that discrimination in employment against persons with diseases and afflictions that cannot be transmitted by casual contact exists in the City and County of San Francisco. This discrimination cuts across all racial, ethnic, and economic lines. Such discrimination poses a substantial threat to the health, safety, and welfare of the community. Existing state and federal restraints on such arbitrary discrimination are inadequate to meet the particular problems of this city and county.

SEC. 3852. EMPLOYMENT.

(a) Prohibited Activity. It shall be unlawful for any person to do any of the following acts as a result of the fact, in whole or in part, that a person has any disease or affliction that cannot be transmitted by casual contact:

(1) By an employer: To fail or refuse to hire, or to discharge any individual; to discriminate against any individual with respect to compensation, terms, conditions or privileges of employment, including promotion; or to limit, segregate or classify employees in any way which would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect his/her status as an employee;

(2) By an employment agency: To fail or refuse to refer for employment any individual; or otherwise to discriminate against any individual;

(3) By a labor organization: To exclude or expel from its membership or to otherwise discriminate against any individual; or to limit, segregate or classify its membership; or to classify or fail or refuse to refer for employment any individual in any way which would deprive or tend to deprive such
individual of employment opportunities, or would limit such employment opportunities, or otherwise adversely affect his/her status as an employee or as an applicant for employment;

(4) By an employer, employment agency or labor organization:

(i) to discriminate against any individual in admission to, or employment in, any program established to provide apprenticeship or other training or retraining, including any on-the-job training program;

(ii) to print, publish, advertise or disseminate in any way, or cause to be printed, published, advertised or disseminated in any way, any notice or advertisement with respect to employment, membership in, or any classification or referral for employment or training by any such organization, which indicates an unlawful discriminatory act or preference.

(b) Bona Fide Occupational Qualification Not Prohibited;

Burden of Proof.

(1) Nothing contained in this section shall be deemed to prohibit selection or rejection based upon a bona fide occupational qualification.

(2) In any action brought under Section 3856 of this Article (Enforcement), if a party asserts that an otherwise unlawful discriminatory practice is justified as a bona fide occupational qualification, that party shall have the burden of proving:

(i) that the discrimination is in fact a necessary result of a bona fide occupational qualification; and,

(ii) that there exists no less discriminatory means of satisfying the occupational qualification.

(3) The capacity of an individual to perform his or her duties without endangering his or her health or safety, or the health or safety of others is a bona fide occupational qualification.

(c) Exceptions. Nothing in this section shall be construed to prohibit any act specifically authorized by the laws of the State of California or any actions taken by or under the direction of the San Francisco Department of Public Health in order to protect the Public Health.

(d) Definition. For the purposes of this ordinance, "person" shall mean any individual, person, firm, corporation or other organization or group of persons however organized.

SEC. 3853. ASSOCIATION AND RETALIATION.

(a) It shall be unlawful for any person to do any of the acts described in Section 3852 as a result of the fact that a person associates with any one who has a disease or affliction that cannot be transmitted by casual contact or any associated condition covered by this ordinance.

(b) It shall be unlawful for any person to do any of the acts described in Section 3852 or to retaliate against a person because a person:

(i) has opposed any act or practice made unlawful by this ordinance;

(ii) has supported this ordinance and its enforcement;

(iii) has filed a complaint under this ordinance with the San Francisco Human Rights Commission or any court;

(iv) has testified, assisted or participated in any way in any investigation, proceeding or litigation under
SEC. 3854. TESTING.

(a) No person shall require another to take any test or undergo any medical procedure designed to show or help show that a person has a disease or affliction that cannot be transmitted by casual contact or any associated condition covered by this ordinance.

(o) Subsection (a) does not apply to an employer who can show that the absence of a disease or affliction that cannot be transmitted by casual contact is a bona fide occupational qualification.

(c) Nothing in this section shall be construed to prohibit any act specifically authorized by the laws of the State of California or any actions taken by or under the direction of the San Francisco Department of Public Health in order to protect the public health.

SEC. 3855. LIABILITY.

Any person who violates any of the provisions of this ordinance or who aids in the violation of any of the provisions of this ordinance is liable for each and every such offense for the actual damages, and such amount as may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damages but in no case less than one thousand dollars ($1000), and such costs and attorneys' fees as may be determined by the court. In addition, punitive damages may be awarded in a proper case.

SEC. 3856. ENFORCEMENT.

(a) Human Rights Commission. Any person who believes that he or she has been discriminated against in violation of the provisions of this ordinance may file with the Human Rights Commission a request to have the Commission investigate and mediate his or her complaint under the provisions of the Administrative Code of the City and County of San Francisco.

(b) Civil Action. Any aggrieved person may enforce the provisions of this ordinance in a civil action.

(c) Equitable Relief.

(1) Any person who commits, or proposes to commit, an act in violation of this ordinance may be enjoined therefrom by any court of competent jurisdiction.

(2) An action for equitable relief under this subsection may be brought by any aggrieved person, by the District Attorney, by the City Attorney, or by any other person.

(d) Bar. A complaint to the Human Rights Commission is not a prerequisite to the filing of a civil action under this section. The pendency of a complaint before the Human Rights Commission shall not bar any civil action under this section, but a final judgment in any civil action shall bar any further proceedings by the Human Rights Commission.

SEC. 3857. LIMITATION ON ACTIONS.

Judicial actions or requests to the Human Rights Commission under this ordinance must be filed within two years of the alleged discriminatory act.

SEC. 3858. SEVERABILITY.

If any part or provision of this ordinance, or the
application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable.

SEC. 3859. NON-WAIVERABILITY.

Any written or oral agreement which purports to waive any provision of this ordinance is against public policy and void.

SEC. 3860. APPLICATION TO THE CITY AND COUNTY OF SAN FRANCISCO.

All the provisions of this ordinance shall apply to the City and County of San Francisco.

APPROVED AS TO FORM:

GEORGE AGHOST, City Attorney

Deputy City Attorney

7375E

Board of Supervisors, San Francisco

Passed for Second Reading
May 19, 1986

Ayes: Supervisors Britt Hongisto
Kennedy Kopp Maher Molinari Renne
Nelder Silver Walker Ward

Finally Passed
May 27, 1986

Ayes: Supervisors Britt Hongisto
Kennedy Maher Molinari Nelder
Renne Silver Walker Ward

Absent: Supervisors Kopp

I hereby certify that the foregoing ordinance was finally passed by the Board of Supervisors of the City and County of San Francisco

FILE NO. 97-85-48

Date Approved

JUN 6 1986

Mayor
finds and declares that the medical condition described as acquired immune deficiency syndrome, and commonly known as AIDS, is a deadly disease which has the potential to affect every segment of the City's population. AIDS was first recognized in 1981. It is now seen as the top priority of the United States Public Health Service.

AIDS is the most severe manifestation of a spectrum of clinical disease caused by a virus, variously known as human T-lymphotropic virus type III, lymphadenopathy-associated virus, or AIDS-associated retrovirus, which attacks and cripples the body's immune system by killing T-helper lymphocytes, thereby leaving the body vulnerable to opportunistic infections and malignancies. A person afflicted with AIDS can suffer a variety of viral, bacterial, fungal, and protozoal infections and malignancies which eventually lead to death, usually within one year after diagnosis.

The spread of the virus has occurred only through the exchange of body fluids, that is blood, blood products, or semen, between individuals. No evidence exists to indicate that the virus can be spread by casual person-to-person contact. Medical studies of families in which one or more members have been infected with HTLV-III/LAV/AVR show no spread of the virus other than through sexual intercourse or from mother to fetus in utero. Medical studies of hospital personnel caring for AIDS patients show no spread of the virus other than through needle sticks. The public health danger presented by the virus and its subsequent manifestations of AIDS-related complex and AIDS is caused by a lengthy asymptomatic period of infection during which an apparently healthy individual may unknowingly spread the disease to other persons through the exchange of blood.
products, or semen. AIDS is concentrated primarily in urban areas, with the City and County of San Francisco having the largest incidence of the disease in the country. In the opinion of the scientific, medical, and public health communities, AIDS will continue to increase at a high rate within our City for the foreseeable future.

AIDS and AIDS-related complex by their nature have created a seriously disabiling minority of our citizens who are afflicted with a seriously disabiling condition whose ultimate outcome is fatal. Individuals infected with the virus represent a significant segment of our population particularly victimized due to the nature of their infection and to the present climate of misinformation, ignorance, and fear in the general population. Discrimination against victims of AIDS and AIDS-related conditions exists in the City and County of San Francisco. Persons with AIDS or AIDS-related conditions are faced with discrimination in employment, housing, business establishments, city facilities, city services, and other public accommodations. This discrimination cuts across all racial, ethnic, and economic lines. Such discrimination poses a substantial threat to the health, safety, and welfare of the community. Existing state and federal restraints on such arbitrary discrimination are inadequate to meet the particular problems of this city and county.

SEC. 3803. EMPLOYMENT.

(a) Prohibited Activity. It shall be unlawful for any person to do any of the following acts as a result of the fact, in whole or in part, that a person has AIDS or any of the associated conditions covered by this Article:

(1) By an employer: To fail or refuse to hire, or to discharge any individual; to discriminate against any individual with respect to compensation, terms, conditions or privileges of employment, including promotion; or to limit, segregate or classify employees in any way which would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect his/her status as an employee;

(2) By an employment agency: To fail or refuse to refer for employment any individual; or otherwise to discriminate against any individual;

(3) By a labor organization: To exclude or expel from its membership or to otherwise discriminate against any individual; or to limit, segregate or classify its membership; or to classify or fail or refuse to refer for employment any individual in any way which would deprive or tend to deprive such individual of employment opportunities, or would limit such employment opportunities, or otherwise adversely affect his/her status as an employee or as an applicant for employment;

(4) By an employer, employment agency or labor organization:

(i) to discriminate against any individual in admission to, or employment in, any program established to provide apprenticeship or other training or retraining, including any on-the-job training program;

(ii) to print, publish, advertise or disseminate in any way, or cause to be printed, published, advertised or disseminated in any way, any notice or advertisement with respect to employment, membership in, or any classification or referral for employment or training by any such organization, which indicates
an unlawful discriminatory act or preference.

(o) Bona Fide Occupational Qualification Not Prohibited;

Burden of Proof.

(1) Nothing contained in this section shall be deemed to prohibit selection or rejection based upon a bona fide occupational qualification.

(2) In any action brought under Section 3811 of this Article (Enforcement), if a party asserts that an otherwise unlawful discriminatory practice is justified as a bona fide occupational qualification, that party shall have the burden of proving:

(i) that the discrimination is in fact a necessary result of a bona fide occupational qualification; and

(ii) that there exists no less discriminatory means of satisfying the occupational qualification.

(3) The capacity of an individual to perform his or her duties without endangering his or her health or safety, or the health or safety of others is a bona fide occupational qualification.

(c) Exceptions. Nothing in this section shall be construed to prohibit any act specifically authorized by the laws of the State of California or any actions taken by or under the direction of the San Francisco Department of Public Health in order to protect the public health.

SEC. 3804. HOUSING.

(a) Prohibited Activity. It shall be unlawful for any person to do any of the following acts as a result of the fact, in whole or in part, that a person has AIDS or any of the associated conditions covered by this Article:

(1) To interrupt, terminate, or fail or refuse to initiate

SUPERVISOR BRITT

or conduct any transaction in real property, including but not limited to the rental thereof; to require different terms for such transaction; or falsely to represent that an interest in real property is not available for transaction;

(2) To include in the terms or conditions of a transaction in real property any clause, condition or restriction;

(3) To refuse to lend money, guarantee the loan of money, accept a deed of trust or mortgage, or otherwise refuse to make available funds for the purchase, acquisition, construction, alteration, rehabilitation, repair or maintenance of real property; or impose different conditions on such financing; or refuse to provide title or other insurance relating to the ownership or use of any interest in real property;

(4) To refuse or restrict facilities, services, repairs or improvements for any tenant or lessee;

(5) To make, print, publish, advertise or disseminate in any way, or cause to be made, printed or published, advertised or disseminated in any way, any notice, statement or advertisement with respect to a transaction or proposed transaction in real property, or with respect to financing related to any such transaction, which unlawfully indicates preference, limitation or discrimination based on AIDS.

(b) Exceptions.

(1) Nothing in this Article shall be deemed to permit any rental or occupancy of any dwelling unit or commercial space otherwise prohibited by law.

(2) Nothing in this section shall be construed to prohibit any act specifically authorized by the laws of the State of California or any actions taken by or under the direction of the San Francisco Department of Public Health in order to

SUPERVISOR BRITT
SECTION 3805. BUSINESS ESTABLISHMENTS AND PUBLIC ACCOMMODATIONS.

(a) Prohibited Activity. It shall be an unlawful practice for any person to deny any individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any business establishment or public accommodation as a result of the fact, in whole or in part, that a person has AIDS or any of the associated conditions covered by this Article.

(b) Exceptions. Nothing in this section shall be construed to prohibit any act specifically authorized by the laws of the State of California or any actions taken by or under the direction of the San Francisco Department of Public Health in order to protect the public health.

SECTION 3807. CITY FACILITIES AND SERVICES.

(a) Prohibited Activity. It shall be an unlawful practice for any person to deny any person the full and equal enjoyment, or to impose different terms and conditions on the availability, of any of the following:

1. Use of any City facility or City service as a result of the fact, in whole or in part, that a person has AIDS or any of the associated conditions covered by this Article.

(b) Exceptions. Nothing in this section shall be construed to prohibit any act which is specifically authorized by the laws of the State of California or any actions taken by or under the direction of the San Francisco Department of Public Health in order to protect the public health.

SECTION 3808. EDUCATIONAL INSTITUTIONS.

(a) Prohibited Activity. It shall be an unlawful educational practice for any person to do any of the following:

1. To deny admission, or to impose different terms or conditions on admission, as a result of the fact, in whole or in part, that a person has AIDS or any of the associated conditions covered by this Article.

(b) Exceptions. Nothing in this section shall be construed to prohibit any act which is specifically authorized by the laws of the State of California or any actions taken by or under the direction of the San Francisco Department of Public Health in order to protect the public health.

