

Domestic worker challenges dismissal because of HIV/AIDS status



The employment of domestic workers is becoming increasingly precarious with the spread of HIV/AIDS. A domestic worker recently received compensation for being unfairly dismissed because of her HIV status. The **AIDS Law Project** reports on the case.

A domestic worker was employed during March 2001 to do cleaning and child minding. During February 2002 the employee was told that the employer wished to assist her and the other domestic employees in their employ to get medical aid cover. The domestic worker was further told that she would have to undergo medical tests and was taken to a clinic in Sandton where a blood sample was taken. In pleadings before the Labour Court, the employee alleges she was not informed of the nature of the blood test, was not examined by a doctor and was not given any counselling by any medical professional prior to or after the test. The blood sample indicated that the worker was HIV positive and the results were sent directly to the employer who informed the employee of her HIV status.

She was subsequently dismissed. Following her dismissal the domestic worker launched proceedings seeking compensation for unfair dismissal in terms of the Labour

WHAT'S HAPPENED TO THE NATIONAL HIV/AIDS PREVENTION PLAN?

In December 2002 Cosatu made a big fuss about the draft national agreement on HIV/AIDS Prevention and Treatment to the extent that the federation held a sit-in at Nedlac offices. Two years down the line things seem to have gone quiet. The Labour Bulletin attempts to find out what has happened to the draft agreement.

In October 2002 an HIV/AIDS task team - comprising senior government, business, labour and community (including the Treatment Action Campaign) representatives were set up in Nedlac with the aim of drafting a framework agreement on treatment and prevention. The framework agreement builds on Cabinets' decision on HIV/AIDS of April 2002 and endorses a universal roll-out to prevent mother-to-child HIV transmission. Delays in signing the agreement led to a sit-in by Cosatu leaders in 2002. For the last year or so there has been no talk of the status of the agreement. Mark Heywood of the TAC (who represented the community) says he has heard nothing about the agreement since the last task team meeting in June 2003. This is despite the fact that Nedlac's executive council subsequently took a decision that it would be a priority to finalise the agreement.

Heywood indicated that he wrote to Nedlac's executive director Herbert Mkhize some months ago but he got the

impression that the TAC had been sidelined as no formal communication has been received from Nedlac.

Heywood says 'the failure to move ahead and finalise the agreement is a real omission. The alleged barrier to finalising the agreement was solely the issue of antiretroviral treatment. But by the middle of 2003 it appeared that this barrier had fallen away which could pave the way for the finalisation of the agreement'.

Business representative Vic van Vuuren says the Nedlac agreement is currently dead. Business, he says, in fact raised the issue whilst there was silence from labour and government. He says delays occurred originally as government representatives would come to meetings claiming they had no mandate. This continued every time a meeting took place. As far as he was aware the draft agreement had not been retabled in Nedlac.

Heywood believes that the draft framework remains a really important agreement were it to be agreed upon. 'It is specific in terms of committing the parties to concrete actions around HIV/AIDS prevention and treatment. It constitutes a serious programme for workplace related educational interventions. This framework would compel business to do more than it has done and to get business to put more pressure on labour'.

Relations Act; damages for unfair discrimination on the basis of her HIV status in terms of the Employment Equity Act and finally, damages for impairment of her constitutional rights of privacy and dignity. The employer alleged that the employee was not dismissed because of her HIV status but rather retrenched as a result of the fact that

he employed three other domestic employees.

In terms of an out of court settlement, the employer agreed to pay the domestic worker R15 000 in addition to an amount equivalent to three months' salary (R1 200 per month) originally paid to the employee on dismissal.