

LAW 12/2009 OF 12 MARCH

RIGHTS & RESPONSIBILITIES OF THOSE LIVING WITH HIV/AIDS

Notes and comments (comments included in *italics*)

Please note that we provide here a summary of the law, as relevant to business. The law contains a number of other provisions, such as those for women and children and the vulnerable. For a more detailed understanding of the rights and responsibilities the law confers please read the original document.

- 1) The law establishes the rights and responsibilities of those living with HIV/AIDS, and guarantees the promotion of measures for the prevention of the disease and the protection and treatment of those living with it (Art 1).
- 2) In addition to the standard constitutional rights, those living with HIV/AIDS are vested, by this law, with a number of existing rights, and additional rights are re-stated. These include: access to medical assistance and medication; to be considered for jobs in the public and private sectors; access to employment and professional training; respect for privacy and confidentiality in respect of their condition, free treatment through the national health service (Art 2).
- 3) Those living with HIV/AIDS have the right not to declare their status except under certain legal circumstances (*though presumably to benefit from free medical treatment for example, they would need to declare their status*) (Art 6).
- 4) The law imposes a number of obligations on those living with HIV/AIDS, including: refraining from unprotected sex; not sharing needles and blades; adopting behaviour which prevents transmission; following medical advice; advising clinics and the person's sexual partners of their status (Art 13).
- 5) Anyone knowing of another person who is living with HIV/AIDS and is being stigmatised or discriminated against, is required to inform the authorities or a community/religious leader or other influential person (Art 14).
- 6) Non-governmental or social organisations may offer counselling, testing and treatment when duly authorised to do so by the Ministry of Health (Art 15).
- 7) Discrimination against those living with HIV/AIDS is prohibited (Art. 16). Discrimination by educational establishments is singled out for prohibition (Art 17).
- 8) The State guarantees the constitutional and legal rights of those living with HIV/AIDS as well as guaranteeing access to the necessary medical and medicinal support, and the provision of safe blood and blood derivatives (Art 18).
- 9) Those practicing traditional medicine are required to counsel and direct those living with HIV/AIDS who may approach them, to the medical service (Art 20).

- 10) In training and other activities traditional authorities, politicians, community leaders, religious leaders and other persons of influence (*which could potentially include company directors in the workplace*) must include information about the prevention and combat of HIV/AIDS (Art 21).
- 11) The State defines policies for the prevention and combatting of HIV/AIDS (Art 24).
- 12) HIV/AIDS tests may only be undertaken with informed consent (except in certain specific circumstances listed in the law). Minors of between 16 and 21 may choose to accept or reject the permission given by a parent or tutor in respect of testing, but such authorisation must be sought (*companies must be aware of this in respect of testing campaigns run in the workplace*) (Art 25).
- 13) The results of tests are confidential and may only be shared with the spouse (or parent/guardian) of the tested person (Art 27).
- 14) The Government is responsible for ensuring that the types of testing, laboratories and medicines available are duly registered with the Ministry of Health (*companies offering in-house medical assistance or workplace testing must be sure that tests and medicines are duly registered*) (Arts 28-30).
- 15) Health Service staff must act with diligence in the treatment of those living with HIV/AIDS and any behaviour contrary to what is appropriate may be denounced (Art 32).
- 16) Testing as a prerequisite for employment, for continuing in employment, for access to education or training is expressly forbidden (Art 37).
- 17) Any victim of a sex crime has the right to post-exposure treatment, and the police or legal authority may require testing of any author of such a crime (Art 40).
- 18) Workers or candidates for employment are protected from discrimination in accordance with the Labour Law and other relevant legislation (Art 41).
- 19) Workers living with HIV/AIDS have the right not to be discriminated against in respect of their workplace rights, including the rights to training, promotion and career progression. They are assured equal opportunities in function of their merit and capacity to undertake the function for which they are employed (*the law does not clarify issues arising from the labour law such as how workers no longer able to meet the requirements of their function are to be treated, or indeed how changing someone's function to ensure they can still be employed when they have reduced capacity does not actually indicate their status to other workers*). Workers have the right to take time off work to receive medical attention in accordance with the labour law (*though of course in order to do so presumably they would have to declare their status*). Violation of these prescriptions is punishable under the terms of the labour law and other relevant legislation (Art 42).
- 20) The dissemination and implementation of information and legislation about HIV/AIDS in the workplace, and implementation of programmes for the combat and prevention of HIV/AIDS,

in the workplace are compulsory (*companies must be particularly aware of this and have plans in place by the time the law comes into force in September – the law will also be regulated so guidance should be sought as to what is expected to be an appropriate level of intervention. One step in the direction of complying with this article would be to print and publicly display Law 12/2009 in the workplace*) (Art 43).

- 21) The State guarantees the right to legal assistance to those living with HIV/AIDS or their representatives and this may be provided by non-governmental organisations working in the HIV/AIDS sector (Art 44).
- 22) Discrimination against a person living with HIV/AIDS, of any type by anyone, is punishable by between one and six months in prison and a fine (Art 46).
- 23) Defamation, calumny, injury or illegal use of the image of a person with HIV/AIDS is punishable with prison of up to one year and a fine (Arts 47 & 48);
- 24) Anyone who has been told in confidence of the status of another, and who reveals this information to a third party may be jailed for between three months and one year and be required to pay a fine (*this is a particular issue within companies where for example HR might have been told, but not the employee's line manager*) (Art 49).
- 25) Anyone who reveals the results of an HIV/AIDS test by way of mishandling the information given to them (for example giving the result, a copy of the result etc) may be jailed for up to one year and fined (*any documents presented to the company by an employee must be treated with extreme care*) (Art 50).
- 26) This law comes into effect 180 days after publication (i.e. 7th September).