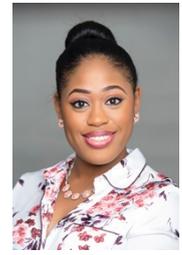




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The HIV and AIDS (Anti-Discrimination) Act 2014

HIV and AIDS in Nigeria

The Human Immunodeficiency Virus (HIV) or Acquired Immune Deficiency Syndrome (AIDS) remain two of the world's most significant public health challenges, particularly in developing countries. The World Health Organisation (WHO), a prominent institution in the battle against HIV/AIDS estimated that at the end of 2017, there were approximately 36.9 million people living with HIV, with 1.8 million people becoming newly infected in 2017 globally¹. The WHO's African Region is the most affected region, with 25.7 million people living with HIV in 2017 and Nigeria has the second highest burden of HIV infections in the world, with about 3.6 million people infected². The country has recorded significant success in educating the population. Raising public awareness about the disease and sensitising people of the importance of getting tested, the treatment of the disease and fundraising for HIV-positive people is the sole focus of many NGOs and charities based in Nigeria.

Due to the advances being made in anti-retroviral (ARV) drugs, the virus can now be controlled and people with HIV can enjoy healthy, long and productive lives. The road towards the eradication of the stigmatisation, degradation and discrimination that comes hand in hand with the notorious disease, however, remains fraught with obstacles.

In Nigeria, protection from discrimination is a constitutionally guaranteed right. Section 42 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) (the "Constitution") prohibits discrimination against any citizen of Nigeria whether on the grounds of the community to which he or she belongs, ethnicity, place of origin, sex, religion, or political opinion. Section 17 of the Constitution also provides that the State shall direct its policy towards ensuring that all citizens can secure adequate means of livelihood, as well as suitable employment, and that there should be equal pay for equal work without discrimination on the grounds of sex or any other ground, without discrimination on any group whatsoever.

The Nigerian courts, however, have held that the provisions of section 17 of the Constitution are mere statements of policy, and cannot be relied upon in a Nigerian court of law as a basis for challenging any discriminatory practice, unless the provisions are contained in a substantive law. As a result, notwithstanding the constitutional provisions, it was fairly common practice that the HIV/AIDS test was a required pre-employment medical tests that prospective applicants were obliged to undertake. Refusing

¹ World Health Organisation: Fact Sheet on HIV/AIDS - <http://www.who.int/en/news-room/fact-sheets/detail/hiv-aids>

² National Strategic Framework on HIV and AIDS: 2017-2021 published by the National Agency for the Control of AIDS in Nigeria

to take the test or turning up with a positive result, were reasons for a termination of employment or for refusing to employ a prospective employee.

In a bid to address this concern, the HIV and AIDS (Anti-Discrimination) Act 2014 (the “HIV/AIDS Act”) was enacted into law.

Employee Protections and Employer Obligations

The HIV/AIDS Act provides that people living with or affected by HIV/AIDS have a right to freedom from discrimination based on their real or perceived HIV status, with respect to access to and continued employment as well as conditions of employment and employment benefits (among other things). Employers are obliged to take steps to eliminate HIV-related discrimination in all settings as well as to promote equality of opportunity and treatment and non-discrimination based on real or perceived HIV status and HIV-related illness. The HIV/AIDS Act describes acts that amount to discrimination making the law clear and enabling easy adherence. Some of the ways by which the HIV/AIDS Act seeks to protect the rights and dignity of people living with and affected by HIV and AIDS include:

- creating a supportive environment, so that employees living with HIV and AIDS are able to continue working under normal conditions for as long as they are medically fit to do so;
- promoting appropriate and effective ways of managing HIV in the workplace, community, institutions and other fields of human endeavour; and
- creating a safe and enabling working and learning environment for all persons.

Additionally, the HIV/AIDS Act imposes several obligations on employers in conformity with the objectives of the Act; and prescribes penalties for failure to carry out such obligations. The duties of an employer under the Act include:

- to provide reasonable accommodation (defined as “any modification or adjustment to a job description, school or workplace or institution that is reasonably practicable and will enable a person living with HIV or AIDS to participate or advance in his or her chosen endeavour”) to support people living with or affected by HIV;
- to refrain from mandating an employee to disclose his/her HIV status directly or indirectly;
- to refrain from compulsory pre-employment HIV testing for its prospective employees.;
- to refrain from disclosing any employee’s HIV status unless the disclosure is required by law;
 - All persons living with HIV or affected by AIDS have the right to protection of data with respect to their health and medical records. Any person, including an employer, who fails to protect such data, is liable on conviction to a fine of not less than ₦500,000.00 (approximately US\$1,375.52) for an individual, and ₦1,000,000.00 (approximately US\$2,751) for an institution; or imprisonment for a term not exceeding 2 years, or to both fine and imprisonment.

- to provide a safe workplace, including ensuring that the risk of occupational exposure to HIV is minimised;
- to provide support and compensation to an employee who becomes infected with HIV in the workplace including costs of medical tests and supply of medicines and treatment for opportunistic infections;
 - Every employer is required to ensure that all occupationally acquired HIV infections are reported to the Minister of Labour and Employment from the date of discovery of such infections. The failure of an employer to comply with this provision attracts a fine of not less than ₦250,000.00 (approximately US\$687.76); or imprisonment for a term not exceeding 1 year, or to both fine and imprisonment.
- in consultation with its employees or their representatives, to adopt a workplace HIV/AIDS Policy that is consistent with the National HIV and AIDS Workplace Policy and to lodge the policy with the Federal Minister of Labour and Productivity within one month of its adoption. This duty applies to employers having 5 (five) or more employees.
 - The penalty for failure to adopt this policy is a fine of ₦250,000.00 (approximately US\$687.76) for the first year of default and ₦100,000.00 (approximately US\$275.10) for each subsequent year or part of a year that the offence continues. Failure to lodge a copy of the policy with the Minister attracts a penalty of ₦10,000.00 (approximately US\$27.51) for every day or part of a day that the offence continues.

The Persons Living with HIV/AIDS Law No.17 Laws of Lagos State, 2007

In addition to the foregoing, Lagos State of Nigeria promulgated the Persons Living with HIV/AIDS Law in 2007 which reinforces that employers in Lagos State are prohibited from carrying out compulsory and mandatory HIV tests on its employees. Any employer that contravenes the provisions of this law is guilty of an offence and liable on conviction to a fine not exceeding ₦50,000.00 (approximately US\$137.55) or to imprisonment for a term not exceeding 2 (two) years, or to both such fine and term of imprisonment. The HIV/AIDS Law also requires every corporate organisation to issue an HIV/AIDS policy for the benefit of any of its employees living with HIV or affected by AIDS. Failure to maintain such an HIV/AIDS policy as prescribed by the law is an offence, for which an employer shall be liable on conviction to a fine not exceeding ₦100,000.00 (approximately US\$275.10) or imprisonment for a term not exceeding 2 (two) years.

Conclusion

Although the HIV/AIDS Act has been in existence for about 4 years, not many employers are aware of its existence, and therefore, many have not complied with its provisions. The laws we have examined in this article are a step in the right direction towards the eradication of discrimination and stigmatization that HIV-affected persons face on a daily basis from their family, friends, employers and from the general populace. In order for these laws to be effective, there is a need to ensure that their provisions are properly enforced and the prescribed sanctions imposed on defaulting employers to boost the sensitization of employers in the public and private sectors and protect the rights of HIV-positive employees working within it.

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