ASSOCIATION AND RETALIATION.
(a) Association. It shall be unlawful for any person to do any of the acts described in Sections 3803(a), 3804(a), 3805(a), 3805(b), 3806(a) or 3807(a) as a result of the fact that a person associates with anyone who has AIDS or any of the associated conditions covered by this Article.

(b) Retaliation. It shall be unlawful for any person to do any of the acts described in Sections 3803(a), 3804(a), 3805(a), 3805(b), 3806(a) or 3807(a) or to retaliate against a person because a person:

(i) has opposed any act or practice made unlawful by this Article;

(ii) has supported this Article and its enforcement;

(iii) has filed a complaint under this Article with the San Francisco Human Rights Commission or any court;

(iv) has testified, assisted or participated in any way in any investigation, proceeding, or litigation under this Article.

SEC. 3809. TESTING.

(a) No person shall require another to take any test or undergo any medical procedure designed to show or help show that a person has AIDS or any of the associated conditions covered by this Article.

(b) Subsection (a) does not apply to an employer who can show that the absence of AIDS is a bona fide occupational qualification.

(c) Nothing in this section shall be construed to prohibit any act specifically authorized by the laws of the State of California or any actions taken by or under the direction of the San Francisco Department of Public Health in order to protect the public health.

SEC. 3810. LIABILITY.

Any person who violates any of the provisions of this Article or who aids in the violation of any provisions of this Article is liable for each and every such offense for the actual damages, and such amount as may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damage but in no case less than one thousand dollars ($1000), and such costs and attorney's fees as may be determined by the court. In addition, punitive damages may be awarded in a proper case.

SEC. 3811. ENFORCEMENT.

(a) Human Rights Commission. Any person who believes that he or she has been discriminated against in violation of the provisions of this Article may file with the Human Rights Commission a request to have the Commission investigate and mediate his or her complaint under the provisions of the Administrative Code of the City and County of San Francisco.

(b) Civil Action. Any aggrieved person may enforce the provisions of this Article in a civil action.

(c) Equitable Relief.

(1) Any person who commits, or proposes to commit, an act in violation of this Article may be enjoined therefrom by any court of competent jurisdiction.

(2) An action for equitable relief under this subsection may be brought by any aggrieved person, by the District Attorney, by the City Attorney, or by any other person.

(d) Bar. A complaint to the Human Rights Commission is not a prerequisite to the filing of a civil action under this section. The pendency of a complaint before the Human Rights Commission shall not bar any civil action under this Article.
section, but a final judgment in any civil action shall not be
further proceedings by the Human Rights Commission.

SEC. 3812. LIMITATION ON ACTIONS. Judicial actions or requests
to the Human Rights Commission under this Article must be filed
within two years of the alleged discriminatory acts.

SEC. 3813. DEFINITIONS. As used in this Article, the following
words or phrases shall have the meanings indicated:

(a) The word "AIDS" shall mean the condition which occurs
when an individual is infected with the virus known as
lymphadenopathy-associated virus or human T-lymphotropic virus
type III or AIDS-associated retrovirus including, but not limited
to, acquired immunodeficiency syndrome (AIDS), AIDS-related
complex, progressive generalized lymphadenopathy, lymphadenopathy
syndrome, and asymptomatic infection. It also includes anyone
who has any medical condition as a result of having any of the
above. It also includes any perception, whether real or
imaginary, that a person is suffering from AIDS, any of the
conditions described above, or the perception, real or imaginary,
that a person is at risk for any of the conditions described
above.

(b) The phrase "business establishment" shall mean any
entity, however organized, which furnishes goods or services to
the general public. An otherwise qualifying establishment which
has membership requirements is considered to furnish services to
the general public if its membership requirements consist only of
payment of fees or consist of requirements under which a
substantial portion of the residents of this City could qualify.

(c) The word "person" as used in this Article shall mean
any individual, person, firm, corporation, or other organization
or group of persons however organized.

SUPERVISOR BRITT
Board of Supervisors, San Francisco

Passed for Second Reading
November 5, 1985

Ayes: Supervisors Britt Hongisto
    Kennedy Kopp Maher Molinari Renne
    Silver Ward

Absent: Supervisors Nelder Walker

Finally Passed
November 12, 1985

Ayes: Supervisors Britt Hongisto
    Kennedy Kopp Maher Molinari
    Nelder Renne Silver Walker

Absent: Supervisor Ward

I hereby certify that the foregoing ordinance was finally passed by the Board of Supervisors of the City and County of San Francisco

[Signature]

File No. 97.85-36
Date Approved

[Signature]
AMENDMENT OF THE WHOLE
Introduced 10-24-85

FILE NO. ____________________________

ORDINANCE NO. ________________________

(AIDS Discrimination)

AMENDING PART II, CHAPTER VIII, (POLICE CODE) OF THE SAN FRANCISCO MUNICIPAL CODE BY ADDING ARTICLE 38 THERETO TO PROHIBIT DISCRIMINATION AGAINST PERSONS SUFFERING FROM THE MEDICAL CONDITION AIDS OR ANY MEDICAL SIGNS OR SYMPTOMS RELATED THERETO.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Part II, Chapter VIII, (Police Code) of the San Francisco Municipal Code is hereby amended by adding Article 38 thereto, to read as follows:

NOTE: Additions are not underlined; all sections are entirely new.

ARTICLE 38

PROHIBITING DISCRIMINATION ON THE BASIS OF AIDS AND ASSOCIATED CONDITIONS

SEC. 3801 Policy
SEC. 3802 Findings
SEC. 3803 Employment
SEC. 3804 Housing
SEC. 3805 Business Establishments and Public Accommodations
SEC. 3806 Educational Institutions
SEC. 3807 City Facilities and Services
SEC. 3808 Association and Retaliation
SEC. 3809 Testing
SEC. 3810 Liability
SEC. 3811 Enforcement
SEC. 3812 Limitation on Actions
SEC. 3813 Definitions
SEC. 3814 Severability
SEC. 3815 Non-Waiverability
SEC. 3816 Application to the City and County of San Francisco

SEC. 3801. POLICY. It is the policy of the City and County of San Francisco to eliminate discrimination based on the fact that a person has AIDS or any medical signs or symptoms related thereto.

SEC. 3802. FINDINGS. After public hearings and consideration of testimony and documentary evidence, the Board of Supervisors

SUPERVISOR BRITT
finds and declares that the medical condition described as acquired immune deficiency syndrome, and commonly known as AIDS, is a deadly disease which has the potential to affect every segment of the City's population. AIDS was first recognized in 1981. It is now seen as the top priority of the United States Public Health Service.

AIDS is the most severe manifestation of a spectrum of clinical disease caused by a virus, variously known as human T-lymphotropic virus type III, lymphadenopathy-associated virus, or AIDS-associated retrovirus, which attacks and cripples the body's immune system by killing T-helper lymphocytes, thereby leaving the body vulnerable to opportunistic infections and malignancies. A person afflicted with AIDS can suffer a variety of viral, bacterial, fungal, and protozoal infections and malignancies which eventually lead to death, usually within one year after diagnosis.

The spread of the virus has occurred only through the exchange of body fluids, that is blood, blood products, or semen, between individuals. No evidence exists to indicate that the virus can be spread by casual person-to-person contact. Medical studies of families in which one or more members have been infected with HTLV-III/LAV/ARV show no spread of the virus other than through sexual intercourse or from mother to fetus in utero. Medical studies of hospital personnel caring for AIDS patients show no spread of the virus other than through needle sticks. The public health danger presented by the virus and its subsequent manifestations of AIDS-related complex and AIDS is caused by a lengthy asymptomatic period of infection during which an apparently healthy individual may unknowingly spread the disease to other persons through the exchange of blood, blood
products, or semen. AIDS is concentrated primarily in urban areas, with the City and County of San Francisco having the largest incidence of the disease in the country. In the opinion of the scientific, medical, and public health communities, AIDS will continue to increase at a high rate within our City for the foreseeable future.

AIDS and AIDS-related complex by their nature have created a discrete and insular minority of our citizens who are afflicted with a seriously disabling condition whose ultimate outcome is fatal. Individuals infected with the virus represent a significant segment of our population particularly victimized due to the nature of their infection and to the present climate of misinformation, ignorance, and fear in the general population. Discrimination against victims of AIDS and AIDS-related conditions exists in the City and County of San Francisco.

Persons with AIDS or AIDS-related conditions are faced with discrimination in employment, housing, business establishments, city facilities, city services, and other public accommodations. This discrimination cuts across all racial, ethnic, and economic lines. Such discrimination poses a substantial threat to the health, safety, and welfare of the community. Existing state and federal restraints on such arbitrary discrimination are inadequate to meet the particular problems of this city and county.

SEC. 3803. EMPLOYMENT.

(a) Prohibited Activity. It shall be unlawful for any person to do any of the following acts as a result of the fact, in whole or in part, that another person has AIDS or any of the associated conditions covered by this Article:

SUPERVISOR BRITT
(1) By an employer: To fail or refuse to hire, or to discharge any individual, to discriminate against any individual with respect to compensation, terms, conditions or privileges of employment, including promotion; or to limit, segregate or classify employees in any way which would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect his/her status as an employee;

(2) By an employment agency: To fail or refuse to refer for employment any individual; or otherwise to discriminate against any individual;

(3) By a labor organization: To exclude or expel from its membership or to otherwise discriminate against any individual; or to limit, segregate or classify its membership; or to classify or fail or refuse to refer for employment any individual in any way which would deprive or tend to deprive such individual of employment opportunities, or would limit such employment opportunities, or otherwise adversely affect his/her status as an employee or as an applicant for employment;

(4) By an employer, employment agency or labor organization;

(i) to discriminate against any individual in admission to, or employment in, any program established to provide apprenticeship or other training or retraining, including any on-the-job training program;

(ii) to print, publish, advertise or disseminate in any way, or cause to be printed, published, advertised or disseminated in any way, any notice or advertisement with respect to employment, membership in, or any classification or referral for employment...
or training by any such organization, which indicates an unlawful discriminatory act or preference.

(b) Bona Fide Occupational Qualification Not Prohibited; Burden of Proof.

(1) Nothing contained in this section shall be deemed to prohibit selection or rejection based upon a bona fide occupational qualification.

(2) In any action brought under Section 3311 of this Article (Enforcement), if a party asserts that an otherwise unlawful discriminatory practice is justified as a bona fide occupational qualification, that party shall have the burden of proving:

(i) that the discrimination is in fact a necessary result of a bona fide occupational qualification; and
(ii) that there exists no less discriminatory means of satisfying the occupational qualification.

(3) The capacity of an individual to perform his or her duties without endangering his or her health or safety, or the health or safety of others is a bona fide occupational qualification.

(c) Exceptions. Nothing in this section shall be construed to prohibit any act specifically authorized by the laws of the State of California or any actions taken by or under the direction of the San Francisco Department of Public Health in order to protect the public health.

SEC. 3804. HOUSING.

(a) Prohibited Activity. It shall be unlawful for any person to do any of the following acts as a result of the fact, in whole or in part, that a person has AIDS or any of the associated conditions covered by this Article:
(1) To interrupt, terminate, or fail or refuse to initiate or conduct any transaction in real property, including but not limited to the rental thereof; to require different terms for such transaction; or falsely to represent that an interest in real property is not available for transaction;

(2) To include in the terms or conditions of a transaction in real property any clause, condition or restriction;

(3) To refuse to lend money, guarantee the loan of money, accept a deed of trust or mortgage, or otherwise refuse to make available funds for the purchase, acquisition, construction, alteration, rehabilitation, repair or maintenance of real property; or impose different conditions on such financing; or refuse to provide title or other insurance relating to the ownership or use of any interest in real property;

(4) To refuse or restrict facilities, services, repairs or improvements for any tenant or lessee;

(5) To make, print, publish, advertise or disseminate in any way, or cause to be made, printed or published, advertised or disseminated in any way, any notice, statement or advertisement with respect to a transaction or proposed transaction in real property, or with respect to financing related to any such transaction, which unlawfully indicates preference, limitation or discrimination based on AIDS.

(b) Exceptions.

(1) Nothing in this Article shall be deemed to permit any rental or occupancy of any dwelling unit or commercial space otherwise prohibited by law.

(2) Nothing in this section shall be construed to prohibit any act specifically authorized by the laws of the State of California or any actions taken by or under the direction of SUPERVISOR BRITT.
the San Francisco Department of Public Health in order to protect
the public health.

SEC. 3805. BUSINESS ESTABLISHMENTS AND PUBLIC ACCOMMODATIONS.

(a) Prohibited Activity. It shall be an unlawful practice
for any person to deny any individual the full and equal
enjoyment of the goods, services, facilities, privileges,
advantages and accommodations of any business establishment or
public accommodation as a result of the fact, in whole or in
part, that a person has AIDS or any of the associated conditions
covered by this Article.

(b) Advertising. No person shall make, print, publish,
advertise or disseminate in any way any notice, statement or
advertisement with respect to any business establishment or
public accommodation which indicates that a person is doing or
will do anything which this section prohibits.

(c) Exceptions. Nothing in this section shall be
construed to prohibit any act specifically authorized by the laws
of the State of California or any actions taken by or under the
direction of the San Francisco Department of Public Health in
order to protect the public health.

SEC. 3806. EDUCATIONAL INSTITUTIONS.

(a) Prohibited Activity. It shall be an unlawful
educational practice for any person to do any of the following:

(1) To deny admission, or to impose different terms or
conditions on admission, as a result of the fact, in whole or in
part, that a person has AIDS or any of the associated conditions
covered by this Article.

(2) To deny any individual the full and equal enjoyment
of, or to impose different terms or conditions upon the
availability of, any facility owned or operated by or any service
SUPERVISOR BRITT
or program offered by an educational institution as a result of
the fact, in whole or in part, that a person has AIDS or any of
the associated conditions covered by this Article.

(b) Exceptions.

(1) It shall not be an unlawful discriminatory practice
for a religious or denominational institution to limit admission,
or give other preference to applicants of the same religion.

(2) Nothing in this section shall be construed to
prohibit any act specifically authorized by the laws of the State
of California or any actions taken by or under the direction of
the San Francisco Department of Public Health in order to protect
the public health.

SEC. 3807. CITY FACILITIES AND SERVICES.

