# DIGNITY, DISCRIMINATION, AND LEGAL IMPLICATIONS: THE POLITICS OF AIDS IN PRIVATE AND PUBLIC SECTOR WORK SETTINGS: A COMPARATIVE ANALYSIS

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#### ABSTRACT

This article reports on a research study designed to elicit information about discrimination against HIV/AIDS sufferers in two contemporary work settings, one in the private sector, the other in the public sector. It focuses on building an understanding of how HIV/AIDS is viewed and the extent to which discrimination exists in the workplace today.

This article discusses the nature of discrimination, the employment status of HIV/AIDS sufferers, the legal status of HIV/AIDS sufferers, values system, and decision making regarding what is best for the organization, the perceived moral and ethical obligations of the victim and the employer, the moral responsibility of the victim to other employees, myths associated with HIV/AIDS, and the facts affiliated with discrimination against HIV/AIDS sufferers. While, the general feeling about HIV/AIDS is quite similar in the two work settings, there are a number of important differences between the two sectors.

The article offers recommendations for workplace evaluation and monitoring to prevent HIV/AIDS-related discrimination and to foster better work productivity while preventing litigation based on discriminatory and illegal practices against HIV/AIDS victims.

#### In 1986, the U.S. Surgeon General stated:

There is no known risk of non-sexual infection in most of the situations which we encounter in our daily lives. We know that family members living with individuals who have the AIDS virus do not become infected except through sexual contact. There is no evidence of transmission (Spread) of AIDS virus

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by everyday contact even though these family members shared food, towels, cups, razors, even toothbrushes and kissed each other . . .

Everyday living does not present any risk of infection. You cannot get AIDS from casual social contact. Casual social contact should not be confused with casual sexual contact which is a major cause of the spread of the AIDS virus. Casual social contacts such as shaking hand, hugging, social kissing, crying, coughing, or sneezing will not transmit the AIDS virus. Nor has AIDS been contracted from swimming in pools or hot tubs or from eating in restaurants (even if a restaurant worker has AIDS or carries the AIDS virus). AIDS is not contracted from sharing bed linens, towels, cups, straws, or dishes, or any other eating utensils. You cannot get AIDS from toilets, doorknobs, telephones, office machinery, or household furniture. You cannot get AIDS from body massages, masturbation, or non-sexual body contact [1, pp. 2785-2786].

## THE CONTRACTING OF HIV

It would seem that most medical practitioners agree that HIV is a viral agent transmitted in three manners: 1) via blood and/or semen during sexual penetration; 2) via blood during transfusions and/or the use of human blood products and blood plasma; and 3) via the sharing of hypodermic syringes or needles (usually during intravenous drug use).

## THE INQUIRY

Since it is medically proven that HIV/AIDS cannot be contracted by casual contact inherent to normal workplace relations, does discrimination exist? If so, why does discrimination against HIV/AIDS sufferers persist?

#### WHAT IS HIV/AIDS?

HIV stands for Human Immunodeficiency Virus. Effectively, HIV is a virus that attacks the immune system. As a result, the body is left susceptible to contracting a host of viruses and infections it would otherwise be capable of warding off or fighting. Over a period of time the body becomes incapable of defending itself, as it becomes increasingly worn down from a multitude of these afflictions. Many of these are referred to as AIDS-related illnesses.

#### BACKGROUND

Many people were horrified by the discovery of HIV/AIDS in the early 1980s. While some were concerned about transmission patterns, others were indifferent, thinking it was a type of "gay cancer." By the mid 1980s, however, it was clear that HIV/AIDS is everyones' concern. People from all walks of life have been diagnosed with the Human Immunodeficiency Virus (HIV), meaning they are carriers of Acquired Immune Deficiency Syndrome (AIDS) antibodies. Today, many suffer from AIDS-related illnesses.

While HIV/AIDS is no longer considered a gay plague and the notion of quarantining those who suffer from HIV/AIDS has dissipated, the stereotype associated with having HIV/AIDS has not. Despite many efforts to change the negative perception of the HIV/AIDS virus and those who suffer from it, the stigma remains. HIV/AIDS victims face discriminatory practices and social ostracization in society in general, and in the workplace in particular.

## THE PURPOSE OF THE RESEARCH AND THE RESEARCH QUESTION

The purpose of this research was to elicit information about discrimination against HIV/AIDS sufferers in contemporary work settings. It focused on building an understanding of how HIV/AIDS is viewed and the extent to which prejudice and negative stereotypes exist in the workplace today. In particular, this research was guided by one broad research question: To what extent are HIV/AIDS sufferers discriminated against in the workplace today?

#### **RESEARCH METHODOLOGY**

Six work sites were selected for this study, three in the private sector, three in the public sector. This study was designed to secure an understanding of how HIV/AIDS is viewed by the participants in both types of work settings. It probed at determining policies for dealing with HIV/AIDS victims, both in terms of their employment status and measures to prevent and deter discrimination. It also focused on the perceptions of employees of those suffering from HIV/AIDS, including their rights and responsibilities. The results of the study are not intended to offer sweeping generalizations about HIV/AIDS discrimination in the workplace. They are meant to offer an understanding of these particular settings. It is hoped these findings can serve as preliminary hypothesis for studying employee attitudes and behaviors in other settings. A three-step research design was applied to complete this study.

## **Step One: Policy Documents**

This stage consisted of reviewing all policy documents pertaining to the employment practices for HIV/AIDS sufferers. Once the research sites were identified and the necessary permission was gained, the directors from both work settings were asked to submit policy documents, including the terms of employment contracts. Policy documents and contracts of employment were examined

for relevant data regarding the employment status of HIV/AIDS sufferers and discriminatory practices. Summary notes were taken and used in the final analysis as well as to assist in developing an interview guide for step two.

#### Step Two: Interviews

Interviews were conducted at all work sites. Nine people were identified in each setting (for a total of 36 participants). At each site the participants worked at senior (executive), intermediate (managerial), and junior (clerical) level positions.

While the intent of this particular sample was to elicit the opinions and experiences of people working in both the private and public sectors, an attempt was made to find work settings that were similar in scope (that is to say, they engage in comparable activities and deal with similar issues), albeit one setting was governmental and the other private. The government sector, in particular, requested that the nature of the subject matter remain anonymous.

The interviews were aimed at developing a broad understanding of current workplace practices and issues relating to discrimination against HIV/AIDS sufferers in the workplace. While questions focused on whether policies aimed at ensuring equity were adhered to, particular emphasis was placed on the personal values of employees and how these may affect workplace practices regarding the implementation of policies.

# Step Three: Data Analysis of Policy Documents and Interviews

The data from each setting were analyzed individually and then compared within their respective sectors and then across settings. First, policy documents were compared and contrasted for common themes and major differences. Subsequently, all interviews were reviewed and transcribed; then summaries were made [2]. Preliminary conclusions were reached for each of the separate settings, and final conclusions were drawn from a comparative analysis of both sectors.

In particular, the interview data were analyzed for similar themes, differences, and other important issues following the suggestions of noted academics such as Bogdan and Biklen [3]; Hammersly [4]; Eisner [5]; Lincoln and Guba [2]; Miles and Huberman [6]; and Taylor and Bogdan [7]. Conclusions were verified following Miles and Huberman's twelve tactics for verifying conclusions [6].

## FINDINGS: DISCRIMINATION IS PREVALENT IN PRIVATE AND PUBLIC SECTOR WORKPLACES

Discrimination against people suffering with HIV/AIDS exists within the American workplace. Although most of the interviewees admit that HIV/AIDS represents a very tragic condition, leading to a violent death, they cannot shed their biases toward HIV/AIDS victims. They generally agree that sufferers should

be given the chance to live with dignity. Nevertheless, they still stereotype HIV/AIDS victims. They report it is different from other terminal illnesses such as cancer, finding it difficult to be objective. This difference is attributed to the fact that most still perceived AIDS as a "gay disease" and readily admit that they are, at least to an extent, anti-gay. These biases inevitably perpetuate discrimination in the workplace.

While the general feeling about HIV/AIDS is similar in the two work settings, there are a number of important differences as well. These similarities and differences will be discussed in turn. Discussion includes the nature of discrimination, the employment and legal status of HIV/AIDS sufferers, values system and decision making regarding what is best for the organization, the perceived moral and ethical obligations of the victim and the employer, the moral responsibility of the victim to other employees, myths associated with HIV/AIDS, and the facts affiliated with discrimination against HIV/AIDS sufferers in the workplace.

#### The Nature of Discrimination: Hierarchical

While some participants were somewhat uncomfortable to admit it, most agreed that discrimination is unequivocally directed toward HIV/AIDS sufferers at work. The extent to which one is discriminated against, however, and the degree of discrimination varies. It seems a hierarchy of discrimination exists against HIV/AIDS sufferers in the workplace. That is to say, the degree of discrimination depends largely on who you are and how you have contracted the virus.

Those who have contracted the disease through casual sex, for example, face greater degrees of discrimination than those who may have contracted the virus via medical or clinical means, such as through a blood transfusion. Similarly, the degree of the actual discrimination will also depend on who is involved. Men are more likely targets of discrimination than women. Homosexuals are more likely targets of discrimination than heterosexuals. Gay and bisexual men are more likely to face discriminatory practices than lesbian and bisexual women.

Those who have inherited HIV through their natural mothers [8] are likely to face less discrimination than recipients from any other means of transmission. The hierarchy of discrimination in both work settings reads as follows:

- 1. Homosexual (gay) men
- 2. Bisexual men
- 3. Homosexual (lesbian) women
- 4. Bisexual women
- 5. Intravenous drug users
- 6. Heterosexual men
- 7. Heterosexual women
- 8. Medical and clinical (i.e., blood transfusions)
- 9. Inheritance-children born HIV positive

(Number one represents those most likely to be discriminated against, while number nine is least likely.)

The rank-ordering of discrimination seems to be rooted in homophobic attitudes in the workplace. Many of these employees are antihomosexual. They feel "alternative" life styles of this nature are wrong. Even those who are somewhat sympathetic to the plight of homosexuals still find it difficult to understand, insisting that it is a form of deviance that tears at the fabric of society. They ask why homosexuals cannot be "normal." They voice their disapproval of homosexuals. In fact, some participants feel the harshness of living with HIV/AIDS justifies the price of the "deviant" behavior that led to their contracting it.

Many stated they are less sympathetic to victims who could have prevented it from happening (such as those who contracted the virus during sexually related activities) than toward those who are recipients via other means (such as blood transfusions). Although most agreed that many people contracted the virus long before public awareness and prevention campaigns, the interviewees still felt it is something "dirty" that could have been avoided. More appropriately, the negative attitudes have nothing to do with preventive measures, but rather with the nature of the sexual activity involved in the transmission of HIV to homosexuals. In other words, the real issue is homosexual-related sexual activities and not the virus itself.

That is to say, the negative perception of HIV/AIDS is rooted in its association with homosexuality, which inadvertently shapes attitudes toward HIV/AIDS sufferers in the workplace. It appears that discrimination against HIV/AIDS sufferers is due, in large part, to antihomosexual sentiment [9]. The virus was originally considered a disease prone to afflict homosexuals, a "gay disease." As a result, negative connotations associated with the virus now characterize all people who contract the virus. They are viewed in this same negative light. Other "types" of people have become vulnerable to HIV/AIDS (specifically, nonhomosexuals), leading to a tendency to rank-order those suffering from HIV/AIDS. More dignity is bestowed on those who are seen as "innocent victims" than on "deviant" ones.

### THE DISCRIMINATION PYRAMID

As evidenced from the data collected, there is a pyramid effect or, pecking order, regarding which type of HIV/AIDS victims are most discriminated against (see Figure 1).

