



# THE FOOD AND ALLIED WORKERS UNION

## FAWU Specific HIV AND AIDS Policy

### 1. PREAMBLE

The FOOD AND ALLIED WORKERS UNION recognises that:

1. the HIV and AIDS pandemic is an international threat to the world's labour force;
2. there is a need to instil confidence in the union's process of relating to infected and affected employees and members;
3. education on HIV and AIDS needs to be transformed;
4. we need to empower our members and employees about HIV and AIDS.

### 2. BACKGROUND

FAWU is required to adopt a policy to address the HIV and AIDS pandemic in terms of the following legislation:

- Employment Equity Act, No. 55 of 1998;
- Labour Relations Act, No. 66 1995;
- Occupational Health and Safety Act, No. 85 of 1993;
- Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993;
- Basic Conditions of Employment Act, No. 75 of 1997;
- Medical Schemes Act, No. 131 of 1998; and
- Promotion of Equality and Prevention of Unfair Discrimination Act, No.4 of 2000

### 3. OBJECTIVES

The FAWU HIV and AIDS Policy aims to:

1. eliminate stigma surrounding HIV and AIDS infected and affected members and employees;
2. achieve equality of persons who are unfairly discriminated upon because of their HIV and AIDS status;
3. make FAWU friendly to members and employees who are affected and infected by HIV or HIV and AIDS;
4. promote testing and treatment of HIV and Aids.

### 4. VISION

"The FOOD AND ALLIED WORKERS UNION is committed to ensuring that no person is discriminated against on the basis of their HIV status. FAWU will publish a Code of

Good Practice on HIV and AIDS in the workplace to prevent infections and to ensure that all members and employees who are infected and affected work in an environment of respect and friendship and continue to live healthy and productive lives.”

## **5. POLICY ELEMENTS**

FAWU will issue a Code of Good Practice on HIV and AIDS to all employees with details of the systems and procedures designed to:

1. Prevent infections
2. Professionalise HIV testing
3. Make a voluntary notification of HIV status to the employer
4. Provide care and support to members and employees who are infected or affected
5. Exercise discipline in cases of unfair discrimination
6. Monitor and evaluate the impact of this policy

Policy positions on each of these elements follow.

### **5.1 Preventing Infections**

In terms of Section 8(1) of the Occupational Health and Safety Act, No. 85 of 1993; an employer is obliged to provide, as far as is reasonably practicable, a safe workplace. This includes ensuring that the risk of occupational exposure to HIV is minimised to:

(a) Infected Employees

(b) Affected Employees

The practical actions the FAWU will take include:

(a) Creating a structure (or structures) within the organisation that is mandated to implement, develop and finalise a Code of Good Practice on HIV and AIDS in the Workplace.

(a) Distributing quality condoms within the workplace to help manage the spread of HIV and AIDS.

(b) Promoting awareness of HIV and AIDS prevention, treatment and care programmes in the public and private sector.

(c) Encouraging HIV positive employees to register onto an appropriate HIV and AIDS management programme.

### **5.2 Position Regarding HIV Testing**

No employee, or applicant for employment, may be required by his or her employer (FAWU) to undergo an HIV test in order to ascertain his or her HIV status. Section

7(2) of the Employment Equity Act states that:

(a) Medical testing of an employee is permissible only when legislation requires testing or when this is justifiable for various reasons;

(b) HIV testing is prohibited unless such testing is determined to be justifiable by the Labour Court.

According to Section 54(1) of the Employment Equity Act, No. 55 of 1998, no person may unfairly discriminate, directly or indirectly, against an employee in any employment policy or practice, on one or more of the grounds listed in the Act, including a person's HIV status. In any legal proceedings in which it is alleged that an employer has discriminated unfairly, the employer must prove that any discrimination or differentiation was fair.

In accordance with Section 24(2)(e) of the Medical Schemes Act, No. 131 of 1998, a registered medical aid scheme may not unfairly discriminate directly or indirectly against its members on the basis of their 'state of health'. Further in terms of s67(1)(9), regulations have been drafted stipulating that all schemes must offer a minimum level of benefits to their members.

### **5.3 Voluntary Notification of HIV Status to the Employer**

In accordance with both Common Law and Section 14 of the Constitution of South Africa Act, No. 108 of 1996, all persons with HIV or AIDS have a right to privacy, including privacy concerning their HIV and AIDS status. Accordingly, there is no legal duty on an employee to disclose his or her HIV status to their employer or to other employees.

However, in order to access care and support in the workplace, an employee can choose to disclose his or her status to the employer, and should be given every confidence that this disclosure will be kept confidential.

### **5.4 Providing Care and Support to Members and Employees Who are Infected**

FAWU shall provide the following benefits:

(a) A 50% medical contribution to employees as per the existing policy on medical aid.

(b) When an employee is infected with HIV as a result of an occupational exposure to infected blood or bodily fluids, he or she should apply for benefits in terms of Section 22(1) of the Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993.

(c) In accordance with the Basic Conditions of Employment Act No. 75 of 1997, every employer is obliged to ensure that all employees receive certain basic standards of employment, including a minimum number of days sick

leave [Section 22(2)].

(d) In addition to sick leave in terms of the BCEA, FAWU will implement a policy of compassion for employees who are infected with HIV and AIDS and who are medically incapable. Medical incapacity means a continuing non-culpable absence from duty due to illness or disability (in this regard, due to HIV and/or AIDS), which prevents the employee from fulfilling their employment obligations.

(i) Considering that HIV or HIV and AIDS affects individuals differently, when members or employees of the Union are unable to continue with all the work they are employed to do, due to being infected by HIV and/or AIDS, the employer should give them a lighter duty or reduce the number of days that the person should work, until they are medically fit. A registered doctor should guide this process.

(ii) When an employee, due to a HIV and/or AIDS related illness or disability, has been unable to fulfil their employment obligations for an extended period of time and has not reached medical fitness, after lighter duty in terms of (i), a registered doctor should advise on additional leave to promote recovery;

(iii) Once all efforts have been taken to accommodate the employee's condition taking into consideration issues of health, safety and cost, other options such as resignation or retirement on medical grounds should be presented to the employee for consideration. Medical retirement involves retirement on grounds of disability where physicians certify that there is an impairment which prevents the employee from engaging in any employment for which they would be reasonably suited. Medical retirement as a result of HIV and AIDS should be treated like any other serious illness, in terms of benefits.

In accordance with Section 187(1) of the Labour Relations Act, No. 66 of 1995, an employee with HIV and AIDS may not be dismissed simply because he or she is HIV positive or has AIDS. However, where there are valid reasons related to their capacity to continue working and fair procedures have been followed, their services may be terminated in accordance with Section 188(1)(a)(i).

## **5.5 Grievances against Unfair Discrimination**

(a) HIV and AIDS related grievances should be held privately and confidentially in order to protect the identity and rights of the complainant(s).

(b) FAWU's existing grievance policy procedures should accommodate HIV and AIDS related complaints.

## 5.6 Monitoring and Evaluation Mechanisms

(a) The impact of the final version of the Code of Good Practice and how it suits the organization will be monitored and evaluated from time to time.

(b) It will therefore be changed from time to time to accommodate new laws and changes within the organization.

(c) The body or persons who will be responsible for the implementation and coordination of responsibilities related to this policy, will report to the NEC from time to time on the challenges and successes with HIV and AIDS related matters.

Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Date: