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LEGAL ISSUES IN DEALING WITH AIDS IN THE WORKPLACE

Presented By Victor Schachter And Richard J. Curiale
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AIDS: Legal And Human Resources Issues For The Employer

LEGAL ISSUES IN DEALING WITH AIDS IN THE WORKPLACE

I. Emerging Legal Issues

A. Equal Employment Laws

1. Handicap Discrimination

a. An employer must be careful not to violate statutory protections given to handicapped employees. In this context, it is likely that AIDS will be considered a handicap and/or disability under both federal and state laws.

b. Federal Law: The federal Rehabilitation Act of 1973, Sections 503 and 504, imposes a duty upon employers with federal contracts, and employers who are recipients of federal assistance, not to discriminate against "handicapped" persons.

(1) The Act defines "handicapped" as:

> A physical or mental impairment which substantially limits one or more of such person's major life activities, or...has a record of such impairment, or...is regarded as having such an impairment.

c. State Law: Most states prohibit employers from making employment and hiring decisions on the basis of a physical handicap if the person is otherwise qualified.

(1) The California Fair Employment and Housing Act definition of "physical handicap" includes "impairment...of physical ability because of...loss of function or coordination, or any other health impairment which requires special education or related services." Cal. Gov't Code §12926(h).

(a) Impairment of physical ability due to loss of function is defined as "any physiological disorder or condition ... affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs,

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respiratory, including speech organs, cardiovascular, reproductive ... lymphatic, skin and endocrine." Cal. Admin. Code Title 2, §7293.6(d).

(b) The California Department of Fair Employment and Housing has indicated that it considers AIDS to be a physical handicap. It has accepted charges of physical handicap discrimination as a result of AIDS related employment decisions and is presently processing charges through the agency.

(2) New York Human Rights Law defines "handicap" to mean "physical...impairment resulting from...physiological...conditions which prevent the exercise of a normal bodily function or as demonstrated by medically accepted clinical or laboratory diagnosis techniques...." Article 15, Section 296.

(a) The New York State Division of Human Rights interpreted New York's physical handicap statute to mean that an individual was protected unless his or her disability substantially affected his or her ability to do the job. This agency interpretation was rejected by the Court of Appeals of New York in Westinghouse Electric Corporation v. State Division of Human Rights, 49 N.Y. 2d 234, 401 N.E.2d 196, 425 N.Y.S.2d 74 (1980). Subsequently, the New York Human Rights law was amended to reinstate the agency's original interpretation.

(b) Recently the New York State Division of Human Rights has taken the position that AIDS is a disability under New York law. The Division will accept and prosecute complaints not only from persons who have AIDS, but from persons perceived to have

AIDS, persons perceived to be particularly susceptible because they are related to or reside with someone with AIDS, and persons perceived to be particularly susceptible because they tested positively for the AIDS antibody. There currently are employment related AIDS cases pending before the Division, including at least one case concerning an employee's discharge.

(3) In the first determination of its kind by a state human rights agency, the Florida Commission on Human Relations recently ruled that an employee who was fired because he had AIDS was a victim of unlawful handicap discrimination. Shuttleworth v. Broward County Office of Budget and Management Policy, FCHR No. 85-0624, Dec. 11, 1985.

(a) The Commission stated: "Based on the plain meaning of the term 'handicap' and the medical evidence presented, an individual with acquired immune deficiency syndrome is within the coverage of the Human Rights Act of 1977 in that such individual 'does not enjoy, in some manner, the full and normal use of his sensory, mental or physical facilities.'"

d. City Ordinances: A growing number of cities in California have passed ordinances specifically prohibiting discrimination against persons suffering from AIDS or its related symptoms, e.g., San Francisco, Los Angeles and West Hollywood.

(1) In November, 1985 San Francisco passed a tough ordinance barring discrimination against AIDS victims. (See Appendix for full text.)

(a) The ordinance makes it illegal to discriminate against AIDS victims in housing, employment, medical services or business.

(b) The ordinance also prohibits employers, landlords and others from requiring tests for AIDS.

(c) The penalty provisions enable victims to sue for treble damages and to collect punitive damages and attorneys' fees as well.

e. Court Decisions: The courts have not yet had many opportunities to rule on whether a person with AIDS is handicapped. Therefore, there is sparse guidance from this quarter. However, the following cases indicate the direction the courts seem to be taking.

(1) In People v. 49 West 12 Tenants Corporation, No. 43604/83 (Sup.Ct. N.Y. County, Oct. 17, 1983), the New York State Attorney General, after determining that AIDS was a covered "handicap" under the New York Human Rights law, brought suit for damages and injunctive relief against a cooperative apartment Board of Directors which refused to renew the lease of a gay doctor who had treated AIDS patients on the premises. Although the case was settled favorably for the plaintiff before going to trial, the trial judge, in an unpublished opinion, overruled a motion to dismiss for failure to state a claim under the statute, implicitly affirming the Attorney General's conclusion that AIDS was covered by the state law.

(2) In Chrysler Outboard Corporation v. Department of Industry, Labor and Human Relations, 13 Empl. Prac. Dec. ¶11,526 (Wis. Cir. Ct. 1976), a non-AIDS employment case, an employer refused to hire an applicant with acute lymphocytic leukemia because the employer's physician had advised him that the applicant carried a high risk of becoming infected from minor injuries. The employee sued. The employer conceded the applicant was physically able to perform the work, but contended that it should be able to refuse him employment because of

the expected expense in lost work time and higher group insurance rates. The court found that the employee was handicapped under Wisconsin law and held against the employer.

(3) In Watson v. San Francisco Department of Public Health, No. 11-17001-2 (Cal. Dept. of Indus. Rel., September 6, 1985), four nurses at San Francisco General Hospital insisted on wearing gloves, masks and gowns when coming in contact with AIDS patients despite the fact that neither the hospital's Infection Control Manual nor the Infection Precautions Notice for each AIDS patient suggested these precautions. Supervisors told one of the four that wearing such protective devices and equipment was not necessary for routine or casual contact with AIDS patients. Sometime later, because of deficiencies in the skills of these nurses, management scheduled temporary transfers of each of the nurses to a different shift for developmental training. The nurses filed complaints with the state alleging that they were being discriminated against in violation of California law for silently expressing a concern for safety and health. The California Labor Commissioner held that management's requirement of developmental training was well founded because of a deficiency in the nurses' skills and found no violation. However, the Commissioner also indicated that if the nurses had been discriminated against because they wore masks, gloves and gowns around AIDS patients, they would have been protected under the California Labor Code.

retaliated for self. protected activity. Prob. not held up. in courts. Hospital create hysteria in room etc. prob. not protected activity.

(4) One factor in any analysis of whether state and federal handicap discrimination laws apply should be the potential health and safety risk that such a person may pose to other employees. As of this date, there are no cases directly on point. However, there are several analogous cases which lead to the conclusion that

given the state of current medical evidence, this factor would not be strong enough to overcome a charge of physical handicap discrimination.

(a) In New York State Association for Retarded Children, Inc. v. Carey, 466 F.Sup. 479 (E.D. N.Y. 1978), the New York City Board of Education developed a plan to isolate in separate classes, forty-eight (48) children who were known to be carriers of hepatitis B. While this disease can be transmitted through successive innoculations of different people with the same needle, the extent to which it can be transmitted through infected saliva has yet to be determined. On appeal of the district court's ruling that the Board's plan was in violation of various laws, including the Rehabilitation Act, the Court of Appeal noted that the Board was unable to demonstrate that the health hazard posed by hepatitis B carriers was anything more than a "remote possibility." Therefore, this defense was rejected by the court. This decision takes on added importance because the CDC uses hepatitis B virus as the model for determining the precautions that should be taken to prevent the transmission of HTLV-III and considers hepatitis B virus more contagious than AIDS.

Board alleged warranted for ~~unable to demon~~. health reasons.

H.B. - (a) more contagious than AIDS
(b) CDC uses HB as std. for cautions re AIDS

Case important

*(b) In Arline v. School Board of Nassau County, 772 F.2d 759 (11th Cir. 1985), a teacher was fired after her third relapse of tuberculosis. On appeal, the Appellate Court determined that a contagious disease such as tuberculosis was a handicap within the parameters of the Rehabilitation Act. In analyzing the School Board's health and safety defense, as opposed to their duty to reasonably

accommodate the affected teacher, the court noted, "We are obligated to scrutinize the evidence to determine whether an employer's justifications reflect a well-informed judgment grounded in a careful and open-minded weighing of the risks and alternatives, or whether they are simply conclusory statements being used to justify reflexive reactions grounded in ignorance or capitulation to public prejudice." The court remanded the case for further fact-finding, regarding the risk of infection posed by tuberculosis.

f. Reasonable Accommodation

(1) If it is determined that AIDS is a physical handicap under federal, state or local law, employers will be expected to reasonably accommodate AIDS employees.

(a) Reasonable accommodation may include: making facilities readily accessible to and useable by handicapped employees, job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices and similar actions. In determining whether accommodation is reasonable, an employer should consider the reasonableness of the cost of the accommodation and the availability of alternatives.

(2) Employer's Defense To A Handicap Discrimination Claim

(a) The basic defense for an employer in a handicap discrimination claim is to establish that the claimant is not qualified for the position or is not adequately performing in the position.

(b) When an employee with AIDS is performing his work inadequately or lacks the necessary

qualifications, the employer should clearly establish and document these non-discriminatory reasons, e.g., excessive absences, failure to carry out assigned duties.

(c) The action taken against an employee with AIDS for non-discriminatory reasons must be comparable to actions taken against a person who does not have AIDS for the same conduct.

(3) In addition, employers can legally take adverse action against a handicapped person due to safety considerations. For example:

(a) In Southeastern Community College v. Davis, 442 U.S. 397 (1979), the court found that a North Carolina college's refusal to accept a deaf person into a nursing program was not violative of the Rehabilitation Act because the applicant's inability to read lips in all clinical situations might endanger patients.

(b) In Simon v. St. Louis County, 656 F.2d 316 (8th Cir. 1981), cert. den. 455 U.S. 976 (1982), the court held that a Missouri police officer who sustained gunshot wounds which left him paraplegic might not be "otherwise qualified" for a job with the police department, depending upon whether the ability to make forceable arrests was required for all positions within the department.

2. Sexual Preference

a. Title VII of the Civil Rights Act, 42 U.S.C. 2000e et seq. prohibits discrimination in hiring, firing, compensation and terms, conditions and privileges of employment on the basis of race, color, religion, sex or national origin.

(1) Although Title VII prohibits gender-based discrimination, it does not prohibit discrimination based on sexual preference such as homosexuality. De Santis v. Pacific Telephone and Telegraph Co., 608 F.2d 327 (9th Cir. 1979).

(2) Senate Bill 1432 is currently pending in Congress and would amend the 1964 Civil Rights Act to prohibit discrimination in employment, housing and public accommodations on the basis of "affectational or sexual orientation." The bill is not expected to pass.

b. Most states, including California and New York, do not prohibit discrimination based on sexual preference.

(1) At this time, the state of Wisconsin is the only state which prohibits an employer from discriminating against an applicant or employee on the basis of sexual preference or orientation.

(2) New York's Executive Order No. 28 prohibits state agencies or departments from discriminating on the basis of sexual orientation against any individual in any matter pertaining to employment by the state.

c. A number of local jurisdictions in metropolitan areas of California also prohibit employment discrimination based on sexual preference. See, San Francisco Administrative Code, Chapter 12A, §12A.3 (1980); Los Angeles Municipal Code, Chapter IV, Article 12, §49.70 et seq. (1979).

B. State Tort Claims

1. Wrongful Discharge

a. American law presumes that the employment relationship in the private sector is "at will" unless the employer's discretion to terminate the relationship has been abridged by contract, statute, or, in many jurisdictions, public policy.

(1) The federal and state legislation discussed above, prohibiting employment discrimination, provides a major exception to the "at will" principle. Thus, prohibitions of discrimination on the basis of physical disability or handicap may give rise to a claim for wrongful discharge where an adverse employment decision is made with respect to an AIDS patient.

(2) Under both state and federal handicap discrimination laws there may be a question of whether an individual cause of action is preempted by the agency empowered to regulate the area. For example:

(a) If an employer is a federal contractor, an aggrieved employee must file a charge with the Office of Federal Contract Compliance Programs (OFCCP).