(a) Prohibited Activity. It shall be an unlawful practice
for any person to deny any person the full and equal enjoyment,
or to impose different terms and conditions on the availability,
of any of the following:

(1) Use of any City facility or City service as a
result of the fact, in whole or in part, that a person has AIDS
or any of the associated conditions covered by this Article.

(2) Any service, program or facility wholly or
partially funded or otherwise supported by the City and County of
San Francisco, as a result of the fact, in whole or in part, that
a person has AIDS or any of the associated conditions covered by
this Article.

(b) Exceptions. Nothing in this section shall be
construed to prohibit any act which is specifically authorized by
the laws of the State of California or any actions taken by or
under the direction of the San Francisco Department of Public
Health in order to protect the public health.

SUPERVISOR RITT
SEC. 3808. ASSOCIATION AND RETALIATION.

(a) Association. It shall be unlawful for any person to do any of the acts described in Sections 3803(a), 3804(a), 3805(a), 3805(b), 3806(a) or 3807(a) as a result of the fact that a person associates with anyone who has AIDS or any of the associated conditions covered by this Article.

(b) Retaliation. It shall be unlawful for any person to do any of the acts described in Sections 3803(a), 3804(a), 3805(a), 3805(b), 3806(a) or 3807(a) or to retaliate against a person because a person:

i) has opposed any act or practice made unlawful by this Article;

(ii) has supported this Article and its enforcement;

(iii) has filed a complaint under this Article with the San Francisco Human Rights Commission or any court;

(iv) has testified, assisted or participated in any way in any investigation, proceeding, or litigation under this Article.

SEC. 3809. TESTING.

(a) No person shall require another to take any test or undergo any medical procedure designed to show or help show that a person has AIDS or any of the associated conditions covered by this Article.

(b) Subsection (a) does not apply to an employer who can show that the absence of AIDS is a bona fide occupational qualification.

(c) Nothing in this section shall be construed to prohibit any act specifically authorized by the laws of the State of California or any actions taken by or under the direction of the San Francisco Department of Public Health in order to protect the
public health.

SEC. 3910. LIABILITY.

Any person who violates any of the provisions of this Article or who aids in the violation of any provisions of this Article is liable for each and every such offense for the actual damages, and such amount as may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damage but in no case less than one thousand dollars ($1000), and such costs and attorney's fees as may be determined by the court. In addition, punitive damages may be awarded in a proper case.

SEC. 3811. ENFORCEMENT.

(a) Human Rights Commission. Any person who believes that he or she has been discriminated against in violation of the provisions of this Article may file with the Human Rights Commission a request to have the Commission investigate and mediate his or her complaint under the provisions of the Administrative Code of the City and County of San Francisco.

(b) Civil Action. Any aggrieved person may enforce the provisions of this Article in a civil action.

(c) Equitable Relief.

(1) Any person who commits, or proposes to commit, an act in violation of this Article may be enjoined therefrom by any court of competent jurisdiction.

(2) An action for equitable relief under this subsection may be brought by any aggrieved person, by the District Attorney, by the City Attorney, or by any other person.

(d) Bar. A complaint to the Human Rights Commission is not a prerequisite to the filing of a civil action under this section. The pendency of a complaint before the Human Rights Commission is
Commission shall not bar any civil action under this section, but a final judgment in any civil action shall bar any further proceedings by the Human Rights Commission.

SEC. 3812. LIMITATION ON ACTIONS. Judicial actions or requests to the Human Rights Commission under this Article must be filed within two years of the alleged discriminatory acts.

SEC. 3813. DEFINITIONS. As used in this Article, the following words or phrases shall have the meanings indicated:

(a) The word "AIDS" shall mean the condition which occurs when an individual is infected with the virus known as lymphadenopathy-associated virus or human T-lymphotropic virus type III or AIDS-associated retrovirus including, but not limited to, acquired immunodeficiency syndrome (AIDS), AIDS-related complex, progressive generalized lymphadenopathy, lymphadenopathy syndrome, and asymptomatic infection. It also includes anyone who has any medical condition as a result of having any of the above. It also includes any perception, whether real or imaginary, that a person is suffering from AIDS, any of the conditions described above, or the perception, real or imaginary, that a person is at risk for any of the conditions described above.

(b) The phrase "business establishment" shall mean any entity, however organized, which furnishes goods or services to the general public. An otherwise qualifying establishment which has membership requirements is considered to furnish services to the general public if its membership requirements consist only of payment of fees or consist of requirements under which a substantial portion of the residents of this City could qualify.

(c) The word "person" as used in this Article shall mean any individual, person, firm, corporation, or other organization.
or group of persons however organized.

SEC. 3814. SEVERABILITY. If any part or provision of this Article, or the application thereof to any person or circumstance is held invalid, the remainder of the Article, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Article are severable.

SEC. 3815. NON-WAIVERABILITY. Any written or oral agreement which purports to waive any provision of this Article is against public policy and void.

SEC. 3816. APPLICATION TO THE CITY AND COUNTY OF SAN FRANCISCO. All the provisions of this Article apply to the City and County of San Francisco.

APPROVED AS TO FORM:

GEORGE AGNOST, City Attorney

By: [Signature]

Deputy City Attorney

SUPERVISOR BRITT
AIDS: LEGAL AND HUMAN RESOURCE ISSUES
FOR THE EMPLOYER

BRYAN LAWTON, Ph.D.
Vice President & Director
Wells Fargo Bank, N.A.
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AIDS WORKPLACE ISSUES AND CORPORATE RESPONSIBILITY:
A REVIEW OF ONE COMPANY'S EXPERIENCE IN DEVELOPING
A CORPORATE PROGRAM.

General Overview

AIDS is rapidly becoming a major issue for many employers throughout the country. Its impact on companies can no longer be ignored because of the medical, legal, benefits, employee relations, affirmative action, employee assistance and safety issues involved. As the number of cases rapidly increases, with attendant major social and economic impact, it becomes evermore critical for every employer to understand this medical disease.

Critical concerns requiring immediate attention are: how AIDS is spread, how to reduce the anxiety and fear related to the spread of AIDS, and how to educate and motivate individuals at higher risk for this disease to change their lifestyle habits to reduce the spread of this disease. The purpose of this article is to address the above issues and describe one company's experience in addressing AIDS in the workplace. Specific issues addressed include the development of a Company's policy and procedures on AIDS, the varying methods of educating employees, and the process successfully used to return an AIDS affected employee back to work. It is hoped that this communication will assist employers in developing their own approach based upon their employees' needs, company culture and work-site location.
Medical Background On AIDS

AIDS is caused by a virus that attacks, among other things, a particular type of cell in the immune system. This virus is known as HTLV-III, LAV or ARV. The AIDS virus causes a breakdown in a person's normal protection against infection. This breakdown leaves the body vulnerable to life-threatening rare cancers and infections which invariably are fatal. It is not the AIDS virus itself, but rather these illnesses, which result in death. The mortality rate is high, with approximately 80% of AIDS-diagnosed individuals dying within two years after exhibiting their first symptoms.

As of August 1985, over 14,000 AIDS cases had been identified in the United States resulting in more than 7,157 deaths. It is projected that the number of cases will double every six to nine months if the disease continues to spread at the current rate. Recently, a lower rate of increase in AIDS cases has been noted in San Francisco. This has cautiously been interpreted to suggest that earlier educational efforts to prevent the transmission of this disease is beginning to appear.

Recent medical evidence suggest that AIDS can have an incubation period of 1-5 years before symptoms appear. Current research also suggests that the incubation period can be as long as 12
years. Most researchers now believe that other factors in addition to the AIDS virus are necessary for the disease to develop. For example, a majority of AIDS and ARC (AIDS related condition) patients also have herpes virus, which may be an essential co-factor.

In order for the AIDS virus to spread, it needs healthy cells to feed upon. Thus, the virus appears to be contractable from an infected individual who has yet to manifest symptoms of the disease. However, the fragility of the virus requires very specific means of transmission. After entering an individual's blood system, the AIDS virus destroys the immune system along with itself. Drugs and alcohol are also thought to contribute to a susceptibility to the AIDS virus, as they suppress the immune system, enabling the AIDS virus to take hold and result in ARC or AIDS.

Medically recognized experts on AIDS indicate that there is no known risk of AIDS transmission through casual contact between an affected employee and other employees while involved in normal work activities. Additionally, this illness is not transmitted through breathing the same air, through the use of bathroom lavatories, touching a common paper, or using the same telephone. Even for a healthy individual with such poor hygienic practices as drinking out of someone else's cup or sharing a cigarette, the
risk of contamination through oral secretions or tears is not a recognized risk factor at this time for AIDS infection in a healthy person.

The major risk groups for AIDS infection are homosexual and bisexual men and heterosexual men or women who use intravenous drugs. Individuals of all sexual preferences are at risk of contracting AIDS, if they engage in casual sexual relations with individuals in high-risk groups without using protection to guard against sexually transmitted diseases. Sexual intercourse, particularly anal intercourse, appears to be the leading means of transmission. Approximately 75% of all victims are homosexual men and 13% are I.V. drug users. The virus has also begun infecting women prostitutes, according to preliminary studies from several cities. Prostitutes and I.V. drug users may be the primary agents of transmission of the virus to the heterosexual population, according to recent research findings. Hemophiliacs, who regularly receive blood transfusions, also have been exposed to the AIDS virus. However, the risk of AIDS transmission through blood products has been significantly reduced since the recent discovery and use of an AIDS virus screening process.

According to recognized medical experts, AIDS is transmitted in the following ways: sexual contact through transmission of semen or blood; intravenous drug administration with contaminated
needles; administration of (contaminated) blood products; and passage of the virus from infected mothers to their newborns either during pregnancy or at delivery.

Normally healthy persons need not fear infection through contact with AIDS-diagnosed individuals by riding the same public transportation, eating in the same public places, living in the same house or working in the same office. Their normal immune systems' protection against infection can cope and does cope with ordinary infectious agents everyday.

Psychosocial Impact

The recent special attention and hysteria associated with the spread of AIDS, has created a crisis for our society and the fragile relationships between every community member. In spite of the medically accepted belief that the AIDS virus is not spread by casual contact, this disease has created the image of a modern day "plague", with attendant wide spread hysteria and over-reaction. Some of the following reasons may help explain the increasing societal anxiety and fear related to this deadly disease:
This disease is deadly with 100% of those AIDS diagnosed dying within a three year period. The number of diagnosed cases is doubling nationally every nine months. AIDS has largely affected the younger homosexual population of men ages 25 to 45 who are denied a full and productive life. A cure is likely to be years away.

The media's continued attention to this disease has at times bordered on sensationalism. Although many writers have responsibly reported medical facts as they have become known, the increased media attention on peoples' uncertainties regarding this disease, has enhanced the spread of panic in the general population. These fears may take a significant amount of time and education to fully subside.

The initial reporting on the risk factors or methods of contracting this disease were ambiguous or used medical nomenclature euphemisms which obfuscated the specific means of transmission for this disease. This approach was designed to protect societal taboos related to sexually explicit communication on homosexual behavior.
The majority of Americans lack the ability to medically evaluate their risk for this disease due to a lack of understanding of probability theory and epidemiological research and statistical estimation methods. Thus, people become more fearful when they cannot fully comprehend their real risk for this deadly disease.

Many individuals inaccurately equate the AIDS virus spread with the common cold virus. The AIDS virus is more similar in nature to the Hepatitis "B" virus which requires transmission through blood products and not through breathing the air. Also some individuals have a dreaded fear of germs and disease, called pathophobia. This neurotic condition can be exacerbated by this impending threat and may require treatment.

Some individuals lack trust in medical science, its knowledge, techniques and seemingly contradictory opinions which continually change in time. Additionally, people fear that medical recommendations on this disease will be influenced by political, economic and community pressures to capitulate and underestimate the "real risk" of AIDS to the general population.
Many individuals fear not knowing who may be contagious with the AIDS virus. A lengthy incubation period before the appearance of symptoms compounds this fear. Specifically, both the homosexual and heterosexual population have significantly curtailed sexual behavior toward unknown sexual partners.

Current economic fears in the insurance industry have increased pressure to limit access to medical insurance and survivor benefits for this disease, out of a concern that it will bankrupt the system or expend critical resources.

Many people mistakenly believe that individuals diagnosed with AIDS are at greatest risk for spreading this disease. Actually, after an individual has contracted the AIDS virus, but prior to the onset of AIDS symptoms, (s)he is most contagious to others.

The "moral majority" sentiment has interpreted AIDS as God's retribution for homosexual behavior and promiscuity. This attitude on homosexuality, which reflects our society's Judeo-Christian underpinnings, has resulted in a backlash and discrimination against male homosexuals even though AIDS affects heterosexuals as well. Additionally, many people's response is a direct expression
of their values and beliefs about homosexuality, and their feelings of revulsion of homosexual behavior. Thus, this illness and its treatment becomes a morality issue, rather than a serious medical disease which requires care and understanding.

Because much is still unknown about this disease, some people are afraid that the AIDS virus will mutate and some new risk factors will be identified that cause the spread of this disease.

Legal Issues

Recently, legal questions have been raised regarding the rights of employers to address AIDS in the workplace (December 2, 1985 Legal Times). Legal questions and recent test cases have been reported nationwide regarding the employers rights to deny employment for an applicant with AIDS, testing employees for AIDS, disciplining and terminating employees with AIDS and denying AIDS affected employees health benefits.

Based upon the most current legal opinions throughout the country, AIDS is considered a protected handicap or disability under federal and state fair employment practice laws. As such,
it must be treated like any other handicap or disability. Only when it substantially interferes with an individual's ability to perform the job sought or held, or when it poses a reasonable probability of substantial injury to others, may it be used as the basis for employment decisions. Fear, particularly when, as in the case of AIDS, it borders on the irrational, should not be allowed to dictate an employer's actions regarding this problem. Instead an employer confronted with an AIDS victim in the workplace setting should act with knowledge of the disease and of the legal obligations posed for employers.

Need For AIDS Education

Accordingly, it is becoming more critical for employers to educate employees on this devastating illness which is often misunderstood and the cause of irrational fear and mounting hysteria. Work-based education programs can promote co-worker compassion in dealing with people who have this disease, reduce the likelihood of work disruption problems when healthy employees must work with an AIDS employee and encourage healthy lifestyle habits to minimize the risk of contracting this deadly disease and contain related health costs.
Wells Fargo & Company Experience

Concern about AIDS was first addressed by Wells Fargo in May of 1983, when an employee with AIDS asked to return to work and had his doctor's permission to do so. Employee Assistance Services was asked to research the medical aspects of this disease and to make recommendations to management on the employee's request to return to work.

Policy Development

After consultation with medical experts from the San Francisco Department of Health, Federal Government Centers for Disease Control and other community medical experts on AIDS, Wells Fargo executives were convinced AIDS was not spread through casual contact, and healthy employees were not at risk in working with an AIDS affected employee in carrying out their normal work activities. Further, it was recommended that the AIDS-affected employee be allowed to return to work, making any necessary reasonable accommodations in work duties to ensure a successful return.

Recognizing that this health problem was the "tip of the iceberg" of a growing community problem, the Employee Assistance Services Department had an outside expert provide a medical overview on
this disease for its Employee Relations staff and the line management staff where the AIDS-affected employee worked. After the overview presentation and a question-and-answer period, it was decided that the AIDS-affected employee would be allowed to return to the workplace in the job previously held, after all staff in the work area were educated on AIDS.

This educational approach was considered necessary in light of the increased media attention the disease had received, and the misinformation, hysteria and fear that was developing. Management wanted to reassure its healthy employees that it was committed to protecting the physical and emotional health of all employees, as well as to providing reasonable accommodations for employees with AIDS who were medically fit to return to work.

The Employee Assistance Services Department was asked to develop a medically approved AIDS policy in order to address personnel reporting and management procedures on AIDS, and develop and implement an AIDS education program. It was decided that the AIDS policy, personnel reporting, and management procedures would be developed prior to the implementation of the AIDS education program. The AIDS policy stated the company’s commitment to all employees to protect their health and well-being. It also explained the necessity for providing accurate medical information on AIDS, identified the risk factors for contracting
the disease and encouraged individuals to take the necessary steps to prevent contracting this disease in the future. The policy emphasized the company's interest in minimizing work disruption problems and morale problems, of healthy employees asked to work with AIDS-affected employees. Additionally, it expressed the company's commitment to provide reasonable accommodation for an employee with AIDS who was medically fit to work.

AIDS Educational Approaches

Approximately three weeks prior to the return of the AIDS-affected employee, all the employees in his division received a memo from their senior line personnel representative advising them of the bank's policy. They were also invited to a medical discussion of AIDS on company-time and presented by an outside medical expert followed by questions-and-answers. The provision of this medical education to the entire division of the employee's work group three weeks prior to his return was designed to protect the AIDS employee's anonymity and assure that all employees' fears and concerns were identified and addressed.

Attached to the general announcement memo inviting employees to attend these medical AIDS education meetings were two brochures, obtained through the local health department, which described
AIDS and the risk to the general population, as well as for the homosexual male.

By attaching these brochures to each memo we could ensure that all employees received the same information, while minimizing any possible embarrassment of an employee feeling personal pressure to reveal their sexual preferences or lifestyle habits. These brochures also were translated into Chinese, Tagalog and Spanish to meet the diverse ethnic needs of our employee population.

The medical overview and question-and-answer period was conducted during a 35 minute time-period by a physician with specialties in infectious diseases and occupational medicine. Approximately 90 percent of the division (which is 400-some employees) attended the educational meetings conducted over a four day period. The education was provided in small groups of 25 or fewer employees. After the medical overview and question-and-answer period, all employees were asked to complete a confidential evaluation form on the educational materials and program, noting their knowledge, feelings and attitudes regarding this disease. A post-hoc statistical analysis was conducted which indicated that a statistically significant positive change occurred in the responses to all 15 questions. The survey provided information about the employees' prior knowledge about AIDS, how the disease was spread, their concerns about contracting it in the work
environment, their intention to reduce risk-factors for this disease, and value of the various education components. An opportunity to have a question-and-answer discussion with a medical consultant was rated as the most important element of this education program, with many employees volunteering their opinions on how comforted and reassured they felt to know that their employer was concerned enough about them to make education available on this frightening disease available on worktime.

Perhaps the most notable result of this educational program was the successful return of the AIDS affected employee. There were no work disruption problems experienced with this employee's return, nor any significant work related problems related to the employee's illness. The positive results of this educational experience and the successful return of an AIDS affected employee further reassured management that their approach was correct and would be replicated in all future cases.

Approximately four months after returning to work, the AIDS affected employee requested a leave of absence to seek experimental medical treatment. Unfortunately, the experimental medical care was unsuccessful and the employee subsequently died without returning to work a second time.
After the success of the initial educational program, the Employee Assistance Services Department identified geographical areas where higher concentration of AIDS cases were being diagnosed, for future educational efforts. Personnel representatives, and later managers throughout the company, were provided the company policy and procedures with a general medical overview of this disease, and a question-and-answer discussion period. Employee Assistance Services also began hearing from employees who had questions regarding the spread of AIDS or who wanted information and help for themselves or someone they knew who had AIDS and needed referrals to available community resources.

Since the development of this policy the company has provided educational information on AIDS to more than 1200 employees in the San Francisco and Los Angeles areas. Throughout the educational process, there have been no serious problems experienced when AIDS-affected employees returned to work in five known instances in different locations of the company. We continually monitor and update the company policy on AIDS, and the medical overview and educational program.

In expanding our educational approach, we have been using a video produced by a San Francisco TV station. The film, which was first aired on September 8, 1985 was developed in conjunction
with The S. F. Department of Public Health and the AIDS Foundation. When it is shown, a brochure entitled AIDS LIFELINE, which was obtained through the San Francisco AIDS Foundation, is also distributed.

After showing the film, a medical expert or community expert on AIDS answers employee questions regarding this disease. Employees are also told they can confidentially consult with Employee Assistance Services to address additional concerns or questions.

Another educational effort was required earlier this summer, when our community and company became increasingly alarmed about declining blood donations. This phenomenon was believed to be related to an inaccurate but widening rumor that AIDS could be contracted by giving blood. This rumor confused blood donation with blood transfusion, and was also fueled by a false belief that needles drawing blood were shared or re-used among donars.

To counter this misunderstanding, Wells Fargo's Health Promotion Task Force, which sponsors a monthly health column in the employee newspaper, developed a specific article to educate people on how AIDS was spread, and to clarify the issues surrounding blood donations and transfusions.
Benefits Issues

With the increasing concern regarding the economic cost of AIDS to employers, many have suggested the need for AIDS virus screening of job applicants prior to an employment decision. In California, the use of AIDS virus testing for employment is illegal.

In a recent study of 9,000 AIDS cases in the United States, it was estimated that treatment cost $140,000 per patient for those who survived 13 to 18 months after diagnosis. In San Francisco where outpatient treatment offerings are more prevalent, the AIDS health cost fell between $25,000 to $32,000 per patient. Companies that are increasingly looking at providing home health care benefits as a more efficient type of medical care for some types of ailments should be aware of these figures.

Safety Issues

All aspects of a company's operation and department activities must be examined to ascertain the need for any change in operational practices. For instance, in the practice of CPR training, it has been recommended that a plastic disposable wrapping be provided over the mannequin to reduce the likelihood, however so slight, of the AIDS virus spreading through the
exchange of blood from one individual's mouth to another. In the actual delivery of CPR in an emergency situation, every person should be instructed to weigh the personal consequences of doing so, should the victim be in a high-risk group for AIDS. Special mouthpieces have been developed to eliminate the need for mouth to mouth contact in this type of situation.

Finally, dentist, eye-specialists and other health specialists have developed special patient handling procedures to minimize their more intimate exposure to the AIDS virus in their work practices.

Employee Relations Issues

Throughout the last 2-1/2 years, only one employee has formally challenged the appropriateness of our company policy and process of returning an AIDS-affected employee to the workforce with medical approval. This challenge was routinely handled by our Employee Relations, Affirmative Action and Employee Assistance Departments. The employee appeared to be satisfied after referral to outside medical experts for further information.
Summary

Overall, in light of the heavy publicity about AIDS, the potential for work disruption and employee morale problems, the extraordinary health cost of AIDS, and the potential for discrimination suits for employees, every company must consider developing a policy and educational program for their employees. Accurate medical information is critical to overcome the fear and anxiety associated with this disease and exacerbated by heightened media attention.

Additionally, with the ever increasing number of AIDS cases there will be increasing pressure on the employer to address its extraordinary health cost which may tax to the limit our benefit plans. Medical home health care insurance benefit offerings will become increasingly important in the future, as will medical claims management for employees or dependents with AIDS, to help control the health cost of their medical treatment.

AIDS should be viewed like any deadly disease, one that requires human compassion and understanding. This can only occur when people have accurate medical information to understand their risk for this disease.
Finally, as this disease spreads to the heterosexual population, we must overcome the stereotype that this is a male homosexual disease. Through worksite education efforts, we can help limit the ultimate spread and cost to society of this deadly disease.
Ethical Issues in Dealing with
AIDS in the Workplace

Presented by Carol Levine, The Hastings Center, for Executive Enterprises at its Symposium on AIDS: Legal and Human Resources Issues for the Employer
I. What we know about AIDS
   A. A devastating disease spread in known ways: primarily sexual contact and contaminated blood, not casual contact.
   B. The HTLV-III antibody screening test detects only past infection with the retrovirus; it is not a diagnostic test for AIDS nor does it predict whether that person will develop AIDS or a lesser illness.
   C. In the workplace, fear of AIDS is more prevalent and potentially more damaging than AIDS itself.
   D. The economic costs of AIDS are a serious concern.
   E. Employers face decisions concerning fear of contagion and costs of providing health care and other benefits to ill workers.

II. Social responsibilities of business:
   A. To make workplace safe
   B. To protect workers from risks that exist
   C. To fully inform workers of potential hazards, where they exist, and to reassure them, when they do not.
   D. To treat workers fairly and compassionately
   E. To make employment decisions on the basis of the individual's ability to perform the job
   F. To provide stable climate for work so that workers are not distracted and anxious
   G. To educate workers about health issues
   H. To educate community about health issues
   I. To develop rational, sensible, and comprehensive policies that cover all these aspects
III. Ethical issues regarding contagion

A. Weighing known versus unknown facts

B. Weighing rights of ill or at-risk workers against interests of those who are fearful of working with them

C. Determining whether negative attitudes about AIDS are based on fear of disease or stigma attached to those groups most at risk

D. Deciding whether the perceived benefits of HTLV-III screening are worth the economic and social costs

E. Communicating corporate policies in a way that recognizes workers' concerns

IV. Ethical questions regarding costs

A. Who will bear the economic burden of AIDS care? Individuals, employers, insurers, society?

B. How can the economic loss of potentially productive workers be counted? The loss of self-esteem and incentive if HTLV-III status becomes a barrier to employment?

C. Should AIDS be excluded from insurance coverage? Should premiums be higher for at-risk individuals?

D. Are there models from other areas—insurance rate-setting based on race or gender?

E. What will be the effect on health care resources if private insurers do not cover AIDS?

F. What will be the effect on society of creating a class of uninsurable (and perhaps unemployable) people dependent on public funds?

G. What kind of coordinated and rational policies can be devised to cover costs and to spread the burden equitably?
HEALTH CARE LABOR REPORT

A BI-MONTHLY NEWSLETTER FOR CALIFORNIA HEALTH CARE MANAGEMENT

INTRODUCTION

This bi-monthly newsletter is privately published and distributed with the purpose of reviewing the latest developments in labor law which are of particular interest to California health care employers. We hope you will find it helpful.

AIDS: Legal Issues Confronting Health Care Employers

Health care employers must be aware of the variety of potential issues confronting them as the incidence of Acquired Immunodeficiency Syndrome (AIDS) continues to increase. Like all employers, they must be concerned with hiring, and supervising, individuals who may have AIDS. Unlike most other employers, however, health care employers must also be concerned with the issues arising from the fact that employees may be caring for, and coming into close contact with, patients suffering from AIDS.

A. AIDS Research and Studies

Scientific research into the cause, transmission and cure of AIDS is increasing. Reputable studies reviewing information about AIDS have included the following: (1) “Special Report: Infection-Control Guidelines For Patients With Acquired Immunodeficiency Syndrome (AIDS),” published in the New England Journal of Medicine, September 22, 1983, and (2) “The Epidemiology of AIDS: Current Status and Future Prospects,” published in Science, September 1985, by members of the Center for Infectious Diseases and Center for Disease Control in Atlanta.

The two published studies illustrate how rapidly knowledge of AIDS has been changing... and increasing... over the past few years. For example, at the time of the 1983 Special Report, the cause of AIDS was unknown although it was suspected to be a virus, whereas, by the time of the 1985 survey, the cause of AIDS was known to be a retrovirus, HTLV-III/LAV. Also, the 1983 Special Report listed neither saliva nor tears as fluids in which the AIDS virus was present, and even stated that “there is no current evidence for its presence in saliva,” whereas, a scant two years later, the 1985 survey reported that the AIDS virus has been found in both tears and saliva.

B. Employees With AIDS

1. AIDS As A Handicap

Employers contemplating the hiring or continued employment of an AIDS victim must consider the potential impact of both state and federal laws against handicap discrimination. Given the expansive definition of the term "handicap" under both statutes (including, high blood pressure and susceptibility to tuberculosis), it should be assumed that the courts will hold AIDS to be a "handicap" for statutory purposes. Accordingly, employers may refuse to hire or to retain an AIDS-diagnosed individual only if it can be shown that, following a reasonable accommodation, the

AIDS Issue

The AIDS controversy has exploded into the public consciousness in recent months. With that increased consciousness has also come an escalating number of AIDS-related issues in the workplace. No industry is more dramatically and pervasively affected than the health care industry, which must deal not only with employment issues involving the handling of employees and job applicants who may have AIDS, but also with issues relating to the exposure of employees to AIDS patients with whom they may come into contact during the regular course of their employment.

Legislatures, city councils, courts, administrative agencies, employers, unions and employees are already acting, and reacting, to these controversies. Statutes and ordinances have been enacted by some states and cities, and more legislation is contemplated. Employees have already filed claims alleging that they have been wrongfully discharged, or denied employment, because they were suffering from AIDS. Some health care employees have filed charges claiming that they have been illegally denied the right to protect themselves against contracting AIDS from patients.

