

HIV & AIDS: Employment Focus

It has been 28 years since the enactment of the Americans with Disabilities Act (ADA) in 1990, vital legislation establishing legal protections for people with disabilities including those living with HIV and AIDS. These legal protections, while fundamental to creating an equal playing field, do not end discrimination on their own. Rather, systemic educational and training efforts are required to create lasting culture change towards inclusion.

Today, discrimination against people living with and affected by HIV and AIDS persists. Fear, stigma, and basic misinformation remain at the root of much of this discrimination and continue to drive exclusions from private and public sector employment opportunities.

Inclusive employers know that creating welcoming workplaces across a wide spectrum of workforce diversity is not only the right thing to do, but is also good business practice. Employers that create welcoming workplaces for people living with HIV or AIDS stand to benefit in recruiting and retaining workers as well as in gaining ongoing increased productivity and engagement.

THE LEGAL LANDSCAPE

Employees living with HIV or AIDS are protected under two pieces of Federal legislation: the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990. They are protected by various state and local laws as well.

LAWS IN ACTION: Practical Implications for the Workplace

Legal protections for individuals living with HIV or AIDS extend beyond what we typically associate with discrimination to impact day-to-day employer/employee expectations.

Requesting and providing reasonable accommodations –

Employers are required to provide reasonable accommodations to individuals living with HIV or AIDS so as to facilitate their participation in the job application process, their performance of the essential functions of a job, or their access to the benefits and privileges of employment. As long as it does not constitute an undue hardship to the employer, requested accommodations must be granted.

Qualified = ability to perform ‘essential functions’ – As stated above, there is legislation in place which protects qualified individuals living with HIV or AIDS from discrimination on the basis of this status. However, to ensure full enforcement of this law, it is necessary for employers to recognize the distinction between the essential and marginal functions of a job. Essential functions refer to the duties that constitute the position. Marginal functions are non-essential or incidental job functions. For example, the essential function of a typist is the ability to type. A marginal feature would be the ability to move large boxes of files. In this way, while there may be certain incidental job functions an employee with HIV or AIDS may not be able to perform, as long as it does not impede his or her ability to perform the core duties of that job, the individual is still classified as qualified.

Communicate and examine benefits programs – Despite the progress made in protecting individuals living with HIV or AIDS, not all employers provide workplace benefits specifically for HIV or AIDS related healthcare. Therefore, it is important for employers to communicate existing benefits which can serve employees or their dependents living with HIV and AIDS. For example, the *Family Medical Leave Act of 1993 (FMLA)* allows eligible employees to take leave for serious medical conditions or to provide care for an immediate family member with a serious medical condition, including HIV and AIDS for up to 12 weeks of job-protected leave.

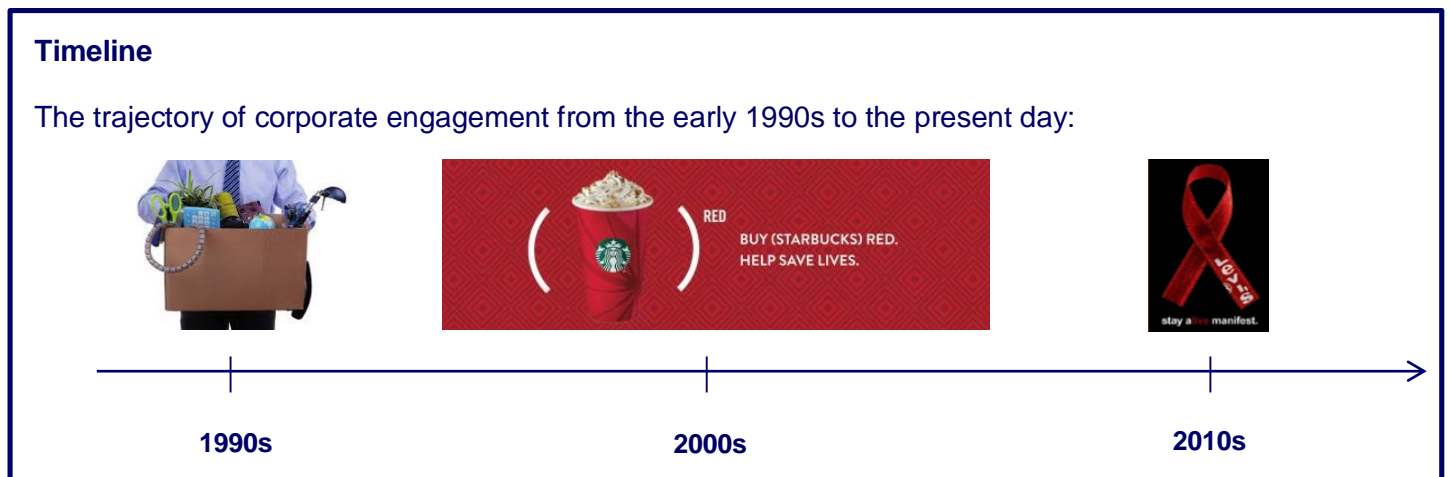
Americans with Disabilities Act of 1990 (ADA) prohibits private and public employers (with more than 15 employees) from discriminating against individuals on the basis of their HIV or AIDS status. This protection covers all employment stages including recruitment, firing, hiring, training, job assignments, promotions, pay, benefits, leave, and all other employment-related activities.

Rehabilitation Act of 1973 prohibits federal contractors, agencies, and employers receiving federal funding from discriminating against individuals with HIV or AIDS. Like the ADA, this law applies to employment decisions at all stages.

