to blood or other body fluids of a HCW, the patient should be informed of the incident and the same procedure outlined above for exposures of HCWs to patients should be followed for both the source HCW and the potentially exposed patient. Management of this type of exposure will be addressed in more detail in the recommendations for HCWs who perform invasive procedures.

Serologic testing of HCWs. Routine serologic testing of HCWs who do not perform invasive procedures (including providers of home and prehospital emergency care) is not recommended to prevent transmission of HTLV-III/LAV infection. The risk of transmission is extremely low and can be further minimized when routinely recommended infection-control precautions are followed. However, serologic testing should be available to HCWs who may wish to know their HTLV-III/LAV infection status. Whether indications exist for serologic testing of HCWs who perform invasive procedures is currently being considered.

Risk of occupational acquisition of other infectious diseases by HCWs infected with HTLV-III/LAV. HCWs who are known to be infected with HTLV-III/LAV and who have defective immune systems are at increased risk of acquiring or experiencing serious complications of other infectious diseases. Of particular concern is the risk of severe infection following exposure to patients with infectious diseases that are easily transmitted if appropriate precautions are not taken (e.g., tuberculosis). HCWs infected with HTLV-III/LAV should be counseled about the potential risk associated with taking care of patients with transmissible infections and should continue to follow existing recommendations for infection control to minimize

HTLV-III/LAV - Continued

outside of the bag is contaminated with blood or other body fluids, a second outer bag should be used. Recommended practices for disposal of infective waste (23) are adequate for disposal of waste contaminated by HTLV-III/LAV. Blood and other body fluids may be carefully poured down a drain connected to a sanitary sewer.

CONSIDERATIONS RELEVANT TO OTHER WORKERS

Personal-service workers (PSWs). PSWs are defined as individuals whose occupations involve close personal contact with clients (e.g., hairdressers, barbers, estheticians, cosmetologists, manicurists, pedicurists, massage therapists). PSWs whose services (tattooing, ear piercing, acupuncture, etc.) require needles or other instruments that penetrate the skin should follow precautions indicated for HCWs. Although there is no evidence of transmission of HTLV-III/LAV from clients to PSWs, from PSWs to clients, or between clients of PSWs, a risk of transmission would exist from PSWs to clients and vice versa in situations where there is both (1) trauma to one of the individuals that would provide a portal of entry for the virus and (2) access of blood or serous fluid from one infected person to the open tissue of the other, as could occur if either sustained a cut. A risk of transmission from client to client exists when instruments contaminated with blood are not sterilized or disinfected between clients. However, HBV transmission has been documented only rarely in acupuncture, ear piercing, and tattoo establishments and never in other personal-service settings, indicating that any risk for HTLV-III/LAV transmission in personal-service settings must be extremely low.

All PSWs should be educated about transmission of bloodborne infections, including HTLV-III/LAV and HBV. Such education should emphasize principles of good hygiene, antiseptic, and disinfection. This education can be accomplished by national or state professional organizations, with assistance from state and local health departments, using lectures at meetings or self-instructional materials. Licensure requirements should include evidence of such education. Instruments that are intended to penetrate the skin (e.g., tattooing and acupuncture needles, ear piercing devices) should be used once and disposed of or be thoroughly cleaned and sterilized after each use using procedures recommended for use in health-care institutions. Instruments not intended to penetrate the skin but which may become contaminated with blood (e.g., razors), should be used for only one client and be disposed of or thoroughly cleaned and disinfected after use using procedures recommended for use in health-care institutions. Any PSW with exudative lesions or weeping dermatitis, regardless of HTLV-III/LAV infection status, should refrain from direct contact with clients until the condition resolves. PSWs known to be infected with HTLV-III/LAV need not be restricted from work unless they have evidence of other infections or illnesses for which any PSW should also be restricted.

Routine serologic testing of PSWs for antibody to HTLV-III/LAV is not recommended to prevent transmission from PSWs to clients.

Food-service workers (FSWs). FSWs are defined as individuals whose occupations involve the preparation or serving of food or beverages (e.g., cooks, caterers, servers, waiters, bartenders, airline attendants). All epidemiologic and laboratory evidence indicates that bloodborne and sexually transmitted infections are not transmitted during the preparation or serving of food or beverages, and no instances of HBV or HTLV-III/LAV transmission have been documented in this setting.

All FSWs should follow recommended standards and practices of good personal hygiene and food sanitation (26). All FSWs should exercise care to avoid injury to hands when preparing food. Should such an injury occur, both aesthetic and sanitary considerations would dictate that food contaminated with blood be discarded. FSWs known to be infected with HTLV-III/LAV need not be restricted from work unless they have evidence of other infection or illness for which any FSW should also be restricted.

HTLV-III/LAV - Continued

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Employers are being pressed to formulate policies and procedures to deal with the AIDS crisis in the workplace. Here's a look at the legal framework.

AIDS—An Employment Issue for the Eighties

by **Stuart H. Bompey** *

INTRODUCTION

Acquired immune deficiency syndrome (AIDS) promises to confront employers with a wide range of troubling questions in the immediate future.

For example: Can an employer terminate or segregate an AIDS victim to alleviate the fears of other employees? Can a company discharge an AIDS victim based on economic concerns that the employee might have to take an extended medical leave of absence? Can an employer implement a policy of medical screening for applicants to detect the presence of the AIDS virus?

Would employees be engaging in concerted activity under the National Labor Relations Act if they refused to work with AIDS victims, and how should employers respond to such activity? Does an employer have any justification for taking action based on fear of contagion?

Addressing these issues, as well as others,¹ involves a certain degree of educated guesswork, since the law is still in an inchoate state of development. Nonetheless, by focusing on the current response to the AIDS crisis and by examining the likely direction of legal developments, it is possible to give employers some sense of their responsibilities under the law in the near future.

This paper looks first to the statutes, ordinances and case law which have

specifically addressed the AIDS crisis, and then focuses on the applicability of the existing legal framework, principally the antidisability discrimination statutes.

LAW ON AIDS TO DATE

Legislative Action

Among the most significant legal developments responding to the AIDS crisis are those involving the Wisconsin and California statutes banning the use of testing for the AIDS virus in employment and insurance matters.² Both statutes flatly prohibit employers from directly or indirectly soliciting or requiring an AIDS blood test as a condition of employment. These statutes also ban insurance companies from using the test to determine policy coverage.³

These laws present an approach that will in all likelihood be followed by other jurisdictions. The test itself only determines whether or not a person has been exposed at one time to the virus and does not conclusively reveal if the virus is still present. More importantly, even if the test could establish the presence of the virus, only a fraction of those infected will ultimately develop AIDS or an AIDS-related complex. Thus, assuming an argument could be made that AIDS is a "job-related" disability that

would enable an employer to terminate infected employees (see discussion below), the AIDS blood test would probably be viewed by most jurisdictions as an overly inclusive screening mechanism, which presents great potential for abuse.

Two municipalities, Los Angeles and West Hollywood, California, have passed ordinances which specifically prohibit discrimination against AIDS victims in all matters relating to employment.⁴ The breadth of these laws is quite sweeping and, indeed, arguably reaches beyond the scope of the antidisability discrimination provisions of the California Fair Employment and Housing Act. Chapter 6 of that act permits an employer to discharge or refuse to hire an employee if that employee's medical condition renders him unable to perform his duties or poses a threat to the employee's health or the health and safety of others. The Los Angeles ordinance does not contain such limiting language (although it does contain a "bona fide occupational qualification" exception), which reflects the city's acceptance of prevailing medical opinion that AIDS is noncontagious in the workplace environment and does not constitute an impediment to one's performance.⁵

4. On November 20, 1985, Mayor Dianne Feinstein of San Francisco signed a city ordinance that will prohibit discrimination in employment, housing and education against persons with AIDS.

5. Most discrimination claims will probably be asserted by those who are known to have tested positively for the AIDS virus or by those whose condition does not require hospitalization. Those victims in the advanced stages of the disease would be unable to perform work, and the issue of job discrimination in such instances would be, for the most part, moot.

1. See the inset on page 9 for a series of questions and answers that employers may soon have to consider regarding this issue.

2. Florida has a similar statute that applies only to state and municipal employees.

3. On November 14, 1985, Governor Anthony Earl signed an amendment to the Wisconsin statute which would allow insurers doing business in the state to use the AIDS blood test to screen customers if medical experts discover that the disease is more easily transmittable than is now believed.

Given the overwhelming medical consensus on the difficulty of transmitting the AIDS virus, it seems significant that only the above mentioned jurisdictions have passed some form of anti-AIDS discrimination legislation. This perhaps reflects a belief by other jurisdictions that the antidisability discrimination laws already in place in most states apply to AIDS. Indeed, some courts and administrative agencies, and most legal commentary on AIDS, have reached this conclusion.

For example, a New York court has held on a motion for preliminary injunction that AIDS is a disability under the New York Human Rights Law. *People v. 49 W. 12th Street Tenants Corp.*, No. 43604/83 (Sup. Ct., N.Y. Co.), NYLJ Oct. 17, 1983, p. 1. Similarly, the New York State Division of Human Rights, the agency charged with handling discrimination claims under the New York Human Rights Law, has announced that AIDS is a covered disability and has issued "probable cause" findings of AIDS discrimination in employment and housing cases.⁶

However, other jurisdictions may be genuinely reluctant to adopt such anti-discriminatory measures, perhaps concerned that subsequent medical research will demonstrate that AIDS is more easily transmitted than had previously been assumed. Thus, despite medical evidence that the AIDS virus can be transmitted only through intimate sexual contact or blood transfusions, proposed ordinances are pending in Miami, Newark, Houston and other localities that would subject food handlers to periodic testing for the AIDS virus.

On the national level, Representative William E. Dannemeyer of California has proposed five bills covering AIDS-related issues.

The first bill would make it a crime for a member of a "high risk" group to knowingly donate blood (HR 3649). The second bill would prohibit health care workers with AIDS from working in the health care delivery system (HR 3647). The third bill would allow health care professionals to wear protective garments when treating AIDS patients (HR 3646). The fourth bill would deny revenue sharing funds to localities which fail to close public bathhouses (HR 3648). The fifth bill would be a resolution expressing "the sense of Congress that children with

AIDS should be provided with an alternative means of education other than attending classes" (H. Cong. Res. 224).

It is important to note that all of the proposed legislation, however short-sighted and unresponsive to medical evidence, nonetheless does not suggest that employers as a general rule should be empowered to treat employees with AIDS differentially. Indeed, there seems to be no movement of any significance which would enable employers to take what they might view as necessary but discriminatory action against AIDS victims. Employers should, therefore, not expect to be granted wide ranging discretion in their treatment of employees with AIDS. Indeed, a more likely development is that legislatures and courts will view AIDS as a disability under the

"One of the threshold issues . . . is whether or not AIDS is, in fact, a disability. . . ."

antihandicap discrimination laws of many states. (See discussion below.)

Moreover, the Public Health Service recently announced guidelines on AIDS which recognize that the disease poses no danger to other employees. Stressing that AIDS is a "blood borne" disease which cannot be spread by casual contact, the guidelines recommend that employees should not be prevented from work solely because they are infected with the virus, nor should they be prevented from using telephones, office equipment, toilets, showers, eating facilities and water fountains.

The guidelines also point out that testing for food service workers, personal service employees (e.g., hairdressers, barbers, manicurists) and even health care workers is not necessary, since these environments do not present a risk of transmission. The Public Health Service noted that separate guidelines for health care workers who perform "invasive procedures" (e.g., surgery or dentistry) are being developed by the Center for Disease Control.

Case Law

Given the limited number of cases addressing AIDS-related issues, it is not possible to draw any broad conclusions about the judicial response to the AIDS crisis. The most one can hope for is an indication of how the courts might analyze the issue in future cases.

Two cases arising out of New York demonstrate the extent to which the courts are prepared to engage in fact-finding and defer to the judgments of employer representatives.

In *LaRocca v. Dalsheim*, 120 Misc. 2d 697, 467 N.Y.S.2d 302 (1983), the supreme court of Dutchess County ruled on a motion by inmates at the Downstate Correctional Facility in Fishkill, New York to force prison officials to remove AIDS victims from the prison. The court refused to take any action, other than to direct the distribution of an AIDS brochure prepared by the New York State Department of Health. Surveying the medical knowledge then available, the court relied on expert testimony that AIDS cannot be transmitted through casual contact.

The court recognized the prevalence of homosexual activity in prisons, but noted that the three AIDS victims at the facility were segregated from the inmate population. The opinion thus found that the state "acted reasonably in endeavoring to prevent" forcible homosexual activity.

In the second New York case, *Cordero v. Coughlin*, 607 F. Supp. 9 (S.D.N.Y. 1984), the plaintiffs were AIDS victims who alleged that the prison policy of segregating them from the general inmate population violated their rights under the Constitution. The court declined to engage in detailed fact-finding, but instead noted that AIDS sufferers are not a "suspect class." Therefore, ". . . as long as there is a legitimate government end and the means used are rationally related to that end, the Equal Protection Clause is not violated." 607 F. Supp. at 10.

The state's objective was not to halt the spread of the disease, but "to protect both the AIDS victims and other prisoners from the tensions and harm that could result from the fears of other inmates." (Emphasis added.) The court did not call for any factual analysis as to whether or not these fears were realistic, but instead found that segregation, as a constitutional matter, bore a rational

(Continued on page 8)

6. A notice issued by the New York State Division of Human Rights.

AIDS

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relation to the objective of alleviating tensions and fears.