Because of these growing issues facing health care employers, HCLR is devoting this edition to AIDS-related issues, including a review of the recent judicial and legislative developments in the area.

Please Note

This newsletter is a service to the health care industry and is intended to provide information on recent developments in labor law. It is not legal advice and is not a substitute for the advice of counsel.

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San Francisco, California
individual either (1) simply cannot perform the essential duties of the job, or (2) cannot do so without presently endangering the health and safety of himself/herself or others. The present consensus from current medical studies is that AIDS is not contracted by casual physical contact, and therefore, it generally would be difficult to justify discharging or refusing to hire an AIDS victim on the basis of a danger to the health and safety of other people in the health facility.

By contrast, AIDS sufferers may themselves be endangered by contact with highly infectious patients suffering from other problems and an employer might reasonably restrict the assignments of AIDS-diagnosed employees for the purpose of protecting those employees. And similarly, patient care assignments of AIDS-diagnosed employees might be restricted with respect to specific high-risk patients who have been identified as being particularly susceptible to the secondary infections typical to AIDS victims.

2. Liability For Wrongful Discharge

Discharged AIDS sufferers may well argue that any termination based on their alleged handicap (AIDS) violates the implied covenant of good faith and fair dealing in their employment relationships, thereby allowing suit for wrongful discharge, for which additional remedies such as punitive damages may be available. California courts, however, have thus far held that claims based on physical handicap discrimination, having been created by the California Fair Employment and Housing Act, must be processed pursuant to that Act and not by way of a separate wrongful discharge lawsuit. Strauss v. Randall Co., 144 Cal. App. 3d 514 (1983).

3. Los Angeles AIDS Ordinance

A recently adopted ordinance by the Los Angeles City Council broadly prohibits discrimination against AIDS victims (1) in employment, (2) in the furnishing of goods and services made available to the general public by business establishments, (3) in admissions to educational institutions (or in the enjoyment of any services or programs given by such educational institutions) and (4) in rental housing. In the employment area, the ordinance prohibits limiting, segregating or classifying employees and/or applicants who have AIDS in any manner which would deprive them of employment opportunities or adversely affect their employment status on the basis of having AIDS, unless an employer can prove that such discrimination is based on a bona fide occupational qualification. The ordinance protects not only (1) persons suffering from the disease, but also (2) persons exhibiting any signs or symptoms related to AIDS and (3) persons perceived to be suffering from AIDS, whether the perception is real or imaginary. Violation of the ordinance can result in the assessment of actual damages, costs, attorneys' fees and punitive damages.

4. Discrimination Based On Sexual Orientation

Some localities, such as the City of San Francisco, have pre-existing ordinances which prohibit discrimination on the basis of sexual orientation. S.F. Police Code § 3301 et seq. Should an employer take action affecting AIDS victims, an individual suffering from AIDS may be able to allege a violation of the City's sexual orientation ordinance using an "adverse impact" argument. Adverse impact is found when an employer's neutral policy, although applicable equally to all employees, nevertheless affects a protected category of employees more harshly or adversely than the rest of the employees. Male homosexuals comprise the vast majority of AIDS victims and will be affected by an AIDS policy far more than heterosexuals. Therefore, an employer's policy directed to persons with AIDS, while facially neutral and applicable to all employees, would have an adverse impact on male homosexuals, a protected group under the S.F. Police Code. Of course, employers can prevail against such claims where there is a legitimate business reason for the policy.

5. Discrimination Based On AIDS Antibody Test

Earlier this year, California enacted legislation providing that:

The results of a blood test to detect antibodies to the probable positive agent of Acquired Immune Deficiency Syndrome shall not be used in any instance of insurability or suitability for employment.

California Health and Safety Code § 199.21(f) (1985) (emphasis added). Thus, individuals known to have tested positive for the AIDS antibody may not, for that reason, be terminated or rejected for employment, nor may that individual be denied coverage under an insurance policy. The statute provides both civil and criminal penalties for willful disclosure of the test results.

6. Confidentiality Of Medical Information Act

Pursuant to California's Confidentiality of Medical Information Act, an employee health department may not disclose medical information regarding an employee-patient without a proper authorization. Cal. Civ. Code § 56 et. seq. Thus, if employee health determines that an employee-patient has AIDS, it may not automatically inform the hospital of the diagnosis in the absence of authorization by the employee. While there are numerous exceptions to this requirement of confidentiality, the Act must be consulted in each instance to ensure compliance. Violation of the Act is not only a misdemeanor, but also can subject the hospital to liability for all of the employees' economic loss and personal injury, plus punitive damages and attorneys' fees. Cal. Civ.
C. Employees Providing Care To AIDS Patients

1. No Definitive Standards

Employees who treat AIDS patients may be understandably concerned about their own personal health. Concerns also are being raised by employees in other industries who cannot know in advance if the patient has AIDS (e.g., firefighters and others who administer mouth-to-mouth resuscitation to accident victims). Unfortunately, there are no universally-accepted standards to which health care employers can turn. Indeed, while California administrative regulations require acute care hospitals to adopt a general infection control program conforming to AHA guidelines, there are no regulations specifically setting standards for employee health protection during the treatment of AIDS patients.

2. Statutory Protection For Employee Health Protests

Because of the general public’s fear of AIDS, and the lack of definitive standards, voluntarily-adopted guidelines for protecting health care employees who deal with AIDS patients, even when based on the most current medical information, may not sufficiently reassure all such employees. Resulting protests by employees over what they perceive, rightly or wrongly, as inadequate protection of their own health may themselves be protected from employer discipline. For example, California state law prohibits discrimination against any employee for complaining about occupational health or safety problems. Cal. Labor Code §§ 6310, 6311. This protection is extended even if no health or safety standard is actually being violated, and the employee merely possesses a reasonable belief that there may be a health or safety problem. Hentzel v. Singer, 138 Cal. App. 3d 290 (1982).

The state’s protection of health and safety concerns was recently utilized by four San Francisco nurses who insisted on wearing gloves and masks whenever coming into contact, even routine or casual contact, with AIDS patients. In their complaint to the State Labor Commissioner, they alleged that their transfer to a different unit violated the law because it was in retaliation for their insistence on wearing protective clothing. After a hearing, the Labor Commissioner found that (1) the wearing of masks and gloves was a “statement” by which the employees were expressing their concern for safety and health, (2) the statement, therefore, was protected by the Labor Code, (3) but since no proof existed that the nurses were transferred “because of” their statement, no violation of the Labor Code occurred. Of significance to all employers faced with this issue, however, is that the Commissioner went on to note that the nurses’ concern for their own health and safety was “reasonable in view of the uncertainties expressed [about the transmission of AIDS] in the medical community,” and indicated that if the transfers had been ordered because of the nurses’ “statement”, which they were not, that would have constituted unlawful discrimination under the Labor Code.

Accordingly, California health care employers may have to allow employees to take added precautions when providing care to AIDS patients, even if the hospitals feel they are unnecessary and unwarranted, as long as those precautions are based on employee concerns which are at all “reasonable” under the current state of medical knowledge or lack of knowledge. Indeed, given the ongoing discoveries about AIDS, employers should be extremely careful before concluding that any particular employee’s fears about AIDS are “unreasonable.” For example, although the 1983 Special Report indicated that precautions might be considered with respect to mouth-to-mouth resuscitation, it also reported that there was no current evidence that the AIDS virus was present in saliva. By the time of the 1985 survey, however, that presence was confirmed. Therefore, precautionary measures which previously might have been only suggested, such as using resuscitation bags and disposable devices for mouth-to-mouth resuscitation, and excusing AIDS-diagnosed employees from participating in the two-person manikin phase of CPR training, may become widely used in light of the new evidence.

One example of such changing standards is the protocol for mouth-to-mouth resuscitation recently adopted by the Los Angeles County Fire Department. The adoption was triggered by a particular incident in which one firefighter administered emergency mouth-to-mouth resuscitation to an accident victim who, it was later learned, was suffering from both AIDS and hepatitis B. The Department now requires that all emergency vehicles carry a small plastic device, called a mouth-to-mask resuscitator, which allows aid to be administered without any contact with the victim’s breath or body fluids.

Whether or not an employee refusal to administer direct mouth-to-mouth resuscitation would have been “reasonable” several years ago, it would certainly appear to be so now. Accordingly, when faced with employee demands for added precautions based on their concerns about AIDS, health care employers must carefully review the most recent published research and medical studies to determine if the employees’ fears or concerns can in any way be considered “reasonable”. If so, it should be expected that they would be protected against discipline for refusing to work without those added precautions.

Even if employees can insist on taking some added precautions when dealing with AIDS patients, however, they cannot outright refuse to provide care to AIDS patients. There is no medical evidence that casual contact can transmit AIDS to a healthy employee and, therefore, except for employees with bona fide medical restrictions from their own physician recommending that the employee not work in contact with AIDS patients, any outright refusal could be handled as simple insubordination.

3. Ostracism Of Fellow Employees

Since present medical evidence indicates that AIDS cannot be transmitted by casual contact, any outright refusal by healthy employees to work alongside an AIDS-diagnosed employee, similar to a refusal to care for AIDS patients, may be handled as insubordination. Lesser degrees of ostracism (e.g., attempting to avoid touching the co-worker, wearing a mask while in the immediate vicinity, etc.) should be dealt with on a case-by-case basis in light of the California Labor Commissioner’s opinion that employee actions may be protected even where based upon reasonable fears about AIDS which are not necessarily supported by the weight of current medical knowledge.

(Continued on page 4)
D. Other Potential Concerns And Liabilities

1. Personal Injury Suits By Patients Or Hospital Visitors

Patients or hospital visitors who believe they have contracted AIDS because of their exposure while in the hospital could file personal injury suits. Whether or not a hospital has breached its obligations to provide a safe and healthy environment for employees, patients and visitors, will depend upon the extent to which it has complied with current scientific and medical information concerning the infectious nature of AIDS. Therefore, if the hospital has complied with infection-control guidelines contained in current medical reviews, the hospital’s risk of tort liability should be diminished.

2. Workers’ Compensation Liability

Although there is no evidence that AIDS can be transmitted to health care workers as a result of their performing normal patient care duties or working alongside AIDS victims, if such a claim were made, the employee would ordinarily be limited to recovery by way of workers’ compensation rather than by personal injury suit. Attempts to increase any such workers’ compensation awards because of the employer’s alleged “serious and willful misconduct” in failing to furnish a “safe and healthful” place of employment should have little chance of success if a hospital follows the general guidelines published by infection control medical experts. Cal. Lab. Code §§ 6400, 6403.

3. Unemployment Insurance Benefits

Unemployment Insurance Benefits were recently granted to a gay employee who resigned his position to provide care and support for his dying AIDS-afflicted lover, with whom he had lived for a period of time. UI benefits are available to employees who resign to provide necessary care for an ill or dying family member, and although the employee’s gay lover did not meet the regulations’ definition of “family member,” the Administrative Law Judge concluded that some “non-blood and non-legal relationships may be established which are as meaningful or more meaningful than relationships created by blood or by the bond of marriage.” Thus, while recent court decisions have not permitted non-employee members of a gay relationship to be eligible for family or dependent coverage under health or dental policies, it is still possible that, at least for purposes of Unemployment Insurance benefits, responsibilities assumed by employees toward their partners in homosexual relationships may be accorded the same treatment as responsibilities owed by employees toward their families in more traditional marital relationships.

E. Conclusion

Notwithstanding the fact that knowledge about AIDS is still limited and continues to change as research increases, there are a number of operating assumptions that health care employers may wish to adopt, and which appear to be accurate, based on the current state of medical knowledge.

1. AIDS cannot be transmitted by casual contact.
2. It is possible that AIDS will be viewed as a “handicap” for purposes of handicap discrimination laws.
3. California law will protect employees from discipline for demanding added precautions in dealing with AIDS patients or co-workers where those demands are based on concerns or fears that are “reasonable”, even if those concerns are not necessarily in accord with the weight of current medical knowledge.
4. Health care facilities may increase their potential liability to people claiming to have contracted AIDS while in the facility if they do not conform to the most recent guidelines regarding AIDS.
5. Knowledge about AIDS is rapidly changing and increasing so that reliance cannot necessarily be safely placed on studies of even a year or two ago. Health care facilities must keep abreast of new research conclusions and infection control guidelines as they are published or otherwise made known to members of the health care community.
6. Employee anxiety, and demand for added precautions, may be reduced by ensuring that they have complete, accurate and timely knowledge concerning the disease, its methods of transmission, and proper precautionary methods.
AIDS AND DISCRIMINATION — AN OVERVIEW

Benjamin Schatz
Director
AIDS Civil Rights Project,
National Gay Rights Advocates

As of January, 1986, approximately 16,000 Americans have contracted acquired immune deficiency syndrome, or AIDS. An estimated 160,000 others have contracted a milder form of the disease called AIDS-related complex (ARC). Furthermore, it is believed that another one to two million Americans have been exposed to the HTLV-III virus, the probable cause of AIDS.

FACT #1 — AIDS IS NOT CASUALLY TRANSMITTED. The spread of AIDS has occurred only through the exchange of blood, blood products or semen between individuals. Numerous medical studies of families in which one or more members have been infected with HTLV-III show not a single case in which the AIDS virus has been spread to other family members, other than through sexual intercourse or from mother to fetus in utero. Medical studies of hospital personnel caring for AIDS patients show no spread of the AIDS virus other than through needle sticks.

FACT #2 — MOST PEOPLE WHO HAVE BEEN EXPOSED TO THE AIDS VIRUS WILL NOT DEVELOP AIDS. Current medical research indicates that only 5-10% of those who show antibodies to the HTLV-III virus go on to develop AIDS within five years. Consequently, employer or insurer use of an HTLV-III antibody test in order to screen out people with AIDS is ineffective and inappropriate. Indeed, the U.S. Food and Drug Administration, when approving the use of the HTLV-III antibody test for the purpose of protecting the nation's blood supply, warned that "it is inappropriate to use this test as a screen for AIDS or as a screen for members of groups at increased risk for AIDS in the general population."

FACT #3 — AN EPIDEMIC OF AIDS-RELATED DISCRIMINATION THREATENS TO BE AS DEVASTATING AS AIDS ITSELF. Problems include:

-- Employment Discrimination: automatic dismissal of employees with AIDS and ARC without medical benefits; conditioning employment on employee agreement to take the HTLV-III test; refusal to hire individuals suspected of belonging to "high risk" groups.