(b) On the other hand, if an employer receives federal financial assistance, an aggrieved employee may file a private cause of action.

(3) In California, a complaint of physical handicap discrimination must be filed with the Department of Fair Employment and Housing. This requirement precludes a private action for wrongful discharge based on such discrimination.

2. Defamation

a. Defamation is an invasion of the interest in "reputation." The law of defamation may provide fertile ground for tort liability where an employee is accused of having AIDS and the employer's information is incorrect and has been broadcast to others.

(1) Slander is generally restricted to oral statements and gestures. It is a "false and unprivileged publication...which imputes in [a person] the present existence of an infectious, contagious or loathsome

disease; tends directly to injure him in respect to his office, profession, trade or business; or which by natural consequence, causes actual damage." Cal. Civil Code §46; Liffman v. Booke, 398 N.Y.S.2d 674, 675 (1977).

(a) Open discussion about a suspected AIDS employee could lead to a slander claim.

(2) Libel is a "false and unprivileged publication by writing, printing, picture, effigy or other fixed representation to the eye which exposes any person to hatred, contempt, ridicule, or obloquy or which causes him to be shunned or avoided or which has a tendency to injure him in his occupation." Cal. Civil Code §45, Laurence University v. State of New York, 326 N.Y.S.2d 617, 624 (1971).

(a) Written office memos circulated among management or employees or posted on a bulletin board could provide the basis for a libel claim.

3. Invasion of Privacy

a. Employees have a reasonable expectation of privacy in particular circumstances. The gist of the cause of action in a privacy case is not injury to the employee's character or reputation, but a direct wrong of a personal character resulting in injury to the feelings without regard to any effect which the publication may have on the property, business, pecuniary interest or the standing of the individual in the community. The right of privacy concerns the individual's peace of mind; the injury is mental and subjective.

(1) There are three types of invasion of privacy which might give rise to a claim by an AIDS employee. They include:

(a) Intrusion into private affairs, i.e., eavesdropping, shadowing, wiretapping.

(b) Public disclosure of private facts, i.e., disclosure of private facts which would be objectionable to a reasonable person and not of legitimate public concern. See Sipple v. Chronicle, 154 Cal.App.3d 1040, 201 Cal.Rptr. 655 (1984), where the court found that the news coverage of Sipple's heroism in thwarting the attempt on the life of President Ford, which also revealed his homosexuality, was an invasion of Sipple's privacy. However, the newspaper was shielded from liability by the "newsworthy defense."

(c) Placing plaintiff in a false light, i.e., a false but not necessarily defamatory position in the public eye.

4. Intentional Infliction of Emotional Distress

a. Where an employer's conduct towards an AIDS employee is outrageous (beyond all bounds of decency), is intentional or reckless, and causes severe emotional distress, the employee may have a claim for intentional infliction of emotional distress.

(1) Such conduct may include inadequate notice of testing, derogatory comments, unjustified discipline or unauthorized investigation into the employee's personal life.

5. Assault and Battery

a. An assault is the apprehension of harmful or offensive contact, while a battery is the actual harmful or offensive contact done intentionally. Rest. 2d, Torts §§18 and 21.

(1) An AIDS employee may charge an employer with assault and battery because of fear of being tested for AIDS or for the actual test itself. See, Strachan v. Union Oil Company, 768 F.2d 703 (5th Cir. 1985) where an employee sued the company for assault,

defamation, and invasion of privacy because he was accused of being a drug user, was physically searched and given blood and urine tests. The assault claim was based on the physical search and the blood test.

C. Constitutional Privacy

1. U.S. Constitution: The U.S. Constitution does not expressly provide for the right of privacy, but the Supreme Court has recognized that the Bill of Rights serves as a "penumbra" from which the right of privacy can be implied. See Griswold v. Connecticut, 381 U.S. 479 (1965).

2. State Constitutions

a. The California state constitution explicitly guarantees all its citizens the "inalienable right of privacy." Article I, Section 1.

(1) Thus, an employer's broadcasting of confidential information about an employee to the workforce would be a breach of privacy, absent a compelling need to justify such a broadcast.

(2) In Garrett v. Los Angeles City Unified School District, 116 Cal.App.3d 520 (1981), the court rejected an employee's claim that a chest x-ray for tuberculosis, required as a condition of employment, violated her constitutional right to privacy. The court was persuaded by expert medical testimony that mandatory chest x-rays were the best means of guarding against the actual health threat of tuberculosis spreading to other staff and students.

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(3) In Rulon-Miller v. IBM Corp., 162 Cal.App.3d 241, 208 Cal.Rptr. 524 (1984), the court found that an employee's dismissal because of a romantic involvement with the manager of a rival firm was a violation of the employee's substantive, direct contract rights flowing to her from IBM's privacy policy. Moreover, the court noted that "the right of

privacy, a constitutional right in California, could be implicated" as well.

b. The New York state constitution does not have a section on privacy.

D. Statutory Claims

1. Privacy/Confidentiality Legislation: Balancing The Employer's Need To Know With The Employee's Right To Privacy

a. Testing

(1) Although many employers are currently considering policies that would require employees or applicants to submit to an AIDS test, three states have taken legislative action prohibiting such tests.

* (a) California prohibits employers from testing a person's blood for evidence of AIDS without the written consent of the individual. The law also prescribes the uses to which the blood test results may be put and the persons to whom the results may be disclosed. The results may not in any instance be used for the determination of insurability or suitability for employment. Cal. Health and Safety Code §199.20-.22.

(b) Florida protects a person who submits to a seriologic test for infectious disease from unauthorized disclosure of the results of the test. The law prohibits the results of such test from being used to determine if a person may be insured for disability, health or life insurance or to screen or determine suitability for or, to discharge a person from, employment. Senate Bill No. 1038. Cap. 85-52, May 30, 1985.

(c) Wisconsin prohibits an employer or agent of an employer from directly or indirectly soliciting or requiring as a condition of employment of an employee or applicant an AIDS blood test. Similarly, insurers may not condition coverage on whether or not an individual has obtained an AIDS blood test or what the results of the test revealed. The law further protects the confidentiality of test results. 1985 Wis. Act. 29 Section 2329m (July 17,1985).

(d) Use of such tests by employers and insurers is still an open legal question in most jurisdictions.

b. Record Maintenance

(1) California has also enacted the Confidentiality of Medical Information Act which makes it unlawful for employers to disclose medical information about an employee without the written authorization of the employee involved, except in very limited circumstances. Generally, the disclosure of this information is permitted only for the purpose of administering and maintaining employee benefit plans such as health care and short and long term disability plans. There are severe penalties for violation of this statute. Cal. Civil Code §56.20.

(2) All states require that AIDS patients be reported to health authorities. Colorado recently announced a new Board of Health rule that took effect on October 30, 1985. The rule requires doctors and laboratories to telephone the state health department whenever a patient is identified as an AIDS carrier. The patient's name, address, age and sex are to be kept on file at the health department. N.Y. Times, Sept. 19, 1985 at B15. Thus

far Colorado is the only state to mandate the names of individuals testing positively for AIDS also be reported.

(3) The Supreme Court has held that employees have a privacy interest in their personnel files. See Detroit Edison Co. v. NLRB, 440 U.S. 301 (1979), where the Court deemed a union's request to require the employer to provide the individual results of psychological testing done on employees violative of the employee's right of privacy.

2. Federal Labor Laws

a. Under Section 7 of the National Labor Relations Act, employees have the right to engage in "concerted activity" for their "mutual aid and protection." This means two or more employees have the right to withhold their services to protest issues affecting their wages, hours and working conditions.

b. In addition, Section 502 of the Labor Management Relations Act specifically protects employees' rights to stop working because of abnormally dangerous conditions in the workplace.

(1) For years, protests and strikes over health and safety issues have been held to be protected if there is a reasonable basis for the employees' fears.

(2) Even though current medical evidence has concluded that AIDS is not contagious by casual contact in the workplace, it is an open question whether the NLRB would find a strike over health and safety issues regarding AIDS to be protected activity.

3. Occupational Safety And Health Act

a. An employer generally owes its employees the duty of exercising reasonable care to provide a safe workplace.

(1) The federal Occupational Safety and Health Act, 29 U.S.C. §660(c), protects employees who have safety complaints from an employer's retaliatory actions.

(2) Some states have enacted protective legislation as well. See, Cal. Labor Code, Section 6300 et seq.; N.Y. Labor Law Code, Section 28.

(3) To meet the duty of providing a safe workplace, an employer should stay informed concerning the guidelines and recommendations of CDC and others who are at the forefront of AIDS research in the medical community.

4. ERISA

a. Section 510 of the Employee Retirement Income Security Act of 1974, as amended, provides that it is unlawful for a person to discharge, discipline or discriminate against a participant or beneficiary of an employee benefit plan "for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan."

(1) Employers should be aware that potential cost to a health plan or any other employee benefit plan cannot be the basis for an employment decision concerning an AIDS employee.

(a) In Folz v. Marriott Corporation, No. 82-0219-CV-W-5 (W.D. Mo. August 31, 1984), the court awarded approximately $175,000 in back pay and front pay to an employee of a Marriott Hotel who was discharged because his employer learned that he had multiple sclerosis and believed that the disease would be costly to the company's health and welfare plan.

5. Workers' Compensation Statutes

a. Most states provide employees with a compensation scheme for job-related injuries under workers' compensation laws.

(1) It appears to be arguable that if an employee contracts AIDS in the course of his employment, or if the employee contracted AIDS outside his job, but aggravates his condition by exposure to an infection on the job, he is covered by workers' compensation.

b. If an employee's AIDS condition can be classified as a job-related injury, state laws that prohibit discrimination against employees who are injured in their jobs may also be applicable. In California, Labor Code Section 132a provides that "It is the declared policy of this state that there shall not be discrimination against workers who are injured in the course and scope of their employment." The statute further provides that it is unlawful for an employer to discharge or otherwise discriminate against an employee because the employee has filed a workers' compensation claim, made known his intention to file such a claim, received an award of workers' compensation benefits, testified in a workers' compensation proceeding or made known his intention to testify in such a proceeding.

(1) It has been argued that Labor Code Section 132a prohibits an employer from terminating an employee because of his prolonged absence due to a job-related injury or disability. However, the California Supreme Court, in Judson Steel Corporation v. Workers' Compensation Appeals Board, 42 Cal.3d 657 (1978), stated:

> [W]e emphasize that our present holding in no way mandates that an employer retain all employees who sustain injuries on the job. Section 132a does not compel an employer to ignore the realities of doing business by

"reemploying" unqualified employees or employees for whom positions are no longer available.

(2) Recently, an employer's defense to a Section 132a claim was strengthened by a California appellate court. In Jordan v. Workers' Compensation Appeals Board, 85 D.A.R. 3957 (Dec. 2, 1985), the court affirmed the WCAB's decision that an employee's termination did not violate Section 132a where the employee had been unable to work consistently for over two years and had exhausted her leave of absence rights under a collective bargaining agreement. The court held:

> [I]t is neither realistic nor reasonable to require that an employer create a class of absentee employees, outside the ambit of the collective bargaining agreement by keeping positions 'open' for an indefinite period of time on the possibility that their former occupants may recover from an industrial injury.

This holding does not change the fact that an employee whose AIDS condition is classified as a workers' compensation injury is entitled to return from a medical leave of absence if he or she is competent to perform the job, and the position is available.

6. Unemployment Benefits

a. Many states provide unemployment benefits when an employee is justifiably discharged, unless the employee was guilty of "wilful misconduct." Accordingly, an AIDS employee who is discharged for violation of a company work rule may receive unemployment benefits if it is determined that the employee's poor health caused a non-volitional breach of the work rule.

(1) In a non-AIDS case, Jacobs v. California Unemployment Insurance Appeals Board, 25 Cal.App.3d 1035 (1972), an employee was discharged due to excessive absenteeism caused by his alcoholism. The employer argued that the employee should not receive unemployment benefits because his absenteeism constituted wilful misconduct. The court disagreed with the employer, holding that the employee's alcoholism was a disease that incapacitated him from controlling his actions, thereby entitling him to benefits.

b. The California Unemployment Insurance Appeals Board recently decided that a man who voluntarily quit his job to care for his "family partner" who was dying of AIDS was entitled to unemployment compensation (Case No. SF-24774, Cal. Unemployment Insurance Appeals Board, Sept. 13, 1985).

