



Government of Malawi
Ministry of Labour

National HIV and AIDS Workplace Policy

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Ministry of Labour
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FOREWORD

The AIDS pandemic is now a major global crisis and it constitutes a serious public health problem which has far reaching consequences on social economic, employment and human rights.

Beyond the suffering it imposes on individuals and their families, the pandemic is profoundly affecting the social fabric of societies. HIV and AIDS is a major threat to the world of work. It knows no social, gender, age or racial boundaries. It is affecting the most productive segment of labour force and is imposing huge costs on enterprises in all sectors through declining productivity, increasing labour costs and loss of skills, experience, employee benefits, occupational safety and health and workplace morale. The pandemic and its impact strike hardest at vulnerable groups particularly women and children. The workplace is well positioned to contribute to response as it offers an entry point to reach young and adult populations.

This is why the government of Malawi is committed to making a strong statement through a policy on HIV and AIDS at the workplace. The policy will be instrumental in helping to prevent the spread of the pandemic, mitigate its impact on workers and their families and provide social protection to help cope with the disease. The policy covers key principles, such as the recognition of HIV and AIDS as a workplace issue, non discrimination in employment, gender equality, screening and confidentiality, social dialogue, prevention and care and support, as the basis for addressing the pandemic in the workplace.

This policy guides and promotes sustainable workplace interventions by the government, employers, employees, organizations, others in their efforts to combating all forms stigma and discrimination in the workplace and will effectively contribute to the objectives of the Malawi Decent Work Country Programme and the Malawi Growth and Development Strategy (MGDS), particularly. The public health, sanitation and HIV/AIDS management. At the international level, the implementation of the policy interventions will significantly contribute towards the achievement of the MDGs, the ILO Code of practice on HIV/AIDS and the world of work and the ILO Recommendation concerning HIV and AIDS and the World of Work (No.200) of 2010.

The problem of HIV and AIDS in the workplace poses a big challenge. My ministry alone cannot single handedly eliminate it. I therefore call upon all social partners, government ministries and institutions, civil society and all donor communities to join us to face this challenge.

Yunus Mussa, M.P.
Minister of Labour

PREFACE

HIV and AIDS have a serious impact on society and economies, on the world of work in both the formal and informal sectors, on workers, their families and dependants, on the employer's and worker's organizations and public and private enterprises and undermine the attainment of decent work and sustainable development. Workers have the right to work in an environment that protects them from stigma, discrimination, unwarranted dismissals and other workplace related abuses as stipulated in ILO Conventions, ILO Code of Practice on HIV and AIDS and the World of Work of 2001 and the ILO Recommendation concerning HIV and AIDS and the World of Work (No.200) of 2010, the Constitution of the Republic of Malawi and other national laws and policies. These instruments call for protection of workers and aim to achieve social justice and combat discrimination and stigmatisation with regard to HIV and AIDS in all aspects of work.

The Ministry of Labour will take the leading role in implementing the policy. The institutional partners including Government Ministries and Departments, NGOs, Workers' Organization, Employers' Organizations and the workplace at large will compliment this. The Government of Malawi will endeavor increase budgetary allocations in HIV and AIDS workplace interventions, while mobilizing resources from development partners to supplement government funding. The adequate financing of HIV and AIDS workplace interventions and effective implementation of these interventions will contribute significantly towards the achievement of the MGDS and the Malawi Decent Work Country Programme.

The policy is a product of consultations and collaboration amongst government, employers, workers and other relevant stakeholders in the world of work. It provides invaluable practical guidance to policy-makers, employers' and workers' organizations and other social partners for formulating and implementing appropriate workplace policy, prevention and care programmes.

Andrina F. Mchiela (Mrs)

Principal Secretary

Ministry of Labour

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The Government also acknowledges the financial and technical support from the National AIDS Commission (NAC), ILO/USDOL HIV/AIDS Workplace Education Programme, whose support made the development of this policy possible.

Gratitude also go to each and everyone that contributed to the successful production and adoption of this policy.

ABBREVIATIONS AND ACRONYMS

AIDS	Acquired Immuno Deficiency Syndrome
ARV	Antiretroviral
FBO	Faith based Organisation
HIV	Human Immuno Deficiency Virus
HTC	HIV Testing and Counseling
ILO	International Labour Organisation
MDGs	Millenium Development Goals
MGDS	Malawi Growth and Development Strategy
NAC	National AIDS Commission
NAF	National Action Framework
NGO	Non Governmental Organisation
PEP	Post Exposure Prophylaxis
PLWHIV	People Living with HIV.
SADC	Southern Africa Development Community
STI	Sexually Transmitted Infection.
WHO	World Health Organization

DEFINITIONS

“Affected Employee” means an employee whose life is changed by HIV or AIDS owing to the broader impact of the epidemic. **“AIDS”** means the Acquired Immune Deficiency Syndrome, a state of immune system depletion of the defence of the body from a cluster of medical conditions

“Competent Authority” means an authority competent to exercise any power or to discharge any duty or function under this policy

“Employee” means a person employed for wages under a contract of service.

“Employer” means the owner of an industry or the person with whom employee has entered into a contract of service.

“Employees’ Organisation” means any combination of persons, the principal purposes of which are the representation and promotion of employees’ interests and the regulation of relations between employees and employers, and includes federation of trade unions but not an organisation or association that is dominated by an employer or employers’ organisation.

“Employers’ Organisation” means any combination established by employers, the principal purposes of which are the representation and promotion of employers’ interests and the regulation of relations between employers and employees.

“Epidemiological” means related to disease patterns, causes, spread and mechanisms of control in society.

“Discrimination” means any distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.

“Informed Consent” means a process of obtaining consent from a patient that ensures that every person fully understands the nature and implications of the test before giving his or her agreement to it.

“Family” means a group comprising a husband, wife and their biological children including dependent children.

“HIV” means the Human Immuno-Deficiency Virus, a virus that weakens the body’s immune system thereby causing AIDS

“HIV Positive” means having tested positive for HIV infection.

“HIV Testing” means taking a medical test to determine a person’s HIV status.

“Persons living with HIV employee” means an employee who has tested positive for HIV or who has developed AIDS.

