

Many horror stories about firms struck low by AIDS circulate, but research in the Richards Bay area, which is known to have a particularly high rate of HIV/AIDS infections, seems to tell a different story. Managing directors, owners or HR personnel of 90 firms in Richards Bay, Empangeni and Isthebe were interviewed last year for a study commissioned by the AIDS Legal Network (ALN).

The firms were mainly in the manufacturing and services sectors. A third of these firms require new employees to undergo a pre-employment medical examination, and half of these (ie 15 out of 90 firms) try to establish the HIV/AIDS status of new employees. The pattern with respect to the medical conditions of existing employees is much the same.

What employers said

When asked about the medical conditions that concerned them, only 14% said they were concerned about HIV. The reason given was that it affects the productivity of a person at a later stage of the illness. A further 14% said they were mostly concerned about TB, some saying that most of their TB cases have been HIV-related. Nearly 20% of the respondents said there is no medical condition that they are particularly concerned with and one third said they were concerned with the general physical (or mental) fitness of their employees.

Charles Crothers and colleagues find out what company owners and managers think and do about AIDS.

On the medical problems employees normally suffer from, a third said the common illness in their workplace is flu and another third that they were not aware of any particular illnesses that affect their employees. Ten percent said TB is a problem some of their employees have and 5% that their employees have multiple illnesses that affect their physical fitness.

Some revealing comments

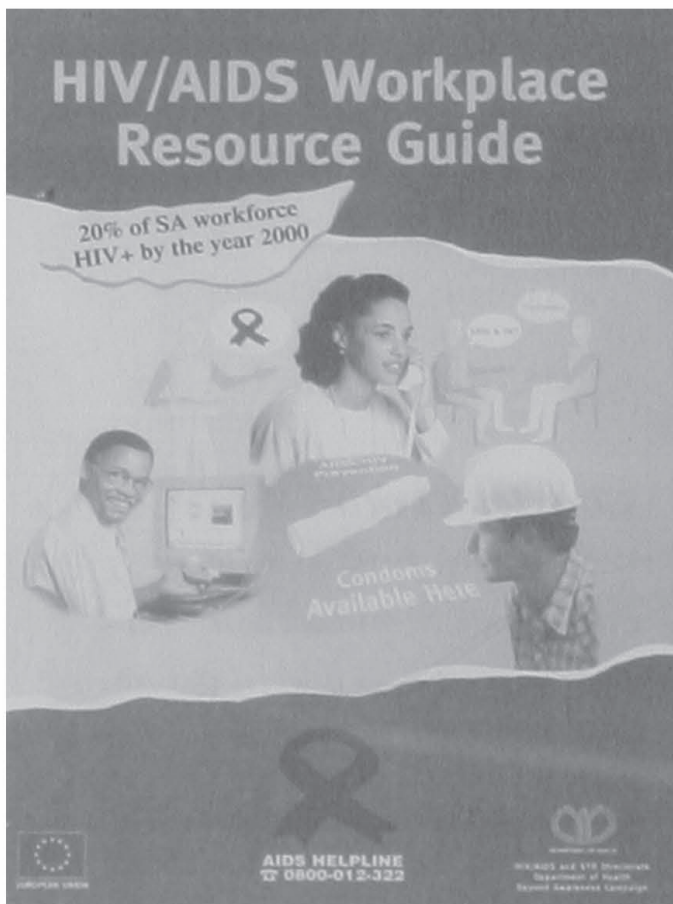
'Only the usual flu'

'We are losing a significant number of staff to TB which could be AIDS-related'

'Most of the black staff do not go to the company doctor, they go to traditional healers, so the company does not have records of their medical conditions'

'We have not established HIV testing because it is a very touchy subject.'

'We don't test workers for HIV as they aren't covered by a medical aid.'



Resource guide developed by the Department of Health.

'We move those sick with HIV to light duty function'

'If someone shows signs of being ill he is advised to go to a clinic or doctor at his cost but as long as he is fit to work we continue to keep someone on'

What is the legal position?

The Employment Equity Act, 55 of 1998, introduced to create workplace equity and to ensure equal representation of all designated employees (black people, women and people with disabilities) in the workplace, is the first positive piece of legislation in South Africa that deals with HIV/AIDS.

The Act has included HIV alongside other grounds listed in the Constitution and the Labour Relations Act under which unfair discrimination is prohibited (Chapter 2, section 6). If an employee alleges unfair discrimination based on their HIV status, the

onus is on the employer to show that discrimination is fair.

Also, in Section 7(2) the Act provides that testing of an employee to determine their HIV status is prohibited unless such testing is determined to be justifiable by the Labour Court. Thus, any employer who wishes to conduct pre-employment HIV testing must obtain permission from the Labour Court. The court will decide when it is justifiable to test employees.

The Employment Equity Act will come into effect at different times. It is expected that the provisions that provide protection against HIV testing and discrimination will come into effect by February 1999.

Like the Labour Relations Act, the Employment Equity Act excludes the South African National Defence Force (SANDF), National Intelligence Agency and the Secret Service. The SANDF has continued testing of all recruits whereas other state organs stopped HIV testing during March 1997.

Do companies care?