The peak of the pyramid represents the most acute form of discrimination, whereas the base of the pyramid represents the least amount. One must bear in mind, however, that regardless of the level of discrimination, all levels are discrimination which may lead to litigation. (This will be discussed in greater detail in this article.)

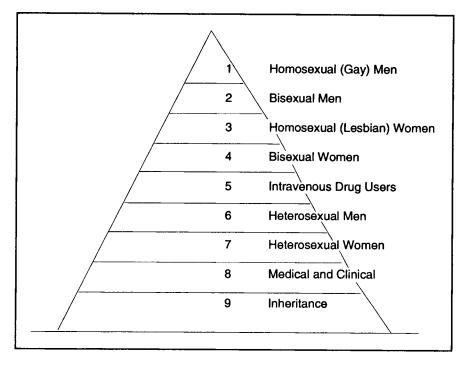


Figure 1. The discrimination pyramid.

### **Employment Status**

Most interviewees in both settings felt HIV/AIDS sufferers should not remain in the workplace for the duration of their illness. There are, however, divisions between the private and public sectors as to how long they should remain on the job and the manner by which they should be terminated.

First, those in the private setting generally felt HIV/AIDS workers should be dealt with in the early stages of their being diagnosed as HIV-positive. That is to say, they should be asked to leave their job before they start developing AIDS-related illnesses. Those in the public sector felt workers should be permitted to remain until they are no longer able to conduct their normal duties.

Second, those in the private sector felt that HIV/AIDS sufferers should be dismissed with severance pay, the amount of the settlement being based on the nature of their duties and their length of tenure. The public sector employees, on the other hand, said HIV/AIDS employees should be eligible for long-term disability, at least for some period of time.

The public sector employees were less likely to insist that the HIV/AIDS sufferers should be dismissed, whereas those in the private sector were more likely

to favor dismissal. The private sector participants felt HIV/AIDS employees are incapable of sustaining a high quality of work and the employer has no obligation to keep them. They view the world as competitive and felt they would lose this edge by keeping HIV/AIDS employees, particularly as the afflicted employees' health deteriorates. Company image plays a major role in the decision. While public sector employees are less concerned about corporate image, private sector employees feel they have more to lose.

## Legal Status: Protection Against Discrimination

Senior-level participants in both work settings are fully aware of the rights of HIV/AIDS sufferers, and such an awareness is reflected in their dismissal policies. (See Table 1 for a breakdown of the awareness of all participants regarding legal protection against discrimination of HIV/AIDS suffers.) Senior people are well-versed in the legalities regarding employee dismissal. Specifically, HIV/AIDS sufferers are legally protected against being fired. AIDS is recognized as a handicap. The United States Supreme Court decided in the case of *School Board of Nassau County, Florida v. Arline* 1987, that employees cannot be fired solely on the basis of having a contagious disease [10].

In this case Gene Arline was discharged from her teaching position when it was confirmed that her infectious tuberculosis posed a risk to children. The Supreme Court ruled Arline suffered from a communicable disease that rendered her as handicapped [10]. The Court followed a set of criteria established by the American Medical Association in determining the extent to which Arline posed a health risk. These included examining how the disease was transmitted, the length of time for which it is infectious, the potential harm to third parties, and the probability of transmission to others, including varying degrees of harm.

Moreover, this argument stood the test in the case of *Racine Education Associa*tion v. Racine Unified School District, 1987, where a Wisconsin court ruled against a school district's policy of expelling employees with AIDS from school settings and barring their employment [11].

Level	Private Sector	Public Sector
Executive (Senior)	Yes	Yes
Manager (Intermediate)	Yes	No
Clerical (Junior)	Yes	No

## Table 1. Awareness of the Legal Protection against Discrimination for HIV/AIDS

The senior people in the private sector in particular adamantly disagreed with the precedent set in the Arline case, stating it is insensitive to the needs of employers. One particular participant, who has controlling interests in the company, felt angry about HIV/AIDS being classified as a handicap. One stated it is difficult to operate a business today, and employing AIDS victims is potentially costly. While he said he would prefer "to fire them outright," he would not do this simply because a lawsuit would be more costly. A public sector executive, on the other hand, did not personalize the issue to the same degree. Although he felt it could be costly for the organization, he did not feel the same sense of competition and the need for cost-saving measures.