“Post Exposure Prophylaxis” means taking certain steps in particular providing antiretroviral medication, as soon as possible after exposure to HIV in order to prevent infection.

“Pre- and Post-Test Counseling” means a process of counseling which facilitates an understanding of the nature and purpose of the HIV test. It examines what advantages and disadvantages the test holds for the person and the influence of the result, positive or negative. It implies that the individual understands what the test is, why it is necessary, the benefits, risks, alternatives and any possible social implications of the outcome.

“Prophylaxis” means any medical or public health procedure whose purpose is to prevent rather than treat or cure.

“Reasonable Accommodation” means any modification or adjustment to a job or to the workplace that is reasonably practicable and will enable a person living with HIV or AIDS to have access to or participate or advance in employment.

“Screening” means measures whether direct (HIV testing), indirect (assessment of risk-taking behaviour), or asking questions about tests already taken or about medication.

“Stigma” means the social mark that, when associated with a person , usually causes marginalization or presents an obstacle to the full enjoyment of social life by the person infected or affected by HIV.

“Social Partners” means the Government, employers and their Organizations and employees and their organizations.

“Surveillance Testing” means anonymous and unlinked testing which is done in order to determine the incidence and prevalence of disease within a particular community or group to provide information to control prevent and manage the disease.

“Universal precautions” means minimum standards of infection control used in the handling of blood and other bodily fluids to reduce the risk of transmission of blood borne infections.

“Vulnerability” means the unequal opportunities, social exclusion, unemployment or precarious employment, resulting from the social, cultural, political and economic factors that make a person more susceptible to HIV infection and to developing AIDS.

“Workplace” means any place or premises in which one or more persons are employed and includes apprentices, casual, part and full time employment and all types of employment contract. It applies to the workplace in the broad sense of the term

1. INTRODUCTION

1.1 Background

Since the discovery of the HIV case in Malawi in 1985, HIV and AIDS has had a very profound and negative impact on the Malawi economy as the national development agenda including delivery of services by the workforce. In the Country Development Report (UNDP 2001), it has been noted that the major challenges Malawi faces in its development agenda are HIV and AIDS, poverty and governance.

The National prevalence rate amongst people aged 15 and 49 stands at 12.0% as per the NAC (2008) estimate. This is the bracket where most employees are. In addition, the 2004 MDHS shows that the HIV prevalence rate is higher among working women (15%) and men (13%) than among their counterparts who are not working (12% for women and 6% for men).

Just like in all sub-Sahara countries, employees in Malawi are a critical part of the social and economic engineering of the society. They play a central role in governance and facilitating economic and social development. The efficiency and effectiveness of both the public and private sector in providing necessary infrastructure and services is critical for economic growth and productivity of the Malawi Nation. HIV and AIDS has a potential to undermine the services delivery by the workforce to facilitate social and economic development, provide governance and create an enabling environment for all in the development process.

1.2 Rationale

HIV and AIDS are a serious public health problem that has socio-economic, employment and human rights implications. In the workplace, unfair discrimination against people living with HIV and AIDS has been perpetuated through practices such as pre-employment HIV testing, dismissals for being HIV positive and denial of employee benefits and employment opportunities such as training, etc.

The AIDS pandemic affects every workplace with prolonged staff illness, absenteeism and death impacting on productivity, employee benefits, occupational safety and health, costs and workplace morale.

One of the most effective ways of reducing and managing the impact of HIV and AIDS in the workplace is through the establishment and implementation of HIV and AIDS Policy and Programme. The policy will enable employers, employees, Trade Unions and Government to actively contribute towards national efforts to prevent and manage HIV pandemic. This will also ensure that there's coordination in the response to HIV and AIDS in society and consistency in the

application and enforcement of rules, regulations and practices with regard to HIV and AIDS.

1.3 Linkages with other relevant Policies.

The National HIV and AIDS Workplace Policy has been guided by the National HIV and AIDS Policy (2003) and guidance was also obtained from the International Labour Organization of Code of practice on HIV and AIDS and the world of work of 2001, the International Labour Organisation Recommendation (No.200) of 2010 concerning HIV and AIDS and the World of Work, as well as The 1997 SADC Policy of Conduct on HIV and AIDS in the workplace.

Currently, a National HIV and AIDS Policy of 2003 is in place after it was launched in February 2004. However that policy deals with general matters and the section that deals with workplace issues only gives guidelines on what should be contained in sectoral workplace policies. The National Policy envisaged that specific employment sectors will develop their workplace policy to manage the impact of HIV and AIDS.

The ILO code of practice on HIV and AIDS and the world of work, the International Labour Organisation Recommendation (No.200) of 2010 concerning HIV and AIDS and the World of Work and SADC code of conduct on HIV and AIDS provide guidelines to address prevention of HIV and AIDS, management and mitigation of the impact of HIV and AIDS, care and support of workers persons living with HIV and affected by HIV and AIDS and elimination of stigma and discrimination on the basis of real or perceived HIV status in the world of work.

Various existing legislations in Malawi have also been taken into account particularly those dealing with non-discrimination and respect for human rights and the rights of employees such as:

- The Constitution of the Republic of Malawi,
- The Employment Act (Cap. 55:01),
- The Labour Relations Act (Cap.54:01),
- The Workers Compensation Act (Cap. 55:03)
- The Occupational Health, Safety and Welfare Act (Cap.55:07).

These were analyzed to ensure that the Policy is not in conflict with the said legislations.

Sectoral policies were also considered to see how they link with this workplace policy. These are policies such as the National Gender Policy and others.

2.0 BROAD POLICY DIRECTIONS

2.1 Vision

An HIV- free and highly productive National work force.

2.2 Mission

To reduce the prevalence of HIV amongst employees and attain improved productivity through effective and quality HIV and AIDS prevention, treatment, care and support interventions in the workplace.

2.3 GENERAL PRINCIPLES

The following general principles should apply to all action involved in the national response to HIV and AIDS in the workplace:

2.3.1 Human Rights

That this policy is based on the fundamental principles of human rights and patient rights, WHO/ILO/SADC standards and guidelines, medical and occupational health, ethical principles, sound epidemiological data, prudent business practice and humane and compassionate attitude to individuals.

2.3.2 Decent workplace and Human Dignity

That in the spirit of decent work and respect for the human rights and dignity of persons living with HIV or affected by HIV and AIDS, there should be no discrimination against employees on the basis of real or perceived HIV status or related family responsibilities.

2.3.3 Parity with other serious diseases

That the policy aims at promoting equality and non-discrimination between all individuals (*those living with HIV and those who are not affected*) and between HIV and AIDS and other comparable health/medical conditions.

2.3.4 Compassion

That the Policy should create a compassionate, supportive and conducive environment so that persons living with HIV and affected employees or those perceived to be HIV positive are able to continue working under normal conditions in their current employment for as long as they are medically fit to do so.

That this policy is based on extension of compassion to the family of the workers.

2.3.5 HIV and AIDS as a workplace issue

That HIV and AIDS should be recognized as a workplace issue, and be treated like any other serious illness/condition in the workplace, not only because it affects the workplace, but also because the workplace, being part of the local community, has a role to play in the wider struggle to limit the spread and effects of the infection.

2.3.6 Gender Dimension

That the gender dimension of HIV and AIDS should be recognized, in particular that the greater the gender discrimination in societies and the lower the position of women, the more negatively they are affected by HIV and therefore more equal gender relations and the empowerment of women are vital to the successful prevention of the spread of HIV infection and management thereof.

2.3.7 Cooperation of social partners

That the successful implementation of this policy and programme requires cooperation and trust between employers, employees and their representatives and the commitment of all social partners.

2.3.8 No compulsory HIV and AIDS screening

That HIV and AIDS screening – whether direct (HIV testing), indirect (assessment of risk-taking behaviours) or asking questions about tests already taken or about medication – should not be required of jobseekers and job applicants or persons in employment.

2.3.9 Confidentiality

That there is no justification for asking job applicants or employees to disclose HIV-related personal information, or should co-employees be obliged to reveal such personal information about fellow employees and that access to personal data relating to an employee's HIV status should be bound by the rules of confidentiality consistent with the ILO's Code of Practice on the Protection of Employees' Personal Data 1997.

2.3.10 Dismissal

That employment should never be terminated solely on the basis of an individual's perceived or real HIV status or related family responsibilities, or should HIV status influence retrenchment decisions or employer initiated early retirement.

2.3.11 Accurate Information for All

That employers, employees and their immediate families should have access to accurate and up-to date information about HIV and how it is spread, and to education programmes which cover risk for HIV infection and coping strategies.

2.3.12 Equal Access to medical and employee benefits

Employees living with HIV are entitled to affordable health services and there should be no discrimination against them and their dependants in access to and receipt of benefits from statutory social security programmes and occupational schemes.

2.3.13 Necessity of the Policy

That the same ethical principles that govern all health/medical conditions in the employment context apply equally to HIV and AIDS, but that the gravity and impact of the AIDS pandemic and the potential for discrimination create the need for this HIV and AIDS policy.

2.3.14 Adherence to Regional and International obligations

The Government shall ensure that International treaties, Conventions, Recommendations, guidelines, policies, codes of practice to which the Republic is a member or signatory, impacting HIV and AIDS, human rights and related issues, are adhered to.

2.4 Overall Goal:

The goal of this policy is to provide a set of guidelines for employers and employees to address HIV and AIDS in the workplace.

2.5 Objectives

The objectives of this policy are.

- (a) To reduce stigma and discrimination on the basis of real or perceived HIV status.
- (b) To manage and mitigate the impact of HIV and AIDS at the workplace through provision of Treatment, Care and Support to employees persons living with HIV and affected by HIV and AIDS
- (c) To prevent the spread of HIV and AIDS.

2.6 Application of the Policy

The Policy applies to the public and private sectors, NGOs, including employers and managers, jobseekers and job applicants, apprentices, casual, volunteers, part and full time employees and to all types of employment contract. It applies to the workplace in the broad sense with specific provisions concerning the informal sector.

All employers and employees and their respective organizations are encouraged to use this policy to develop, implement and refine their HIV and AIDS policies and programmes to suit the needs of their workplace.

3.0 POLICY THEMES

3.1 HIV Testing

Voluntary HIV testing and counseling is a very powerful tool in the response to AIDS pandemic for all purposes, including the workplace as it motivates people towards positive behaviour change and offers an opportunity to access treatment, care and support services.

HIV testing must be genuinely voluntary and free of any coercion and testing programmes must respect international guidelines on confidentiality, counseling and consent.

Further voluntary anonymous and unlinked surveillance may occur provided it is undertaken in accordance with the ethical principles of scientific research, professional ethics and the protection of individual rights and confidentiality. Where such research is done, workers and employers should be consulted and informed that is occurring

HIV testing or any form of screening for HIV should not be required of workers, including migrant workers, jobseekers and job applicants.

Migrant workers, or those seeking to migrate for employment, should not be excluded from migration by countries of origin, of transit or of destination on the basis of their real or perceived HIV status.

However, non-voluntary HIV or testing for exclusion from employment or training opportunities is not only counter productive to the response to HIV and AIDS but also a grave infringement of the human rights of People Living with HIV .

3.1.2 Goal

Ensure all employees have access to HIV testing and counseling services in order to know their HIV Status.

3.1.3 Objective

To promote HTC for surveillance purposes for all employees whose results will not be used for employment purposes.

3.1.4 Strategies

(a) Employers shall encourage HTC

Employers shall encourage all employees to go for HTC services. This shall only be carried out at the request or initiative of the employee and in such a case the test shall be carried out by a suitably qualified personnel and on condition that:

- (i) express informed consent of the individual is obtained;
- (ii) HIV pre-testing and post-testing counseling services are available and provided to the employee by qualified personnel;
- (iii) results of such testing are kept confidential in terms of this policy;
- (iv) gender sensitive pre- and post-test counseling, which facilitates an understanding of the nature and purpose of the HIV tests.

(b) Surveillance HIV Testing to be carried out.

Surveillance testing for epidemiological or impact studies purposes is not prohibited under this policy.

Such testing shall be carried out at regular intervals as long as it is anonymous, unlinked and for non-employment reasons.

However, it may be used for budgeting and planning purposes as well as monitoring and evaluation of this policy and programme

(c) No Mandatory HIV testing for employment purposes.

Employers shall ensure that no employee undergoes mandatory HIV testing or HIV screening for employment purposes.

Being HIV positive alone does not render any person incapable of carrying out any functions or duties, which that person would otherwise be capable of carrying out. The only medical requirement for any person to fill any vacancy at the work place as a suitable candidate is fitness for the work assigned to that position and that one's HIV positive status shall not form part of medical criterion for such fitness.

For national security reasons, it is important that the Army, Police, Prisons and Immigration be permitted to carry out HIV testing as part of their pre-recruitment and periodic general medical assessment of staff for purposes of establishing fitness.

Government undertakes to permit HIV testing in the Army, Police, Prisons and Immigration as part of a broader assessment of fitness for work.

Whilst, therefore, prospective employees may be required to undergo a medical examination to determine their fitness to fulfill the job requirements, it shall not be compulsory for any prospective employee

- (i) to be tested for HIV,
- (ii) to disclose their HIV positive status.

(d) **No deliberate HIV testing for training, promotion or career advancement**

Employers shall not base their decision for training, promotion and career advancement of any of their employees on the basis of one's HIV status.

However, where it is proved by credible medical evidence that an employee is medically unfit for long term training the employer may withhold long term training support but will continue to provide short term training to such an employee for as long as the employee is still capable of providing relevant services to the employer.

3.2 Prevention and Control

3.2.1 Rationale

Workplace HIV and AIDS information and education are very essential in combating the spread of HIV infection as well as eliminating misconceptions surrounding HIV and AIDS to foster greater tolerance for employees living with HIV. Prevention strategies should be adapted to workplace conditions and the type of workplace, and should take into account gender, cultural, social and economic concerns.

One of the most effective ways of reducing, controlling and managing the impact of HIV and AIDS is through the implementation of HIV and AIDS programmes for prevention in addition to treatment, care and support in the work place.

There is a risk of HIV transmission in the work place in some occupations. For example, there exist occupational accidents that involve body fluids, particularly in the health profession. It is, therefore, mandatory that an employer should provide and maintain a work place that is safe and without undue risk to the health of its employees.

3.2.2 Goal

Ensure sustainable, appropriate and effective HIV and AIDS prevention and control programmes are in place in all workplaces.

3.2.3 Objective

To develop and promote sustainable, appropriate and effective HIV and AIDS prevention and control programmes in the workplaces and create a safe and conducive working environment for employees.

3.2.4 Strategies

(a) **Information and Education for Behaviour Change.**

It is an essential component of this policy to provide or cause to be provided for the benefit of every employee at designated sites within the

work places and at such times as employers shall appoint education and information for behavior change relating to:

- (i) the promotion of safer sex and risk reduction measures in relation to STIs including HIV;
- (ii) the transmission of STIs including HIV
- (iii) prevention of transmission of HIV from mother to child (PMTCT),
- (iv) the prevention of the spread of HIV and STIs;
- (v) Counseling facilities for persons living with HIV and affected employees within and outside the work places;
- (vi) the risk factors such as occupational mobility, that make certain categories of employees more susceptible to HIV infection;
- (vii) the need to be non-discriminatory towards employees living with or perceived to be living with HIV;
- (viii) promotion of personal hygiene and proper nutrition for all employees:

Such education and prevention measures shall as far as practicable be conducted at the work place during working hours

The above services and programmes will be a continuing process and will be, as far as possible, extended to their families and dependants shall collaborate with the surrounding Communities

The strategies used shall be non-stigmatizing and gender sensitive with special emphasis on the vulnerability of women to HIV and prevention strategies that can lessen their vulnerability

Ensure that women receive information and education about their babies and their increased risk or vulnerability to HIV infection.

Ensure that education for men includes awareness raising, risk assessment and strategies to promote their responsibilities regarding HIV and AIDS prevention, treatment, care and support.

Employers shall also provide counseling and education on abstinence for the unmarried; faithfulness and respect for the sanctity of marriage for the married

(b) Specialized training for specific groups of employees

The employer will ensure that internal training for trainers and peer educators; and supervision is undertaken as this will minimize expenses and ensure that employers have readily available resource persons

Special training should also be provided for peer educators, labour inspectors and those employees who come into contact with blood and other body fluids to equip them appropriately in their duties.

(c) Condom availability

In their effort to promote safer sex, employers shall in addition to promoting abstinence, faithfulness and safer sex, make condoms available to employees. In this connection, employers will ensure that information regarding correct and consistent condom use is made available to user groups.

(d) Protective clothing and universal precautions.

Employers should undertake to provide appropriate protecting clothing, devices and equipment to all employees engaged in designated high-risk occupations or tasks to minimize the risk of transmission of HIV

Employers should undertake to provide appropriate training, together with clear and accurate information and guidelines on minimizing the hazards of the spread of HIV and related communicable diseases and education on the use of universal precaution to identify, deal with and reduce the risk of HIV transmission.

All employees shall receive training about infection control procedures in the context of workplace accidents and first aid.

3.2 Treatment, Care and Support.

3.2.2 Rationale

Prevention, treatment, care and support services are all mutually reinforcing elements of a continuum of an effective response to HIV and AIDS. Therefore, in addition to prevention strategies there is need to put in place strategies for treatment, care and support.

One of the most effective ways of reducing and managing the impact of HIV and AIDS is through the implementation of HIV and AIDS programmes for treatment, care and support in the workplace in addition to prevention programmes.

The policy should, therefore, create a compassionate, supportive and conducive environment so that employees living with HIV or those perceived to be HIV positive are able to enjoy the support services provided and continue working under normal conditions in their current employment for as long as they are medically fit to do so.

3.2.3 Goal

Ensure sustainable, appropriate and effective HIV and AIDS treatment, care and support programmes are in place in all work places.

3.2.4 Objective

- (i) To develop sustainable, appropriate and effective HIV and AIDS treatment, care and support programmes in the workplace
- (ii) To promote sustainable, appropriate and effective HIV and AIDS treatment, care and support programmes in the workplace.

3.2.5 Strategies

(a) Post Exposure Prophylaxis (PEP), Anti-Retroviral Therapy (ART), Prevention of Mother to Child Transmission (PMTCT), Community Home Based Care (CHBC) and nutritional support.

The employer shall also provide training and education on the steps that must be taken after an occupational exposure to HIV including access to PEP.

The employer is committed to ensuring that employees have access to the following care, treatment and support programmes:

- (i) Prevention and treatment of HIV-related illnesses
- (ii) Anti-Retroviral Therapy
- (iii) Post Exposure Prophylaxis
- (iv) Community Home Based Care services,
- (v) Prevention of Mother to Child Transmission
- (vi) Treatment of Sexually Transmitted Infections
- (vii) Nutritional support
- (viii) Provider-initiated HIV testing and counseling

Where an employee has been exposed to HIV as a result of on-the-job accident the employer shall be obliged to provide PEP to that employee free of charge.

Every employer shall ensure that employees have access to care, treatment and support services.

(b) Reasonable accommodation

Employers shall take steps to adapt the workplace to accommodate employees with illnesses by applying measures such as the re-arrangement of working time,

job sharing, the modification of the employees duties, special equipment, opportunities for rest breaks, time off for medical appointments and counseling, flexible sick leave, care for dependants, part-time work, return-to-work arrangements, accepting a less than ideal level of performance as long as minimum standards are met.

3.3 Protection and Promotion of Rights of Employees.

3.4.1 Rationale

Discrimination against PLWHIV worldwide has been perpetrated through practices such as dismissal, unfair termination of employment (redundancy or retrenchment) on the basis of being HIV positive and denial of employee benefits if known to be persons living with HIV with HIV. Such practices are against fundamental principles of human rights. It is also essential that co-employees should protect PLWHIV from stigmatization and discrimination.

All persons with HIV or AIDS have the constitutional right to privacy. An employee is, therefore, not legally required to disclose his or her HIV Status to their employers.

It is of common knowledge that the greater the gender discrimination and the lower the position of women, the more negatively women are affected by HIV and, therefore, more equal gender relations and the empowerment of women to enjoy equal rights with men is vital to the successful response to HIV and AIDS in the workplace.

3.4.2 Goal

Ensure non-discrimination in the work places based on HIV status or gender by promoting practices where all employees have equal access to employee benefits and opportunities irrespective of HIV status or gender.

3.4.3 Objective

To promote and protect the rights of all employees and ensure that employee benefits and dismissal or redundancy are not based on the HIV Status or gender of an employee.

3.4.4 Strategies

(a) Confidentiality and Voluntary disclosure of HIV status

(i) The employer shall encourage all employees to be open about their HIV status. This could be achieved through prevention and education programmes.

(ii) Any disclosure by an employee on his or her HIV status shall be treated confidentially by the employer and shall not be disclosed to fellow employees by the employer.

(iii) Every employee has the right to confidentiality about their HIV status.

(iv) An employee's HIV status should not be required in any routine medical or personnel report and such information (where available) shall be kept on medical files kept only by a designated official.

(v) Breach of any of the foregoing provisions on confidentiality should be treated as a disciplinary action against the employee alleged to have made such breach. Employers should have procedures that can be used by workers and their representatives for work-related grievances. These procedures should specify under what circumstances disciplinary proceedings can be commenced against any employee who discriminates on the grounds of real or perceived HIV status or who violates the workplace policy on HIV and AIDS.

(vi) No employee should stigmatize or victimize any fellow employee or employer on grounds of HIV and AIDS.

(vii) Employees may not be required to divulge information about the HIV/AIDS status of their fellow employee, and that access to personal data relating to an employee's HIV status should be bound by rules of confidentiality.

(b) HIV Status shall not affect Job Status or Employment Benefits.

(i) An employee's HIV status shall not be a factor in deciding whether or not to promote that employee.

(ii) No employee shall be transferred based on his or her HIV status except in relation to reasonable accommodation.

(c) Gender and Sexual Harassment.

(i) Employers shall ensure that they give equal opportunities to all in access to employment in the workplace without regard to sex or other status.

(ii) Employers shall not condone any form of sexual violence or harassment in their workplaces.

(iii) Employers shall ensure that gender sensitive grievance procedures are put in place to enable women who are sexually abused or harassed to lodge their complaints without hindrance or other impediments.

(iv) Employers shall ensure that women's legal rights are protected

(d) Termination of Employment.

(i) Employers shall not terminate any employee's employment solely based on perceived or real HIV status.

(ii) Where an employee with AIDS related condition is too ill to continue to work and where reasonable accommodation have been exhausted, termination of employment may be considered in accordance with the provisions of the law and with full benefits.

3.5 Workplace Impact Mitigation

3.5.1 Rationale

HIV and AIDS should be recognized as a work place issue, and be treated just like any other serious illness/condition in the work place. This is so not only because it affects the workplace, but also because the work place, being part of the local community, has a role to play in the wider response to mitigate the impact of the HIV and AIDS. Mitigation of the impact of HIV and AIDS in the work place is our integral part of the response to the epidemic.

3.5.2 Goal

Ensure a work place that has a supportive environment for those employees who are persons living with HIV or affected by HIV and AIDS so that they may continue to work productively for as long as possible.

3.5.3 Objective

To promote appropriate and effective ways of managing the impact of AIDS pandemic in the work places and on the employees.

3.5.3 Strategies

(a) Employees Welfare Programme

(i) The employer may make available to employees loans and other facilities to enable them better prepare for their early retirement.

(ii) The employer may endeavour to provide employees a fair remuneration to enable them access and afford suitable nutrition.

(b) Wills and Death Benefits

(i) Employees should be encouraged to write Wills to protect death or occupational benefits.

(ii) Employers should provide technical back up to facilitate such writing of Wills.

(c) Medical Scheme for Employees

Employers should encourage employees to join medical schemes.

3.6 Database Management Systems

3.6.1 Rationale

For proper monitoring and evaluation exercises of the progress on the fight against HIV and AIDS in the workplace, it is imperative to maintain an up to date database management system on human resources, costs and related facilities.

3.6.2 Goal

Institutionalise a flexible workplace database management system that guides the fight against HIV and AIDS in the workplace.

Employers will establish and maintain confidential individual sickness records. In addition employers will establish and maintain sickness and death database in the workplace. This will enable employers prepare appropriate budget allocations for HIV and AIDS programmes as well as to take appropriate corrective and prevention measures where necessary and they may also use data for impact assessment studies.

3.6.3 Objective

To establish comprehensive workplace database management systems on human resources, labour attrition, labour costs and related facilities in the fight against HIV and AIDS.

3.6.4 Strategies

- (a) Maintain both paper and electronic data base system on human resource, labour costs and related facilities in the fight against HIV and AIDS.
- (b) Workplace inspections on database by the ministry responsible for Labour issues.
- (c) Standardization and updating of source documents for maintaining records on human resource, labour costs and related facilities in the fight against HIV and AIDS.
- (d) Execute regular research on labour market issues and HIV and AIDS at the workplace.
- (e) Mobilise resources for database management systems at the workplace.
- (f) Provide for a strategic institution for database management.

4.0 Implementation Arrangements.

Most policies and strategies have failed to make an impact because of lack of sustainable and effective implementation arrangements. In order to ensure the success of this policy it is essential to put in place implementation mechanisms with clear demarcation of roles of various stakeholders.

Ministry responsible for labour issues shall be the overall coordinator and manager of this policy.

4.1 General Roles and Responsibilities

(a) The Ministry responsible for Labour and Competent Authorities

- (i) The ministry responsible for labour shall ensure coherence of National HIV and AIDS strategy and programmes at the workplace.
- (ii) The ministry responsible for labour shall ensure that the composition of HIV/AIDS Committees includes representatives of employers, employees and of Ministries responsible for labour and social matters.
- (iii) The competent Authorities shall mobilise and support broad partnership for protection and prevention, including public agencies, the private sector, employees and employers' organizations Faith Based Organisations (FBO) and other NGOs so that the greatest number of actors in the work place is involved.
- (iv) The ministry responsible for labour shall facilitate and co-ordinate all workplace interventions and provide an enabling environment at National level. Coordination shall build on measures and support

services already in place, for example those related to promoting employment opportunities for persons with disabilities and mainstreaming gender issues in all programmes.

- (v) The competent Authorities shall initiate, promote awareness and prevention programmes to counter stigmatization and reduce the prevalence of HIV in the workplace.
- (vi) The ministry responsible for labour shall ensure that benefits under National laws and regulations apply to employees with HIV and AIDS no less favourable than to employees with other serious illnesses.
- (vii) In designing and implementing social security programmes, The Ministry responsible for labour shall take into account the progressive and intermittent nature of the disease and tailor schemes accordingly.
- (viii) To achieve coherence with national AIDS plans, to mobilize the social partners, and to facilitate planning to mitigate its socioeconomic impact, the competent authorities shall carry out and publish the findings of ethical and other research on HIV and AIDS and the workplace, including gender-sensitive analysis, using where appropriate, research from employers and their organizations and employees' organizations. Data collection shall to the extent possible, be sector-specific, and disaggregated by sex, age, employment, and occupational status among other key variables.
- (ix) The Ministry responsible for labour shall estimate the cost implications of HIV and AIDS, and develop and implement proposals to finance the consequences for social security systems and employee benefit schemes.
- (x) The Ministry responsible for labour in consultation with the social partners and experts in the field of HIV and AIDS shall provide the relevant regulatory framework and revise labour laws.
- (xi) The competent authorities shall supply technical information and advice to employers and employees concerning the most effective way of complying with legislation and regulations applicable to HIV and AIDS and the workplace. They shall strengthen enforcement structures and procedures, such as factory/labour inspectorates and labour courts and tribunals, so that protection and prevention laws are enforced and applied as far as practicable in the informal sector.
- (xii) In extending HIV and AIDS prevention to the informal sector, The Ministry responsible for labour in collaboration with informal sector

groups shall, as far as possible, adapt and extend its programmes, and include income generation and social protection measure.

- (xiii) The Ministry responsible for labour shall ensure care and support in the context of HIV and AIDS through public health care programmes and other appropriate government initiatives.
- (xiv) The Ministry responsible for labour shall promote and support collaboration at regional and international levels, and through intergovernmental agencies, especially UNAIDS, so as to focus international attention on HIV and AIDS and on needs in the workplace.
- (xv) The Ministry responsible for labour shall enlist international assistance in support national programmes. It shall take initiatives aimed at supporting international campaigns to reduce the cost of and improve access to antiretroviral drugs.
- (xvi) The Ministry responsible for labour shall collect, compile and analyze data on HIV and AIDS, sexually transmitted diseases and tuberculosis and other related conditions and make it available in the public domain.
- (xvii) Responsibilities for monitoring evaluation and review of the policy and its implementation shall lie with the social partners at national, regional level and district level and with relevant officers of government in population and health development matters.
- (xviii) The Ministry responsible for labour shall carry out the above functions, responsibilities and activities in line with the National HIV and AIDS Framework 2005 – 2009 (June, 2005) or any revisions for replacement thereof and other related documents and policy guidelines.
- (xix) The Ministry responsible for labour shall ensure that copies of this Policy are available and accessible to employers, employees and their representative organizations and other stakeholders.
- (xx) The competent authorities shall ensure that the labour inspectors undertake specialised training on HIV and AIDS prevention and protection strategies at the work place as part of their advisory services and capacity building training.
- (xxi) In programmes to eliminate child labour, The Ministry responsible for labour should ensure that attention is paid to the impact of the epidemic on children and young persons whose parent or parents are ill or have died as a result of HIV and AIDS.

- (xxii) The Ministry responsible for labour shall take measures to identify groups of workers who are vulnerable to infection, and adopt strategies to overcome the factors that make these workers susceptible. The Ministry responsible for labour should also endeavour to ensure that appropriate prevention programmes are in place for these workers.

(b) Employers and their Organisations.

- (i) Employers shall consult and agree with employees and their representatives to develop and implement an appropriate policy for their workplace; which prevents the spread of the infection and protects all employees from discrimination related to HIV and AIDS. Such policy shall adhere to this policy.
- (ii) Employers shall adhere to the Labour Relations Act and practice in relation to negotiating terms and conditions of employment about HIV and AIDS issues, and endeavour to include provisions on HIV and AIDS protection and prevention in national, sectoral and enterprise bargaining agreements.
- (iii) Employers and their organizations shall initiate and support programmes at their workplace to inform, educate and train employees about HIV and AIDS and the enterprise's policy, including specific staff benefits and entitlements.
- (iv) Employers shall develop appropriate strategies to understand, assess and respond to the economic impact HIV and AIDS on their particular workplace and sector. This shall be done in cooperation with employees' representatives.
- (v) In the spirit of good corporate citizenship, employers and their organizations shall, where appropriate, encourage fellow employers to act in accordance with this Policy, and encourage government to take all necessary action to stop the spread of HIV and AIDS and mitigate its effects. Other partnerships such as joint business-trade councils on HIV and AIDS should be encouraged to support these processes.
- (vi) Employers in this sector shall investigate and, where appropriate, develop prevention and care programmes through the mutual health funds that are established for small and micro-enterprises. City, Town and District Assemblies will be expected to assist in the delivery of such services and programmes to employees in the informal sector.

- (vii) Employers and their organizations shall contribute to international partnerships in the fights against HIV and AIDS.
- (viii) Employers shall ensure that the policy is available and accessible by employees and their organizations and also ensure that they include the policy in their orientation, education and training programmes of employees.
- (ix) Employers shall encourage employees to write wills to protect terminal benefits in case of death.

(c) Employees and their Organization

- (i) Employees and their organizations shall consult with their employers and agree on the implementation of an appropriate policy at their workplace, which prevents the spread of the infection and protects all employees from discrimination related to HIV and AIDS.
- (ii) Employees and their organizations shall adhere to the Labour Relations Act and practice when negotiating terms and conditions of employment relating to HIV and AIDS issues, and endeavor to include provisions on HIV and AIDS protection and prevention in national, sectoral and enterprise bargaining agreements.
- (iii) Employees and their organizations shall use existing union structures and facilities to disseminate information on HIV and AIDS in the workplace, and develop educational materials and activities appropriate for employees and their families, including regularly updated information on worker's rights and benefits.
- (iv) Employees and their organizations shall cooperate with employers to develop appropriate strategies to understand, assess and respond to the economic impact of HIV and AIDS in their particular workplace and sector
- (v) Employees and their organizations should encourage employers, their organizations and lobby Government to take all necessary action to stop the spread of HIV and AIDS and mitigate its effects.
- (vi) Employees and their organizations shall support and encourage the employers in creating and implementing personnel policy or practices that treat employees with HIV and AIDS no differently from other employees.
- (vii) Employees and their organizations shall develop and carry out training courses for their representatives on workplace issues raised by the

epidemic, appropriate response, and the general needs to people living with HIV and AIDS.

- (viii) Employees have the right to access their own medical files. Employees' organizations should not have access to personnel data relating to a worker's HIV status. In all cases, when carrying out trade union responsibilities and functions, the rules of confidentiality set out in the ILO's Occupational Health Services Recommendation, 1985 (No. 171), shall apply
- (ix) Employees and their organizations should extend their activities to the informal sector, in partnership with non-governmental and community-based organizations where appropriate, and support new initiatives that help both to prevent the spread and mitigate the impact of HIV and AIDS.
- (x) Employees' organizations should build solidarity across national borders by using sectoral, regional and international groupings to highlight HIV and AIDS and the workplace, and to include it in employees' rights campaigns.
- (xi) The employees and their organizations shall carry out the above functions and responsibilities and activities in line with the National HIV and AIDS Framework 2005 – 2009 (June, 2005) and other related documents and policy guidelines.
- (xii) Trade Unions shall include the Policy in their education and training programmes of shop stewards and employees.
- (xiii) Trade Unions with the assistance of Government and Employers shall ensure that the policy is available and accessible to employees in at least the major vernacular languages in Malawi provided that in case of conflict between the different versions the English version shall rule.
- (xiv) The employees shall take responsibility for their own health and that of their immediate families; they shall participate actively in the HIV and AIDS programmes and take the lessons learnt to their homes and communities.

(d) The National AIDS Commission

- (i) The main role of NAC is to ensure overall coordination of HIV and AIDS response in Malawi;

- (ii) NAC shall support the ministry responsible for labour in conducting advocacy for the National HIV and AIDS Workplace Policy in line with their mandate for advocacy of the National HIV and AIDS Policy;
- (iii) Provide technical support for the policy and programme development as well as implementation of this policy and Programme;
- (iv) Mobilise financial resource and channel funds for the implementation of the programme activities under the National HIV and AIDS Workplace Policy
- (v) To ensure that this policy is consistent with the National HIV and AIDS Policy;
- (vi) Co-ordinate and link the monitoring and evaluation systems of the workplace policy as a component of the national monitoring and evaluation system for the National HIV and AIDS Policy.
- (vii) To be a resource centre for advice and technical support for all stakeholders in policy and programme activities.

4.2 Budget and Funding

The government and employers shall allocate adequate resources towards the implementation of the National HIV and AIDS Workplace Policy.

The National AIDS Commission shall also mobilise additional funds and technical assistance from international co-operating partners in consultation with the Ministry responsible for labour and other stakeholders.

5.0 Monitoring and Evaluation

5.1 Objective

To ensure that the policy objectives are achieved and adjustments are made to take care of identified shortfalls.

5.2 Policy statement on Monitoring and Evaluation.

The Ministry responsible for labour in collaboration with employers, employees and the National AIDS Commission shall conduct regular appraisals to analyse the impact of the pandemic on the future of the labour force, its structures, operations and functions and monitor the effectiveness of the policy and programmes in achieving the goal.

5.3 Planning

HIV and AIDS have negative impact on human resource in the workplace. Government and employers should ensure they have in place adequate mechanisms, training plans and recruitment programmes that ensure that there will be adequate and qualified personnel at all times in the workplace.

5.4 Review of Policy

This policy shall be reviewed to ensure that it remains relevant and responsive to the needs of the Malawi nation. This review will take into account the progress and the impact of the pandemic current developments in scientific and other technological advancements. The policy shall be reviewed at least once in every three years or at any time before the three-year cycle as need arises.