The *Cordero* case, it must be emphasized, dealt with a class of people whose constitutional rights are severely limited and an environment unusually conducive to the spreading of the disease. Thus, the judicial restraint exercised here is not an approach that other courts, addressing nonprison issues, would necessarily follow.

Moreover, judges handling AIDS-related cases in the prison context are not encumbered by antidisability discrimination statutes and are, thus, free to apply a more deferential "rational relation" standard to the constitutional claims of inmates.

COVERAGE OF AIDS UNDER DISABILITY STATUTES AND OTHER LAWS

Almost all states have statutes which prohibit discrimination on the basis of handicap and/or a disability. Moreover, the Federal Rehabilitation Act of 1973 prohibits discrimination against the disabled by those companies that contract with the federal government or receive federal financial assistance.

Although the wording varies from jurisdiction to jurisdiction, the essential framework for all of these laws is the same: An employer may not discriminate against an employee or applicant solely because of that employee's disability, unless the employer can show that the handicap or disability would adversely affect the employee's work performance.⁷

Is AIDS a Disability?

One of the threshold issues, which may not be as apparent as it first seems, is whether or not AIDS is, in fact, a disability under the definitional sections of the disability statutes. Many states define a disabled person as one who has a physical or mental impairment which substantially limits one or more of that person's "major life activities." Only a

handful of states specifically include impairment of the immunological system or a physiological disability due to illness as part of the definition of handicap. Leonard at 691-92.

These definitional variations become especially important when addressing discrimination claims brought by those in the early stages of the disease or by those known to have been exposed to the virus. Employees in the latter category may never contract AIDS or an AIDS-related complex and, thus, their major life activities and their ability to perform work effectively might never be impaired. Since many statutes conceivably would not be construed as including those exposed to the virus as "disabled," an employer theoretically could discharge such employees with impunity.⁸

Some statutes foreclose this possibility. For example, the New York Human Rights Law defines a disability as "a condition regarded by others" as a physical, mental or medical impairment. Similarly, Wisconsin defines a "handicapped individual" as one who is "perceived as having" a physical or mental impairment.

Moreover, the case law of some jurisdictions reads the "perceived as" language into the text of an otherwise silent statute. Leonard at p. 691, n. 43. Nonetheless, the possibility remains, given the current wording of many state statutes, that an employee known to have been exposed to the AIDS virus may not be protected by these statutes.

Pre-Employment Practices

May an employer condition employment on "passing" the AIDS blood test? Similarly, may an employer ask applicants if they have AIDS or have been exposed to the AIDS virus?

Pre-Employment Inquiries

Many jurisdictions allow pre-employment inquiries only if such inquiries are directly related to the position applied for, or relate directly to whether the applicant would endanger his health or the health and safety of others.

For example, the New York Human Rights Law prohibits any pre-employment inquiries relating to a disability unless based upon a "bona fide occupational qualification." The New York State Division of Human Rights lists the

following example of a "lawful" pre-employment inquiry concerning a handicap: "Do you have any impairments, physical, mental or medical, which would prevent you from performing in a reasonable manner the activities involved in the job or occupation for which you applied?"

Conversely, the division lists the following as unlawful inquiries: "Do you have a disability? Have you ever been treated for any of the following diseases . . . ? Do you have now, or have you

"Case law has generally dismissed the 'future risk' argument of employers. . . ."

ever had, a drug or alcohol problem?"

Similarly, California—in addition to its general prohibition on testing for the AIDS virus—bans the use of overly broad inquiries which are not job-related. (See the Pre-Employment Inquiry Guidelines of the California Department of Fair Employment and Housing.)

Pre-Employment Physicals

Pre-employment physical examinations to determine minimal fitness for employment are generally lawful, but employers must exercise care in utilizing the results of such tests.

For example, most states prevent employers from taking action against a disabled or handicapped employee unless the employee's disability is job-related. Thus, no adverse action could be taken based on information concerning the physical condition of an applicant (i.e., exposure to the AIDS virus) unless the pre-employment physical examination indicated a disability which, in fact, rendered the employee presently physically or mentally unable to perform the expected duties of the position in question.

A number of state regulations are explicit on this point. For example, the Missouri statute allows pre-employment examinations relating to minimum physical standards for employment, but such minimum standards must be related to the applicant's ability to perform the essential functions of the position applied for.

Moreover, the results of such examinations must be accorded confidentiality, except where supervisors or safety personnel would need access to such

7. For an exhaustive analysis of the applicability of disability statutes to AIDS-related issues, see Leonard, *Employment Discrimination Against Persons with AIDS*, 10 Univ. Dayton L. Rev. 681 (1985). Some of the research in this section of this paper derives from the Leonard article, and appropriate references are noted and cited.

8. Employers must be mindful of the rights of employees under collective agreements and terminations viewed as "abusive" under either a tort or breach of contract theory.

information. Similarly, the New York State Division of Human Rights, in its Rulings on Pre-Employment Inquiries, notes that pre-employment physical examinations relating to minimum physical standards for employment are lawful, provided the minimum physical standards are reasonably necessary for the work to be performed.

Therefore, although employers might be able to include the AIDS blood test in pre-employment physicals, the usefulness of test results indicating that an employee has been exposed to the virus is severely limited. Once an employer has such knowledge, he cannot use it as a justification to discharge, deny employment or take other adverse action against an employee. Moreover, the employer cannot communicate this knowledge to others, since the medical community virtually unanimously agrees that the presence of AIDS at the workplace does not present a safety hazard.

Concerns of Employers

Assuming that many jurisdictions would define AIDS as a disability, the employer in an AIDS discrimination case might raise, as an affirmative defense, the fear of contagion. Indeed, many states provide that an employer need not hire a disabled applicant if such employment would threaten the applicant's health or the health and safety of others. Leonard at p. 695, n. 60.

Any analysis on this issue is relegated to guesswork, but there are some general conclusions that might prove illuminating. First, two New York court decisions, *49 W. 12th Street Tenants Corp.* and *LaRocca*, cited earlier, engaged in careful fact-finding on the issue of the transmissibility of AIDS. The implication is that the judiciary will abide by the medical knowledge currently available and not be swayed by the slight possibility of transmission through casual contact. Similarly, even the proposed legislation discussed in the first section, which would restrict the rights of AIDS victims, attempts to narrow the scope of such legislation to particular settings that appear to pose a greater risk of transmission. Research has revealed no legislative initiatives that would broadly curtail the employment rights of AIDS victims based on the general fear of contagion through casual contact.

A more legitimate concern of employers is that an employee with AIDS, although fully capable of working at present, will soon be incapacitated. Thus,

AIDS-Related Employment Issues — A Summary of Legal Conclusions

The following summary prepared by attorney Stuart H. Bormpey presents answers to some of the likely questions employers may soon face. It must be emphasized that the law on AIDS is scarce, and thus any legal conclusions are, at this stage, educated assumptions, not infallible indicators of the direction of the law. It is suggested that specific questions be addressed to a knowledgeable legal counsel.

Q. Is AIDS a disability under the definitional section of antidiscrimination statutes?
A. Probably yes. Most legal commentators believe that AIDS is a protected handicap.

Q. Can an employer deny employment to an applicant with AIDS?
A. No, unless the disease is so far advanced that the employee is incapable of performing the duties of the job applied for.

Q. Can an employer take adverse action against an employee with AIDS based on fear of contagion?
A. No. The medical consensus is essentially unanimous that AIDS cannot be spread through casual contact. For example, segregation, without solid medical justification, would probably violate statutory prohibitions against discrimination on the basis of a disability.

Q. Do employees have the right under the National Labor Relations Act to refuse to work with AIDS victims?
A. Probably not. Employees would most likely be required to produce some objective evidence substantiating a claim that a dangerous condition exists.

Q. Can an employer discharge an AIDS victim based on economic concerns that the employee may soon be incapacitated?
A. No. Case law interpreting disability statutes generally rejects "future risk" arguments.

Q. Can an employer ask applicants if they have AIDS or have been exposed to the AIDS virus?
A. No. Disability statutes generally prohibit overly broad pre-employment inquiries which are not job-related.

Q. May an employer require pre-employment physical examinations, which would include the AIDS blood test?
A. Probably, but the employer would be strictly limited in using test results indicating that an applicant has been exposed to the virus.

Q. May an employer communicate any information indicating that an employee has tested positive for the AIDS virus?
A. No, unless such information was necessary for health or safety purposes. In fact, an employer would be best advised not to disclose such information.

Q. May an employer force an AIDS victim to take a medical leave of absence?
A. No, not unless the employee is physically unable to perform his normal functions.

Q. Can an employer terminate employees who refuse to work with an AIDS victim?
A. If, after educating such employees on the minimal risk, they still refuse to work, an employer may threaten discipline and eventually permanently replace such employees.

an employer might be faced with the economic burden of an employee who received extensive training but who may soon require prolonged hospitalization.

Case law has generally dismissed the "future risk" argument of employers, although no case has dealt with this issue in an AIDS-related context. The New York Court of Appeals earlier this year addressed an employer's argument that an obese applicant was unacceptable because the applicant's condition would deteriorate. *State Division of Human Rights v. Xerox Corp.*, 65 N.Y.2d 213, 491 N.Y.S.2d 106 (1985). The court rejected the employer's rationale and held: "Disabilities, particularly those resulting from disease, often develop gradually and, under the statutory definition of the New York Human Rights Law, an

employer cannot deny employment, simply because the condition has been detected before it has actually begun to produce deleterious effects." 491 N.Y.S.2d at 109.

Similarly, in *Chrysler Outboard Corp. v. Wisconsin Dep't of Industry, Labor and Human Relations*, 14 Fair Empl. Prac. Cas. (BNA) 344 (1976), the Wisconsin Circuit Court of Dane County addressed the claim of an applicant that he was denied employment because he had acute lymphocytic leukemia.

The employer, conceding that the refusal to hire was based on the applicant's disease, relied on information from a medical consultant that the applicant's condition posed a high risk of infection from minor injury, a risk of

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prolonged recuperation and a risk of complications from the disease, all of which would result in lost time. Finding that the disease was a "handicap" under the Wisconsin statute, the court noted that the law was "written in the present tense" and held: "The [employer's] contention that the complainant may at some future date be unable to perform the duties of the job is immaterial."

Employers may also be faced with the prospect of employees allegedly engaging in concerted activity under Section 7 of the National Labor Relations Act⁹ by refusing to work with AIDS sufferers. No cases to date involve workers who have invoked this section based on fear of contracting a contagious disease, but such claims seem imminent given the current hysteria AIDS has produced.

Traditional labor law does not present clear guidelines as to how this issue would be resolved. Decisions construing Section 7 seem to indicate that the reasonableness of the decision to engage in concerted activity is an irrelevant concern. For example, in a case involving a refusal to work by employees who alleged freezing conditions at the workplace, the Supreme Court stated: "... it has long been settled that the reasonableness of workers' decisions to engage in concerted activity is irrelevant to the determination of whether a labor dispute exists or not." *NLRB v. Washington Aluminum Co.*, 370 U.S. 9, 16 (1962).

The National Labor Relations Board echoed this sentiment more recently in *Tamara Foods, Inc.*, 258 NLRB 180, 108 LRRM 1218, *enf. granted*, 692 F.2d 1171 (8th Cir. 1982). The employees in *Tamara* left the workplace due to their belief that the ammonia fumes used by the employer in its frozen food business constituted a health hazard. The board found for the employees, and stated: "whether the protested working condition was actually as objectionable as the employees believed it to be . . . is irrelevant to whether their activity is protected by the act." 108 LRRM at 1219.

Despite this strong language, workers do not necessarily enjoy the unfettered right to refuse to work with AIDS victims based on groundless fears of

9. That section provides in relevant part: "Employees shall have the right . . . to engage in . . . concerted activities for the purpose of collective bargaining or other mutual aid or protection. . . ."

contagion. The facts of the above cited cases included some objective evidence which supported the employees' concerns.

Moreover, the Supreme Court has held that Section 502 of the Labor-Management Relations Act, which creates a safety-related exception to the no-strike provisions in collective bargaining agreements, requires that the employee present "objective evidence" of abnormally dangerous conditions before that section is implicated.¹⁰ *Gateway Coal Co. v. Mine Workers*, 414 U.S. 368 (1974). Finally, if discrimination against AIDS victims becomes an unlawful act, then concerted activity to force employers to unlawfully discharge AIDS victims would not enjoy protection under Section 7.

Arline Case

Section 504 of the Federal Rehabilitation Act resembles the antidisability discrimination statutes of many states. In pertinent part, it provides: "No otherwise qualified handicapped individual . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

In a case of major importance, the 11th Circuit Court of Appeals held that contagious diseases fall within the coverage of this act. *Arline v. School Board of Nassau County*, 39 Fair Empl. Prac. Cas.

10. It must be noted, however, that at least one court has held that Section 502 has no application to cases which do not involve no-strike provisions in collective bargaining agreements and that Section 502 in no way modifies Section 7 of the NLRA. *NLRB v. Tamara Foods*, 692 F.2d 1171, 1182-83 (8th Cir. 1982). Moreover, the National Labor Relations Board recently noted the possible conflict between the two sections, but refused to determine whether Section 502 modified Section 7 until an appropriate case directly presented the issue. *Baker Industries Corp.*, 268 NLRB No. 147, 115 LRRM 1127 (1984).

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(BNA) 9 (1985). The plaintiff in *Arline* was discharged from her job following a relapse of tuberculosis. She brought suit under Section 504, claiming that her condition was a handicap under the definitional section of the act.¹¹ The trial court found for the defendant, holding that Congress did not intend to include contagious diseases within the meaning of the statute.