#### Values and Decision Making

When questioned about the value system from which they based their feelings about the HIV/AIDS sufferers, there is a division. Those in the private sector said they must remain objective, looking at what is good for the organization. That is to say, they have to look at the employee as an investment. When employees became a "bad investment," the employers must reassess their position. They warned against personalizing the issue, clouding it with sentimentalism, which in the end would not be to the "long-term benefit of the enterprise."

Those in the public sector, however, looked at what is good for the individual. Although concerned about the workplace, they tended to lean more toward the interest of the person with HIV/AIDS. They wanted what is suitable for both the employer and the employee. In AIDS-related cases, they thought it best for the employee to leave work when s/he begins to experience ill-health, whereas the private sector employees felt the AIDS-afflicted individuals should leave as soon after diagnosis as possible.

#### Moral and Ethical Obligations

All participants in both settings felt HIV/AIDS sufferers are morally obligated to inform their employer about the virus. They felt it is a serious medical condition that must be made known to senior officials. Failing to disclose this information within a reasonable period of time was considered a direct breach of professional ethics. In addition, most felt the employer should be at liberty to share this information with other people, as the employer believed necessary. The employer should be permitted to use his/her professional discretion to reveal this information as needed.

#### Moral Responsibility

Most interviewees felt it is the moral responsibility of HIV/AIDS sufferers to inform their fellow workers about their medical condition. Participants felt they would be in a better place to judge how they would sustain working relations with

HIV/AIDS sufferers if they knew up front. In fact, some said they have the "right to know about AIDS in the workplace." They generally believe that hiding it will "make it worse for everybody involved in the long run."

## Myths

Interviewees were largely uninformed about the medical/scientific aspects of HIV/AIDS. It is fair to say that they did not understand the virus or the needs of those suffering from it. They had little content knowledge of the nature of the virus and were generally unaware about the treatment and medical prognosis of those suffering with it. Further, they had limited faith in current research findings.

Although all interviewees knew they cannot contract the virus through normal workplace interactions, many of the participants also felt there is more to HIV/AIDS than physicians and scientists know about, or at least are currently disclosing. Some felt there are other facts about HIV/AIDS that have not yet been discovered. As a result, they decidedly wished to avoid contracting HIV/AIDS. They said this is best achieved by avoiding its victims. In other words, they did not want them in the workplace.

Many feared the disease and were afraid of taking it home to their families. In addition, most stated it would be impossible to carry on normal workplace relations with an HIV/AIDS carrier. They said that once they knew, it would be impossible to look beyond it and see the victims in any other light. While most are compassionate to some degree, they admitted they would discriminate against HIV/AIDS sufferers at least to some extent. One employee said she would not invite an HIV sufferer to her home for a staff-related gathering for fear of contamination. It should be noted that both medical and legal opinions agree AIDS is not transmitted by casual contact [1, 12-14].

### Facts

Many of the interviewees reported that if they were aware of people with HIV/AIDS at work they would avoid unnecessary contact. While some stated it is a fear of contamination alone, others said they are afraid of ostracization by other members in the work setting. They are afraid people will marginalize them. Whatever the case, they tended to limit professional contact. One employee stated, for example, that workers tend to build alliances in the work culture for promotion. He believed it was difficult to network with someone who has HIV/AIDS, as he feels they are "just buying time" until dismissal or death. In effect, HIV/AIDS sufferers face marginalization from others in the workplace.

Aside from being excluded from normal office activities, victims also face systemic barriers that may hinder their productivity and professional input. Most employees said that by limiting contacts with HIV/AIDS victims these afflicted employees could inadvertently be left out of office decision making. While employees said they would not intentionally do this to HIV workers, they recognized that many important decisions are made informally. Being marginalized from the group renders the HIV/AIDS sufferers absent from certain decisions.