(1) The decision is considered significant because in prior cases only "blood family members" had been able to establish "good cause" for voluntarily leaving work to care for someone who was dying.

E. Collective Bargaining Agreements

1. If an AIDS employee is covered by a collective bargaining agreement with the employer, the employer will need to follow any contract procedures and requirements with respect to sick leave, health benefits or unpaid leave of absence. The same is true of any discipline or discharge of the employee.

a. In Traynor v. United Airlines, an airline flight attendant diagnosed with AIDS was placed on medical leave by United Airlines in 1983 without being given a physical examination to determine his physical ability to perform his job. An arbitrator heard expert medical testimony about AIDS and ruled that the airline could not implement a policy of automatically laying off employees diagnosed with AIDS. Rather, a physical examination would be required to determine the flight attendant's fitness to work. The arbitrator rejected the argument

that an employee with AIDS would automatically pose a health threat to fellow employees or passengers. [An unreported arbitration decision, Jan. 7, 1985, cited in Leonard, Employment Discrimination Against Persons With AIDS, 10 Dayton L.Rev. 681, 688 n. 32 (1985)].

II. Employment Practices To Avoid Exposure To Liability

A. Inquiries of Job Applicants

1. If persons with AIDS or AIDS Related Complex, (ARC) are protected by federal, state or local handicap discrimination laws, an employer may not ask a job applicant whether he or she has AIDS or refuse to hire such applicant.

a. An employer may ask applicants if they can perform the specific duties of the position being sought, e.g., Can the applicant work an eight hour shift with a 30 minute break? Does the applicant know of any reason why he or she could not perform the duties of the job?

B. Inquiries of Incumbent Employees

1. The most prudent course, for an employer who wishes to discover existing employees who may have AIDS, would be to identify those positions involving increased risk of transmission and inquire of employees in those positions only.

a. Such positions might include those in which employees must use sharp instruments such as needles, razors, knives or dangerous machinery or positions in which employees handle blood samples.

b. Such inquiries should be done privately and tactfully.

2. Inquiries could also be structured as part of an AIDS education effort or asked in a general way to cover all serious, communicable diseases.

a. In this case, inquiries should be made of everyone in an identified risk position only for a job-related purpose. Employers should avoid singling out only high risk

AIDS groups (e.g., males, persons of a particular national origin) to avoid EEO problems.

3. Inquiries of employees who are not in positions of increased risk are not advisable.

C. Testing Employees

1. The Antibody Test

a. The blood test used to detect the presence of antibodies to HTLV-III does not indicate whether the individual who tested positive is currently infectious or will develop AIDS sometime in the future and the test results occasionally may be incorrect.

b. The CDC does not recommend routinely testing employees, with the possible exception of health care employees who perform invasive procedures.

c. If AIDS is a handicap under applicable federal, state or local law, requiring the antibody test of all employees and applicants would be ill-advised.

d. If for some reason the test is required, care should be taken to maintain confidentiality. The testing should be carried out in the least intrusive manner possible and employees should be given ample notice beforehand.

D. Establishing A Corporate Policy

1. Examine whether current sick leave and benefit policies cover AIDS patients and if so, determine their adequacy.

a. Make sure these policies are consistently applied.

2. If no such policy exists, establish a policy to address AIDS issues.

3. In establishing a corporate ~~policy,~~ stay current with the latest information from CDC, the American Hospital Association and other recognized authorities on AIDS and infectious diseases. Keep company policies concerning AIDS as close to those recommendations as possible.

E. Employer's Response Upon Learning An Employee Has AIDS

1. If an employer learns that an employee has AIDS, it should advise him or her of the latest information from the CDC and others in the medical community on hazards he might be exposed to in the workplace.

2. If not already done, the employer should refer the employee to his doctor.

3. The employer should receive confirmation from the employee's doctor that the employee can adequately and safely perform the duties of his job or that work assignment changes are indicated.

4. These actions will help meet the employer's duty to provide a safe workplace and might preclude a workers' compensation claim for aggravation to the AIDS condition that might occur on the job.

F. Employer's Duty To Communicate Knowledge About An AIDS Employee To Other Employees

1. Given the current state of medical opinion that AIDS is not communicated by casual contact in the workplace, AIDS cannot be regarded as a health hazard normally transferrable on the job. Therefore, an employer has no established legal duty to communicate its knowledge about an AIDS affected employee to other employees.

   a. In fact, an employer may breach the AIDS employee's right to privacy and confidentiality of medical information (in California) by disclosing the employee's condition.

G. Training, Education and Safety Programs

1. Either before or at the time employees become concerned about working with other employees who have AIDS or AIDS Related Complex (ARC), it would be wise for an employer to embark on an educational program.

   a. Medical experts in the area of AIDS are very willing to come in and address employees in order to allay their fears regarding AIDS in the workplace.

b. Educational programs help to dispel the myths and hysteria that frequently accompany news of AIDS in the workplace.

H. Dealing With Employee Refusals To Work

1. Employees generally have a duty to perform assigned work and this may include working with an employee who has AIDS.

a. An employer must evaluate each instance of employee refusal to work on a case-by-case basis to determine whether the refusal to work with someone who has AIDS is based upon legitimate and recognized concerns or upon misinformation and the general anxiety concerning AIDS.

(1) First, an employer should be sure the employee understands the current medical knowledge and guidelines concerning AIDS. Educational programs for employees before these problems ever arise would be helpful.

(2) An employer might consider accommodating any employee who is refusing to work with an AIDS employee. Accommodation might include transfer, arranging for employees to volunteer to work with AIDS employees, allowing employees to wear protective garments or soliciting suggestions from employees for specific precautionary measures.

(3) If the employee continues to refuse to return to work, even after efforts at accommodation, the employer may have no choice but to discipline or replace the employee for refusing to work.

(a) The employer may explain that no other accommodation is possible, and provide the employee with some time off to consider the matter before final action is taken.

III. Preventive Steps

A. Stay current with the latest information from CDC, the American Hospital Association and other recognized authorities on AIDS and infectious diseases.

B. Develop a corporate policy for dealing with AIDS. Keep company policies concerning AIDS as close to the recommendations of the medical community as possible.

C. Stay aware of local laws and state decisions regarding AIDS.

D. Plan and present an AIDS educational program to the workforce.

E. Review adequacy of existing benefit and sick leave plans.

F. Keep information regarding an AIDS employee's condition as confidential as possible. Keep the information restricted to those with a need to know.

G. In interviewing AIDS patients, focus upon qualifications necessary for the position.

H. Reasonably accommodate AIDS employees, consistent with company policies. However, you need not hire or retain employees whose handicap renders them unqualified for the job.

I. Where necessary and permissible, conduct tests in the most confidential and least intrusive manner that is feasible from a business point of view. Obtain employee consent in advance.

APPENDIX OF SUPPORT MATERIALS

ILLUSTRATIVE POLICY REGARDING ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)

The unfortunate spread of AIDS in recent years has caused us to consider and adopt a policy regarding the employment of those who have, or may have, this disease. We have consulted medical experts and are satisfied that, according to the best medical evidence available to date, casual workplace contact with employees who have AIDS, or who have been exposed to the AIDS virus, will not result in the transmission of AIDS to others.

Therefore, effective immediately, our normal policy will be to employ employees or applicants who have AIDS, or are suspected of having AIDS, so long as such persons remain qualified to perform their jobs in accordance with our standards. Some exceptions or deviations to this policy may be necessary for certain positions, but our intent will be to maximize the employment opportunities of AIDS patients, while at the same time preserving the safety and morale of all our employees.

We will stay abreast of the latest medical knowledge regarding this disease. Should it ever appear that the implementation of our policy may present a danger to our employees, we will make appropriate revisions to the policy.

If you have any questions about this policy, please contact _____. If you wish to review medical information upon which the policy is based, we would be glad to make it available upon request.

LITIGATION DEALING WITH AIDS AND OTHER INFECTIOUS DISEASES

La Rocca v. Dalsheim, 467 N.Y.S.2d 302 (1983)

The prisoners at Downstate Correctional Facility in New York brought a proceeding to enjoin the superintendent of the facility and the Commissioner of the Department of Correctional Services from forming or maintaining a central AIDS program at the facility; from moving any inmates and employees in and out of the prison until AIDS examinations were given; and for removal of AIDS sufferers from the prison for treatment at a hospital.

In reaching its decision, the court comprehensively investigated and reviewed the history, demographics, communicability and current medical status of AIDS. It determined that AIDS was not spread by casual contact. Based on this determination, the court held the following: 1) the superintendent and Commissioner were directed to hand each inmate a copy of an AIDS brochure in order to dispel misinformation and reduce the incidence of forced sex; 2) because there is no known test by which AIDS can be detected, an injunction of all traffic in and out of the facility until entrants could be screened and declared free of the disorder could not be granted; 3) removal of patients afflicted with AIDS was not justified because patients were isolated from other inmates and contagious disease precautions were being followed; and 4) no evidence demonstrated that the state had established, or intended to establish, an AIDS colony at the facility or otherwise congregated patients there.

New York State Association For Retarded Children, Inc. et al. v. Carey,, 612 F.2d 644 (2nd Cir. 1979)

A group of mentally retarded children, who had transferred from a residential development center to the New York City public schools, were known to be carriers of hepatitis B. The acute stage of this disease is relatively rare. Carriers can transmit the disease by blood-to-blood routes, characteristically by transfusions or successive inoculations of different people with the same needle. The antigen has also been detected in the saliva of carriers; however, the extent to which contact with infected saliva can transmit the disease has yet to be determined.

The New York City Board of Education developed a plan to isolate the 48 carrier children in separate classes throughout New York City. When the Board moved the District Court for a declaratory judgment establishing the legality of its plan, the Judge held that the Board's plan was in violation of various laws, including the Rehabilitation Act of 1973. The Board of Education appealed this decision.

The court of appeals ruled that the Rehabilitation Act governed this case and that the Board was obliged to make at least some showing that its plan was justified. Here, the Board was unable to demonstrate that the health hazard posed by the hepatitis B carrier children was anything more than a remote possibility. Furthermore, there was considerable evidence of the detrimental effect of isolating the children. Thus, the court held that the Board's plan violated the Rehabilitation Act.

Arline v. School Board of Nassau County, 772 F.2d 759 (11th Cir. 1985)

Mrs. Gene Arline claimed that she was fired from her job solely because of her susceptibility to tuberculosis. Arline first contracted tuberculosis in 1957 at age fourteen, after which the disease went into remission. She began teaching as an elementary school teacher for Nassau County, Florida in 1966 and did her job competently for thirteen years. Arline then suffered three relapses of tuberculosis, one in 1977 and two in 1978. After her third relapse the School Board dismissed Arline from her job. She brought this action alleging that her dismissal violated the Rehabilitation Act.

The appellate court agreed with Arline. It determined that a contagious disease, such as tuberculosis, is a "handicap" within the meaning of the Rehabilitation Act. The court explained that when a person is afflicted with tuberculosis, he/she "has a physical or mental impairment which substantially limits . . . major life activities." Even when not directly affected by tuberculosis, a person falls within the coverage of the Rehabilitation Act because he/she "has a record of such impairment" and "is regarded as having such an impairment" by the employer. The court found that there was no objective evidence to dispute this conclusion.

With respect to the duty to consider reasonable accommodation, the court stated:

> [We are] obligated to scrutinize the evidence to determine whether an employer's justifications reflect a well-informed judgment grounded in a careful and open-minded weighing of the risks and alternatives, or whether they are simply conclusory statements being used to justify reflexive reactions grounded in ignorance or capitulation to public prejudice.

The court remanded this case for further fact-findings regarding the risk of infection and reasonable accommodation.

DECISION OF FLORIDA COMMISSION ON HUMAN RELATIONS IN SHUTTLEWORTH v. BROWARD COUNTY OFFICE OF BUDGET AND MANAGEMENT POLICY (TEXT)

FCHR No. 85-0624
EEOC No. N/A

Mr. Todd F. Shuttleworth
c/o Larry Corman, Esquire — Complainant
2310 One Financial Plaza
Fort Lauderdale, Florida 33394

Broward County Office of Budget
and Management Policy — Respondent
Janet Lander, Assistant General Counsel
115 South Andrews Avenue, Suite 423
Fort Lauderdale, Florida 33301

NOTICE OF DETERMINATION: CAUSE

PLEASE TAKE NOTICE that a Determination has been made on the above-referenced complaint and there is reasonable cause to believe that an unlawful employment practice has occurred. A copy of the Determination is attached.