The court of appeals reversed, reasoning that contagious diseases fit precisely within the definitional framework. Moreover, the fact that Congress failed to exclude contagious diseases from the act when it specifically excluded alcoholism and drug abuse indicated that "it harbored no similar disapproval about them."

"The 11th Circuit thus remanded the case with directions to engage in a careful weighing of the costs involved in reasonably accommodating the plaintiff.

The implications for AIDS discrimination claims are clear: Under the Federal Rehabilitation Act, an employer will have to substantiate any perceived risks regarding contagion with facts. As the opinion noted: "The court is obligated to scrutinize the evidence before determining whether the defendant's justifications reflect a well-informed judgment grounded in a careful and open minded weighing of the risks and alternatives, or whether they are simply conclusory statements that are being used to justify reflexive reactions grounded in ignorance or capitulation to public prejudice."

CONCLUSION

Many employers and employees may feel uncomfortable about the presence of AIDS victims at the workplace. Nonetheless, legislatures and courts rely on facts, not fears, and the reviewing authority, a judge, administrative agency or an arbitrator will typically base opinions on current medical knowledge, not unsubstantiated concerns.

Whether states enact specific legislation prohibiting AIDS discrimination or rely on the courts to interpret the disability statutes as covering the disease, the trend in the law suggests that AIDS victims will be protected from arbitrary or discriminatory treatment.

11. "... [T]he term 'handicapped individual' means . . . any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment."

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AIDS and California Employment Law

By Kent Jonas

The article below, by Kent Jonas, is the first in a series of articles on health and safety issues in employment, indicating, among other things, the breadth and vitality of issues in this area. Other subjects in the series will include asbestos, smoking, and the rights of an employee who refuses an assignment he believes would endanger the health or safety of others. This series is coordinated by the Committee on Individual Employee Rights and Benefits. We would like to see other articles on related subjects, and invite authors to contact the new chair of the Committee, Pearl Lat-taker, at (213) 936-7494.

JAMES N. ODLE
Chair Emeritus
Committee on Individual Rights
and Employee Benefits

Page 1 of *The San Francisco Chronicle* for October 8, 1985, reported that the acting Superintendent of the San Francisco Unified School District had proposed to the District's board that, "All those who need to be tested" be given a blood test to determine whether they carry the antibody for acquired immune deficiency syndrome (AIDS). This was another reflection of the popular fear surround-

The Public Health Service reports that 23 percent of the reported AIDS cases in the United States are from California (36 percent are from New York).

ing the apparently uncontrollable spread of this incurable disease, a spread which has been chronicled in cover stories in such popular publications as *Time* and *Newsweek*. What the superintendent's statement highlighted, however, is the increasing impact AIDS is likely to have in the California workplace.

Because of the emotions AIDS raises — fear for life in the population in general and fear of persecution in the gay community — how to deal with the presence of employees and, in some cases consumers, with the disease is likely to be one of the most troublesome issues facing California employers and employees in the balance of this decade. This article will venture into the largely unmapped area of the legal implications of the presence of AIDS in the workplace. That area is composed not only of employers, such as the San Francisco schools, which wish to guard against (or at least appear to guard against) the possibility of AIDS entering their own environment, but also of AIDS victims who want to continue to work, of those

in categories at higher risk for contracting AIDS who wish their work lives to be unaffected by that risk, and by healthy employees who may wish to minimize the chances they will contract the disease. These various groups of individuals have already begun to raise legal issues growing out of their various concerns and those issues will undoubtedly proliferate as this newly visible disease continues to spread.

Essential to any discussion of the legal issues arising out of the spread of AIDS is a basic understanding of the disease itself. In its August 1985 publication, "Facts About AIDS," the Public Health Service defines the disease as "a serious condition characterized by a defect in natural immunity against disease." According to the Public Health Service, and a wealth of corroborative medical data, AIDS is caused by a virus generally referred to as Human T-Lymphotropic Virus, Type III (HTLV-III). While the presence of this virus in an individual's system does not inevitably mean that he or she will be an AIDS victim, its absence indicates that he or she will not.

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Aids and California Employment Law—Continued from page 1

Early AIDS symptoms may include fatigue, fever, weight loss, and swollen glands. Those more seriously affected often suffer from one of two rare diseases — pneumocystis and carinii pneumonia, or a type of cancer known as Kaposi's sarcoma. These and a host of related diseases lead to the high death rate (about 50 percent of cases diagnosed to date) among AIDS sufferers.

The Public Health Service, and most other published sources, describe a limited number of ways in which AIDS can be transmitted. Generally, prevailing medical opinion is that the illness is spread through sexual contact, needle sharing, or, far less frequently, through blood. The latter type of contagion appears to have occurred largely through transfusions of contaminated blood. There have been, as well, widely reported cases of AIDS victim mothers transmitting the disease to their infants.

The Public Health Service reports that 23 percent of the reported AIDS cases in the United States are from California (36 percent are from New York). The same publication's October 25, 1985, issue reported some 6,500 AIDS diagnoses in 1985 through October 19. The Service's Morbidity and Mortality Report for May 10, 1985 showed that some 73 percent of all adult AIDS victims were homosexual or bisexual, 17 percent users of intravenous drugs, and the balance from a variety of other high risk categories. In August, the San Francisco Medical Society reported that as of June 30, there had been some 1,250 AIDS cases in that city and that about half of those cases had resulted in death.

Thus, AIDS is a lethal disease which is of the greatest danger to those in certain so-called "high risk" categories. It also appears that the virus which carries the disease can be transmitted only in a few, rather limited, ways, the most common of which is sexual intercourse.

With these facts in mind, we turn now to the question of whether employment decisions can legally be based upon the fact that an employee has AIDS or is at risk of contracting it.¹ It appears that under California law these factors can, at most, be taken into account only in a few, very limited, situations.

One potential question, suggested at the beginning of this article, is easily dealt with. The AIDS antibody test,

which the San Francisco school Superintendent had suggested giving the District's employees,² probably cannot be used for any purpose he may have had in mind. A.B. 403, authored by Assemblyman Agnos and signed into law by Governor Deukmejian earlier this year, adds Health and Safety Code Section 199.21(f). This legislation forbids the use of the AIDS antibody test to determine "suitability for

Although the statute's term, "suitability for employment," is far from clear, it would seem at a minimum to mean that hiring and firing decisions cannot be based upon the results of the test.

employment."³ This rule was apparently premised upon the fact that the test determines only whether an individual's system carries the antibody to HTLV-III and that a positive test connotes only exposure to the virus, not necessarily that the subject is an AIDS victim.⁴ Although the statute's term, "suitability for employment," is far from clear, it would seem at a minimum to mean that hiring and firing decisions cannot be based upon the results of the test. It may mean as well that test results cannot be used for any other employment-related purpose, although "suitability for employment," could also be argued to be limited to hiring and firing decisions and to leave an employer free to use test results for purposes such as assignment.

However, another state law may limit an employer's ability to base any decision not only upon the results of an AIDS antibody test but also upon any other AIDS-related reason. This provision is contained in the California Fair Employment and Housing Act, Government Code Section 12900, *et seq.* That Act forbids employment discrimination on the basis of physical handicap. As interpreted by the Supreme Court, this law, "was designed to prevent employers from acting arbitrarily against physical conditions that, whether actually or potentially handicapping, may present no current job disability or job-related health risk." *American National Insurance Company v. Fair Employment and Housing Commission*, 32 Cal.3d 603, 609-610 (1982).

This far-reaching interpretation of the meaning of the term "handicapped" as used in the Fair Employment and Housing Act ("FEHA") would appear to bring AIDS within the reach of that law. That is, while in most cases an AIDS victim will not have any present inability to perform his or her work and may therefore not appear to be "handicapped" in the common understanding of that term, the fact is that such an individual is suffering from a "physical condition" that may, "potentially" make, "achievement unusually difficult."⁵ Thus, an AIDS victim is in all likelihood an "otherwise qualified handicapped individual" within the meaning of California law, and any decision based upon this condition will be illegal unless it is necessary to protect the health and safety of either the AIDS victim or other employees. Moreover, as the AIDS victim's health deteriorates, and the handicap begins to become more apparent, it may be incumbent upon the employer to "accommodate" the handicap.⁶ (See, Cal. Admin. Code, Title 2, Sec. 7293.9.)

One other aspect of the state law is worthy of mention. The Fair Employment and Housing Commission regulations implementing that law defines handicap as including "perceived" handicaps, which is defined to include being treated by an employer as having an increased likelihood of developing a handicap. (See, Cal. Admin. Code, Title 2, Sec. 7293.6(i).) It is possible that, on the basis of this regulation, an argument could be mounted that because the gay population is at the highest risk of contracting AIDS, discrimination against gays is discrimination on the basis of handicap and therefore a violation of the state law. While this argument may on its face sound unlikely, it is entirely possible that empirical evidence could be gathered to demonstrate the (accurate) popular perception that gay individuals are likely to be AIDS victims.⁷ The argument could then proceed to the proposition that the translation of this perception into employment decisions is illegal if it can be shown that employment decisions involving gays are based upon the popular assumption that they will bring AIDS into the workplace.

In addition to state law, several California cities have enacted local ordinances forbidding employment discrimination on the basis of AIDS.⁸

Two such ordinances, those in Los Angeles and San Francisco, are very similar. Each forbids employers from failing or refusing to hire, and from discharging or otherwise discriminating against, any individual with respect to any term or condition of employment because the person suffers from AIDS or any related condition. Each goes on to forbid employers limiting, "segregating," or classifying an employee in such a way as to deprive them of employment opportunities because the employee suffers from AIDS.⁹

Both the San Francisco and Los Angeles ordinances contain the bona fide occupational qualification defense and place upon the employer the burden of establishing that discrimination on account of AIDS is a necessary result of the BFOQ and that there is no less discriminatory means of proceeding. Neither ordinance provides, as does the handicap discrimination section of the Fair Employment and Housing Act, that an employer's duty not to base employment decisions upon AIDS is satisfied if it can demonstrate that no reasonable accommodation exists which will permit the AIDS victim (handicapped individual) to perform the duties of his or her job. (Cf., Cal. Admin. Code, Title 2, Sec. 7293.9.)

Those ordinances have enforcement provisions providing the opportunity for aggrieved persons to bring civil actions. While neither ordinance addresses the question, presumably the statutory and common law tests for the availability of compensatory and punitive damages would apply in such a case. Each ordinance also provides for the possibility of equitable relief in the form of an injunction barring the employer from continuing to discriminate on the basis of AIDS.

Any litigation directed toward the enforcement of these local ordinances will doubtless raise the issue of whether such local legislation is permitted in light of the Fair Employment and Housing Act. In *Alioto's Fish Company v. Human Rights Commission of San Francisco*, 120 Cal.App.3d 594, 174 Cal. Rptr. 763 (1981), the court in dictum discussed the meaning of the so-called saving language in the Fair Employment and Housing Act, Government Code Section 12993(c), which states, "[I]t is intention of the legislature to occupy the field of regulation of discrimination in employment encompassed by the provisions of this part, exclusive of all other laws ban-

ning discrimination in employment by any city, county, city and county, or other political subdivisions of this state . . ." The *Alioto's* court indicated that had the local ordinance before it been an attempt to exert the municipal police power, it would have fallen afoul of Section 12993(c) and so been invalid. However, the court went on to uphold the ordinance in question on the grounds that it was in fact an exercise by San Francisco of its power to insert non-discrimination terms in a contract — its contracting power.

This far-reaching interpretation of the meaning of the term "handicapped" as used in the Fair Employment and Housing Act ("FEHA") would appear to bring AIDS within the reach of that law.

If the interpretation of the *Alioto's* court put on the FEHA remains valid, then the local ordinances prohibiting AIDS-based discrimination in employment will not stand. Because, as seen above, it is virtually certain that discrimination on the basis of AIDS will be found to be discrimination in violation of the FEHA, and because it is hard to conceive of a basis for those ordinances other than the local police power, they will likely be found to be invalid municipal legislation in a field preempted by the state.¹⁰

The Los Angeles and San Francisco ordinances may run afoul of state law in another regard. The failure of both ordinances to recognize a reasonable accommodation defense would seem to put them into conflict with the provision of the FEHA which does provide for such a defense. In such conflicts, the local ordinance must, of course, give way just as it must when the state has preempted the field. *Alioto's*, 120 Cal.App.3d at 603-604, 174 Cal.Rptr. at 767. Thus, the future of local ordinances as a vehicle for banning employment discrimination against AIDS victims is doubly dubious at this time.

It seems more likely that applicants or employees who are the subject of employer decisions based upon their suffering from AIDS will attempt to pursue remedies under the FEHA. If they do so, there are at least two lines of defense employers are likely to present.¹¹ Regardless in which of these

legal theories it may be couched, these defenses are likely to draw factually upon the same basic facts — patron or co-employee fear of association with the AIDS victim.

One of the theories which may be used to justify such fear as the basis for employment decisions adversely affecting an AIDS patient may be that of a bona fide occupational qualification. Thus, an employer may argue that if co-employees or patrons are unwilling to associate with the AIDS patient, and if this unwillingness to associate has a substantial deleterious effect upon the employer's business, then it is a bona fide occupational qualification to have someone in the job in question with whom co-employees or patrons will associate; to be unable to do so is to impose an economic hardship upon the employer which he should not be expected to bear.