State or local employment anti-discrimination statutes vary and may provide coverage not available under federal law such as HIV and AIDS accountability in healthcare, accommodations, etc.

EDUCATION & AWARENESS: Tracking Corporate Engagement on HIV & AIDS

Over the last 2+ decades, corporations in the United States have engaged in the HIV and AIDS awareness movement in various ways, intersecting and paralleling the call for LGBT workplace equality. From early internal efforts based in education and policy in the 1990s, to large-scale visibility campaigns in the 2000s, corporations have adopted policy protections and increased acceptance of people living with HIV and AIDS.



1990s – Internal Organizational Efforts:

- In 1988, and ahead of many others, Levi Strauss & Co. integrated HIV and AIDS education in to their new employee orientation training in the U.S.
- Employers began adopting non-discrimination policies that cover sexual orientation and began offering domestic partner benefits, organizationally recognizing their LGBT employees.

2000s – Visibility Campaigns:

- In 2004, the Levi Strauss Foundation became the first corporate foundation to support the “Syringe Access Fund,” advocating access to clean syringes for injecting drug users as a critical measure to slow the spread of HIV and AIDS.

- In 2006, “Product Red” was started as an initiative to get businesses and consumers involved in eliminating HIV and AIDS in Africa.

2010s – A Global Move to End Discrimination:

- In 2012, the Levi Strauss Foundation led a pledge calling on governments to end HIV-related travel restrictions. “HIV travel restrictions are discriminatory and bad for business,” said Chip Bergh, President and CEO of Levi Strauss & Co. Along with more than 40 other CEOs, Bergh signed an initiative urging the repeal of laws in 45 countries that restrict travel for those living with HIV and AIDS.

MAKING IT REAL: Promoting Everyday Workplace Inclusion

In the decades following the ADA’s passage there was a noticeable shift from a focus on policy reform to one of improving workplace climate. As federal legal protections fell into place, efforts naturally shifted from eliminating barriers to entering the workforce to nurturing a more welcoming climate by breaking down biases and misinformation about people living with HIV and AIDS.

Dispelling Unfounded Stigma: Education is Key

Education is key to dispelling bias and stigma towards people living with HIV and AIDS. Common misconceptions that serve as justifications for discriminating against people based on their HIV status include:

- A person living with HIV too expensive to provide insurance coverage
- People living with HIV or an AIDS diagnosis may miss too much work for medical issues
- Colleagues will be uncomfortable working with a person living with HIV

A basic misunderstanding on the employer’s part about the ways HIV is transmitted, the risks involved, and what it means to live with HIV contribute to bias. To reduce bias, improve workplace climate and decrease the potential for discriminatory acts, employers should ensure a fundamental understanding of HIV and AIDS and dispel common stereotypes associated with people living with HIV and AIDS.

How do HIV and AIDS come up in the workplace?

From the factory floor to the corner office, people bring bits and pieces of themselves into the workplace every day - whether or not they are even aware of it. A weekend activity or breaking news will likely make it into the conversation at work around the water cooler. HRC Foundation’s climate survey, [The Cost of the Closet and the Rewards of Inclusion](#), found that nearly every workplace demands some level of sharing, on a weekly or daily basis, including topics such as social life, politics, TV shows, movies or celebrities, and relationships. This evidence underscores how a majority of employees will experience the conscious and unconscious biases of their colleagues as each share about their lives and personal views.

There are common biases, beliefs, and misperceptions about HIV and AIDS. Hearing people use language such as “it’s a death sentence” regarding someone diagnosed with HIV can not only be hurtful, but can often lead to a less productive work environment. This may discourage an HIV-positive employee

from speaking up and requesting a reasonable accommodation, because of the fear surrounding disclosure, and could directly impact job performance.

Employers seeking a welcoming and productive workplace for employees living with HIV and AIDS – as part of workplace diversity – will want to educate managers and colleagues on the impact of conscious and unconscious bias in the workplace.

CONSIDERATION & TIPS FOR INCLUSION

More than anything, creating an HIV-inclusive workspace is to provide a safe and inclusive environment where all workers can be productive and valued. Individuals with HIV are living, longer healthier lives thanks to advances in medical treatment. As with all employees, those with HIV who take care of their health, can and do, provide valuable contributions in the workplace.

Here are some tips for employers:

- Build into HR manuals an abundance of caution around holistic workplace safety, and not an abundance of caution around individual employees.
- Increase HR department competency, not only in terms of nondiscrimination and benefits, but also an understanding around the day-to-day needs of employees living with HIV and AIDS.
- Enumerate protected categories - including HIV and AIDS statuses - in employee training along with definitions and scenarios of discrimination and harassment.
- Abide by the ADA's requirement of keeping medical records fully confidential, separated from general personnel files.

Tips for job seekers:

- Learn about your employer's obligations in regards to hiring, promoting, firing, and available benefits, as well as obligations around regulating a safe work environment.
- Don't hesitate to make requests for reasonable accommodations. Some examples from the U.S. Department of Justice are such:
 - An accountant with HIV who had no available sick leave required two hours off, monthly, for visits to his doctor. He was permitted to take longer lunch breaks and to make up the time by working later on those days.
 - A supermarket check-out clerk with AIDS had difficulty standing for long periods of time. Her employer provided her with a stool so that she could sit down at the cash register when necessary.
 - A machine operator required time off from work during his hospitalization with AIDS-related pneumonia. He had already used up all his sick leave. His employer allowed him to take leave without pay.

For more information, please visit: <http://www.hrc.org/topics/hiv-aids>