Pursuant to Section 22T-9-.05, Florida Administrative Code, you are now invited to join the Commission in an effort to reach a just resolution of this matter through conciliation. In the event that voluntary conciliation is unsuccessful, the Complainant may request formal adjudication by the Commission. A representative of the Commission will contact you to begin the conciliation process.

The parties are further advised that the Respondent may request the Executive Director to reconsider his Determination: Cause. Any Request for Redetermination must be filed within 20 days of the date of mailing of this Notice and must comply with the provisions of Rule 22T-9.07, Florida Administrative Code.

FOR THE FLORIDA COMMISSION ON
HUMAN RELATIONS

/s/Betsy Howard
Clerk of the Commission

* * *

DETERMINATION: CAUSE

MR. TODD F. SHUTTLEWORTH filed a Complaint of Discrimination alleging that BROWARD COUNTY OFFICE OF BUDGET AND MANAGEMENT POLICY discriminated against him on the basis of his handicap (acquired immune deficiency syndrome) in violation of the Human Rights Act of 1977, as amended, Sections 760.01-760.10, Florida Statutes (1983).[1] An investigation of this matter has been conducted and shows the following:

1. Complainant is a person within the meaning of Section 760.02(5), Florida Statutes.

2. Complainant is an individual within the meaning of Section 760.10(1), Florida Statutes, by reason of his medical condition. Complainant's medical condition, acquired immune deficiency syndrome, falls within this Commission's interpretation of the term "handicap". *See, e.g., Fenesy v. GTE Data Services, Inc.*, FCHR Case No. 79-214, DOAH Case No. 80-473, FCHR Order No. 81-042, 3 FALR 1764-A (FCHR August 11, 1981), which held:

> Since this statute does not indicate a different connotation, the term "handicap" should be given a meaning accorded by common usage. *See, Gaulden v. Kirk*, 47 So.2d. 567 (Fla. 1950). In construing similar statutes, courts of three other states have resorted to the definition of "handicap" contained in Webster's Third International Dictionary. *Chicago, Milwaukee, St. Paul and Pacific Railroad Co. v. Washington State Human Rights Commission*, 577 P.2d 307 (Wash. 1976), *State v. Turner*, 209 N.E.2d 475 (Ohio 1965), *Chicago, Milwaukee, St. Paul and Pacific Railroad v. Department of Industry, Labor and Human Relations*, 215 N.W.2d 443 (Wis. 1974). Generally "handicap" connotes a condition that prevents normal functioning in some way: "A person with a handicap does not enjoy, in some manner, the full and normal use of his sensory, mental or physical faculties." *Chicago, Milwaukee, St. Paul and Pacific Railroad Co. v. Washington State Human Relations Commission, supra.*

Based upon the plain meaning of the term handicap" and the medical evidence presented, an individual with acquired immune deficiency syndrome is within the coverage of the Human Rights Act of 1977 in that such individual "does not enjoy, in some manner, the full and normal use of his sensory, mental or physical faculties." *Accord Arline v. School Board of Nassau County*, 772 F.2d 759 (11th Cir. 1985), which held that an individual with a chronic contagious disease, tuberculosis, is within the coverage of Section 504 of the Rehabilitation Act of 1973.

3. Respondent is an employer within the meaning of Section 760.02(6), Florida statutes.

4. The Complaint of Discrimination was timely filed. Section 760.10, Fla. Stat.; Rule 22T-9.01(2).

5. On September 13, 1984, Complainant was terminated from his position of Administrative and Management Intern. He was initially employed by Respondent on May 16, 1983. It is undisputed that Complainant's work performance was satisfactory or above during this employment.

6. Respondent's articulated reason for discharging Complainant was because he contracted acquired immune deficiency syndrome (AIDS). The action was taken "due to a lack of knowledge as to the severity and communicable aspect of the disease in consideration of protecting the Complainant, other county employees and the public."

7. In defense of its articulated reason, Respondent asserts that it cannot screen all persons who may come into contact with Complainant in the course of his employment. Respondent asserts that it cannot assume the risk of allowing even one person to unwittingly contract AIDS because of Complainant's presence at the work site.

8. Respondent based this statement in substantial part on an article entitled *AIDS-Information and Procedural Guidelines for Providing Health and Social Services to Persons with AIDS* (HRS July 1984). It provides in pertinent part that while the consensus of the medical community holds that intimate, as opposed to casual, contact is the key to transmission of AIDS, the following persons are known to be in a high risk category and should avoid any exposure to AIDS patients: persons receiving large-dose steroid drugs on a daily basis; persons with known immune deficiency diseases; persons receiving chemotherapy who have not achieved hematologic recovery; persons receiving any immunosuppressive medication; and persons who are pregnant.

9. The risk cited above, however, does not emanate from all individuals with AIDS but only from those indi-

[1] All statutory references are to Florida Statutes (1983), and all rule references are to the Florida Administrative Code.

viduals with easily transmissible opportunistic infections.

10. Respondent has not shown that Complainant had an easily transmissible opportunistic infection when it made the decision to terminate Complainant's employment.

11. In addition, Complainant worked in a private office which was enclosed by a floor to ceiling wall on one side and by five feet high partitions on the other three sides.

12. State of Florida, Department of Health and Rehabilitative Services (HRS) advises in its recommended procedures for outpatients that AIDS outpatients may use common waiting areas and bathroom facilities.

13. HRS recommends that its employees who have AIDS and are directly involved in patient care be transferred to non-patient care positions or be evaluated on a case-by-case basis to determine whether the employees are free from transmissible infections and are not unduly susceptible to infections so that the employees might be retained in a patient care position.

14. Section 760.10, Florida Statutes, provides in pertinent part:

"(1) It is an unlawful employment practice for an employer:

(a) To discharge . . . any individual . . . because of such individual's . . . handicap . . . .

* * *

(8) Notwithstanding any other provision of this section, it is not an unlawful employment practice under ss. 760.01 - 760.10 for an employer. . . to:

(a) Take or fail to take any action on the basis of . . . handicap . . . in those certain instances in which . . . absence of a particular handicap . . . is a bona fide occupational qualification reasonably necessary for the performance of the particular employment to which such action or inaction is related.

15. The Florida courts in interpreting the term "bona fide occupational qualification" have held that the defense of risk of future injury must be substantial. *School Board of Pinellas County v. Rateau,* 449 So.2d 839 (Fla. 1st DCA 1984). Similarly, this Commission has held that the evidence must support a conclusion that the employer had a reasonable basis for its assessment of the risk of injury or death to establish the bona fide occupational qualification. *Hatfield v. H & D Packaging, Inc.*, FCHR Case No. 81-0870, FCHR Order No. 82-022, 4 FALR 1110-A (April 18, 1982). *Accord Mantolete v. Bolger,* 767 F.2d 1416 (9th Cir. 1985).

16. Respondent failed to show that there was a substantial risk of future injury or a reasonable basis for its assessment of the risk of injury to Complainant, other employees or the public by retaining Complainant in its employ.

17. I am mindful of the serious and important concerns of the employer, the other employees and the public. Based upon my review of this case, I do not find that Respondent was acting in bad faith when it made the decision to terminate Complainant; nevertheless, there is an absence of evidence to show with any reasonable probability that AIDS can be transmitted by casual contact that commonly occurs in the workplace.

Pursuant to the authority delegated to me by Rules 22T-6.04(2)(e) and 22T-9.02, it is my determination that there is reasonable cause to believe that an unlawful employment practice has occurred in that:

A. Complainant has shown a prima facie violation of the Human Rights Act of 1977, as amended; and

B. Respondent has articulated, but failed to substantiate, legitimate, nondiscriminatory reasons for the actions complained of.[1]

DATED: 12/11/1985
Tallahassee, Florida

/s/Donald A. Griffin
Executive Director
Florida Commission on Human Relations

FILED 12/11/1985
By: Betsy Howard
Clerk of the Commission

* * *

INVESTIGATORY REPORT

DATE: July 24, 1985

TO: Office of General Counsel

FROM: Office of Field Services
Otis B. Mallory
Investigator

RE: TODD F. SHUTTLEWORTH v. BROWARD COUNTY OFFICE OF BUDGET AND MANAGEMENT POLICY
FCHR No. 85-0624
EEOC No. N/A

A. ALLEGATION/BASIS
Termination/Handicap (Acquired Immune Deficiency Syndrome-AIDS)

B. JURISDICTIONAL ITEMS

Alleged Violation	Sept. 13, 1984 approx.
Received Complaint	Nov. 19, 1984
Filed with EEOC	N/A
Complaint Docketed	Nov. 29, 1984
Service of Complaint	Nov. 29, 1984
Respondent's Type Operation/Size	County Budgetary Functions/15+

Mr. Todd F. Shuttleworth
c/o Larry Corman, Esquire
2310 One Financial Plaza
Fort Lauderdale, Florida 33394

Broward County Office of Budget and Management Policy
Ms. Janet Lander, Assistant General Counsel
115 South Andrews Avenue, Suite 423
Fort Lauderdale, Florida 33301

[1] In so holding, I specifically refrain from resolving issues involving employment decisions to reassign or alter the working conditions of employees with AIDS or decisions involving employees with transmissible infections.

C. RECOMMENDED DETERMINATION: Cause

1. BACKGROUND

Respondent is an employer within the meaning of the Human Rights Act, and the timeliness and all jurisdictional requirements have been met.

From review of information submitted by Respondent, it can be determined that the following allegations forwarded by Complainant are undisputed by them:

1. "On or about September 13, 1984, I was discharged from my position as Administrative and Management Intern where I have been employed since May 16, 1983" (Tab A, Exhibit A, page 1, Item I; Tab D-2, Exhibit C, Item 4a; and Tab D-3, Exhibit E, pages 1 and 7);

2. "I was informed via letter, from Ms. Earnestine Turner, OEEO Director, that I was discharged because I contracted Acquired Immune Deficiency Syndrome (AIDS)" (Tab A, Exhibit A, page 1, Item II and Tab D-3, Exhibit K);

3. "My handicap did not affect my job performance" (Tab A, Exhibit A, page 2, Item IIIa and Tab D-2, Exhibits C, Item 7 and D, par. 2);

4. "I had received an outstanding evaluation and had been recommended for a 'two-step merit raise' before my discharge" (Tab A, Exhibit A, page 2, Item IIIb and Tab D-3, Exhibits C, D and E, page 5).

While Respondent does not deny discharging Complainant because of his medical condition, their defense, which will be explored in depth in forthcoming discussion, centers around:

1. the medical aspect of Complainant's illness, AIDS, relative to their ability to accommodate him; and

2. the applicability of AIDS as qualifying as a bona fide or recognized handicap according to state and federal definitions.

2. DISCUSSION OF THE FACTS

First, Respondent states, in addressing the medical aspects of Complainant's illness,

"Prior to termination of the Charging Party's employment, Broward County reviewed the enclosed AIDS related information. Key considerations in the termination decision were based upon the information contained in *Chapter V, Personnel Management, of the Information and Procedural Guidelines for Providing Health and Social Services*. I would like to direct your attention to several points:

1. This pamphlet was prepared because of growing concern of health care professionals regarding danger to themselves in the care and treatment of AIDS patients.

2. The exact cause of AIDS is not known; however, the fatality rate of the disease is believed to be 90 percent or higher.

3. Although the consensus of the medical community holds that intimate, as opposed to casual, contact is the key to transmission of the disease, the following persons are known to be in a high risk category and should avoid any exposure to AIDS patients:

a) Persons presently or frequently receiving large-dose steroid drugs on a daily basis sufficient to depress immune function (more than one mg/kg prednisone per day); e.g., some asthmatics.

b) Persons with known immune deficiency diseases; e.g., Lupus Erythematous, Agammaglobulinemia, Hodgkin's Disease.

c) Persons receiving or who recently have received chemotherapy and have not achieved immune or hematologic recovery.

d) Persons receiving any immunosuppresive medication.

e) Persons who are pregnant" (Tab D-2, Exhibit E, page 1, par. 2).