Table 2 highlights the main findings of this study.

# **CONCLUSIONS AND RECOMMENDATIONS**

While these findings may not come as any great surprise, they do present important information. They contribute to the current understanding of how HIV/AIDS sufferers may face discrimination in the workplace. The participants in this study readily admit they negatively stereotype individuals suffering from HIV/AIDS. Moreover, they bring these biases into the world of work. Although many of the interviewees felt sorry for some HIV/AIDS sufferers, they could not

Descriptor	Private Sector	Public Sector	
Discrimination	Hierarchical in nature	Hierarchical in nature	
Employment status	Dismissal with severance	Long-term disability	
Legal status	Fully aware	Generally aware	
Values	Organizationally-based	Personally-based	
Decision making	What is best for the organization	What is mutually appropriate	
Moral/ethical obligations	Victim is obligated to tell the employer		
Moral responsibility	Victim should tell other employees		
Myths	Largely do not understand HIV/AIDS Did not want HIV/AIDS in the workplace Were afraid of contracting HIV/AIDS		
Facts	Negative image of HIV/AIDS		
	Non-HIV/AIDS employees fear marginalization and social ostracization for interacting with HIV/AIDS sufferers		
	Marginalization of the HIV/AIDS sufferers HIV/AIDS sufferers face systemic barriers		

Table 2. The Status of Discrimination for HIV/AIDS

overcome their negative attitudes. They did not feel that HIV/AIDS sufferers belong at work, particularly in the private setting.

Regardless of how unpleasant the thought of working with someone who has HIV/AIDS may be, it is a reality that is not going to change quickly. Statistics indicate there is a growing number of HIV/AIDS victims, many of whom are currently working. In 1989 the World Health Organization (WHO) estimated there are over 162,000 known cases of AIDS worldwide and up to ten million who would test positive for HIV [15].

Today's challenge is to stabilize workplace relations. The data collected in this study indicate normal workplace relations are unlikely once HIV/AIDS sufferers are identified. It is obvious these individuals are going to face discrimination, both overtly and covertly. Such office behavior is inevitably counterproductive. HIV/AIDS sufferers are protected under law and cannot be dismissed or categorically forced to resign without risking a discrimination lawsuit.

## LEGAL IMPLICATIONS

It is essential to bear in mind that many legal implications can stem from the behaviors and attitudes identified in this study. With these in mind, the following important points are worth mentioning to employers and employees.

First, it is discriminatory to dismiss an employee simply because s/he has HIV/AIDS.

Second, it is an invasion of personal privacy to disclose to fellow workers that someone is HIV positive or is suffering from an AIDS-related illness.

Third, an employer may be negligent of a duty of care to an employee should s/he haphazardly disclose medical records to other employees.

Fourth, employers are advised not to request employees be tested for HIV.

Fifth, employers are strongly dissuaded from obtaining blood samples fraudulently so as to determine the medical status of employees without those employees' prior knowledge or permission.

## THE CHALLENGE: TOWARD A WORKABLE WORKPLACE

The challenge is to make the employment situation as workable as possible. That is to say, to encourage all employees to share a tolerable workplace atmosphere while fostering effective productivity. This may be achieved, in part, through organizational evaluation and educational programs to enhance productivity.

First, workplaces can undergo brief evaluations to determine whether there is a need for antidiscrimination education. If so, education can occur on two levels. First, general awareness about the medical/scientific aspects of HIV/AIDS. This would include content pertaining to the nature and the treatment of the virus,

including general information about its transmission. The second focus would be to encourage professional work relations. This would entail helping people work together in a collaborative sense while ensuring productivity and discouraging negative ramifications in the office politics. Workplace evaluation and monitoring to prevent HIV/AIDS-related discrimination and to enhance work productivity also fosters social justice both in the office and in society at large.

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