Relatedly, an employer may argue that it is unable to provide a reasonable accommodation to an AIDS victim whose presence in the workforce has the same deleterious economic effect. That is, an employer might assert that so long as the individual in question remained a part of its workforce, it would lose significant and, perhaps, crippling amounts of business due to the individual's presence, either because patrons refuse to associate with him or because his co-employees will not work with him.

There are several legal and practical difficulties with both of these arguments. In the first place, the longstanding and analogous rule under Title VII of the Civil Rights Act of 1964 is that customer and co-employee preferences cannot overcome an employer's duty not to discriminate on a prohibited basis. (See, e.g., *Anderson v. Methodist Evangelical Hospital*, 4 FEP 33 (W.D.Ky. 1971), aff'd., 464 F.2d 723 (6th Cir. 1972); *Diaz v. Pan American World Airways*, 442 F.2d 385 (5th cir. 1971), cert. den. 404 U.S. 950 (1971).)¹² Thus, it may simply be argued that such preferences do nothing other than reflect unfounded biases and fears and that, regardless of their economic effects, they provide no excuse for an otherwise illegal decision.¹³

Relatedly, the California courts have indicated that the economic burden on an employer may not be a factor which can be used to defend against a claim of handicap discrimination. Thus, in *Sterling Transit Co., Inc. v. Fair Employment Practice Commis-*

(Continued on page 6)

sion, 121 Cal.App.3d 791, 175 Cal.Rptr. 548 (1981), the court held that the workers' compensation and other cost burdens which might be imposed upon an employer by hiring an employee with a chronically bad back for a job likely to exacerbate that condition did not constitute a defense to the failure to hire an "otherwise qualified handicapped individual." While the situation imposed here is somewhat different — the economic burden is not that of caring for the employee's handicap but that of attempting to maintain the livelihood of the business — the conjunction of *Sterling Transit* and traditional employment discrimination theories suggests that an employer raising these defenses will have a hard row to hoe.

Both the San Francisco and Los Angeles ordinances contain the bona fide occupational qualification defense and place upon the employer the burden of establishing that discrimination on account of AIDS is a necessary result of the BFOQ and that there is no less discriminatory means of proceeding.

This difficulty is compounded by the real world problems in developing the facts needed for this defense. It almost certainly will not be sufficient to show belief or speculation that the hiring or continued employment of an AIDS victim will have an adverse effect on the employer's business. Rather, it will doubtless be necessary to provide hard financial data along with anecdotal evidence linking the poor results shown in that data to the presence of the AIDS victim in the workforce. Thus, there is a Catch 22 involved — an employer may have to suffer bad business for some prolonged period in order to accumulate the evidence necessary to defend itself against a charge of discrimination based on AIDS. This could leave an employer in the unhappy situation of having to choose which risk — loss of business or litigation — it wishes to take should it in fact be faced with a situation such as the hypothetical posed here.

That this discussion, however, is no mere hypothetical is illustrated by a case which arose at San Francisco

General Hospital and which shows one more area in which AIDS may affect the law of employer-employee relations — occupational safety and health. In the case at San Francisco General, four nurses complained that they were not being permitted to wear protective clothing such as masks and gloves when dealing with patients in the AIDS isolation ward. They filed a complaint with the Department of Industrial Relations on the basis of the Hospital's refusal.¹⁴ In dismissing the nurses' claims, the Division of Occupational Safety and Health relied upon the Hospital's compliance with Public Health Service guidelines for employee safety in dealing with AIDS patients. Specifically, the division found no safety and health problems in AIDS patients having free access to public area, in gloves not being worn unless a nurse came into contact with a patient's blood or body secretion; and in not wearing surgical masks in the absence of coughing.

What this decision seems to indicate is that Cal OSHA will accept as safe practices at hospitals — and presumably elsewhere — which conform to governmental guidelines, and that the state will not take any action based upon the premise that casual contact with AIDS victims may constitute a safety hazard. Amended and far more detailed guidelines covering health care workers as well as the food service industry were issued by the Public Health Service in mid-November 1985. They generally follow the approach that there are only a few known and limited means for transmitting AIDS and that precautions against those specific methods of transmission are all that is needed.

Any litigation directed toward the enforcement of these local ordinances will doubtless raise the issue of whether such local legislation is permitted in light of the Fair Employment and Housing Act.

This article has been notably lacking in citations to cases dealing with AIDS in the workplace. When an update is written two or three years from now, it will almost surely be replete with such citations given the ever-increasing number of AIDS victims, their ever-

increasing visibility in California, and the legal problems their presence at work is almost certain to create. This highly sensitive, even explosive, issue is potentially more a problem for California employers than was integration of the races in the South. While the dominant whites in the South may have not wished to associate or work with Blacks, they did not fear that being near them could lead to death through a communicable and incurable disease. It is just such fear which is likely to be the volatile moving force behind many of the legal problems arising from the AIDS epidemic. It will require California lawyers and courts to move cautiously as they shape the law which will inevitably grow from this plague.

REFERENCES

1. This article will examine only the California law applicable to this question. While some federal legislation, such as Sections 503 and 504 of the Rehabilitation Act, may apply to certain California employers, the relatively cumbersome scheme for enforcing these laws and the relatively less severe sanctions available (compensatory and punitive damages are available under California law, *Commodore Home Computer Systems, Inc. v. Superior Court*, 32 Cal.3d 211 (1982)) under them suggest that state courts are most likely to be the forums for deciding AIDS-related questions in the employment setting.
2. *The San Francisco Chronicle* for October 9 reported that the Superintendent had withdrawn his suggestion.
3. A.B. 403 also forbids the use of test results to determine insurability. This should foreclose companies providing employee group insurance plans from conditioning participation upon a negative result from an AIDS antibody test.
4. Landerman, Sheldon, Harold Ginzburg, and Stanley Weiss, "Special Report: The AIDS Epidemic," 312 *New England Journal of Medicine*, 521 (February 21, 1985).
5. This *Webster's Dictionary* definition of handicap was adopted by the court in *American National Insurance*, 32 Cal.3d at 609.
6. In March 1985, the Department of Fair Employment apparently acted pursuant to this analysis when it issued an accusation against the Raytheon Corporation (Case No. FEP 83-84 L1-0310p) alleging that it violated the Act by refusing to allow an AIDS victim to return to work after an extended leave of absence. This, the department charges, constitutes refusal to accommodate a handicapped employee. The case is currently awaiting hearing.
7. For instance, a Gallup Poll conducted for the New York City Department of Health showed that 0 percent of all respondents believed (correctly) that "most people with AIDS are homosexual men." *Center for Disease Control, Mortality and Morbidity Weekly Report* 513 (August 23, 1985).
8. Some of these local ordinances also ban AIDS-based discrimination in housing and public accommodations, topics which will not be addressed in this article.
9. Each ordinance places similar structures on employment agencies and labor organizations.
10. In its opinion letter to Los Angeles City Council regarding the ordinance finally enacted there, the Los Angeles City Attorney's office concluded on the basis of *Alison's* that the employment provisions of that city's ordinance are preempted by the FEHA.
11. One defense not available on the present medical evidence is that of risk to the health and safety of co-employees. Given the current knowledge about the ways in which AIDS can be transmitted, it seems highly unlikely that proof can be found to support this defense.
12. *Duc*, however, suggests that had a customer preference for female flight attendants been more central to the "essence" of Pan Am's business — providing safe air transport — the result might have been different. 442 F.2d at 308.
13. This counter-argument would be significantly undermined should further research show that casual contact of the sort not now believed to spread AIDS does in fact contribute to communicating the disease.
14. The nurses also claimed that they had suffered respiratory transfers and other forms of discipline for lodging their complaint. The Labor Commissioner has dismissed these claims.

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Employers Must Be Wary in Screening for AIDS

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tions. To appreciate the implications of this response it is important to have an understanding of what the AIDS test involves.

The AIDS test was devised as a blood screening device for blood banks and related organizations. It detects whether a person has ever been exposed to or infected by the AIDS virus, but a positive reading does not tell if the virus is still present and/or whether the virus is currently active or inactive. The test is only one of several tools used by doctors to determine whether a person has AIDS. A positive reading is limitedly predictive of whether a person will develop AIDS. (Of those who receive positive test results, 5 to 10 percent develop AIDS, and another 5 to 20 percent develop AIDS-related complex, a milder form of the disease.)

The state of Wisconsin recently enacted a law specifically prohibiting testing applicants or employees for AIDS. The state determined that, among other things, the test is unreliable. In spite of this, the U.S. Armed Forces have chosen to test applicants, recruits, and eventually military personnel for AIDS. Notwithstanding these exceptions or specific provisions, the same principles that operate to prevent asking about AIDS operate to preclude testing for AIDS.

Could an employer test for AIDS as part of a comprehensive physical? Generally, yes, but as was suggested earlier, use of the results is severely circumscribed. Furthermore, assuming the AIDS test is contemplated as part of a comprehensive general physical examination, it should be kept in mind that

the AIDS test should not be the only test performed. Tests for other communicable diseases should be performed as well.

• If an otherwise qualified applicant states he has AIDS, or has been medically shown to have it, can he be refused employment on that basis? The answer is no, unless the condition is job related—that is, it substantially interferes with his ability to do the job sought, or would pose a reasonable probability of substantial harm to others.

In determining whether the AIDS condition is job related, the employer

must consider the actual duties of the job and the context or environment in which the job is to be performed. Indeed, it is the individual's symptoms and performance which must be evaluated.

Thus, unless the disease has progressed to the extent that it is debilitating, it is unlikely to substantially interfere with an applicant's ability to work, for example, as a bank teller, an office clerk, a lawyer or a corporate vice president. On the other hand, if the disease has become debilitating, an AIDS victim may not be able to perform even those jobs.

The mere risk or even likelihood that a person with AIDS will be unable to perform the job in the future is generally insufficient to justify denial of employment. Although there are no judicial decisions dealing with this precise issue, decisions involving other handicaps and disabilities support this statement.

In *Chrysler Outboard Corp. v. Dill*,¹ an individual who had acute lymphocytic leukemia was denied employment because of the high risk of infection.

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time period declined between 10 and 50 percent. See International Competitive Carrier Policies, Notice of Proposed Rulemaking, CC Docket No. 83-107, at 20 (released April 19, 1983).

• Title II permits carriers to impose rate changes by filing new tariffs which become effective after the applicable notice period unless the commission affirmatively suspends their effectiveness. The suspended rate becomes effective at the end of the suspension period by operation of law. See 47 U.S.C. §204. Under §205, the commission may determine the lawfulness of newly filed or previously established rates and prescribe new rates but only after a full investigation and hearing. The review procedure provided in the notice would appear to impose a requirement that all rate-making changes be subject to prior approval of the FCC, which approval may be withheld indefinitely. A similar requirement imposed over tariffs, where the commission's jurisdiction is broader, would violate the statutory scheme of Title II. See AT&T v. FCC, 487 F.2d 963 (D.C. Cir. 1973).

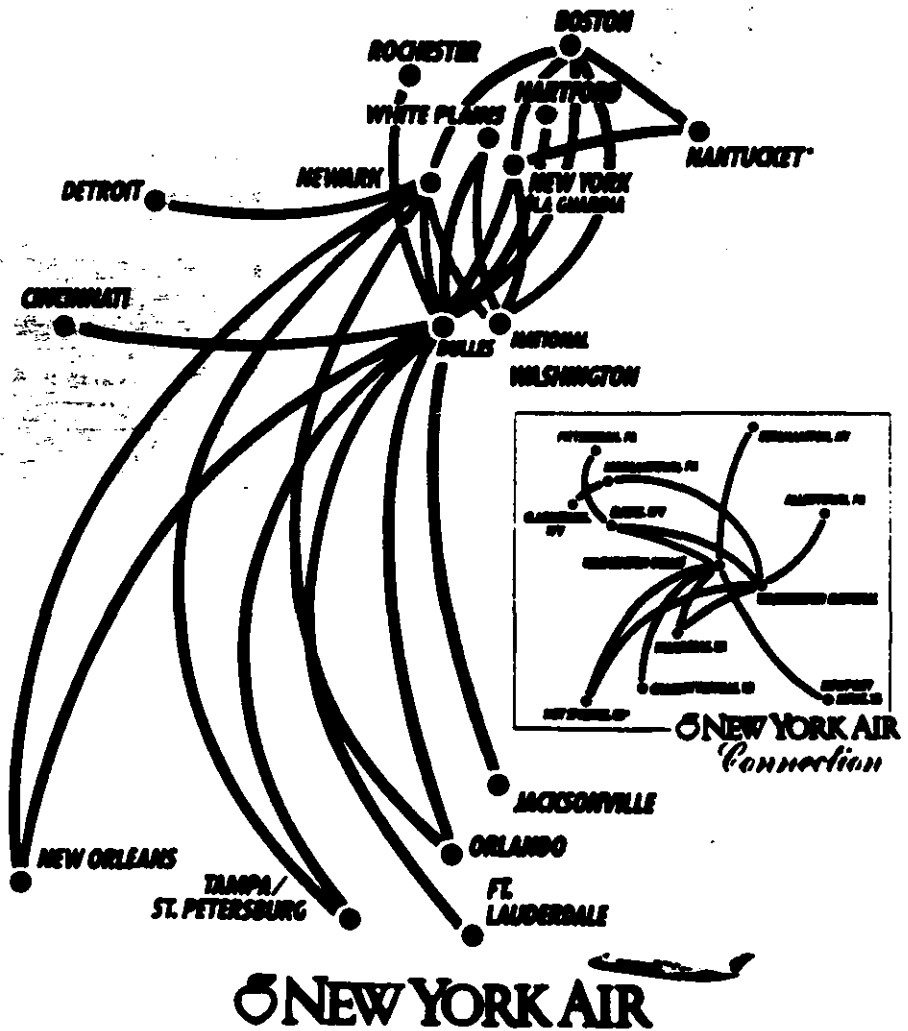
• Policy and Rules Concerning Rates and Facilities. Authorizations for Competitive Carrier Services, (Competitive Carrier Rulemaking), First Report and Order, 85 FCC 2d 1, 34 (1980).