Continuing, Respondent asserts:

"Broward County cannot screen all persons who may come into contact with Mr. Shuttleworth in the course of his employment with Broward County. Any exposure by a person in one of the above high-risk groups to *any* bodily secretion of an AIDS victim, including saliva (in sneezing), may expose that person to the risk of contracting AIDS. Broward County cannot assume the risk of allowing even one person to unwittingly contract this fatal disease. It is a balancing of the risk of exposing the unknown but foreseeable person to AIDS versus the interest of the AIDS victim in continued employment, as long as he or she is able, that led to the termination decision" (Tab D2, Exhibit E, page 2, par. 1).

Continuing further, Respondent states:

"Clearly, there is a great deal of difference between the acceptance of risk with the exercise of concomitant precautionary measure by those persons' who *knowingly* care for a patient with AIDS in contrast to an employment decision by Broward County which would effectively result in the consent to such exposure of all persons who unknowingly came into contact with a county employee who has this disease" (Tab D2, Exhibit E, page 2, par. 2).

In concluding their remarks relative to this aspect of the case, Respondent states:

"Broward County is cognizant of the fact that AIDS has not been shown to be transmitted through casual contact with affected individuals. The county's decision to terminate the Charging Party is based, to a great extent, on the fact that the present knowledge of AIDS possessed by the medical community is based on reported patient information. Therefore, depending on what is reported tomorrow or the next day, the above-stated statistical result may change" (Tab D-2, Exhibit E, page 2, par. 31).

Review of the document referenced by Respondent, *AIDS-Information and Procedural Guidelines for Providing Health and Social Services to Persons with AIDS July 1984*, along with other information solicited from Respondent and the Centers for Disease Control (CDC) and provided by Complainant in the form of affidavits from medical experts indicate the following, interms of the "facts" cited by Respondent as well as those facts overlooked or neglected to be cited by them:

1. While the referenced pamphlet was prepared by the Florida Department of Health and Rehabilitative Services (HRS), in part, because of concern of health care professionals regarding danger to themselves in the care and treatment of AIDS patients, as stated by respondent, HRS in the pamphlet's *Introduction* states:

"It is the posture of the HRS that agency personnel, as well as the public at large, need to be informed of the current findings about this disease and that, to the extent practicable, *AIDS patients are to be treated in regular hospital settings and considered for normal placement alternatives*, as appropriate for their overall health and social circumstances" (Tab D-4, Exhibit B, page 1, par. 2).

Under *Scope*, HRS states:

"The information and guidelines within this document are designed to improve HRS social service delivery to persons who have the AIDS diagnosis. Also, it is intended as an informational tool for the public who may have questions or concerns about the disease" (Tab D-4, Exhibit B, page 1, par. 3).

2. that while Respondent's citing of the exact cause of AIDS being unknown is accurate, the 90 percent or higher fatality rate for the disease as cited by them is inaccurate. In its pamphlet, HRS states:

"The fatality rate ranges from 20 percent to as high as 100 percent depending on the length of time the patient has had the syndrome and what specific opportunistic diseases have occurred" (Tab D-4, Exhibit B, page 6, par. 5).

CDC statistics put the fatality rate as ranging from 20 percent to more than 50 percent depending upon the opportunistic disease and the time from diagnosis (Tab B, Exhibit B, page 2, Item 6).

3. While the individuals cited by Respondent as being in a high risk category and needing to avoid any AIDS patients are at high risk, this risk does not eminate from all individuals with AIDS but from only those individuals with "easily transmissible opportunistic infections (e.g., CMV, varicellazoster, etc.)" (Tab D-4, Exhibit B, page 19, par. 1). It should also be noted the high risk individuals to whom this directive was aimed are hospital or health care personnel working in a restrictive environment where, in all likelihood, most if not all known AIDS patients with easily transmissible opportunistic infections would be found, not out in the general public.

None of the individuals working in Complainant's immediate work area qualify as belonging to any of the aforementioned risk categories, and Respondent failed to determine this from individuals with whom Complainant would normally come into contact in the specific performance of his job (Tab D-2, Exhibits E, page 2, Item 3; F, Item 4; and page 2, Item 4).

5. Respondent's inference that AIDS can be transmitted through sneezing is inaccurate (Tab D-2, Exhibit E, page 2, par. 1). According to the HRS pamphlet:

"Current medical information indicates that AIDS is spread from intimate: i.e., sexual contact, through the use of shared needles for injection of drugs (e.g., heroin, cocaine) and rarely from blood products. There is *no* evidence that AIDS is spread by:

Sneezing or coughing;
Handshakes or other non-sexual contact;
Toilet seats, bathtubs or showers;
Utensils, dishes or linens used by an infected persons;
Food prepared or served by an infected person;
Being around an infected person, even on a daily basis; over a long period time;
By contact with a mosquito or other insects; and/or
Using a swimming pool" (Tab D4, Exhibit B, page 4, pars. 3-4).

In addition, HRS states:

"There is no evidence that AIDS is spread through the air or by other forms of casual contact that commonly occur in the workplace or school . . ." (Tab D4, Exhibit B, page 5, par. 3).

The CDC has also concluded that there is no evidence of transmission of AIDS through casual contact with affected individuals or by airborne spread (Tab B, Exhibit B, page 3).

6. As of November 26, 1984, 6,921 adult cases of AIDS had been reported within the United States. Of these 78.3 percent were either homosexual or bisexual; 17.2 percent were IV drug users; 3.6 percent were Haitian; 0.6 percent were hemophilia patients; 0.3 percent were heterosexual contacts; 1.2 percent were transfusion recipients; and 3.3 percent were noncharacteristic (Tab B, Exhibit B, pages 4-5). According to HRS:

"HEALTHY PERSONS NOT BELONGING TO THESE RISK GROUPS FOR AIDS SHOULD NOT FEAR INFECTION WITH AIDS. . . . In fact, AIDS patients are at much greater risk of developing infections from normal, healthy persons than of transmitting infection to normal, healthy persons. AIDS spreads via direct, intimate sexual contact, direct contamination with blood or secretions, or from sharing unsterile hypodermic needles. Obviously, these are not factors in daily work place situations" (Tab D-4, Exhibit B, page 6, pars. 1-3).[1]

[(emphasis added)]

While Respondent mentions a balancing of the risk of exposing the unknown but foreseeable person to AIDS versus the interest of the AIDS victim Respondent admits to having in their possession prior to Complainant's termination-it is evident that the risks are minimal if existent at all and certainly not to any degree which would warrant termination. This conclusion is further supported by examination of a schematic diagram of Complainant's immediate work area which shows that his office is enclosed by a floor to ceiling wall on one side and by five feet high partition on the other three sides, which would have the effect of significantly precluding haphazard or random accessibility to him (Tab D, Exhibit G, page 2). It is quite paradoxical that Respondent Claims they "cannot assume the risk of allowing even one person to unwittingly contract this fatal disease," but seeks to invoke this protection only for the relatively few individuals, while manifesting no hesitancy about allowing him to roam at will among the "unsuspecting" general populace (Tab D-2, Exhibits E, page 2, par. 1 and G, page 1, Items 2-3).

Respondent attempts to distinguish between the acceptance of risk with the exercise of concomitant precautionary measures by those persons who knowingly care for a patient with AIDS and an employment decision by them which would effectively result in the consent to such exposure of all persons who unknowingly come into contact with a county employee who has this disease (Tab D-2, Exhibit E, page 2, par. 2). Prior discussion has adequately dealt with the issue of risk alluded to herein, and Respondent's reference to the concomitant precautionary measures, exercised by persons knowingly caring for AIDs patients is rendered moot to a significant degree by the realization that the majority of HRS' *Infection Control Guidelines for Aids Patients* are directed toward health care personnel treating AIDS patients in an institutional type environment, for which Complainant does not qualify (Tab D-4, Exhibit B, pages 10-12). In addressing *Recommended Procedures for Outpatients*, which Complainant would qualify as, HRS states:

"The general hepatitis B precautions guidelines used for hospitalized or institutionalized patients should also be applied to the outpatient and emergency setting. Efforts should be made, however, to minimize direct contact to other severely immunocompromised patients. Specimen labeling, equipment sterilization and disposition of equipment will be handled as for hospitalized patients. AIDS outpatients may use common waiting areas and bathroom facilities, unless the presence of other infections require special precautions" (Tab D-4, Exhibit B, page 12, par. 1).

The general hepatitis B precautions cited above state:

"This should include the use of gloves and handwashing when in contact with patient's blood or secretions. Gowns are recommended for those likely to have direct contact with the patient's secretions and blood" (Tab D-4, Exhibit B, page 10, Item 1).

From this information, it is readily discernable that none of these measures would have to be implemented by Respondent. It should also be noted that according to the CDC, as of April 6, 1984, there were no cases of AIDS among health care workers that can definitely be ascribed

[1] Athough the percentages reported by HRS and the CDC differ somewhat, review of the two sets of information will show that the identified risk groups are identical in their composition.

to specific occupational exposures (Tab B, Exhibit B, page 3). Dr. Margaret A. Fischl, M.D., adds: It is also highly noteworthy that not included among recommendations by the United States Public Health Service, for the prevention of AIDS, were any limitations or restrictions in the employment of individuals with AIDS (Tab B, Exhibit B, page 3, Item 13).

Respondent, in addressing their position relative to the last aspect of Complainant's illness, allude to the continuously evolving nature of the facts and information relative to AIDS as contributing significantly to their decision to terminate Complainant (Tab D-2, Exhibit E, page 2, par. 3). While Respondent's concern is understandable, this concern cannot be allowed to stand as justification for denying an individual a livelihood, particularly when such revelations may not be forthcoming tomorrow or the next day, as forwarded by Respondent, but next year or several years away. Respondent, not being proficient on the subject of AIDS, must rely on the medical and scientific communities' expertise when contemplating decisions such as the one at issue here. While AIDS has only received serious scrutiny since 1981, the theories relative to how it is and is not transmitted have remained constant during the last few years.

The second factor raised by Respondent in their defense centers around the legitimacy of Complainant being considered a member of a protected class — handicapped (Tab D-2, Exhibit E, page 2, par 4). While noting that handicap is not defined within Section 760.01 through 760.10, Florida Statutes, Respondent states ". . . handicap" is defined in Section 760.22(5), Florida Statutes (Supp. 1984), as a person having "a physical impairment which substantially limits one or more major life activities or that he has a record of having or is *regarded* as having, such physical impairment" (Tab D-2, Exhibit E, page 3, par.1). In addition, Respondent references the definition of "handicap" as found in the Federal Register, Volume 45, No. 196 10/7/80. Respondent states the register provides specific examples of what constitutes a physical or mental impairment and although the list does not purport to be all inclusive, unlike AIDS, not one desease or condition listed therein can be classified as contagious, infectious or communicable. Accordingly, Respondent states:

> ". . .using the statutory rule, ejusdem genesis, which provides that in a list, any general term is limited to fit the specific class of things in the specific list, a disease such as AIDS is not a handicap" (Tab D-2, Exhibit E, page 3, par. 2).

Upon review of Complainant's termination notices from Budget Director Canada and OEEO Director Turner, Respondent's *Personnel Action Request Form* and Respondents *Reimbursable* form, it is easily determined that Complainant was *regarded* by Respondent as having a physical impairment which substantially limited one or more major life activities and therefore is qualified for protection as provided under Chapter 760.22(5), Florida Statutes (Tabs D-3, Exhibits E, page 7; G; H; J; and K). Review of the referenced Federal Register provides the following definitions (Tab D-4, Exhibit A, pages 1-2):

> 1. Handicap - any condition or characteristic that renders a person a handicapped individual as defined in this section.
>
> 2. Handicapped individual - any person who
>
> a. has a physical or mental impairment which substantially limits one or more major life activities;
>
> b. has a record of such an impairment; or
>
> c. is regarded as having such a impairment. (emphasis added)
>
> 3. 'Physical or mental impairment'
>
> a. any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, endocrine; and
>
> b. includes but is not limited to such diseases and conditions as: orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular distrophy, multiple sclerosis, cancer, heart disease, diabetes, 'mental retardation, emotional illness, drug addiction, alcoholism.
>
> 4. 'Substantially limits' — the degree that the impairment affects an individual becoming a beneficiary of a program or activity receiving federal financial assistance or affects an individual's employability. A handicapped individual who is likely to experience difficulty in securing or retaining benefits or in securing or retaining or advancing in employment would be considered substantially limited.
>
> 5. 'Major life activities' — functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working and receiving education or vocational training.
>
> 6. 'Is regarded as having such an impairment' — the individual
>
> a. has a physical or mental impairment does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation;
>
> b. has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or
>
> c. has none of the impairments defined in Item 3 of this section but is treated by a recipient as having such an impairment.'[*]

In attempting to ascertain whether or not Complainant qualifies as a "handicapped individual", it must first be determined whether AIDS constitutes a "physical impairment". While Respondent asserts that AIDS does not qualify due to no contagious, infectious or communicable diseases or conditions having been included among those listed, it is apparent that they do not fully comprehend what AIDS is. According to HRS:

> "AIDS stands for acquired immune deficiency syndrome, a recently recognized medical condition. 'Acquired' indicates that it is not inherited and not explained by an underlying illness. 'Immune Deficiency' is the factor common to all cases —— an inability of the body to defend itself against certain unusual tumors and infections. 'Syndrome' refers to the variety of scientific diseases which can occur, these are sometimes referred to as opportunistic cancer or opportunistic infections as they take advantage of this lose of natural immunity against disease. As a result, in persons with AIDS certain cancers and infections which are rare in otherwise healthy individuals occur commonly as a result of the loss of natural immunity from this disease" (Tab D, Exhibit B, page 2, par. 1).