-- Insurance Discrimination: misuse by insurers of the HTLV-III test to screen out "high risk" applicants; blanket denial of life, health and disability insurance to unmarried men who name unrelated males as life insurance beneficiaries, or who live in certain geographic regions or work in stereotypically gay
professions; cancellation of already-existing health insurance policies; refusal by insurers to pay legitimate AIDS-related claims to those already insured, on the grounds that AIDS is a "pre-existing condition" or that medical treatments are "experimental"; attempts by insurers to delay health insurance payments until their insureds have died; setting exorbitant rates for converting from group to individual health insurance; attempts to exclude AIDS-related claims from policy coverage.

-- Discrimination by the Military: mandatory blood testing of all military personnel; refusal to allow recruits who test positive for the HTLV-III antibody to enlist; misuse of evidence disclosed to military physicians to discharge AIDS victims and their sexual partners on grounds of homosexuality; attempted public disclosure of names of recruits testing HTLV-III positive.

-- Discrimination in Education: exclusion from the classroom of teachers, students, and siblings of students with AIDS, ARC, or positive HTLV-III test results.

-- Discrimination in Health Care: refusal by hospitals, nursing homes, dentists, doctors and nurses to treat patients with AIDS; unwillingness on the part of HMO's to develop their programs or facilities to handle their clients who have AIDS or ARC; refusal by ambulance drivers to pick up people with AIDS; unnecessary isolation and degradation of people with AIDS; refusal by hospitals to allow the lovers of gay men with AIDS to visit their loved ones; refusal to perform autopsies; public disclosure of confidential doctor-patient communications concerning HTLV-III results; refusals by hospitals to allow AIDS support groups to meet on their premises because of fears about public reaction.

-- Discrimination by Prison Authorities: harassment and forced isolation of prisoners with AIDS, ARC and positive HTLV-III test results; inadequate medical treatment of prisoners with AIDS and ARC.

-- Discrimination by Funeral Homes and Cemeteries: refusal to embalm; refusal to bury people with AIDS; institution of mandatory cremation or closed casket policies.

-- Discrimination by Business Establishments: Denial of goods, services, and accomodations to people with AIDS and ARC, and to perceived members of "high risk" groups.

-- Discrimination by government agencies, fire fighters and police officers: refusal to assist people with AIDS; maintenance of public lists of people with AIDS; burning of the property of
people with AIDS or ARC out of fear of contagion; refusal to fingerprint people with AIDS, ARC, or HTLV-III seropositive test results.

-- Housing Discrimination: refusal by landlords and real estate agents to rent to, sell to, or buy from people with AIDS; evictions and lockouts of tenants with AIDS and ARC; refusal to rent office space to physicians treating people with AIDS and to AIDS service groups.

-- Judicial Discrimination: refusal by judges to allow people with AIDS to stand trial; excusing jurors afraid to sit in the same court room as a person with AIDS; use of HTLV-III test as a "punishment" instead of prison term; requirement that HTLV-III antibody-positive criminal defendants wear masks, gloves, and surgical garb while in court.

-- Discrimination against gay fathers: denial of custody and visitation rights to (divorced) gay and bisexual fathers who cannot prove that they have not been exposed to the AIDS virus.

-- Discrimination in Immigration: asserted intention of the U.S. Immigration and Naturalization Service to prevent people with AIDS from entering the United States.

-- Censorship of AIDS Education Information: impounding of tax-supported "safe-sex" pamphlets because of fears that they "promote homosexuality."

-- Threat of Quarantine: of people with AIDS who engage in any sexual activity; of all people with AIDS; of all people who test positive for HTLV-III; of all members of "high risk" groups.

-- Invasions of Privacy: Mandatory reporting of all positive HTLV-III antibody test results to state officials; disclosure of these records to researchers, funeral homes, insurers and others. police monitoring of the sexual activities of all people with AIDS under threat of felony prosecution for any sexual activity; possible police monitoring of private sexual activities in hotel rooms; proposals to trace and contact the sexual partners of all people testing HTLV-III antibody positive.

-- Legislative Backlash: legislative attempts to quarantine people with AIDS; to ban employees testing HTLV-III positive from working as health care workers, food handlers or teachers; to prohibit children with AIDS from attending public school; to make it a felony for "high risk" individuals to donate blood; to screen and identify all HTLV-III positive prison inmates; to require HTLV-III testing of all people seeking marriage licenses; to require adult bookstores to record the names, addresses, and social security numbers of all people entering their businesses;
to cut off federal revenue-sharing funds to cities which do not close gay bathhouses -- even those in which only "safe sex" is practiced.

-- Anti-gay Backlash: Repeal and defeat of gay and lesbian rights legislation; increased anti-gay violence; use of AIDS issue to justify criminalizing homosexual sexual relations; increasing discrimination against lesbians and gay men; efforts to close all gay and lesbian businesses; public proposals that all gay men be killed or castrated.

-- Sexual Backlash: efforts to close bathhouses, adult bookstores, hotels and parks frequented by gay and bisexual men; attempted reinstatement of sodomy laws.

-- Hysteria Regarding the Transmissibility of AIDS: discontinuation of shared communion cup in churches because of fear of spreading AIDS; refusal by political candidates to shake hands in public; opinion polls indicating majority of Americans believe AIDS can be spread merely through shared living quarters.

Conclusion

At present, the number of cases of AIDS is continuing to double every 12 months. If this trend continues, over 300,000 Americans will develop AIDS within the next five years. As the number of cases of AIDS continues to increase, so too does the potential for a major assault on civil rights. In order to circumvent the spread of both AIDS and AIDS hysteria, five major steps need to be taken:

1) INCREASED GOVERNMENT SPENDING on research, patient care, and social services.

2) PUBLIC EDUCATION AND RESPONSIBLE LEADERSHIP: government, media, business and community leaders should take the lead in demonstrating compassion towards people with AIDS and in showing that they are not afraid to live, work and socialize with them. In addition, a massive government-funded "safe sex" AIDS prevention campaign should be implemented as soon as possible.

3) STRONG PROTECTIVE LEGISLATION TO PROHIBIT AIDS RELATED DISCRIMINATION, especially in the areas of employment, education and insurance.

4) REPEAL OF SODOMY LAWS AND ENACTION OF GAY CIVIL RIGHTS LEGISLATION: as long as gay men live in fear of discrimination and criminal prosecution, many will continue to be forced into the very kinds of anonymous, unsafe sexual encounters which are most likely to spread AIDS; anti-gay discrimination further
forces gay men into sham marriages, thereby increasing the spread of AIDS into the heterosexual population.

5) INCREASED POLITICAL AND FINANCIAL SUPPORT BY THE HETEROSEXUAL COMMUNITY FOR GAY RIGHTS AND AIDS-SERVICE ORGANIZATIONS which are working to achieve goals one through four.
A LESSON IN THE EMPLOYMENT TERMINATION OF AIDS VICTIMS

Though press reports have indicated to the contrary, there is a growing AIDS paranoia in the Bay Area which has best manifested itself in recent attempts by employers to limit the employment rights of homosexuals and persons with AIDS:

--For example, one hospital in the East Bay required one of its own employees to undergo AIDS testing as a condition of his maintaining his job.

--A bank in San Mateo County transferred one of its allegedly homosexual employees to a different branch because of its concerns about the transmission of AIDS.

--Several local employers have laid off or fired persons with AIDS even though these employees were still highly capable of performing their jobs.

--In several other cases, allegedly homosexual employees were fired for having conditions not related to AIDS, and the reasons given by the employers for the terminations were that they feared the conditions would develop into AIDS.

Though the law protecting employees in these situations is in disarray, this article will describe generally the legal theories used by attorneys representing employees terminated under these conditions. To begin with, it must be noted that most of these clients are employees at will. This means that, if they lack the protection of a written
contract, a permanent contract implied by the circumstances of their employment, or a union, they may be fired regardless of the cause of the employer.

However, some of these clients may seek the protection of the covenant of good faith and fair dealing, which, by California law, is implied in every contract. By this covenant, if an employee has a justifiable expectation of continued employment and the employer has exercised bad faith in firing the employee, a lawsuit for damages against the employer may be successful.

However, the best protection afforded employees with AIDS lies in California statutory provisions prohibiting discrimination on the basis of a perceived medical condition or a handicap. In this regard, the definition of perceived medical condition is very narrowly limited and probably only applies to those persons diagnosed as having Kaposi's sarcoma. However, the definition of a handicap is broad enough to include all other AIDS-related conditions.

It is of little use to most of these fired employees that the real discrimination is due to their being homosexual. In cities like San Francisco where, under certain circumstances, homosexuals are protected from discrimination, the fired employees are lucky, but most cities and counties do not have "gay rights" ordinances. Similarly, there is no statewide statute prohibiting discrimination against homosexuals, and neither the state nor the federal constitutions have been held to prohibit this
discrimination.

Depending upon how the employer learned that the employee was homosexual or had AIDS, there might arise arguments that the news was received in violation of the employee's right to privacy (as defined by caselaw interpreting the California Constitution), was learned in violation of the employee's right to have his medical records remain confidential (pursuant to state statute), or was disseminated by a conspiracy to violate the employee's civil rights. In each of these situations, the employee may have a case for damages against the employer.

Again depending on the circumstances, some employees have argued that their firing was the result of another employee's intentional inducement of the breach of his contract or another employee's intentional interference with his economic advantage. In these situations, the employee can only seek damages against the offending other employee or the employer.

If there is a relationship between the employer and the government, as when the employer receives some sort of government funding or is a government agency, some protection may be found in state and federal legislation prohibiting employment discrimination on the basis of a handicap or prohibiting certain types of discrimination in public accommodations. This protection does not extend to employees not related to the government.
As is obvious from this short discussion, the law does not effectively extend its majesty to protect persons with AIDS in their places of employment. At a time when a job, a useful function in society, may be the most necessary ingredient to maintaining his sanity, an employee with AIDS may not be as well protected as he should be. To exacerbate this problem, the legal system may not be as quick as is necessary to obtain for the person with AIDS the rights he desires. However, attorneys working to alleviate this problem are hopeful that some change may be in the offing. Perhaps this is the lesson the legal system must learn about the rights of society's employees.

---Gary James Wood  
Chair, AIDS Legal Referral Panel  
Bay Area Lawyers for Individual Freedom

8:aidsref.ar2
AIDS Spreads to the Courts

EXCEPT for an arthritic hip, Frances Borchelt of San Francisco was a healthy, vigorous woman of 70 when she agreed to undergo surgery designed to alleviate her pain. During the hip-replacement procedure in 1982, however, Borchelt received a blood transfusion, a routine procedure that would have tragic ramifications. After feeling weak and listless for three months afterward, Borchelt was told she had hepatitis. But the doctors were wrong: last December she was readmitted to the hospital with an accurate diagnosis of AIDS, a fatal disease no longer confined to the homosexual population. In April, Borchelt sued her doctor and the Irwin Memorial Blood Bank for failing to warn her of the dangers in transfusions. Faced with an aged and ailing plaintiff, the courts expedited her case, setting a September trial date. But justice was not swift enough: last week Borchelt died.

And so the cases roll in. AIDS—already the No. 1 public-health crisis in America, according to federal officials—is now coursing through the nation's legal system. Borchelt’s lawyer, Fred Meis, is converting her lawsuit to one for wrongful death. The Florida Supreme Court has taken a case that pits the privacy rights of blood donors against an accident victim who allegedly contracted AIDS from an emergency-room transfusion. And in the homosexual community, the sharp rise in AIDS victims has set off what Matthew Shebar, a lawyer at New York’s Gay Men’s Health Crisis Inc., calls “an intense legal crisis.” Assisted by a network of mostly volunteer lawyers, AIDS sufferers and their associates are fighting on many fronts. They use anti-bias laws to keep their jobs and apartments. They battle with hospitals to win visitation rights and with funeral homes to ensure that their bodies will be treated with dignity. They press claims against insurers bent on avoiding enormous treatment bills. And they face up to the business of dying, drafting deathbed wills and power-of-attorney documents in order to preserve some control even as their lives slip away.

Casual Contacts: Many of the legal problems stem from the conflict between the laws of the land and the mood of the public. While many people understandably fear infection, various federal, state and local statutes forbid discrimination against disabled persons whose handicaps do not prevent them from doing their work. “The only job where AIDS should be a disqualification,” argues New York Law School Prof. Arthur S. Leonard, “is that of a sex surrogate.” The reason: researchers think that AIDS is a virus most commonly passed on through sexual acts—not by working at the next desk. But that assurance has not been sufficient for officials in Broward County, Fla., who fired two AIDS-infected white-collar workers after doctors refused to guarantee that casual contact could not spread the disease. Their case is now before the Florida Human Rights Commission.

AIDS-related job bias often combines hysteria with old-fashioned homophobia. “It’s not just people who have AIDS but people associated with it who are discriminated against,” says Abby R. Rubenfeld of the Lambda Legal Defense and Education Fund, Inc. Around the country, lawyers report that otherwise healthy gay men who come to work with rashes or chest colds are now getting fired because of AIDS phobia. AIDS has also become a difficult issue for landlords and tenants. Often a gay couple will share an apartment but have the lease in only one name. In a dozen New York cases, according to lawyer Shebar, the landlord has tried to evict the roommate when the leaseholder came down with AIDS. Because these cases are so new, the best hope for a litigant often is an analogous court ruling. In San Francisco lawyer Matthew Coles used a state fair-housing law to defeat the eviction of a straight couple who had an AIDS houseguest, relying in part on federal civil-rights cases that protected whites who were known associates of blacks. But sometimes the law can do little for an AIDS victim, such as when gay tenants have themselves refused to allow infected roommates to continue sharing their homes.

Right of Privacy: Some precedent-setting disputes involve heterosexuals. In Florida the family of Donald Rasmussen is trying to collect damages from the driver of an automobile that crashed into him. To save his life, doctors gave Rasmussen 51 units of blood during emergency treatment. A year later he was diagnosed as suffering from AIDS, which one doctor later testified “probably” came from the transfusions; he died last June. But in order to collect damages from the other driver, Rasmussen’s family must prove that death came as a result of the accident or the subsequent medical treatment. To do that, lawyers have to show that the blood he received was contaminated with the AIDS virus—which means tracking down the donors. Not surprisingly, the South Florida Blood Service, which supplied the blood, refuses to turn over a list because it doesn’t want its donors cross-examined. Ruling in April, a state appeals court agreed with the blood bank, noting that, in part, because of the stigma attached to AIDS, these donors have a constitutional right of privacy. The Florida Supreme Court will hear the case later this year.