• See, e.g., Competitive Carrier Rulemaking, First Report and Order, 85 FCC 2d 1, Second Report and Order, 91 FCC 2d 50 (1982).

• See International Competitive Carrier Policies, Report and Order, CC Docket No. 83-107, (released Nov. 15, 1983).

• See Comments of AT&T, p. 14, submitted in response to the notice. ■

OUR LATEST FALL PATTERNS.



ANALYSIS & PERSPECTIVE

AIDS Presents Many Legal Issues for Workplace

By Michael S. Cecere

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Broward County, Fla., fires an employee who has AIDS. A Midwestern manufacturer places an employee with AIDS on an involuntary leave. The secretary of defense directs the Armed Forces to "screen" all recruits and eventually all military personnel for AIDS. A Texas company "screens" all applicants and employees for AIDS. Parents in Queens, N.Y., petition a court to prevent AIDS children from attending classes with other children. Nurses refuse to work with AIDS patients unless the nurses are provided with protective clothing.

Undoubtedly, we have all heard of one or more of these incidents. By now it should be clear that one of the most pressing current issues for management is what to do about AIDS in the workplace. This issue has captured the concern of management and, indeed, the public. In fact, in many instances this concern borders on panic.

The panic is due largely to confusion over what AIDS is, how it is contracted and transmitted, and what the rights and obligations of employers are with respect to it. This article endeavors to explore the employment issues presented by the AIDS epidemic and to clear up some of the confusion.

Nature of the Disease

While the medical experts are not in unanimous agreement, some basic facts about AIDS seem clear. The acronym AIDS stands for acquired immune deficiency syndrome. It is a viral disease. Once the virus produces illness, death is certain, usually within 18 months. Among the early symptoms are general weakness, nausea, headaches, weight loss, fever, diarrhea and malaise. The virus inexorably eliminates the body's ability to combat infection. Recent medical evidence indicates the fatal disease may devastate the victims' brains as well as their immune defense systems. Some patients show clear signs of dementia including memory loss, inability to plan or make decisions, partial paralysis, loss of muscle coordination and loss of body control. To date, there is no known cure.

Seventy-five percent of all victims are homosexual and 13 percent are intravenous drug users. As the statistics indicate, these two groups of people are currently the most susceptible to AIDS. There is some indication, however, that soon the disease may become more widespread among heterosexuals.

The Center for Infectious Diseases (within the federal Centers for Disease Control) has issued national guidelines regarding the AIDS virus. The Public Health Service has adopted the guidelines and numerous agencies responsible for enforcing discrimination laws, including the New York State Division on Human Rights, rely upon the standards. According to the federal center, AIDS is not transmitted through casual contact, but through intimate contact, by way of blood and semen. It should be noted, however, that the AIDS virus has been found in human saliva, tears,



breast milk, and urine, and may be isolated from other body fluids, secretions, and excretions. Nevertheless, transmission through these other fluids is considered unlikely.

The center has found that the epidemiology of the AIDS virus is similar to that of the hepatitis B virus (HBV) infection, and concludes that the procedures for the control of the HBV virus, if followed, would also effectively prevent the spread of the AIDS virus. As is further discussed, the center guidelines on AIDS provide a useful course of conduct for employers faced with AIDS-related employment issues.

According to the center, more than 300,000 individuals have already been infected with the AIDS virus; 25 percent of that number are in the New York area. In short, it is an epidemic, apart from the medical and sociological implications posed (which are not addressed in this article). AIDS presents substantial legal questions in the workplace.

Legal Questions Presented

The questions regarding job applicants include the following:

- Can an employer ask applicants whether they have AIDS? If so, can it "single out" a particular applicant or must it ask all of them?
- Can an employer test job applicants for AIDS?
- If an applicant states he has AIDS, or tests positive, can he be refused employment because he has AIDS?

Additional questions arise regarding employees:

- If an employer believes an employee has AIDS, can it require him to be tested?
- If an employee admits he has AIDS, or tests positive, can he be disciplined or terminated?
- If several employees demand that a co-worker be tested for AIDS, how should an employer respond?
- If several employees refuse to work with a co-employee believed to have AIDS, how should an employer respond?
- How should a hospital employer respond to employees who refuse to work with patients unless the employees are provided protective clothing?
- Finally, can an employer be sued for negligence by an employee who contracts AIDS on the job from a co-worker?

The answers to these questions mainly lie in federal and state laws prohib-

iting handicap and disability discrimination.

On the federal level, the Vocational Rehabilitation Act of 1973, 29 U.S.C. §791 et seq., prohibits federal contractors and recipients of federal financial assistance (such as Medicare funds) from discriminating in employment on the basis of handicap. Various state laws such as the New York Human Rights Law, §296, also prohibit discrimination on the basis of handicap. Typically, the definitions of handicap and disability under these laws are virtually identical. The laws define a handicap or disability as (a) a physical or medical impairment which prevents the exercise of normal bodily functions, (b) a record of such an impairment, or (c) a condition regarded or perceived by others as such an impairment. An individual suffering from such an impairment is protected under this law provided that the impairment does not prevent the individual from substantially performing the job sought or held.

Otherwise qualified individuals suffering from a protected handicap or disability may not be denied or removed from a job or treated differently from non-handicapped individuals solely because they are perceived to have such handicap or disability. Moreover, the law requires that an employer reasonably accommodate the handicapped so long as the employer does not suffer undue hardship.

On the other hand, an employer could lawfully justify employment actions taken because of an individual's handicap when the handicap substantially interferes with the person's ability to do the job sought or held, or when it would pose a reasonable probability of substantial harm to others.

Given the federal and state discrimination law definition of handicap, it is necessary to conclude that AIDS is a handicap since AIDS is a medical impairment of normal bodily functions. Indeed, in a 1983 decision of a suit brought by a tenant doctor threatened

with eviction by a co-op board for treating AIDS patients, a New York supreme court justice specifically held that AIDS is a protected disability under §296 of the New York Human Rights (Executive) Law.¹

In fact, the New York State Division on Human Rights has announced that, in its view, AIDS is a protected disability under the law. Furthermore, a federal court of appeals recently found that a contagious disease such as tuberculosis qualifies as a "handicap" within the meaning of the Rehabilitation Act of 1973.² A federal district court has found that restricting handicapped children with hepatitis B to certain classes is a violation of the Rehabilitation Act.³

Despite all the evidence to the contrary, there are those who maintain that AIDS is not a handicap as defined by federal and state laws. These people argue that the laws were never intended to

encompass communicable diseases, and that AIDS could not have been intended to come under the laws' protection since it "did not exist" at the time the laws were passed. Again, there is no legal support for these propositions. Quite the opposite: Had the legislature intended to limit the diseases protected by the act, it simply would have listed those it intended to cover. It did not do so, choosing instead to provide a working definition to be applied as diseases came to the public's attention.

Assuming then, that AIDS is a protected handicap, the answers to most of the questions posed earlier become evident.

• Can employers ask applicants whether they have AIDS? No. The handicap and disability discrimination laws generally prohibit inquiries as to whether an applicant suffers from a handicap or disability. The reason is simple: The answer is irrelevant unless the handicap or disability substantially interferes with the person's ability to do the job sought. Thus, under most state laws, including New York's, an employer only may ask whether the applicant suffers from a handicap or disability that would substantially interfere with the person's ability to do the job sought. But, it should be noted, that under the Vocational Rehabilitation Act, which, as stated earlier, applies to federal government contractors and grant recipients, pre-employment inquiries as to handicap or disability are essentially prohibited. Employers may only inquire into an applicant's ability to perform job-related functions.

Can general physical examinations be conducted in connection with employment? Yes, but under the Rehabilitation Act, only after the offer is made. Of course, what can be done legally with the results is another issue, which will be addressed later. Taking into account federal and state laws, the prudent course, therefore, is to make a job offer subject to satisfactory completion of a physical examination. If the exami-

Whenever an employer requires job applicants to undergo physicals, the requirement should apply to all applicants, not just those 'suspected' of a handicap or disability. If examinations are done selectively, there may be a discrimination claim.

nation reveals a handicap or disability that substantially interferes with the individual's ability to do the job or poses a reasonable probability of substantial harm to others, the job offer may be rescinded. Whether the examination may include a blood test for AIDS is addressed below.

Of course, whenever an employer requires job applicants to undergo physicals the requirement should apply to all applicants, not just those "suspected" of a handicap or disability. If examinations are done selectively, i.e., only done for homosexuals or Haitians, there may be a discrimination claim.

• Can employers test job applicants for AIDS? Again, the answer appears to be that pre-employment inquiries must be limited to whether the applicant is able to perform job-related func-

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prolonged recuperation and complications, higher health insurance costs and high absenteeism. The decision was held to violate the Wisconsin law prohibiting handicap discrimination where, among other things, there was no evidence that the applicant was *then* unable to do the job. Future inability to do the job, the court stated, was immaterial.

There is some authority, however, for the proposition that when the risk of future inability to do the job is so immediate, the individual may be considered presently incapable of performing a particular job.¹ In view of the virtual certainty and imminence (within 18 months) of death once AIDS is diagnosed, an employer, under limited circumstances, could argue that it should not be required to train or maintain an employee certain to die in the near future. Some state discrimination law regulations imply that the "ability to perform a job" requirement contemplates or assumes that the performance will proceed for "a reasonable length of time." Such time is to be determined on an individual basis. An employer would have to make a strong factual showing, including medical evidence, to prove that an individual's job-life expectancy interfered with the individual's ability to perform the job.

As with future inability to do the job, higher health insurance costs is generally rejected as a basis for declining to employ an otherwise qualified handicapped person.²

Likelihood of Harm to Others

As previously stated, when the hiring of a handicapped individual might pose a reasonable probability of substantial harm to others, the employer is again justified in denying employment to the individual. This standard recently was established by the 9th Circuit Court of Appeals in the case of *Mantolere v. Bieger*.³

The Mantolere case falls under the jurisdiction of the Rehabilitation Act. An applicant for a position with the postal service was an epileptic. She suffered from grand mal seizures. Among the duties of the job applied for was the operation of a letter sorting machine. Doctors for the postal service recommended she not be put in a position involving the operation of machinery, notwithstanding the fact that in prior jobs she operated machinery, including a meat slicer. She was not hired.

The trial court held that because of the "elevated risk" of injury, the postal service did not violate the Rehabilitation Act by refusing to hire her. The 9th Circuit reversed and remanded the case for trial. It held the employer to the stricter standard of having to show a reasonable probability of substantial injury to the applicant or others.

This is a strict standard indeed. The difficulty of meeting it becomes clear when it is considered that in cases where the "looser" elevated risk standard (or an equivalent) was applied, an employer was not permitted to refuse to hire an individual suffering from acute lymphocytic leukemia,⁴ and a school district was not allowed to restrict chil-

dren with hepatitis B to certain classes.⁵

In the case of AIDS, therefore, it seems unlikely that a showing of reasonable probability of substantial injury, i.e., infection, to others can be made. As was discussed earlier, the medical evidence indicates that the disease is not transmitted through casual contact. It is transmitted through intimate contact, the vehicles being blood and semen. Such contact generally does not occur in the work place.

The guidelines issued by the Center for Infectious Diseases are helpful in determining the likelihood of harm to others. The center recommends precautions (such as avoiding needle injuries) for health care workers and others in related occupations in which there may be exposure to blood from persons infected with the AIDS virus. The center also makes reference to certain routine health precautions (not necessarily related to the transmission of AIDS) for persons providing personal services (such as hair dressers and cosmetologists), and food service workers (such as cooks, waiters, and airline attendants). As for "other workers," persons in settings such as offices, schools, factories, and construction sites, the center states there is no known risk of AIDS virus transmission. The center concludes that workers known to be infected by the virus should not be restricted from working or from using public facilities. (The center is now formulating specific recommendations for health care workers who perform invasive procedures).

Though demonstration of reasonable probability of injury in the ordinary work place is unlikely, this is not to suggest that it is impossible. Again, as was described earlier, a relevant factor to be considered in evaluating an employer's reason for refusing to hire a handicapped individual is the context in which the job sought is to be performed.

For example, in a non-employment case, a New York court allowed the segregation of prison inmates suffering from AIDS from those inmates not so afflicted.⁶ In that case, it was shown that the danger of contagion in prison was substantial because of the high incidence of homosexual sex, homosexual rapes, use of drugs, and the exchange of blood through injuries suffered from fights.

Similarly, people involved in food preparation, e.g., chefs, who suffer from AIDS may pose a greater risk of contagion to others since they are likely to use knives and be cut from time to time. Federal center guidelines indicate, however, that no instances of AIDS virus transmission have been documented in the food preparation setting. The center recommends good personal hygiene and food preparation, and care in avoiding injury to hands when preparing food. Should such an injury occur, the center suggests that both aesthetic and sanitary considerations would dictate the food contaminated with blood be discarded. Other than that, the center states that food service workers need not be restricted from work unless they show evidence of an infection or illness that would restrict any food service worker from working.

Interestingly, the National Restaurant Association, relying on the center's findings, is advising its members that

AIDS is not transmitted by food service handlers and that no automatic testing of food service handlers is warranted. Thus, such a risk would likely be perceived as merely an "elevated" one and would not rise to the level of reasonable probability of substantial harm.

The handicap discrimination laws impose some obligation on employers to accommodate an applicant's or employee's disability. This too is subject to a reasonableness standard. For instance, should an employee who has AIDS require some time off, schedule changes, or "job restructuring" to get treatments, the employer will have to demonstrate an unreasonable disruption to business in declining to accommodate the request. The grant or refusal of such requests must, of course, be consistent with the manner in which requests are granted for other medical or personal matters.

Turning back to the additional questions posed earlier that deal with employees rather than applicants:

• If an employer believes an employee has AIDS, can it require him to be tested? Answer: for that reason alone, no. But, if an employee's performance is deteriorating, the employer can deal with the problem like it would any other performance problem. Also, if the job and context of its performance are such that if the employee does have AIDS or some other communicable disease the risk of contagion would be substantial, a comprehensive physical examination may be appropriate. But it must be emphasized that as the Center for Infectious Diseases guidelines indicate, there are few such positions.

• If an employee admits he has AIDS, or tests positive, can an employer discipline or terminate him? Again, the answer is no, unless the individual's job performance has been adversely affected or unless there is a probability of injury to others.

• If several employees demand that a co-worker be tested for AIDS, how should an employer respond? For the reasons previously discussed, the request should be rejected and an effort should be made to educate the employees on AIDS and the lack of risk of contagion in an employment context.

• An interesting question is presented where, fearing for their safety, several employees refuse to work with a co-employee known to have AIDS. Can an employer discipline them? The law suggests that their action may be "protected concerted activity" within the meaning of 47 of the National Labor Relations Act. (Some argue it would not be protected because it is unreasonable and, perhaps, prejudiced).

If protected, the conduct may not be the basis for discipline. Thus, the employer would be put in the position of having to accommodate competing interests—those of the employee protected by the discrimination laws and those of other employees protected by the National Labor Relations Act. As in the California Department of Industrial Relations case cited above, a transfer in order to facilitate education on this matter was not unfair discipline or an unfair labor practice. Again, it is clear that education may be the best solution.

• How should a hospital employer respond to employees who refuse to work with patients unless the employ-

ees are provided protective clothing? In a recent case brought before the California labor commissioner, the commissioner determined that, in essence, there was insufficient evidence of AIDS' communicability—even in a nurse-patient relationship—to support the nurses' request that they be provided protective clothing as a condition to caring for AIDS patients.⁷ In his decision, the commissioner held that the hospital was justified in transferring the nurses to a day shift in order to provide "education" about the care of AIDS patients and that this action was not an unfair labor practice. If evidence of a risk does not exist in a health care setting, it is difficult to imagine when such risk would be recognized—perhaps where invasive procedures are performed. It should be noted that legislation has been introduced in apparent response to this decision. The proposed legislation, H.R. 3646, would authorize nurses and other health care professionals to wear protective clothing when treating AIDS patients.

• Lastly, numerous employers inquire, "Can't I be sued for negligence by an employee who contracts AIDS on the job from a co-employee who I knew or believed had AIDS?" The theory is that an employer has a duty to provide a safe working environment and that duty may be breached when the AIDS victim is hired or continued in employ. The law indicates that an employer could defend against such a suit on the grounds that (1) an employer is legally obligated not to discriminate against otherwise qualified AIDS victims, and (2) medical evidence indicates that the disease is not transmitted through casual (workplace) contact. For that reason, no duty of care was breached in hiring or retaining such an employee.

To sum up, AIDS is a protected handicap or disability under federal and state fair employment practice laws. As such, it must be treated like any other handicap or disability. Only when it substantially interferes with an individual's ability to perform the job sought or held, or when it poses a reasonable probability of substantial injury to others, may it be used as the basis for employment decisions. Fear, particularly when, as in the case of AIDS, it borders on the irrational, should not be allowed to dictate an employer's actions regarding this problem. Instead, an employer confronted with an AIDS victim in the workplace setting should act with knowledge of the disease and of the legal obligations posed for employers.

¹ People v. 49 West 12th St Tenants Corp., N.Y.L.J. Oct 17 1983, p. 1 (Ginsman at J).

² Arline v. School Board of Nassau County, BNA Daily Reporter, No. 197 at D1 (11th Cir. 1985).

³ N.Y.S. Association For Retarded Children v. Carey, 406 F. Supp. 479 (E.D.N.Y. 1978).

⁴ 14 FEP Cases 366 (Wisc. Cir. Ct. 1974).

⁵ E.E. Black, Ltd. v. Marshall, 497 F. Supp. 1028, 1103 at 1610 (N.W. 1980).

⁶ See E.G. McDermott v. Renda Corp., 491 N.Y.S. 2d 106 (1985); Chrysler Outboard Corp. v. Oshin, 14 FEP Cases 366 (Wisc. Cir. Ct. 1974).

⁷ F. 26 (9th Cir. 1985).

⁸ Chrysler Outboard Corp. v. Oshin, 14 FEP Cases 366 (Wisc. Cir. Ct. 1974).

⁹ N.Y.S. Association For Retarded Children v. Carey, 406 F. Supp. 479 (E.D.N.Y. 1978).

¹⁰ Condero v. Coupland III, 807 F. Supp. 9 (S.D.N.Y. 1984).

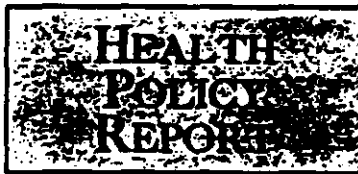
¹¹ Bernales v. City and County of San Francisco, Department of Health, State of California, Department of Industrial Relations Case No.

AIDS in the Work Place: The Ethical Ramifications

BY RONALD BAYER AND GERALD OPPENHEIMER

*In spite of uncertain outcomes, screening,
hiring and insuring policies are being made.*

It is four years since acquired immune deficiency syndrome (AIDS) was first diagnosed among a small group of homosexual men on the West Coast. Since then, more than 14,000 cases have been reported,



half of whom have died. The federal Centers for Disease Control (CDC) estimate that up to one million individuals have been infected by the virus that causes AIDS, HTLV-III (for human T-lymphotrophic virus, type 3). Of these, as many as 20 percent will develop this illness that is almost always fatal.

AIDS is, like all medical crises, a challenge to scientific capacities. Because of some of its unique features, AIDS will require considerable advances in the understanding of virology and in the functioning of the body's immune system. It may take years before it is possible to treat those who develop the disease, and even longer before an inoculation to prevent it is developed.

In the meantime, living with the presence of AIDS will test the moral fiber of the nation. This is the social challenge of AIDS. Will it be met with compassion or anger? Will those who are ill and/or carry the virus be treated with dignity, or as pariahs, stripped of privacy and the right to function as members of the community? Finally, will reason rule, or will the country be swept along in an hysteria that encourages policies in both the private and public sectors that are cruel and ineffective? How these questions are answered will affect dimensions of social life extending far beyond those immediately touched by AIDS.

Among the most crucial issues to confront is the degree to which those who are sick or infected with the HTLV-III virus will find themselves excluded from em-

ployment, the benefits of health insurance protection or access to life insurance. The problem often has been posed as a scientific, actuarial or economic one, but it is at base social and moral. For society, the broad policy question at stake is how

to guide and limit the decisions of employers and insurers so that equity and the fabric of social life will not fall victim to the alarm and panic that now seem to dominate the public discussion.

Screening Possibilities, Problems

Although a lot remains to be learned, what is known about AIDS makes inappropriate much of the current discussion of restrictions on those who are ill and those who are carriers. It appears that the virus associated with it is spread through sexual contact, contaminated needles and blood transfusions. It is not airborne. Close observation of those who are ill and their families has made it clear to virtually every scientist who has studied the disease that casual contact poses no risk to the public. Until a year ago, discussions of the appropriate response to AIDS centered on those who were sick or displayed symptoms of AIDS related complex, a pattern of disorders that may include a generalized swelling of the lymph nodes and exhaustion but that does not meet the restrictive criteria for AIDS as defined by the CDC. Last March, a test was developed to screen the blood supply by detecting the presence of antibodies to the new HTLV-III virus. Though designed explicitly for the elimination of contaminated donations from the blood system, the test had obvious implications for those who believed it necessary to protect the public from all who carry the AIDS related virus.

The enzyme linked immunoabsorbent assay — ELISA for short — detects the presence of antibodies stimulated by HTLV-III viral antigens. The results are scored along a continuum. A reactive result may indicate that the tested blood contains specific antibodies to HTLV-III proteins. The individual is said to be seropositive. This means that

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he or she has been infected with the HTLV-III virus and has produced an immunological response. At the low end of the reactivity scale, the results are considered borderline and arbitrarily not positive.

The ELISA test is very sensitive; that is, its results correspond very closely to the presence of HTLV-III antibody in AIDS patients. To confirm whether a positive test result is a true positive, a more technically difficult and expensive test called the Western blot can be performed. This costs \$65 to \$100 vs. \$2 to \$3 for ELISA. The Western blot test identifies antibodies to proteins of specific molecular weight. Another confirmatory test is the immunofluorescence assay.

When these tests were first developed, it was not known whether the presence of antibodies also indicated the presence of active virus. Many researchers now believe that at least two-thirds of seropositive individuals carry the live virus. All of those who carry the virus are now presumed to be infectious, and may be so for life.

Less than a year since the test was put into use by all blood banks, the worst fears of those who warned how the ELISA test might be used as a mass screening device by employers and insurance companies have been substantiated. Two states, Wisconsin and California, have barred the use of the test for such purposes, but powerful forces are seeking to institute widespread testing. Most significantly, the military decided to initiate antibody screening for all recruits as of last October. The justifications for this move will have implications for both the public and private sectors.

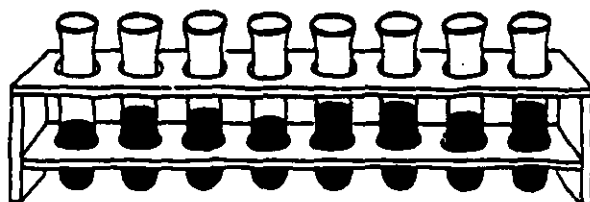
Despite the findings of the CDC that persons who have AIDS as well as those who carry the virus pose no risk to those with whom they work, the military has asserted that the health and well-being of those in the service require rejection of recruits who may develop AIDS. Furthermore, the military has argued that the ultimate medical cost associated with the care of those who develop AIDS justified its decision to exclude individuals who were at increased risk of becoming ill.

If concern about the health of military personnel, as well as fear of the cost of medical care, could serve the largest single employer in the U.S. as a justification for screening all recruits, how long will it be before employers throughout the country with more limited access to scientific data and more limited resources to cover the cost of medical care of their employees rely upon similar arguments? In its place, a more far-reaching decision by the Department of Defense has been announced: to test all active duty personnel and to discharge from the service anyone who admits during screening to drug use or homosexuality. The suspicion of some that AIDS testing represents a clinical device for barring homosexuals from military employment has by this set of decisions been given increasing credibility.

Employment Discrimination Issues

It is difficult to document the extent to which people have lost their jobs or been subject to employment discrimination or harassment as a result of developing AIDS.

The Lambda Legal Defense Fund, serving the homosexual community, has documented cases and has undertaken the defense of complainants who have been victims of such acts. In Dade County, Fla., despite the arguments of the local health commissioner, county supervisors seek to promote the screening of all food handlers so that those who are antibody positive could be excluded from jobs. In New York City, some local leaders have called for the mandatory screening of all teachers, health care workers and barbers in order to prevent the employment of those who carry the HTLV-III virus. There have been similar calls across the country and by some members of Congress.



The legality of discrimination against those who carry the HTLV-III virus or who are sick with AIDS is a complex matter. Until recently, the doctrine of "employment at will" permitted almost unlimited discretion to employers to refuse to hire or fire individuals for any reason or for no reason. Only union contracts and specific legislative provisions limited such plenary authority.

In most states, however, the refusal to hire an individual with a medical condition who is capable of performing a job, or the decision to terminate the employment of such an individual is deemed a violation of laws designed to protect the disabled and handicapped. Forty states forbid such discrimination against private employees; all but three protect disabled public employees. In addition, federal law requires all public agencies and private organizations that receive federal funds to avoid discrimination against the handicapped. Even so, the law regarding those with AIDS or those who carry the virus is extremely vague at this point.

Whatever the ambiguity of the law, it is possible to define the ethical standards that ought to be used in judging acts of discrimination matters involving AIDS. Those standards can draw upon the evolution of legal prescriptions that protect women and racial minorities against discriminatory practices in the work place. Under the doctrine of bona fide occupational qualification, an employer may exclude individuals from jobs only if they fail to possess the skills to perform the required assignments. The assumption, for instance, that all women are incapable of performing certain heavy labor tasks cannot be accepted. Only when a class as a whole is by definition incapable of performing certain functions may it be systematically excluded. For example, discriminating against women in jobs for male locker room attendants would not be deemed a violation of civil rights law. This very high legal standard, which requires that firms practicing discrimination bear the burden of proof, could provide a moral yardstick against which to judge employment discrimination against

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those with AIDS as well as those who carry the antibody to HTLV-III.

What morally acceptable grounds would there be for an employer to refuse to hire someone with AIDS or AIDS related complex? All scientific evidence indicates that fellow workers are not at risk from exposure to individuals who are sick, nor are members of the public who might be brought into contact with a worker with AIDS. So arguments based on the need to protect co-workers and the public have no rational justification. On the other hand, those who are sick may, in fact, be unable to perform certain duties or may pose undue hardships to a company because of prospects of repeated illness and related absences. An employer could reasonably determine on a case-by-case basis that a particular individual ought not be hired for reasons such as these.