Additionally, the CDC states "about 85 percent of the AIDS patients studied have had one or both of two rare diseases: a type of cancer known as Kaposi's sarcoma and *Pneumocystiscarinii* pneumonis, a parasitic infection of the lungs" (Tab B, Exhibit B, page 1, Item 3). Review of medical documentation submitted by Respondent shows:

> "1. On May 31, 1984, Complainant underwent an excision of three hypertrophied lymph nodes, axillary region with frozen section performed by Dr. John Neilly, D.D. The pre and post-operative diagnosis was "left axillary lymphadenopathy'. The Gross Findings were two of the three lymph nodes were submitted and

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[*] List in the Register as "defined in paragraph (b)(1)"

benign frozen section analysis was performed. No other abnormalities were noted (Tab D-3, Exhibit H, page 1).

2. *Pathologist Clinical Observations* — after performance of a left axillary biopsy indicated possible AIDS. Among the pathological findings relative to the left axillary lymph node were: 1. benign follicular hyperplasia; and 2. Kaposi's sarcoma, neoplastic lesion (Tab D-3, Exhibit H, page 2).

3. *General Clinical Data Case Notes* — begun on August 25, 1984 by Peter Babinski, M.D., Diagnosis of Kapori's sarcoma determined by modal biopsy (left axillary) on 5/31/84. Entry on August 28, 1984 indicates physician met with Respondent's Budget Office Director, John Canada, Personnel Director, John Curry and Assistant General Counsel, Janet Lander. Entry on September 14, 1984 indicates physician was informed by Complainant that he had been fired" (Tab B, Exhibit A, Item 3 and Tab D-3, Exhibit H, pages 5).

From the above-cited information, it is clearly evident that Complainant's lymphatic condition and cancer (Kaposi's sarcoma) qualify as physical impairments as previously defined. Further, Complainant qualifies as a handicapped individual in that he has a physical impairment that does not substantially limit major life activities but that is treated by Respondent as constituting such a limitation, per the discussion relative to the Florida Statute.

3. CONCLUSION

Based upon the foregoing discussion, it is recommended that there is reasonable cause to believe Respondent has discriminated against Complainant by discharging him because of his handicap, AIDS.

D. OTHER VIOLATIONS: None

E. INDEX OF INVESTIGATORY MATERIALS

Tab A - Charge of Dicrimination and Other Intake Materials
B - Investigatory Notes and Materials
C-1- Complainant's General Correspondence
C-2- Affidavits Submitted by Complainant
C-3- Complainant's General Supporting Documentation
D-1- Respondent's General Correspondence
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E - Miscellaneous Materials

- - End of Text - -

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BNA

White Collar Report®

CLERICAL • TECHNICAL • PROFESSIONAL

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EMPLOYERS ADVISED TO DEVELOP POLICIES TO EDUCATE WORKFORCE ABOUT AIDS

SAN FRANCISCO — (By a BNA Staff Correspondent) — Employers should be developing policies for dealing with employees stricken with Acquired Immune Deficiency Syndrome (AIDS) before the disease appears in their workforce, a San Francisco attorney advises.

Victor Schachter, a partner in the firm of Schachter, Kristoff, Ross, Sprague & Curiale, says education and a well thought out policy on AIDS are keys for employers in avoiding potential legal problems in dealing with employees who contract the deadly disease.

Among those potential liabilities are defamation, wrongful discharge, invasion of privacy, and failure to accommodate employees with a physical handicap, according to Schachter. Employees also must be prepared to deal with other employees who may refuse to work with an AIDS victim, a position which may be protected as concerted activity under the Taft-Hartley Act, he said at the firm's "Update '85" symposium Dec. 3-4 on significant labor and employment law developments. (For review of other subjects covered at Update '85, see *Labor Symposium.*)

The legal and labor relations aspects of dealing with AIDS are largely uncharted, Schachter conceded. However, a prudent course for employers to follow is to educate their workers and management about the disease and develop policies that address problems likely to arise from the emergence of AIDS as a workplace issue.

Schachter's partner, Richard J. Curiale, told BNA the firm is getting many inquiries about how to handle AIDS cases in the employee relations context. Most of the inquiries concern whether employees afflicted with AIDS can be fired, or if an employer can refuse to hire someone who has the disease, he said. Curiale predicted that virtually every one of the employers represented at the symposium will face the AIDS issue eventually.

AIDS Policy Generally Lacking

An AIDS workshop that wrapped up the two-day symposium on Dec. 4 drew an estimated 200 people, but only a handful indicated in response to a question that they had any policy in place for dealing with AIDS. Schachter said a policy strictly on AIDS isn't necessary, but at the very least there should be some recognition of the issue and some decision about how employees who contract the disease will be treated.

In the absence of an AIDS-specific policy, an employer could decide to treat employees suffering from the disease as they would employees afflicted with any other long-term, disabling disease, Schachter observed. However, this minimal policy must be applied consistently to avoid any appearance of discrimination against an AIDS patient, he cautioned.

The key to dealing with AIDS, according to Schachter, is to treat it like any other long-term illness. The specific content of an AIDS policy will vary from one employer to another, but a policy should be designed to position the company to deal factually with the AIDS issue, he advised.

Symposium attendees received a copy of an illustrative AIDS policy which said employees or applicants who have AIDS, or are suspected of having it, will be employed so long as they remain qualified to perform their jobs in accordance with company standards. The sample policy indicates the company consulted with medical experts about AIDS and offers to share information with concerned employees. The right to change the policy is preserved, should it appear that adherence to it might endanger employees.

Schachter and Curiale stressed education as a key element in addressing the AIDS question in the workplace. Education can head off potential problems arising from the concerns of employees about working with AIDS victims, they said.

It is an open question whether employees who refuse to work with an AIDS victim can be fired, Curiale observed. Such refusal by two or more employees constitutes concerted activity and is protected under the National Labor Relations Act, he explained. However, in order to get the Act's protection, the employees must have a reasonable basis to believe their health or safety is at risk, something not suggested by the available medical evidence, he said.

To avoid facing the discharge question, Schachter advised that employers provide AIDS education for their employees, preferably from medical experts in the field. It is best to build the educational effort into an ongoing program, such as a wellness program, he suggested, rather than begin it after employee concern progresses to concerted activity such as refusal to work with an AIDS patient.

If an employer provides that kind of education and the employees still refuse to work with the AIDS victim, the employer can fire the employees for refusal to work or hire permanent replacements for them, Schachter and Curiale said. But if an employer does not lay the educational groundwork prior to the discharge or replacement, it could be risking a wrongful discharge lawsuit from those who are fired or replaced, Schachter warned.

Safer Course: Permanent Replacement

Curiale said permanently replacing employees who refuse to work with fellow employees who have AIDS, even after being educated about the disease, is a safer course than terminating them. Such employees could be considered as having resigned from their jobs, Schachter suggested, rather than terminated. Asked if transfers for employees away from a fellow employee suffering from AIDS is appropriate, Schachter said it risks setting a dangerous precedent and leaves the employer open to charges of inconsistent application of policy.

The educational program should be set up to protect the identities of any employees who may have AIDS, Curiale cautioned. Under the California constitution, citizens of that state have a right of privacy, he noted, and there are strict limitations on disclosure of medical information. So before embarking on any education program, take a hard look at how employee privacy rights might be affected by it, he advised.

Schachter said he believes AIDS will be deemed a physical handicap under federal law and states laws where applicable. That means that under federal law and California law, for instance, an employer could not transfer an AIDS patient involuntarily to another job of comparable pay and status, he explained.

SUMMARY OF CDC GUIDELINES ON AIDS IN THE WORKPLACE

1. The CDC has recently issued recommendations to provide employers with guidance on the health risks of employing a person with AIDS.

2. The basic recommendation is that an employee with AIDS need not be restricted from work in any area unless they have evidence of other infections or illnesses for which any employee in that area of work should also be restricted.

3. Personal service workers whose services require needles or other instruments that penetrate the skin are urged to follow infection control recommendations that have been issued for health care workers. Instruments that penetrate the skin, e.g., tattooing and acupuncture needles or ear piercing devices, should be used once and disposed of or be thoroughly cleaned and sterilized. Instruments not intended to penetrate the skin, but which may become contaminated with blood (e.g., razors) should be used for only one client and disposed of or thoroughly cleaned and disinfected.

   No special precautions are required for personal service workers whose services do not involve a risk of blood contamination.

4. The CDC does not recommend a prohibition on employment of a person with AIDS working in food services. No evidence exists of transmission of either the AIDS virus or hepatitis B virus during the preparation or serving of food or beverages.

5. Workers with AIDS in a setting such as an office, school, factory or construction site have no known risk of transmitting the infection to co-workers, clients or consumers.

6. The CDC finds the greatest risk of transmission of HTLV-III in the health care work place, especially those health care workers who take part in invasive procedures, such as surgery. It is the CDC's position that even health care workers who are known to be infected with HTLV-III, but who do not perform invasive procedures, "need not be restricted from work unless they have evidence of other infection or illness for which any [health care worker] should be restricted." The CDC intends to issue further guidelines on health care workers who perform invasive procedures.

CDC GUIDELINES

STATEMENT BY JAMES O. MASON, M.D., Dr.P.H. ACTING ASSISTANT SECRETARY FOR HEALTH

Today we are making available to you the Public Health Service's new guidelines on AIDS in the workplace. These guidelines, which are aimed at protecting the public health, are being published in [the] Morbidity and Mortality Weekly Report [November 15, 1985].

The guidelines are directed to:

- *Health care workers*—a broad category that includes health professionals; laboratory and blood bank technologists and technicians; emergency personnel; morticians; housekeepers; laundry workers; and others whose work involves contact with AIDS patients, their blood or other body fluids, or corpses.
- *Personal service workers*—those whose occupations involve close personal contact with clients; for example, hairdressers, barbers, cosmetologists, manicurists and pedicurists, massage therapists, and others.
- *Food service workers*—a category included because of public concern that HTLV-III/LAV, the "AIDS virus," may be transmitted in food and beverages handled by infected persons. (This concern, while understandable, is wholly unfounded.)
- *Other workers*—persons in work settings such as offices, schools, factories, and construction sites, where there is no known risk of AIDS virus transmission.

Other guidelines are being developed for persons working in prisons, in custodial institutions, and in correctional facilities, and for health care workers who perform invasive procedures. Today's guidelines, as well as the ones to come, all have as their goal the protection of the public's health. It is not the business of the Public Health Service to consider other issues.

Both because of the epidemiology of AIDS and because of my personal concern, I asked Public Health Service scientists developing these guidelines to look hard at hepatitis B transmission. Hepatitis B is spread in ways similar to AIDS; however, when the two are compared, the hepatitis B virus is hardier than the AIDS virus; there is more of it than of the AIDS virus in the bloodstream; and hepatitis B is far easier than AIDS to catch. The data I am using come from studies of health care workers. The risk of infection to a health care worker following a needle stick from a carrier of the hepatitis B virus, for example, is between 6 and 30 percent, far in excess of the documented risk of infection to a health care worker following a needle stick involving a patient infected with the AIDS virus—a risk that is much less than 1 percent.