The advent of AIDS may change other laws governing blood banks, stripping them of their protection as a service provider and exposing them to the liability rules facing manufacturers. The pressure for such a move will come from new victims. As Irwin Memorial Blood Bank spokesman Brian McDonough says, “there are going to be more cases of transfusion-related AIDS.” Indeed, according to the Centers for Disease Control in Atlanta, the number of AIDS sufferers will increase dramatically from the 11,010 cases counted since reporting began in 1981. And that will bring more legal conflicts, as well as a harsh reality: even when the law is on the side of the sick, AIDS victims often don’t have the strength or desire for a fight. Says San Francisco lawyer Gary Wood, “If the client has AIDS, he dies or tires out before you can get to trial”—a fact that leads opposing lawyers to stall as long as possible, knowing that if the issue won’t go away the victims eventually will.

AIRC PRESS with TESSA NAMUTH in New York.
GERALD C. LUBENOW in San Francisco.
RON MOREAU in Miami and bureau reports
Dear Mr. Campbell:

Thank you for your kind comments about Lesbian/Gay Law Notes.

Some of what I reported about initial determinations that AIDS is covered as a handicap under various state laws is based on news reports. In terms of citation material, the following may be of some help:

1. New York: In People v. 49 W. 12 Tenants Corp., a trial court ruling on a motion to dismiss essentially held that AIDS is a handicap under the statute. The opinion is not officially published, but was reported upon in New York Law Journal, October 17, 1983, page 1. (Docket No. 43604/B3, NY Sup Ct, NY Co.). Subsequently, the NY State Division of Human Rights issued a policy statement on the matter which is published in CCH Emp. Prac. ¶ 26165.

2. New Jersey: My information is based solely on reports from the Pro Bono Panel of the Bar Association for Human Rights that the New Jersey enforcement agency considers AIDS to be a handicap.

3. Texas: My information comes from newspaper reports announcing that the Texas agency has declared that AIDS meets the handicap definition of the statute, which I confirmed by telephone calls with sources in Texas, including Tom Coleman of the Texas Human Rights Foundation.

4. Massachusetts: My information from informal contacts was confirmed by my participation in a day-long program in Boston, during which one of the local attorneys stated that the Mass. Commission Against Discrimination has taken the position that it can receive charges in AIDS cases based on the handicap statute. See BNA Daily Labor Report No. 239, 12/12/85.

5. District of Columbia: My source is a copy of a letter by the District's Assistant Corporation Counsel, dated 10/15/85, to City Councilman John Ray, advising that in the opinion of the Corporation Counsel, AIDS-based discrimination is covered by the handicap provisions in the District.
6. California: My source is Leonard Graff at National Gay Rights Advocates. Of course, you are aware of the AIDS-specific antidiscrimination laws in Los Angeles, West Hollywood, and San Francisco. The informal agency position on this is now being tested in an administrative trial against Raytheon Corporation, which is scheduled to resume early in January.

7. Vocational Rehabilitation Act: Sources here are several, including initial contacts by various federal agencies by the NY Pro Bono Panel, Lambda Legal Defense Fund, and an announcement by the San Francisco Regional Office of US Department of Health and Human Services.

8. Florida: In addition to the states previously mentioned in my newsletter, it was learned late last week that the Florida agency has ruled in favor of Todd Shuttleworth, interpreting the term "handicap" (which is not defined in the Florida statute) to cover AIDS. I am told that the decision will be printed in full in the BNA Daily Labor Report this week, but have not received it yet.

Lambda Legal Defense Fund is putting together a revised edition of its AIDS Legal Guide and has been accumulating material in this area. Also, National Gay Rights Advocates has started an AIDS Litigation Project and has announced that they are planning some sort of publication. I am sending a copy of your letter and this response to both Lambda and NGRA in hopes that they may also be able to provide you with more specific information to assist in securing a favorable determination in Oregon.

Sincerely,

Arthur S. Leonard

cc: Abby Rubenfeld, Esq.
    Legal Director
    Lambda Legal Defense Fund
    132 West 43 Street
    New York, NY 10036
    (212) 944-9488

Benjamin Schatz, Esq.
AIDS Project
National Gay Rights Advocates
540 Castro Street
San Francisco, CA 94114
(415) 863-3624

Dear Professor Leonard:

1985 Lesbian/Gay Law Notes 53 notes initial determinations in seven jurisdictions that AIDS-based discrimination violates prohibitions on handicap-based discrimination. We hope to get a similar determination from the Oregon Commissioner of the Bureau of Labor and Industries, interpreting Oregon Revised Statutes sections 659.400 to 659.435 (1983).

It would assist us to have for each jurisdiction:

1. The name, address and telephone number of a person to contact for more information;
2. A copy of and a citation form for the determination;
3. The citations for the authorities upon which the determination is based; and
4. Any strategic or tactical advice which might be applicable.

We should be grateful were you able to provide the information or to forward this request to those who could provide the information.

Lesbian/Gay Law Notes is very useful -- concise, informative and reliable -- and we thank you for writing it.

Thank you for your assistance.

Sincerely,

GOLDSTEIN & CAMPBELL

[Signature]

James M. Campbell

Copy: Ben Merrill, Esq.
Firing Employees Who Have AIDS Brings on New Round of Legal Action

Members of occupational health teams can face lawsuits if they reveal that a worker has AIDS

One of the new aftereffects of AIDS (Acquired Immune Deficiency Syndrome) has become job insecurity. Job terminations construed to be based on a diagnosis—or suspicion—of AIDS infection have been occurring with enough frequency to warrant news media reports—and lawsuits.

Employers who dismiss known or suspected AIDS victims from the workforce think their action is justified. Working alongside an AIDS victim, they say, is a threat to the health and welfare of other workers. Expert opinion appears to establish that casual personal contact between an AIDS victim or carrier of the virus and a healthy person is not dangerous. However, the fear of contagion exists.

This development has impact on members of the occupational health and safety team.

They are called upon to provide information and advice regarding the danger of the disease. As a result, they are perhaps in the best position to allay fears about catching AIDS by exposure to people who have it or carry the virus.

They can counsel workers who have the disease or are at high risk. Workers in the health-care field in particular have higher-than-average risk because of the possibility of contact with body fluids from victims or carriers.

They are vulnerable to legal action if they violate state privacy statutes. This comes about if they reveal that a worker who is consulting with them professionally has AIDS and, as a result, is dismissed from his job. A health professional may also find himself or herself named as a defendant if involved in a termination decision which triggers a lawsuit.

**SMALL PERCENTAGE.** AIDS affects a small percentage of the total population. However, the bizarre nature of the disease, its epidemic character, its usually fatal outcome, and the fact that it occurs primarily among homosexual men have focused extraordinary attention on it.

The federal government and various medical institutions have initiated crash research programs. In addition, the epidemic has mobilized homosexual groups to action.

The result has been a range of programs to deal with the medical, psychological, social and practical impact of the disease on its victims. Frequently, the victims wind up without health insurance because coverage is terminated after they lose their jobs. They may be penniless and treated as pariahs.

Firing an employee can bring on a lawsuit based on one or more theories of protection against termination arising out of statute or case law. These theories undermine the concept of at-will employment.

Employment at will means that an employee can be fired for good reason, for bad reason, or for no reason at all, as an Illinois judge once said. But no longer, especially in California.

**LEGAL THEORIES.** Several legal theories are being used by lawyers for fired AIDS victims, according to Gary Wood, a San Francisco attorney. Wood is chair of the AIDS Legal Referral Panel set up by the Bay Area Lawyers for Individual Freedom (BALIF), an established organization of homosexual lawyers. Some of the theories are:

- **Breach of an implied contract.** Even without a written contract of employment, good performance over the years and absence of any “bad marks” can lead a court, particularly in California, to conclude that a contract did exist. Termination without good cause is a breach of such an implied contract.
- **Dealing in bad faith.** California courts have enunciated the idea that every contract has an implied covenant of good faith and fair dealing. This concept comes from a long line of cases arising from lawsuits against insurance companies which refused without good reason to pay claims.

Since this is a tort (i.e., civil wrong, like auto accidents or product injury), punitive damages are available to a successful plaintiff if the defendant’s action was malicious.

- **Company policies or local ordinances which protect against discrimination because of sexual orientation.**

The close relationship between AIDS and homosexuality could bring such protection into play.

- **State and local statutes and ordinances which provide job protection to people with physical handicaps.** The basic requirement under such laws is a good-faith effort by an employer to accommodate to the physical condition of a worker. AIDS victims may be unable to do work for which they were hired.
- **Privacy laws.** These laws provide a right of action against a health professional if a disclosure of information given in confidence leads to an injury, like loss of employment.
- **Discrimination statutes.** Statutes like the one enacted by the city of Los Angeles this past summer bar discrimination, including employment discrimination, against victims of AIDS or those suspected of harboring the virus.
- **The standard tort of intentional infliction of emotional distress.** This is a marginal theory, but could be part of a broader claim. It is based on the manner in which a person is terminated.

Charles Goerth has developed a short list of organizations working with employers on education about AIDS. He can reach at 1900 Central Ave. # 308, Wilmette, Ill. 60091.
21 May

Jack,

Here's Gary Wood's article, as edited by me. Give Gary the 'Byline,' if you may want to put in a note saying the BAPF AIDS Panel provides psychosocial legal services to persons with AIDS in the Bay Area.

Thanks.

Federick
A LESSON IN THE EMPLOYMENT TERMINATION OF AIDS VICTIMS

Though press reports have indicated to the contrary, there is a growing AIDS paranoia in the Bay Area which has manifested itself in recent attempts by employers to limit the employment rights of homosexuals and persons with AIDS. For example:

--For example, one hospital in the East Bay required one of its own employees to undergo AIDS testing as a condition of his maintaining his job.

--A bank in San Mateo County transferred one of its allegedly homosexual employees to a different branch because of its concerns about the transmission of AIDS.

--Several local employers have laid off or fired persons with AIDS even though these employees were still capable of performing their jobs.

--In several other cases, allegedly homosexual employees were fired for having conditions not related to AIDS, and the reasons given by the employers for the terminations were that they feared the conditions would develop into AIDS.

Though the law protecting employees in these situations is in disarray, this article will describe generally the legal theories used by attorneys representing employees terminated under these conditions. To begin with, it must be noted that most of these clients are employees at will. This means that, if they lack the protection of a written
contract, or a permanent contract implied by the circumstances of their employment, or a union they may be fired regardless of the cause of the employer having any specific cause.

However, some of these clients may seek the protection of the covenant of good faith and fair dealing, which, by California law, is implied in every contract. By this covenant, if an employee has a justifiable expectation of continued employment and the employer has exercised bad faith in firing the employee, a lawsuit for damages against the employer may be successful.

However, the best protection afforded employees with AIDS in California statutory provisions prohibiting discrimination on the basis of a perceived medical condition or a handicap. In this regard, the definition of perceived medical condition is very narrowly limited and probably only applies to those persons diagnosed as having Kaposi's sarcoma. However, the definition of a handicap is broad enough to include all other AIDS-related conditions. In statistical law, or medical condition discrimination is much less a problem than sexual orientation discrimination. It is of little use to most of these fired employees that the real discrimination is due to their being homosexual. In cities like San Francisco where, under certain circumstances, homosexuals are protected from discrimination, the fired employees are lucky, but most cities and counties do not have "gay rights" ordinances. Similarly, there is no statewide statute prohibiting discrimination against homosexuals, and neither the state nor the federal constitutions have been held to prohibit this
discrimination.

Depending upon how the employer learned that the employee was homosexual or had AIDS, there might be arguments that the news was received in violation of the employee's right to privacy (as defined by case law interpreting the California Constitution), was learned in violation of the employee's right to have his medical records remain confidential (pursuant to state statute), or was disseminated by a conspiracy to violate the employee's civil rights. In each of these situations, the employee may have a case for damages against the employer.

Again, depending on the circumstances, some employees have argued that their firing was the result of another employee's intentional inducement of the breach of his contract, or another employee's intentional interference with his economic advantage. In these situations, the employee can seek damages against the offending other employee or the employer.

If there is a relationship between the employer and the government, as when the employer receives some sort of government funding or is a government agency, some protection may be found in state and federal legislation prohibiting employment discrimination on the basis of a handicap or prohibiting certain types of discrimination in public accommodations. However, this protection does not extend to employees not related to the government.
As is obvious from this short discussion, the law does not effectively extend its majesty to protect persons with AIDS in their places of employment. At a time when a job is a useful function in society, may be the most necessary ingredient to maintaining his sanity, an employee with AIDS may not be as well protected as he should be. To exacerbate this problem, the legal system may not be as quick as is necessary to obtain for the person with AIDS the rights the AIDS patient desires. However, Attorneys are working to alleviate this problem, and we hope that some change may be in the offing. Perhaps this is the lesson the legal system must learn about the rights of society's employees.

---Gary James Wood, San Francisco, 4563-3020
Chair, AIDS Legal Referral Panel
Bay Area Lawyers for Individual Freedom

8:aidsref.ar2
to cut off federal revenue-sharing funds to cities which do not
close gay bathhouses -- even those in which only "safe sex" is
practiced.

--- Anti-gay Backlash: Repeal and defeat of gay and lesbian
righirs legislation; increased anti-gay violence; use of AIDS' 
issue to justify criminalizing homosexual sexual relations; 
increasing discrimination against lesbians and gay men; efforts
to close all gay and lesbian businesses; public proposals that 
al! gay men be killed or castrated.

--- Sexual Backlash: efforts to close bathhouses, adult 
bookstores, hotels and parks frequented by gay and bisexual men; 
attempted reinstatement of sodomy laws.

--- Hysteria Regarding the Transmissibility of AIDS:
discontinuation of shared communion cup in churches because of
fear of spreading AIDS; refusal by political candidates to shake 
hands in public; opinion polls indicating majority of Americans
believe AIDS can be spread merely through shared living quarters.