The situation is different for those already employed who then become sick. Here the moral question posed for employers is whether they have an obligation to continue the employment of individuals whose capacities and work record are affected by AIDS. Generosity and decency could well dictate one response; narrow financial and efficiency oriented calculations another. But two points need to be underscored. First, the status of having AIDS is in itself not grounds for dismissal; only the work related consequences of AIDS provide such grounds. More important, there is no justification for adopting a more restrictive policy for those who have AIDS than exists for those with other illnesses, for example, cancer.

of the New York Business Group on Health, has noted a sharp increase in inquiries about AIDS and medical costs. "Employers want to know if their health coverage costs will rise, and [if they] can...set up screening barriers to employment," Warshaw noted.

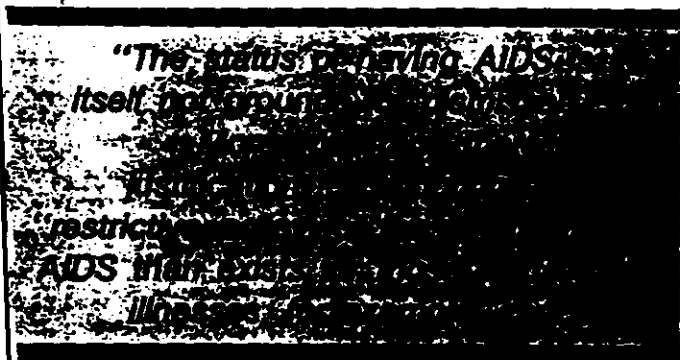
Concern about the potential cost of care was an essential element in the justification provided by the military for its planned screening program. And last June, Hollywood, Fla., solicited bids for the screening of all municipal employees, in part because of a desire to protect the city's benefit plan from the "astronomical expenses" incurred by AIDS patients. A public outcry ultimately forced Hollywood to withdraw its proposal, but the effort is indicative of a level of concern throughout the country among public and private sector employers who often bear the full cost of health care of their workers.

What is Justifiable?

That such fears have been articulated does not mean that the related concerns are empirically justifiable. Nor does it mean that there is a moral justification for implementing discriminatory employment practices. On empirical grounds, it would be necessary to determine the overall impact of the medical expenses for an employee with AIDS for a given health plan. Such a determination would require: better data than are now available on the actual cost of care associated with AIDS as well as AIDS related complex; a much better diagnostic tool for determining who among those who are antibody positive will develop AIDS; and some assumptions about the number of individuals employed who might become ill. With so many factors still uncertain, the formulation of policy centered on the cost to employers for the health care of those who might develop AIDS must be highly conjectural.

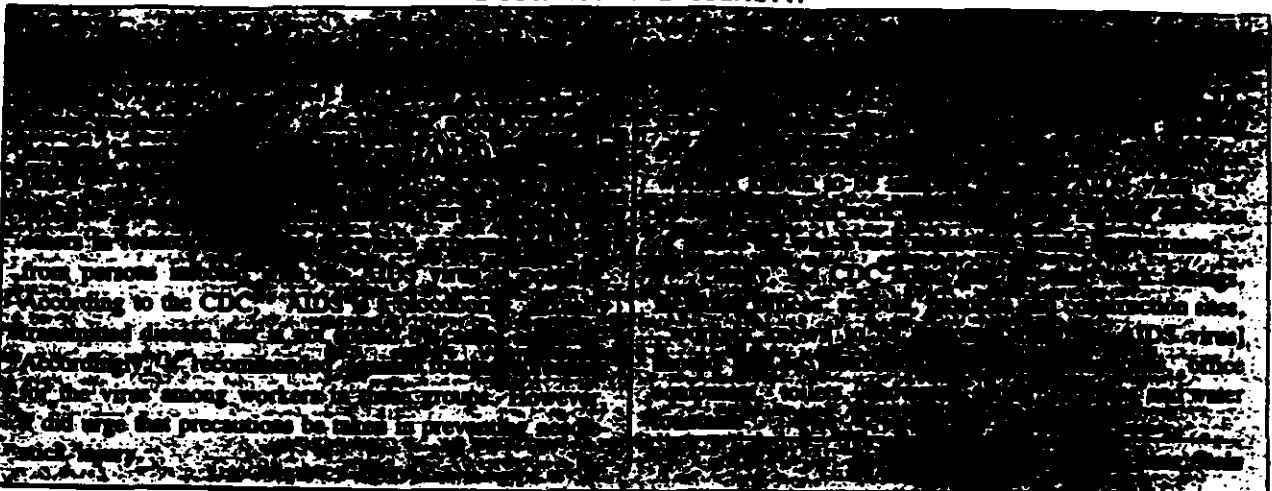
But more is at stake. Americans have decided that protection against the cost of health care expenditures will be available primarily through employment based health insurance. Can the U.S. as a matter of social policy and equity permit the exclusion from employment of those who might incur extraordinarily high health care expenditures? To do so would have the doubly troubling consequence of denying not only health care protection, but also the right to gainful employment. Can a disease like AIDS provide the moral justification for creating a dependent class, one that is barred from private and public sector employment and forced upon a welfare system?

Finally, will antibody testing serve as a clinical subterfuge for social screening? Epidemiologically, AIDS in the U.S. currently occurs predominantly among homosexual and bisexual men and intravenous drug users. Specifically, 61 percent are homosexual or bisexual with no concomitant intravenous drug use; 12 percent are both homosexual or bisexual and intravenous drug users; and 17 percent are heterosexual intravenous drug users. In a society that only recently has begun to extend a modicum of equal treatment to homosexuals, within which legal protections against employment discrimination for such individuals is rudimentary at best and where discrimination because of sexual orientation is still a matter of practice, it is not unreasonable



Whatever the complexities of the issues surrounding those diagnosed as having AIDS or AIDS related complex, the situation is very different for those who carry the virus but are asymptomatic. They are infectious but pose no risk to others unless they engage in sexual activities, share needles with them or donate blood. Since they are asymptomatic and may indeed never become ill, there can be no performance related justification for refusing to hire or for firing such individuals.

Is there, then, no identifiable employer interest that could provide at least a preliminary argument for seeking to exclude, as a class, those who are antibody positive or who are sick with AIDS? Here the potential cost of health care for those who are ill or who may become ill emerges as a critical issue. Indeed, this matter has surfaced with increasing frequency. Leon Warshaw, the executive director



to expect that antibody tests will be used to provide a clinical justification for an antihomosexual bias. That the existence of AIDS has with increasing frequency been used as an excuse for the reinstatement of sodomy statutes, as in Texas, should be alarming.

For these reasons, screening in the private sector poses a grave risk to those who are socially vulnerable, a risk that is not balanced by benefits to society in general nor to those who might be brought into contact with carriers of the HTLV-III virus. Indeed, the only consequences that could follow from the implementation of screening programs in the work place are those harmful to the goal of preserving compassion, equity and reason during the AIDS epidemic.

Health Insurance Concerns

The AIDS issue is an open one for the insurance industry, too. Most telling in this regard is a paper prepared by a task force of insurance company medical directors for the American Council of Life Insurance and the Health Insurance Association of America. Though not yet adopted as an official statement, the report represents a critical commentary reflecting the industry's concerns. Proceeding from the assumption that AIDS may entail outlays of billions of dollars to cover medical expenses, loss of time and death benefits, the task force warned of the potential effect upon an industry that has not allocated reserves for such a purpose. How severe the impact might be would depend, the report noted, on "how effectively applicants can be underwritten in the upcoming months and years.

According to the task force, only the appropriate use of the ELISA test could prevent an untoward outcome. Prohibiting the use of the ELISA test, the insurance group contended, would allow those who know themselves to be at risk to purchase insurance under conditions that would be harmful to the industry and that would be unacceptable from the point of view of equity.

Among the most troubling features surrounding AIDS for the health insurance industry is the confusion that characterizes the estimated cost of caring for each diagnosed case, with figures ranging from \$25,000 to \$140,000.

The industry and those that regulate it will have to chart a course in the face of actuarial ambiguity.

To date, health insurers appear to have met their legal obligations to reimburse the contracted medical expenses of AIDS patients. However, payments have not been made when there has been a clear indication that AIDS was a preexisting condition, that is, one that was known to exist because of diagnosis or symptomology prior to obtaining insurance.

But what is a preexisting condition in the case of AIDS? Is a positive finding on the HTLV-III antibody test a preexisting condition? Is AIDS related complex a preexisting condition for AIDS? Should these health states prevent affected individuals from gaining health insurance? Should their premiums be higher as a consequence? These matters have not yet been resolved.

Although the question of exclusion on the basis of preexisting conditions is of critical importance to the insurance industry, for most persons covered by group health insurance, particularly experience rated groups, the preexisting condition clause is usually waived. Nevertheless, because the presence of those with AIDS in an insured group could affect its premium determination, employers might well consider the use of a pre-employment screening mechanism to reduce such a prospect. The preexisting condition exclusion can affect individuals who directly purchase insurance on their own.

For those patients with AIDS who are covered by private health insurance, many problems remain. The treatment costs may exceed the maximum per hospitalization or lifetime benefits. Experimental drugs and procedures (and in the case of AIDS, much of the clinical approach may entail novel efforts) are not reimbursed by most insurance carriers. Out-of-hospital treatment including hospice care may not be paid in full.

Though private health insurers do not currently know the magnitude of the costs they will face in the future, they are trying to reduce their vulnerability by cautiously proposing the use of the HTLV-III antibody test as a required screening measure for all individual applicants seeking to purchase health insurance. In Wisconsin and California, where the state legislatures have mandated that

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the test results not be used as a condition of employment or insurability, carriers have threatened to exclude AIDS from coverage.

In eight states — Minnesota, Connecticut, Indiana, Florida, North Dakota, Montana, Wisconsin and Nebraska — pools have been created to guarantee coverage to people whose initial applications for health insurance are refused because of risk factors or health conditions. Twenty other states are considering similar legislation. Premiums under such pooling arrangements vary, but they average about 150 percent of the median insurance rates. In six states with insurance pools, there is a six-month preexisting condition clause. Indiana and Nebraska have provided an option of coverage without such exclusion for an increase of 10 percent in the premium charged.

Before health insurance carriers can ask about AIDS on their application forms or require antibody testing, they will have to receive permission to do so from the relevant regulatory agencies in states where they sell policies. The uncertain predictive value of the HTLV-III antibody test, as well as political exigencies, may limit the number of states that allow such screening. In New York, for example, the state insurance department has held that "there is no test established that is a valid identifier of AIDS," though "if a test is developed that proves a person will get AIDS, that could be used to limit the person's insurance coverage."

The issue of antibody testing is both scientific and political. A decision about whether and how insurance companies could use such tests inevitably will be made under conditions where the narrower interests of carriers will be but one factor. Overriding social concerns about equity and the creation of a class of uninsured individuals dependent upon the welfare system could well prove determinative. From a societal perspective, the central issue is whether the costs of health care will be socialized and broadly distributed or borne by those who may become ill and by the welfare system. Were there a system of national health insurance, such a question would, of course, never arise.

Assumptions for Life Insurance

The situation surrounding life insurance is a more complex matter. While assured access to health care is a broadly shared concern with strong popular as well as moral foundations, the right to life insurance has no such support. Indeed, those at especially high risk have always had difficulty in purchasing life insurance or have been confronted with premiums that for most would be considered prohibitive.

The life insurance industry fears that individuals, believing they are at increased hazard for AIDS because they know they are members of risk groups or are seropositive, might seek to insure themselves at very high levels. Among the life insurance companies that have argued openly for the right to raise questions about indicators for AIDS have been Northwestern Mutual Life Insurance Company of Milwaukee (Wisc.) and the Lincoln (Neb.) National Corporation, both of which have sought

permission from state insurance regulators to make such inquiries. Donald Chambers, medical director of Lincoln National, has made the claim most clearly: "It is immensely important to be able to use tools that are as accurate as possible when determining insurability. Unfortunately, if we are not allowed, for example, to use the antibody testing, we may be forced to make certain assumptions that we'd rather not make."

One such assumption is that all homosexuals or those suspected of being homosexual be treated as if they were antibody positive. As a result, some underwriters have suggested that applications from all unmarried men of a certain age, living in certain cities or in specific neighborhoods be carefully scrutinized.

In some instances, insurers have asserted that those who are antibody positive will be declared uninsurable. Others have claimed that the antibody test or other risk factors will be used in determining actuarially appropriate premiums. Despite the position of Lincoln National, Mutual Life Insurance Company of Milwaukee and the insurance industry's task force report, many large insurers have not announced plans for antibody screening.

As life insurance carriers seek to develop policies from their vantage point, private perspectives are forced to confront broader concerns about the social functions of life insurance in the U.S. as well as the demonstrable public interest in the norms that ought to govern the insurance industry. Underwriting rules should not be applied to exclude an entire class of applicants (unmarried men of a certain age), nor be used to reinforce stereotypes (only unmarried men have male sexual partners, or all homosexual men are promiscuous). Steven Rish, vice president for life and health operations of the Nationwide Insurance Company, articulated a corporate perspective when he asserted, "Insurance companies are businesses; they are not a social system." Precisely because this is the case, insurance companies, alone, cannot be permitted to set the terms under which coverage will be made available.