With respect to transmission in health care and other related settings, the hepatitis B model is a "worst case" situation. Guidelines that would control hepatitis B transmission will certainly prevent the spread of AIDS. The guidelines, then, are conservative and are based on this worst-case situation.

Before discussing the guidelines we are releasing today in greater detail, I would like to stress that they represent no change in the basic message about AIDS that the Public Health Service has been conveying all along—that AIDS is a bloodborne, sexually transmitted disease that is *not* spread by casual contact.

Don't misunderstand me—AIDS is frightening. And we are in the midst of an epidemic of fear, which is both good and bad. Two kinds of fear are at work here. One is reasonable fear among people whose behavior may put them at risk for AIDS. For those people, fear may accomplish what knowledge alone will not—fear may cause people to change the behavior that puts them at risk.

On the other hand, fear among people who are not at risk is unwarranted and counterproductive. People who are frightened of friends,

coworkers, and family members who may be at risk of AIDS are suffering unwarranted fear, and that fear doesn't produce any worthwhile outcomes. This is the fear we need to do away with.

In studies of more than 300 household contacts of AIDS patients, none—other than sexual partners or infants who acquired the infection perinatally from their infected mothers—have had positive results on the AIDS antibody test or developed AIDS. In studies of 1,758 health care workers in facilities where AIDS patients are treated, not one has developed AIDS or become seropositive as a result of contacts with patients, other than through needle-stick injury.

The evidence is overwhelming that except for rare cases of transmission by blood transfusion, or perinatally from an infected mother to her infant, or by accidental needle-stick injury, AIDS is transmitted only by sexual acts between consenting individuals or by sharing drug-abuse equipment—not by casual contact. For this reason, the Public Health Service does *not* recommend routine AIDS antibody screening for the groups these guidelines address.

Now, let me briefly outline some of the points the guidelines cover.

The longest section of the guidelines deals with *health care workers* and recommends precautions appropriate to prevent transmission of all bloodborne infectious diseases, including HTLV-III/LAV infection and hepatitis B. These precautions are spelled out in detail in the MMWR article in your press kit. They take into account the possibility of transmission of infection from patient to health care worker and from health care worker to patient, and they should be enforced routinely. They include recommendations for managing parenteral and mucous membrane exposures to blood or other body fluids; precautions to be taken with needles and sharp instruments; appropriate use of gloves and other protective garments; use of equipment to minimize the need for mouth-to-mouth resuscitation; sterilization and disinfection procedures; housekeeping procedures; and disposal of infective body wastes. Precautions for people caring for AIDS patients at home and for providers of pre-hospital emergency care are also included.

The section dealing with *personal service workers*—to which I again refer you for additional details—emphasizes that we have no evidence of any instances of transmission of the AIDS virus between these workers and their clients, or from client to client. Nevertheless, a risk would exist in situations where there is trauma to an uninfected person that would give the virus a portal of entry, combined with access of blood or serous fluid from an infected person to the open tissue, as could occur in the case of a cut. There would also be a risk of transmission from client to client if instruments contaminated with blood were not sterilized or disinfected between clients.

Personal service workers whose services require needles or other instruments that penetrate the skin should follow precautions recommended in the guidelines for health care workers. Instruments used to pierce the skin—for example, tattooing and acupuncture needles and ear-piercing devices—should be used once and disposed of, or should be thoroughly cleaned and disinfected, using the procedures the guidelines recommend.

Any personal service worker (and any health care worker) who has exudative lesions or weeping dermatitis—regardless of that person's status with respect to infection with the AIDS virus—should refrain from direct contact with clients until the condition clears.

With respect to *food service workers*—for example, cooks, caterers, waiters, bartenders, and airline attendants—all evidence from epidemiologic and laboratory studies indicates that bloodborne and sexually transmitted infections such as AIDS are not transmitted in connection with the preparation or serving of food or beverages. There have been no documented instances of transmission of either hepatitis B or AIDS in this manner.

The guidelines state that food service workers should follow established standards and practices of good personal hygiene and food sanitation. Food service workers should not prepare or serve food when they have exudative lesions or weeping dermatitis, and they should take care to avoid injury to their hands when

preparing food. If such injury should occur, food contaminated with blood should be discarded. Of course, this recommendation should be followed anyway, just for aesthetic reasons.

Food service workers known to be infected with the AIDS virus need not be restricted from work unless they show evidence of another infection, condition, or illness for which there should be such a restriction.

The guidelines for *other workers* emphasize that AIDS is not spread by the kind of nonsexual, person-to-person contact that occurs among workers, clients, and consumers in such settings as offices, schools, factories, and construction sites. Workers known to be infected with the AIDS virus should not be restricted from work on this account, nor should they be restricted from using telephones, office equipment, toilets, showers, eating facilities, and water fountains. In the case of accidents in the work setting, equipment that is contaminated with blood or other body fluids from any worker, known to be infected or not, should be cleaned with soap and water or a detergent. A disinfectant or a fresh solution of household bleach, as described in the guidelines, should be used to wipe the area after cleaning.

We ask your help in dispelling unwarranted public fears by continuing to emphasize that AIDS is *not* easy to catch and is *not* spread by casual contact. Again, I repeat what I have said many times before: Personal choices made by each individual with respect to responsible sexual behavior and nonuse of intravenous drugs are the best guarantees of protection from the AIDS virus.

Summary:
Recommendations for Preventing Transmission of Infection with Human T-Lymphotropic Virus Type III/ Lymphadenopathy-Associated Virus in the Workplace

The information and recommendations contained in this document have been developed with particular emphasis on health-care workers and others in related occupations in which exposure might occur to blood from persons infected with HTLV-III LAV, the "AIDS virus." Because of public concern about the purported risk of transmission of HTLV-III/LAV by persons providing personal services and those preparing and serving food and beverages, this document also addresses personal-service and food-service workers. Finally, it addresses "other workers"—persons in settings, such as offices, schools, factories, and construction sites, where there is no known risk of AIDS virus transmission.

Because AIDS is a bloodborne, sexually transmitted disease that is not spread by casual contact, this document does *not* recommend routine HTLV-III/LAV antibody screening for the groups addressed. Because AIDS is not transmitted through preparation or serving of food and beverages, these recommendations state that food-service workers known to be infected with AIDS should not be restricted from work unless they have another infection or illness for which such restriction would be warranted.

This document contains detailed recommendations for precautions appropriate to prevent transmission of all bloodborne infectious diseases to people exposed—in the course of their duties—to blood from persons who may be infected with HTLV-III/LAV. They emphasize that health-care workers should take all possible precautions to prevent needlestick injury. The recommendations are based on the well-documented modes of HTLV-III/LAV transmission and incorporate a "worst case" scenario, the hepatitis B model of transmission. Because the hepatitis B virus is also bloodborne and is both hardier and more infectious than HTLV-III/LAV, recommendations that would prevent transmission of hepatitis B will also prevent transmission of AIDS.

Formulation of specific recommendations for health-care workers who perform invasive procedures is in progress.

Recommendations for Preventing Transmission of Infection with Human T-Lymphotropic Virus Type III/ Lymphadenopathy-Associated Virus in the Workplace

Persons at increased risk of acquiring infection with human T-lymphotropic virus type III/lymphadenopathy-associated virus (HTLV-III/LAV), the virus that causes acquired immunodeficiency syndrome (AIDS), include homosexual and bisexual men, intravenous (IV) drug abusers, persons transfused with contaminated blood or blood products, heterosexual contacts of persons with HTLV-III/LAV infection, and children born to infected mothers. HTLV-III/LAV is transmitted through sexual contact, parenteral exposure to infected blood or blood components, and perinatal transmission from mother to neonate. HTLV-III/LAV has been isolated from blood, semen, saliva, tears, breast milk, and urine and is likely to be isolated

from some other body fluids, secretions, and excretions, but epidemiologic evidence has implicated only blood and semen in transmission. Studies of nonsexual household contacts of AIDS patients indicate that casual contact with saliva and tears does not result in transmission of infection. Spread of infection to household contacts of infected persons has not been detected when the household contacts have not been sex partners or have not been infants of infected mothers. The kind of nonsexual person-to-person contact that generally occurs among workers and clients or consumers in the workplace does not pose a risk for transmission of HTLV-III/LAV.

As in the development of any such recommendations, the paramount consideration is the protection of the public's health. The following recommendations have been developed for all workers, particularly workers in occupations in which exposure might occur to blood from individuals infected with HTLV-III/LAV. These recommendations reinforce and supplement the specific recommendations that were published earlier for clinical and laboratory staffs (*1*) and for dental-care personnel and persons performing necropsies and morticians' services (*2*). Because of public concern about the purported risk of transmission of HTLV-III/LAV by persons providing personal services and by food and beverages, these recommendations contain information and recommendations for personal-service and food-service workers. Finally, these recommendations address workplaces in general where there is no known risk of transmission of HTLV-III/LAV (e.g., offices, schools, factories, construction sites). Formulation of specific recommendations for health-care workers (HCWs) who perform invasive procedures (e.g., surgeons, dentists) is in progress. Separate recommendations are also being developed to prevent HTLV-III/LAV transmission in prisons, other correctional facilities, and institutions housing individuals who may exhibit uncontrollable behavior (e.g., custodial institutions) and in the perinatal setting. In addition, separate recommendations have already been developed for children in schools and day-care centers (*3*).

HTLV-III/LAV-infected individuals include those with AIDS (*4*); those diagnosed by their physician(s) as having other illnesses due to infection with HTLV-III/LAV; and those who have virologic or serologic evidence of infection with HTLV-III/LAV but who are not ill.

These recommendations are based on the well-documented modes of HTLV-III/LAV transmission identified in epidemiologic studies and on comparison with the hepatitis B experience. Other recommendations are based on the hepatitis B model of transmission.

COMPARISON WITH THE HEPATITIS B VIRUS EXPERIENCE

The epidemiology of HTLV-III/LAV infection is similar to that of hepatitis B virus (HBV) infection, and much that has been learned over the last 15 years related to the risk of acquiring hepatitis B in the workplace can be applied to understanding the risk of HTLV-III/LAV transmission in the health-care and other occupational settings. Both viruses are transmitted through sexual contact, parenteral exposure to contaminated blood or blood products, and perinatal transmission from infected mothers to their offspring. Thus, some of the same major groups at high risk for HBV infection (e.g., homosexual men, IV drug abusers, persons with hemophilia, infants born to infected mothers) are also the groups at highest risk for HTLV-III/LAV infection. Neither HBV nor HTLV-III/LAV has been shown to be transmitted by casual contact in the workplace, contaminated food or water, or airborne or fecal-oral routes (*5*).

HBV infection is an occupational risk for HCWs, but this risk is related to degree of contact with blood or contaminated needles. HCWs who do not have contact with blood or needles contaminated with blood are not at risk for acquiring HBV infection in the workplace (*6-8*).

In the health-care setting, HBV transmission has not been documented between hospitalized patients, except in hemodialysis units, where blood contamination of the environment has been extensive or where HBV-positive blood from one patient has been transferred to another patient through contamination of instruments. Evidence of HBV transmission from HCWs to patients has been rare and limited to situations in which the HCWs exhibited high concentrations of virus in their blood (at least 100,000,000 infectious virus particles per ml of serum), and the HCWs sustained a puncture wound while performing traumatic procedures on patients or had exudative or weeping lesions that allowed virus to contaminate instruments or open wounds of patients (*9-11*).

Current evidence indicates that, despite epidemiologic similarities of HBV and HTLV-III/LAV infection, the risk for HBV transmission in health-care settings far exceeds that for HTLV-III/LAV transmission. The risk of acquiring HBV infection following a needlestick from an HBV carrier ranges from 6% to 30% (*12, 13*), far in excess of the risk of HTLV-III/LAV infection following a needlestick involving a source patient infected with HTLV-III/LAV, which is less than 1%. In addition, all HCWs who have been shown to transmit HBV infection in health-care settings have belonged to the subset of chronic HBV carriers who, when tested, have exhibited evidence of exceptionally high concentrations of virus (at least 100,000,000 infectious virus particles per ml) in their blood. Chronic carriers who have substantially lower concentrations of virus in their blood have not been implicated in transmission in the health-care setting (*9-11, 14*). The HBV model thus represents a "worst case" condition in regard to transmission in health-care and other related settings. Therefore, recommendations for the control of HBV infection should, if followed, also effectively prevent spread of HTLV-III/LAV. Whether additional measures are indicated for those HCWs who perform invasive procedures will be addressed in the recommendations currently being developed.