Conclusion

At present, the number of cases of AIDS is continuing to
double every 12 months. If this trend continues, over 300,000
Americans will develop AIDS within the next five years. As the
number of cases of AIDS continues to increase, so too does the
potential for a major assault on civil rights. In order to
circumvent the spread of both AIDS and AIDS hysteria, five major
steps need to be taken:

1) INCREASED GOVERNMENT SPENDING on research, patient care,
and social services.

2) PUBLIC EDUCATION AND RESPONSIBLE LEADERSHIP: government,
media, business and community leaders should take the lead in
demonstrating compassion towards people with AIDS and in showing
that they are not afraid to live, work and socialize with them.
In addition, a massive government-funded "safe sex" AIDS
prevention campaign should be implemented as soon as possible.

3) STRONG PROTECTIVE LEGISLATION TO PROHIBIT AIDS RELATED
DISCRIMINATION, especially in the areas of employment, education
and insurance.

4) REPEAL OF SODOMY LAWS AND ENACTION OF GAY CIVIL RIGHTS
LEGISLATION: as long as gay men live in fear of discrimination
and criminal prosecution, many will continue to be forced into
the very kinds of anonymous, unsafe sexual encounters which are
most likely to spread AIDS; anti-gay discrimination further
forces gay men into sham marriages, thereby increasing the spread of AIDS into the heterosexual population.

5) INCREASED POLITICAL AND FINANCIAL SUPPORT BY THE HETEROSEXUAL COMMUNITY FOR GAY RIGHTS AND AIDS-SERVICE ORGANIZATIONS which are working to achieve goals one through four.
An Unmentionable Personnel Problem of the 1980s

Mark Lipton

Among the problems that human resources managers and their bosses will face in the 1980s is a new one—how to cope with terminally ill employees on the payroll. While it is clearly no secret that humans are mortal, a peculiar confluence of changes in laws regarding retirement and actuarial statistics of length of life indicate that the problem will occur more often in the 1980s than ever before.

The Age Discrimination in Employment Act (ADEA) now makes it possible for an employee to work to age 70 or beyond. It is difficult, if not impossible, for the employer to force early retirement without challenging the law. In addition, the employer may have to prove cause in order to require an employee to retire. At the same time, statistics show that the average life span of Americans is 72.5 years. This means that significantly larger numbers of people will work until they die. Inflation and the growth of unfunded pensions, a development of the 1970s, may accelerate this tendency to work longer. These considerations suggest that a company should develop a policy for dealing with employees who prove to be terminally ill while still on the job.

CURRENT PRACTICE

What is the present practice? When employees have a terminal illness, they usually are allowed to work as long as they feel well enough and can perform satisfactorily. When they can no longer work at their current job, they are placed on sick leave, and their health insurance takes care of the medical bills. When they die, their beneficiary receives life insurance under the group plan. When this occurs today, or when retirement was mandatory at age 65 or under, regret was expressed, and firms felt a certain amount of quiet pride that the benefit plans of the firm were generous in handling the situation. As the number of such persons rises, though, the side effects felt by the company, the younger employees, and the terminally ill will predictably change. It might be wise to anticipate some of the impact on personnel policies and procedures so that the new situation will be more manageable for all concerned.

NEW LEGISLATION—AND THE HANDICAPPED TIE-IN

The newly enacted laws and regulations regarding the employment rights of handicapped employees have made a complicated situation still more complex. The image most people have of the handicapped is one of childhood victims of polio, accident victims, veterans, or adults with handicaps as a result of birth defects or childhood diseases. The new dimension of the ADEA also suggests that some of the handicapped will be those who have suffered impairment of their faculties after a long life of healthy living. Since people age 65 are more likely to become handicapped from degenerative disorders, the somewhat limited views we now hold of the handicapped will presumably change. People who have functioned perfectly well up to age 65 may, during the ensuing five years of work, become cardiac patients or be victimized by other afflictions, such as senility and degeneration of bodily functions. When this occurs, the simple measures we have encountered to date for handling the handicapped will have to be enlarged considerably. Widening the toilets, installing rails, and adding traveling ramps by the front door will have to be supplemented by other arrangements, both physical and administrative, to cope with the new population of handicapped elderly.

None of this will be solved easily. Handling these problems will be hardest on those organizations that fail to anticipate them. The impact will probably be greatest about five years after the implementation of ADEA, and the pressure
introduced by Senator Harrison Williams to elevate the status of the handicapped in employment. That is, the handicapped would, within this legislation, achieve the same protected class status as minority groups and women. As such, they would be covered by EEO actions.

FACTS BEHIND THE PROBLEM

The population of the United States is faced with many unique stressful situations. Some are work related, but most are in response to societal factors. On the plus side, however, people are living longer as a result of technological advances. In 1900 the American man had a life expectancy of 47.2 years and a workforce span of 32.1 years. His working years were primarily in his youth and he worked until his death. In 1975 he could be expected to live 72.5 years and to work 40.1 years. The extension in our years of life does not imply a disease-free society, but simply one of more effective disease control. Lives will continue to be taken by the three leading causes of death among Americans: heart disease, cancer, and strokes. In addition, we are still faced with progressively debilitating conditions, such as multiple sclerosis, muscular dystrophy, arthritis, and rheumatism. Where “cures” have not been developed, impressive advances in medicine have significantly extended our lifespan. Although we may be living longer, we are not necessarily healthier. As a population, we are confronted by many illnesses and, surprisingly, days of disability per person for all ages increased significantly in the past decade for every income level.

Attitude of Industry

Industry has shown compassion for the terminally ill with respect to insurance programs, personnel policy, and concern of fellow workers. What is now at issue is the possibility that the employment of the terminally ill is ending much sooner than warranted. It’s not only a desire to be socially responsible that’s at stake, but the realization that it makes good sense to behave this way. (Besides, premature termination may be illegal.)

New self-concept

The terminally ill encounter significant problems when they first confront their new self-concept. An examination of the environmental constraints placed upon these individuals in one study supports the finding that the terminally ill receive implicit messages from those they work with that they are not required to be socially responsible and are not expected to care for themselves. The resulting behavior patterns of the terminally ill would seem obvious. Psychologists also uncovered the “mourning” response of others in what can be viewed as a sympathetic response due to a case of overidentification with the terminally ill person. Additionally, individuals who were not acquainted with the patient.

required him to mourn his own condition because fellow workers were personally threatened by the terminally ill person’s medical condition or had a pathological need to feel psychologically superior. Consequently, these feelings create a deep concern in the terminally ill about being a burden on society. Added stress and depression may thereby accelerate the deterioration.

Personnel management literature has supported the general viewpoint that if an employee is ill, and the illness extends over a long period of time with no reasonable probability of recovering, he is no longer employable. In light of current developments, this attitude is both legally and morally inappropriate.

LEGISLATIVE DEVELOPMENTS

Extending the employment of the terminally ill worker is first predicated on two recent legislative developments. One is the provision for the Vocational Rehabilitation Act of 1973 which requires federal contractors and subcontractors to take affirmative action by seeking out qualified handicapped people and fully utilizing them. The legal definition of “handicapped” has been an elusive one. A handicapped individual is one who:

- Has a physical or mental disability that significantly limits major activities.
- Has a record of such a disability.
- Is considered as having such a disability.

Thus, a paraplegic has a disability that significantly limits major activities. An individual who has been in a mental hospital, but is now considered mentally competent, is considered handicapped because he or she has a record. This is also the current, accepted status of reform drug and alcohol abusers. Continuing this line of reasoning, a person with a history of heart disease or cancer is also considered handicapped. Employment discrimination based on handicaps is now illegal based on the above federal legislation and statutes in 23 states.

November 1978 was a minor landmark for the federal mandates. The U.S. Department of Labor charged Northwestern University with discriminating against an employee because she had cancer. Prior to this charge, the Department had brought only six complaints under the 1973 Act on any grounds, making this the first based on job discrimination because of cancer. If Northwestern is found in violation of the law, it could lose its current government contracts and be declared ineligible for future government opportunities.

Equally significant in this case is the Labor Department’s charge that the university failed to take “affirmative action” to find the employee another job on its staff, although this is currently the policy at other organizations. A notable example of a company rigorously developing alternatives for employees is the 3M Corporation. Like other large businesses, 3M was motivated to reduce costs and found it more efficient to implement an internal rehabilitation program in
the hope of retaining disabled employees and keeping them productive. By virtue of the program's comprehensive design, it moved easily into handling the needs of the terminally ill employee. Customary procedure at corporations such as 3M and Control Data is a thorough search of positions throughout the organization in an attempt to utilize the valuable skills, abilities, and potential of the employee. According to recent legislation, such a search is mandatory.

Studies conducted prior to 1972 suggest that 30 to 40 percent of hemiplegics (stroke victims) are capable of full employment. However, when stroke victims sought employment from new or prior employers, the most frequently cited objections by the organizations were "second injury insurance risks," "possibility of second strokes," and "danger on the job." Arguments were raised about plant facilities not being suited to the handicapped and "reactions of co-workers to handicapped persons." It is doubtful that employers could justify this today, considering current legislation. But a study, sponsored by the American Cancer Society and completed in February 1979, indicates less positive findings. In this analysis, about 100 recovered cancer patients, their families, employers, co-workers, doctors, and friends were interviewed. The researchers report that the employees, upon returning to their former jobs, faced hostility usually expressed by shunning, sarcastic comments, and assignment changes. The major findings reported that 13 percent of the workers were denied work because of their cancer history; 35 percent perceived discrimination at work following successful treatment of cancer; 23 percent either left their precancer employment or were rejected for at least one other job because of their illness; and 11 percent either were excluded from group health benefits or had their previous benefits reduced. Although these figures may reflect practices prior to legislative enactment and interpretation, overall, it gives us an empirical basis to judge how poorly the "modern" corporation is handling this problem.

A second federal mandate that may impinge on this issue is the Age Discrimination in Employment Act of 1978 (ADEA). As of January 1, 1979, forced retirement before age 70, with some exceptions, is banned. Although the full impact of this law is speculative, it is well accepted that the financial pressures of retirement are forcing many post-65 citizens back into the employment market and those awaiting retirement are seriously questioning the option. Of greater potential impact to industry, however, are the Labor Department's findings suggesting a labor shortage in the next decade. Because of low birthrates in this country since the 1960s, the generation entering the labor market in the 1980s will be significantly smaller than the generation now occupying the labor force. Economists suspect that labor shortages could occur as early as the mid-1980s. While some major corporations will continue to encourage employee retirement at or before age 65, many now believe that the important skills possessed by these workers and the mounting expense of recruitment and training justify keeping the post-65 employee active in the organization. In of disability. As the U.S. economy continues to shift from goods-producing to service industries, employment will shift to physically less demanding tasks and more people will be able to work longer.

Consequently, the average age in both overall population and the workforce will continue to increase. As our population increases in age, our limitation in activity caused by chronic conditions will continue to increase more than proportionately; the aggregate population of terminally ill people in industry will expand, and employers will have no recourse but to develop personnel policies reflecting these demographic changes.

Another important consideration for reevaluating corporate policy vis-à-vis the terminally ill is the belief that it supports other sound management practices. It has been said that it is possible to greatly increase the responsibility and commitment that workers feel for the organizations in which they earn their living. We may look at this from two perspectives. Social and psychological research over the past 35 years in organizations gives clues to some of the possible solutions. Research results indicate that if you want people to behave more responsibly, you must give them the opportunity for involvement and commitment to the job and company. This commitment has been correlated with overall satisfaction of company policy and administration, and is increased by the employees' perceiving that their organization assumes an equitable share of responsibility or commitment toward them. The overt practice of employee job security in postwar Japanese management has sufficiently established the positive results that accrue from this corporate policy. Also, evidence of results from YKK Industries, a zipper company in Georgia, suggests that such policies are not culturally bound. YKK offers its workers an unusual degree of job security in Macon and the workers, in turn, have exhibited characteristics implying high positive commitment toward the organization.

Labor unions have acknowledged that programs that try to keep the terminally ill employee productive contribute significantly to employee morale, and they have been cooperating with management's efforts to keep disabled workers on the job—an apparent conflict with data cited earlier in the American Cancer Society study.

THE DILEMMA

Dr. Roger Cheney, a neurosurgeon and pain specialist, suggests that a major obstacle toward an effective program is the Catch-22 dilemma between the chronically ill and their employers. For example, an employee could be on permanent disability compensation for a back injury and subsequent unsuccessful surgery. After a number of months or years, the individual's pain may be more effectively controlled, perhaps by actual healing, new treatment, or the individual's enhanced ability to cope with the pain. Should that person want to return to work, they are in danger of terminating their disability status upon new
employment. If the new job is physically too demanding, with no other alternatives within that organization, the employee is left without a job and loses the prior disability status. However, if the individual had decided to remain on compensation, the reward would be the security of a guaranteed income. Psychologists point out that the need for security is greater than the need for actualization. Thus, the choice to remain out of the labor supply—to remain unproductive and dependent—is reinforced by existing personnel policies.

A successful program can be implemented in organizations that are capable of the following:

- Assuming responsibility for finding compatible tasks for the individual within the organization.
- Accepting less total aggregate hours of service from the employee.
- Realizing that hourly productivity may be reduced, yet not significantly.
- Assuming the expense for making areas of traffic flow, rest rooms, work areas, and entrances/exits easily accessible for wheelchairs, prosthetics, and supportive equipment (cans, crutches).
- Understanding that the only chance for success of such a program necessitates a strong commitment from all levels of the organization.

Formal programs currently exist in a number of large corporations. Consistently high success rates have been reported in identifying the employees who need the assistance, counseling, retraining, and integration back into the organization as productive members.

There are startup costs, but these are limited primarily to labor time involved in developing and coordinating resources necessary for the program. The vital question that keeps cropping up, however, is whether the firm can afford not to initiate a program. As Figure 1 shows, the typical structure is quite simple and emphasizes careful integration of various existing departments.

The number of terminally ill employees will grow. Companies must realize that the intensity of the issue will mount in the next five years and they will have to initiate policies before the problem is perceived at all levels of the hierarchy. Those that react after the fact may find themselves in managerial and legal quandaries.

MARK LIPTON teaches management, specializing in organization behavior and.