About half the interviewees were aware that the then Employment Equity Bill had clauses that are relevant to the way in which they might handle HIV/AIDS amongst their employees. Most were quite ignorant (and unconcerned) about the provisions in the new Act. But some viewed the provisions in the new legislation with guarded alarm. Nonetheless, three quarters of the firms said they would like to see national legislation on this issue. Only a quarter of the firms have explicit policies on medical conditions. The interviewees were markedly unsuccessful in obtaining copies of these explicit policies. Almost half the firms claimed they had an implicit policy on handling HIV/AIDS.

The reasons given for supporting national legislation were that companies

would exploit employees if they set their own regulations on medical conditions. Most companies suggested that the government should set guidelines based on which companies could make regulations.

There were those who felt that the company owners should be allowed to make all the regulations relating to the functioning of the company. There was also the argument that conditions vary and that since they are on the ground, companies know what is going on.

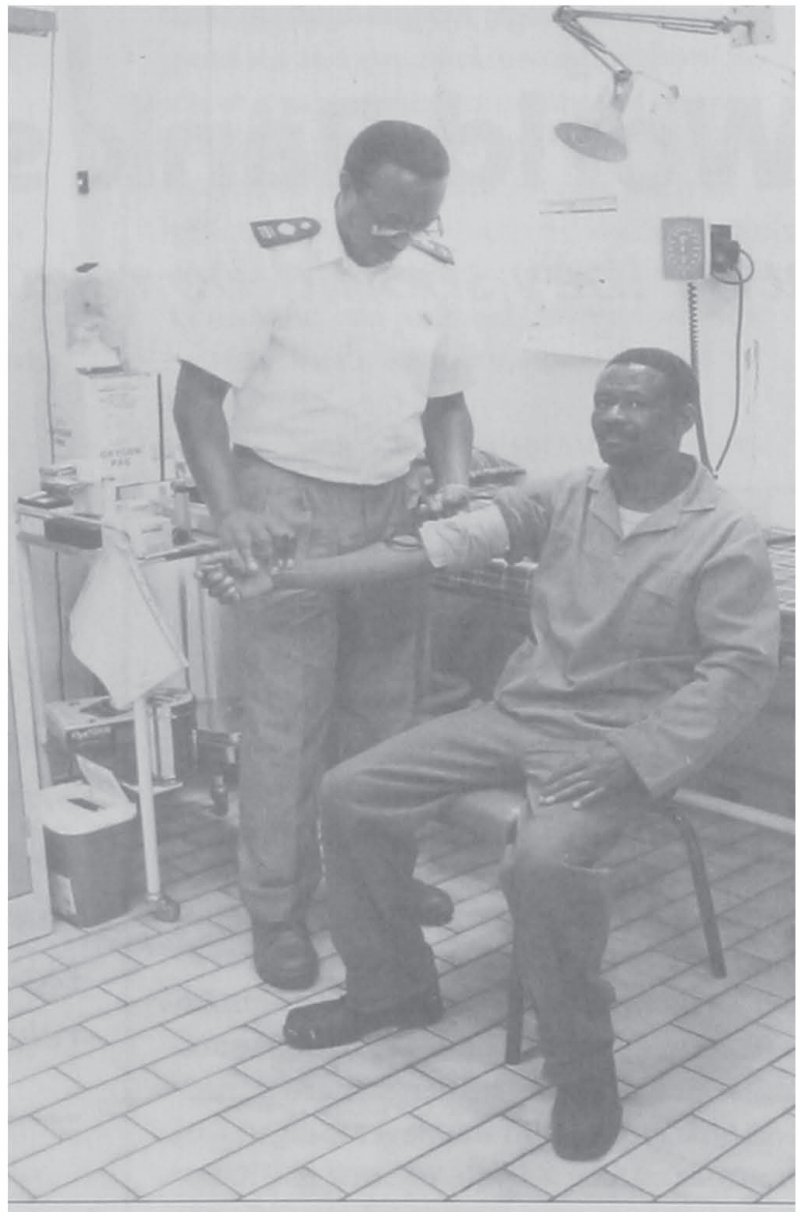
Not surprisingly many saw the issue as having little relevance to unions, mainly because of a generally negative attitude towards unions amongst smaller employers who saw them as at best tolerated and preferably seen but not heard.

Others recognised the role of trade unions and their effectiveness. 'If shopstewards are involved they will ensure they abide by what is laid down. In agreement with shopstewards we are trying to come up with a policy on HIV/AIDS.'

'A workers' fund should be established. Trade unions should be providing information about safe sex.'

Current legislation not enough

The main conclusion of the study was that the current legislation is not enough. Companies need some broader guidance from central government about how they should handle the HIV/AIDS issue amongst their employees. However, employers, at least, want considerable latitude in dealing with the issue. ★



Workplace clinic at Mondi Paper factory in Springs

Free HIV/AIDS materials

The Beyond Awareness Campaign of the Department of Health provides free materials such as leaflets, posters and guidelines for HIV/AIDS activities in the workplace.

These are available on request from their AIDS Action Office in Johannesburg
Tel (011) 482-6737 Fax (011) 482-2099
e-mail wba@icon.co.za

Information and counselling is also available via a tollfree AIDS Helpline – 0800-012-322.