In the debates over unisex insurance rates and in the decision to eliminate gender based calculations from retirement plans, overriding social considerations have been used to limit the implications of actuarial science. Such should be the case with life insurance protection for those at risk for AIDS. Should insurers be permitted to deny coverage to all those suspected of being homosexual or those whose antibody status suggests they are at increased risk for AIDS? Should insurers be permitted to set premiums at a level that would place life insurance protection out of reach because of cost? Should the pooling arrangements now available in some states for health insurance be used to socialize the burden of life insurance protection? These are matters that require broad public discussion — a discussion in which the principle of equity ought to be given a central role.

In the end, AIDS represents a fundamental challenge to American society. How it is met will not only tell a great deal about our society, but also about what kind of society it will become during the next trying years. ■

II. General Resource Materials

C. Printed Material Listing

1. General Audience

The National Gay Task Force prints a list which is updated monthly on the groups offering educational services to companies and support to individuals. For more information write or call: National Gay Task Force, 80 -5th Avenue, New York, NY 10011. (212) 741-5800.

The San Francisco AIDS Foundation has a "Catalogue of Educational Materials" (brochures, booklets, videos, slide shows, posters, reports, technical assistance packets, etc.) available. It lists prices and brief descriptions. San Francisco AIDS Foundation, 333 Valencia Street, 4th Floor, San Francisco, CA 94103. (415) 864-4376

The Shanti Project maintains a list of groups, agencies and organizations offering support and service. For more information: Shanti Project, 890 Hayes Street, San Francisco, CA 94117. (415) 558-9644.

2. Administrators

"AIDS - A symposium on Legal and Human Resource Issues for the Employer." Transcripts and materials from a conference held in New York by Executive Enterprises Seminars on February 3, 1986. Available for \$99.50 in three-ring binder form from Executive Enterprises Seminar, 33 West 60th Street, New York, NY 10023. (212) 489-2670.

"AIDS and Drug Abuse in the Workplace: Resolving the Thorny Legal-medical Issues." A course-book as a result of a seminar on this topic. Available for \$40 from Law & Business, Inc., 855 Valley Road, Clifton, NJ 07013. 1-800-223-0231.

"AIDS Policy and Law" Clearinghouse of information on meetings, books and publications that deal with the issue. One year subscription is \$337.00 and if ordered by March 31, 1986, price is \$287.00. (202) 452-7889.

"AIDS in the Workplace." A booklet which provides information to managers on the legal, medical, insurance and personnel issues as a result of an employee with AIDS. Available for \$7.50 (AMA members); or \$10.00 (nonmembers), and \$3.75 (students). Write to: American Management Association, AMA Membership Publications Division, 135 West 50th Street, New York, NY 10020.

"AIDS in the Workplace." A report which addresses the employee relations problems and their corresponding legal issues when AIDS arises in the workplace. Available from Commerce Clearing House, Inc., 4025 West Peterson Avenue, Chicago, IL 60646. (312) 583-8500.
Price: \$10.00.

"AIDS in the Workplace - A Supervisory Guide." A pamphlet which gives medical, statistical, legal and employee relations information. Available from the National Safety Council, 444 North Michigan Avenue, IL 60611.

"Executive AIDS Watch." A bimonthly publication which summarizes current news on AIDS. Available for \$295.00 for 24 issues from Executive AIDS Watch, 1111 Third Avenue, Suite 700, Seattle, WA 98101. (206) 382-6627.

"Guidelines for Employers on AIDS." Contains information on the proceedings of a conference held on December 3, 1985 in New York City and lists resources available in the New York area. These guidelines will be available after April 15, 1986 for approximately \$50.00 from New York Business Group on Health (NYBGH), 622 Third Avenue, 34th Floor; New York, NY 10017-2997.

International Association of Business Communicators. This organization compiles examples of corporate communications to employees, primarily short articles dealing with a specific subject. They will soon have available a packet on AIDS in the workplace. Packets are approximately \$25.00 for non-members and \$15.00 for members. (For more information, please call (415) 433-3400.)

"Managing AIDS in the Workplace - A Policy Development Outline." This is a package of materials which includes: employee literature; an AIDS Policy Development Outline for managers, and a 25 minute video titled "Understanding AIDS." It is available for \$295.00 from the Cygnus Corporation, 7500 West 7th Street, Edina, MN 55435. 1-800-828-8190 or (612) 944-8190.

* "AIDS: Developing a Corporate Strategy." A manual sponsored by the Bay Area Business Leadership Task Force for businesses addressing policies and programs on education, legal, employee benefits and human resources issues. Available from the San Francisco AIDS Foundation, 333 Valencia, San Francisco, CA 94103. Price - \$25. (415) 864 4376.

** "AIDS in the Workplace: An Epidemic of Fear." A video tape with brochures and an accompanying guide for establishing an appropriate education program in the workplace. Available from the San Francisco AIDS Foundation, 333 Valencia Street, 4th floor, San Francisco, CA 94103. Price for the first copy \$180, additional copies \$100.

3. Employees

"AIDS and the Workplace." A brochure which briefly describes the disease, the contagium factors and the rules of safe practice in the workplace. Available from AIDS Project Los Angeles, 7362 Santa Monica Boulevard, West Hollywood, CA 90046. (213) 876-8951.

"AIDS Lifeline." A brochure on the disease and contagium factors through posing and answering questions addressed to an individual. Available from: San Francisco AIDS Foundation, 333 Valencia Street, 4th Floor, San Francisco, CA 94103. (415) 864-4376.

"The Facts About AIDS." A twenty page pamphlet (or in cassette form) covering medical aspects of AIDS. Written for general audience. Available from: AIDS Education, P.O. Box 365, Wayne, NJ 07470. 1-800-526-4773.

"Living with AIDS - A Self-Care Manual." A 95-page manual which discusses the medical and treatment of the disease; self-care techniques; psychological effects; services and resources one must obtain and a nation-wide resource directory of organizations and educational materials. Available from: AIDS Project/Los Angeles, Inc., 973 N. Cole Avenue, Suite 3, Los Angeles, CA 90038. The manual is \$5.00 (1-19 copies) or \$4.00 (20-39 copies), plus 75¢ for postage and handling and California residents should add 6.5% sales tax.

"Risk of AIDS in the Workplace." A pamphlet distributed by the Shanti Project, 890 Hayes Street, San Francisco, CA 94117. (415) 558-9644.

"What Everyone Needs to Know About AIDS." A pamphlet distributed by United Way, 621 South Vigil Avenue, Los Angeles, CA 90005.

"When A Friend Has AIDS." A pamphlet which identifies ways in which to help and provide emotional support to a friend who has AIDS. Available from San Francisco AIDS Foundation, 333 Valencia Street, 4th Floor, San Francisco, CA 94103. (415) 864-4376.

D. Education
Evaluation Form
- Wells Fargo
Bank

WELLS FARGO BANK
EMPLOYEE ASSISTANCE PROGRAM

CONFIDENTIAL EVALUATION FORM
AIDS DISEASE EDUCATION

Please do not write your name on this form as your answers are confidential. We would like your help in evaluating the health information on AIDS Disease by completing this confidential evaluation form. Your opinion on AIDS Disease education will help us determine how we can offer this information to other employees.

Please return this questionnaire to Employee Assistance Program, AU#750.

Please circle the appropriate number for each question:

1. Are you: 1 Female 2 Male
2. Your Race: 1 American-Indian 5 Asian
 (Optional) 2 Hispanic 6 Philippino
 3 Black 7 Other
 4 White

Please circle the number that best describes how you feel about the AIDS Disease information that you received:

- | | Not
At All | Not
Too Much | Somewhat | Moderately | Very
Much | Not
Applicable |
|---|---------------|-----------------|----------|------------|--------------|-------------------|
| 3. <u>Before</u> you received information <u>at work</u> on AIDS Disease, were you concerned about contracting (catching) AIDS Disease? | 1 | 2 | 3 | 4 | 5 | 6 |
| 4. <u>Before</u> you received information <u>at work</u> on AIDS Disease, did you know how AIDS Disease was transmitted? | 1 | 2 | 3 | 4 | 5 | 6 |
| 5. <u>Before</u> you received information <u>at work</u> on AIDS Disease, were you concerned about contracting AIDS Disease from an employee through normal work contact? | 1 | 2 | 3 | 4 | 5 | 6 |
| 6. <u>Before</u> you received information <u>at work</u> on AIDS Disease, did you know how to prevent contracting this illness? | 1 | 2 | 3 | 4 | 5 | 6 |

	Not At All	Not Too Much	Somewhat	Moderately	Very Much	Not Applicable
7. <u>Before you received information at work on AIDS Disease, did you change your behavior (reduce risk factors) to minimize your risk of contracting this illness?</u>	1	2	3	4	5	6
8. Was the information on AIDS Disease provided at work new to you?	1	2	3	4	5	6
9. Did you find the question-and-answer discussion by the medical consultant useful to you?	1	2	3	4	5	6
10. Did you find the information provided in the brochures helpful to you?	1	2	3	4	5	6
11. Did you find the medical information provided in the Wells Fargo memo useful to you?	1	2	3	4	5	6
12. <u>After you received information at work on AIDS Disease are you now concerned about contracting AIDS Disease?</u>	1	2	3	4	5	6
13. <u>After you received information at work on AIDS Disease, do you now feel you know how AIDS Disease is transmitted?</u>	1	2	3	4	5	6

- | | Not
At All | Not
Too Much | Somewhat | Moderately | Very
Much | Not
Applicable |
|---|---------------|-----------------|----------|------------|--------------|-------------------|
| 14. <u>After</u> you received information <u>at work</u> on AIDS Disease are you now concerned about contracting AIDS Disease from an employee through normal work contact? | 1 | 2 | 3 | 4 | 5 | 6 |
| 15. <u>After</u> you received information <u>at work</u> on AIDS Disease, do you now know how to prevent contracting this illness? | 1 | 2 | 3 | 4 | 5 | 6 |
| 16. <u>After</u> you received information <u>at work</u> , do you now plan to change your behavior (reduce risk factors) to minimize your risk of contracting this illness? | 1 | 2 | 3 | 4 | 5 | 6 |
| 17. Overall, how would you rate the value of the AIDS Disease information provided at work? | | | | | | |

No Value At All	Of Little Value	Partially Helpful	Moderately Valuable	Totally of Value
1	2	3	4	5

18. Briefly describe how AIDS is contracted (caught).

19. Do you have any further questions that you would like to have answered?

20. Any other comments?

**III. Referrals - AIDS Related
Organizations and Hotlines**

III. Referrals - AIDS RELATED ORGANIZATIONS AND HOTLINES

Berkeley

Gay Men's Health Collective
2339 Durant Avenue
Berkeley, CA. 94704-1670
(Tel: (415) 644-0425

Pacific Center for Human Growth
2712 Telegraph Avenue
Berkeley, CA. 94705
(415) 841-6224 or (415) 548-8283

Social Security AIDS Community Liaison
Area Director's Office
200 Center St. Room 308
Berkeley, CA. 94704
(415) 486-3264

East Bay AIDS Fund
P. O. Box 908
Berkeley, CA. 94701
(415) 548-8283

Sacramento

Sacramento AIDS/KS Foundation
2115 "J" Street
Suite 3
Sacramento, CA. 95816
(916) 483-7429

Social Security AIDS Liason
Areas Directors Office
P.O. Box 214008
Sacramento
(916) 484-4788

San Francisco

AIDS Interfaith Network
890 Hayes Street
San Francisco, CA. 94117
(415) 558-9644

AIDS Health Project
333 Valencia Street
San Francisco, CA 94103

AIDS Worried Well Group
Operation Concern
1853 Market Street
San Francisco, CA. 94103

San Francisco (Cont'd.)

Lesbian & Gay Health Services Coordinating Committee
Department of Public Health
101 Grove
San Francisco, CA. 94102
(415) 558-2541

National Gay Rights Advocates
540 Castro Street
San Francisco, CA. 94114
(415) 863-3624

People with AIDS San Francisco
1040 Ashbury #5
San Francisco, CA. 94117
(415) 553-2509

People with AIDS Switchboard
(415) 864-4376

San Francisco AIDS Foundation
333 Valencia Street
4th Floor
San Francisco, CA. 94103
(415) 864-4376
HOTLINE (415) 863-AIDS

San Francisco AIDS Fund

San Francisco Hospice

Shanti Project
890 Hayes Street
San Francisco, CA. 94117
(415) 558-9644

Marin

Centre for Attitudinal Healing
19 Main Street
Tiburon
(415) 435-5022

Marin AIDS Support Network
P. O. Box 603
Kentfield, CA. 94914
(415) 457-AIDS

San Jose
AIDS Project
Dept. of Public Health
2220 Moorpark Avenue
San Jose, CA. 94128
(408) 229-5858
(408) 298-2437 (Noon to 9:00 p.m.)

Social Security Liason Worker
280 South First St.
San Jose, CA. 95113
(408) 291-7431

Santa Cruz

AIDS Network
1080 Emeline
Santa Cruz, CA. 95061
(408) 425-2551

Hospice Caring Project
115 Maple
Santa Cruz, CA. 95060
(408) 426-1993

Sonoma County

AIDS Project
15999 River Road
Guerneville, CA. 95446
(707) 869-0654
(707) 887-2226

Statewide toll-free:

Northern 800-367-2437 (Mon-Fri 9-9 Sat//Sun 11 to 5)

Southern 800-922-2437 (7 days 8.00 - 11.00)

Northern California AIDS Hotline (800) FOR-AIDS

Statistics:

Centers for Disease Control	(404) 329-3472
State AIDS Activity Office	(916) 445-0553
San Francisco, AIDS Activity Office	(415) 558-5122

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