6.0 ACTION PLAN

Specific goal	Specific objective	Strategy(ies)	Responsibility for implementation	Time frame	Performance indicator
Ensured that all employees have access to HIV testing and counseling services so that they know their HIV Status	To promote VCT for surveillance purposes for all employees whose results will not be used for employment purposes	<ul style="list-style-type: none"> • Employers shall encourage HTC • Surveillance HIV Testing to be carried out. • No Mandatory HIV testing for employment purposes • No deliberate HIV testing for training 	<ul style="list-style-type: none"> • Employers, MOL, Unions, NAC, Ministry of Health, Centre for Social Research (UNIMA) 	Biennial	<ul style="list-style-type: none"> • Quarterly promotion reports • Biennial %age on response VCT promotion
Ensured sustainable, appropriate and effective HIV and AIDS prevention and control programmes are in place in all workplaces.	To develop and promote sustainable, appropriate and effective HIV AND AIDS prevention and control programmes in the workplaces and create a safe and conducive working environment for employees.	<ul style="list-style-type: none"> • Information and Education for Behaviour Change • Specialized training for specific groups of employees • Condom availability • Protective clothing and universal precautions 	<ul style="list-style-type: none"> • Employers, MOL, Unions 		
Sustainable, appropriate and effective HIV and AIDS treatment, care and support programmes are in place in all work places.	To develop and promote sustainable, appropriate and effective HIV and AIDS treatment, care and support programmes in the workplace	<ul style="list-style-type: none"> • Post Exposure Prophylaxis (PEP), Anti-Retroviral Treatment, Prevention of Mother to Child Transmission (PMTCT), Community 			

		<p>Home Based Care (HBC), Nutritional support, etc</p> <ul style="list-style-type: none"> • Reasonable accommodation 			
<p>Discrimination in the work places based on HIV status or gender by promoting non-discriminatory practices where all employees have equal access to employee benefits and opportunities irrespective of HIV status or gender.</p>	<p>To promote and protect the rights of all employees and ensure that enjoyment of employee benefits and dismissal or redundancy are not based on the HIV Status or gender of an employee.</p>	<ul style="list-style-type: none"> • Confidentiality and Voluntary disclosure of HIV status • HIV Status shall not affect Job Status or Employment Benefits • Gender and Sexual Harassment • Termination of Employment • 			
<p>Ensure a work place that has a supportive environment for those employees who are persons living with HIV or affected by HIV AND AIDS so that they may continue to work productively for as long as possible</p>	<p>To promote appropriate and effective ways of managing the impact of HIV AND AIDS epidemic in the work places and on the employees</p>	<ul style="list-style-type: none"> • Employees Welfare Programme • Wills and Death Benefits • Medical Scheme for Employees 			
<p>A flexible workplace database management system that guides the fight against HIV and AIDS in the workplace.</p>	<p>To establish comprehensive workplace database management systems on human resources, labour</p>	<ul style="list-style-type: none"> • Maintain both paper and electronic data base system on human resource, labour costs and related facilities in 			

	<p>attrition, labour costs and related facilities in the fight against HIV and AIDS</p>	<p>the fight against HIV and AIDS.</p> <ul style="list-style-type: none"> • Workplace inspections on database by the ministry responsible for Labour issues. • Standardization and updating of source documents for maintaining records on human resource, labour costs and related facilities in the fight against HIV and AIDS. • Executive regular research on labour market issues and HIV AND AIDS at the workplace. • Mobilise resources for database management systems at the workplace. • Provide for a strategic institution for database management 			
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7.0 MONITORING AND EVALUATION FRAMEWORK

	Specific Objective	Indicator	Source of data	Baseline data/current situation	Key milestones	Responsibility for implementation	Time frame
1	To promote VCT for surveillance purposes for all employees whose results will not be used for employment purposes at the workplace.	%age response on VCT promotion	Biennial HIV and AIDS workplace study		Annual VCT week execution	Employers, MOL, Unions, Ministry of Health, NAC, Centre for Social Research, University of Malawi	Regular – Biennial
2	To develop and promote sustainable, appropriate and effective HIV and AIDS prevention and control programmes in the workplaces and create a safe and conducive working environment for employees at the workplace.	0% age response on prevention control program	HIV and AIDS workplace study		Seminar Presentation on prevention an control program	Employers, MOL, Unions, Ministry of Health, NAC, Centre for Social Research, University of Malawi	
3	To develop and promote sustainable, appropriate and	%age response of availability	HIV and AIDS workplace study			Employers, MOL, Unions, Ministry of Health, NAC, Centre for Social	

	effective HIV AND AIDS treatment, care and support programmes in the workplace at the workplace	of the program				Research University of Malawi	
4	To promote and protect the rights of all employees and ensure that enjoyment of employee benefits and dismissal or redundancy are not based on the HIV Status or gender of an employee at the workplace.	%age response on Anti-discrimination policy	HIV AND AIDS workplace study		Seminar presentation on staff recruitment and staff benefits	Employers, MOL, Unions, Ministry of Health, NAC, Centre for Social Research, University of Malawi	
5	To promote appropriate and effective ways of managing the impact of AIDS pandemic in the work places and on the employees at the workplace	%age response on affectivity of program	HIV and AIDS workplace study		Seminar presentation on effectiveness of programs	Employers, MOL, Unions, Ministry of Health, NAC, Centre for Social Research University of Malawi	
6	To establish comprehensive workplace database management	%age response of the availability	HIV AND AIDS workplace study			Employers, MOL, Unions, Ministry of Health, NAC, Centre for Social Research University of	

	systems on human resources, labour attrition, labour costs and related facilities in the fight against HIV and AIDS at the workplace	of comprehensive database				Malawi	
7	To make available of National Workplace Policy	Published workplace policy document	Ministry of Labour- Policy document		Seminar published document	Social partners (Tripartite) MOL, NAC, Ministry of Health	2008
8	To make available comprehensive workplace policy at the workplace				Seminar Presentation	Social partners (Tripartite) MOL, NAC, Ministry of Health	
9	To make available workplace policy at the workplace	%age response on availability of workplace policy at the workplace			Seminar Presentation	Social partners (Tripartite) MOL, NAC, Ministry of Health	