Routine screening of all patients or HCWs for evidence of HBV infection has never been recommended. Control of HBV transmission in the health-care setting has emphasized the implementation of recommendations for the appropriate handling of blood, other body fluids, and items soiled with blood or other body fluids.

TRANSMISSION FROM PATIENTS TO HEALTH-CARE WORKERS

HCWs include, but are not limited to, nurses, physicians, dentists and other dental workers, optometrists, podiatrists, chiropractors, laboratory and blood bank technologists and technicians, phlebotomists, dialysis personnel, paramedics, emergency medical technicians, medical examiners, morticians, housekeepers, laundry workers, and others whose work involves contact with patients, their blood or other body fluids, or corpses.

Recommendations for HCWs emphasize precautions appropriate for preventing transmission of bloodborne infectious diseases, including HTLV-III/LAV and HBV infections. Thus, these precautions should be enforced routinely, as should other standard infection-control precautions, regardless of whether HCWs or patients are known to be infected with HTLV-III/LAV or HBV. In addition to being informed of these precautions, all HCWs, including students and housestaff, should be educated regarding the epidemiology, modes of transmission, and prevention of HTLV-III/LAV infection.

Risk of HCWs acquiring HTLV-III/LAV in the workplace. Using the HBV model, the highest risk for transmission of HTLV-III/LAV in the workplace would involve parenteral exposure to a needle or other sharp instrument contaminated with blood of an infected patient. The risk to HCWs of acquiring HTLV-III/LAV infection in the workplace has been evaluated in several studies. In five separate studies, a total of 1,498 HCWs have been tested for antibody to HTLV-III/LAV. In these studies, 666 (44.5%) of the HCWs had direct parenteral (needlestick or cut) or mucous membrane exposure to patients with AIDS or HTLV-III/LAV infection. Most of these exposures were to blood rather than to other body fluids. None of the HCWs whose initial serologic tests were negative developed subsequent evidence of HTLV-III/LAV infection following their exposures. Twenty-six HCWs in these five studies were seropositive when first tested; all but three of these persons belonged to groups recognized to be at increased risk for AIDS (*15*). Since one was tested anonymously, epidemiologic information was available on only two of these three seropositive HCWs. Although these two HCWs were reported as probable occupationally related HTLV-III/LAV infection (*15, 16*), neither had a preexposure nor an early postexposure serum sample available to help determine the onset of infection. One case reported from England describes a nurse who seroconverted following an accidental parenteral exposure to a needle contaminated with blood from an AIDS patient (*17*).

In spite of the extremely low risk of transmission of HTLV-III/LAV infection, even when needlestick injuries occur, more emphasis must be given to precautions targeted to prevent needlestick injuries in HCWs caring for any patient, since such injuries continue to occur even during the care of patients who are known to be infected with HTLV-III/LAV.

Precautions to prevent acquisition of HTLV-III/LAV infection by HCWs in the workplace. These precautions represent prudent practices that apply to preventing transmission of HTLV-III LAV and other bloodborne infections and should be used routinely (*18*).

1. Sharp items (needles, scalpel blades, and other sharp instruments) should be considered as potentially infective and be handled with extraordinary care to prevent accidental injuries.
2. Disposable syringes and needles, scalpel blades, and other sharp items should be placed into puncture-resistant containers located as close as practical to the area in which they were used. To prevent needlestick injuries, needles should not be recapped, purposefully bent, broken, removed from disposable syringes, or otherwise manipulated by hand.
3. When the possibility of exposure to blood or other body fluids exists, routinely recommended precautions should be followed. The anticipated exposure may require gloves alone, as in handling items soiled with blood or equipment contaminated with blood or other body fluids, or may also require gowns, masks, and eye-coverings when performing procedures involving more extensive contact with blood or potentially infective body fluids, as in some dental or endoscopic procedures or postmortem examinations. Hands should be washed thoroughly and immediately if they accidentally become contaminated with blood.
4. To minimize the need for emergency mouth-to-mouth resuscitation, mouth pieces, resuscitation bags, or other ventilation devices should be strategically located and available for use in areas where the need for resuscitation is predictable.
5. Pregnant HCWs are not known to be at greater risk of contracting HTLV-III/LAV infections than HCWs who are not pregnant; however, if a HCW develops HTLV-III/LAV infection during pregnancy, the infant is at increased risk of infection resulting from perinatal transmission. Because of this risk, pregnant HCWs should be especially familiar with precautions for the preventing HTLV-III/LAV transmission (*19*).

Precautions for HCWs during home care of persons infected with HTLV-III/LAV. Persons infected with HTLV-III/LAV can be safely cared for in home environments. Studies of family members of patients infected with HTLV-III/LAV have found no evidence of HTLV-III/LAV transmission to adults who were not sexual contacts of the infected patients or to children who were not at risk for perinatal transmission (*3*). HCWs providing home care face the same risk of transmission of infection as HCWs in hospitals and other health-care settings, especially if there are needlesticks or other parenteral or mucous membrane exposures to blood or other body fluids.

When providing health-care service in the home to persons infected with HTLV-III/LAV, measures similar to those used in hospitals are appropriate. As in the hospital, needles should not be recapped, purposefully bent, broken, removed from disposable syringes, or otherwise manipulated by hand. Needles and other sharp items should be placed into puncture-resistant containers and disposed of in accordance with local regulations for solid waste. Blood and other body fluids can be flushed down the toilet. Other items for disposal that are contaminated with blood or other body fluids that cannot be flushed down the toilet should be wrapped securely in a plastic bag that is impervious and sturdy (not easily penetrated). It should be placed in a second bag before being discarded in a manner consistent with local regulations for solid waste disposal. Spills of blood or other body fluids should be cleaned with soap and water or a household detergent. As in the hospital, individuals cleaning up such spills should wear disposable gloves. A disinfectant solution or a freshly prepared solution of sodium hypochlorite (household bleach, see below) should be used to wipe the area after cleaning.

Precautions for providers of prehospital emergency health care. Providers of prehospital emergency health care include the following: paramedics, emergency medical technicians, law enforcement personnel, firefighters, lifeguards, and others whose job might require them to provide first-response medical care. The risk of transmission of infection, including HTLV-III/LAV infection, from infected persons to providers of prehospital emergency health care should be no higher than that for HCWs providing emergency care in the hospital if appropriate precautions are taken to prevent exposure to blood or other body fluids.

Providers of prehospital emergency health care should follow the precautions outlined above for other HCWs. No transmission of HBV infection during mouth-to-mouth resuscitation has been documented. However, because of the theoretical risk of salivary transmission of HTLV-III/LAV during mouth-to-mouth resuscitation, special attention should be given to the use of disposable airway equipment or resuscitation bags and the wearing of gloves when in contact with blood or other body fluids. Resuscitation equipment and devices known or suspected to be contaminated with blood or other body fluids should be used once and disposed of or be thoroughly cleaned and disinfected after each use.

Management of parenteral and mucous membrane exposures of HCWs. If a HCW has a parenteral (e.g., needlestick or cut) or mucous membrane (e.g., splash to the eye or mouth) exposure to blood or other body fluids, the source patient should be assessed clinically and epidemiologically to determine the likelihood of HTLV-III/LAV infection. If the assessment suggests that infection may exist, the patient should be informed of the incident and requested to consent to serologic testing for evidence of HTLV-III/LAV infection. If the source patient has AIDS or other evidence of HTLV-III/LAV infection, declines testing, or has a positive test, the HCW should be evaluated clinically and serologically for evidence of HTLV-III/LAV infection as soon as possible after the exposure, and, if seronegative, retested after 6 weeks and on a periodic basis thereafter (e.g., 3, 6, and 12 months following exposure) to determine if transmission has occurred. During this follow-up period, especially the first 6-12 weeks, when most infected persons are expected to seroconvert, exposed HCWs should receive counseling about the risk of infection and follow U.S. Public Health Service (PHS) recommendations for preventing transmission of AIDS (*20,21*). If the source patient is seronegative and has no other evidence of HTLV-III/LAV infection, no further follow-up of the HCW is necessary. If the source patient cannot be identified, decisions regarding appropriate follow-up should be individualized based on the type of exposure and the likelihood that the source patient was infected.

Serologic testing of patients. Routine serologic testing of all patients for antibody to HTLV-III/LAV is not recommended to prevent transmission of HTLV-III/LAV infection in the workplace. Results of such testing are unlikely to further reduce the risk of transmission, which, even with documented needlesticks, is already extremely low. Furthermore, the risk of needlestick and other parenteral exposures could be reduced by emphasizing and more consistently implementing routinely recommended infection-control precautions (e.g., not recapping needles). Moreover, results of routine serologic testing would not be available for emergency cases and patients with short lengths of stay, and additional tests to determine whether a positive test was a true or false positive would be required in populations with a low prevalence of infection. However, this recommendation is based only on considerations of occupational risks and should not be construed as a recommendation against other uses of the serologic test, such as for diagnosis or to facilitate medical management of patients. Since the experience with infected patients varies substantially among hospitals (75% of all AIDS cases have been reported by only 280 of the more than 6,000 acute-care hospitals in the United States), some hospitals in certain geographic areas may deem it appropriate to initiate serologic testing of patients.

TRANSMISSION FROM HEALTH-CARE WORKERS TO PATIENTS

Risk of transmission of HTLV-III/LAV infection from HCWs to patients. Although there is no evidence that HCWs infected with HTLV-III/LAV have transmitted infection to patients, a risk of transmission of HTLV-III/LAV infection from HCWs to patients would exist in situations where there is both (1) a high degree of trauma to the patient that would provide a portal of entry for the virus (e.g., during invasive procedures) and (2) access of blood or serous fluid from the infected HCW to the open tissue of a patient, as could occur if the HCW sustains a needlestick or scalpel injury during an invasive procedure. HCWs known to be infected with HTLV-III/LAV who do not perform invasive procedures need not be restricted from work unless they have evidence of other infection or illness for which any HCW should be restricted. Whether additional restrictions are indicated for HCWs who perform invasive procedures is currently being considered.

Precautions to prevent transmission of HTLV-III/LAV infection from HCWs to patients These precautions apply to all HCWs, regardless of whether they perform invasive procedures: (1) All HCWs should wear gloves for direct contact with mucous membranes or nonintact skin of all patients and (2) HCWs who have exudative lesions or weeping dermatitis should refrain from all direct patient care and from handling patient-care equipment until the condition resolves.

Management of parenteral and mucous membrane exposures of patients. If a patient has a parenteral or mucous membrane exposure to blood or other body fluids of a HCW, the patient should be informed of the incident and the same procedure outlined above for exposures of HCWs to patients should be followed for both the source HCW and the potentially exposed patient. Management of this type of exposure will be addressed in more detail in the recommendations for HCWs who perform invasive procedures.

Serologic testing of HCWs. Routine serologic testing of HCWs who do not perform invasive procedures (including providers of home and prehospital emergency care) is not recommended to prevent transmission of HTLV-III/LAV infection. The risk of transmission is extremely low and can be further minimized when routinely recommended infection-control precautions are followed. However, serologic testing should be available to HCWs who may wish to know their HTLV-III/LAV infection status. Whether indications exist for serologic testing of HCWs who perform invasive procedures is currently being considered.

Risk of occupational acquisition of other infectious diseases by HCWs infected with HTLV-III/LAV. HCWs who are known to be infected with HTLV-III/LAV and who have defective immune systems are at increased risk of acquiring or experiencing serious complications of other infectious diseases. Of particular concern is the risk of severe infection following exposure to patients with infectious diseases that are easily transmitted if appropriate precautions are not taken (e.g., tuberculosis). HCWs infected with HTLV-III/LAV should be counseled about the potential risk associated with taking care of patients with transmissible infections and should continue to follow existing recommendations for infection control to minimize their risk of exposure to other infectious agents (*18,19*). The HCWs' personal physician(s), in conjunction with their institutions' personnel health services or medical directors, should determine on an individual basis whether the infected HCWs can adequately and safely perform patient-care duties and suggest changes in work assignments, if indicated. In making this determination, recommendations of the Immunization Practices Advisory Committee and institutional policies concerning requirements for vaccinating HCWs with live-virus vaccines should also be considered.

STERILIZATION, DISINFECTION, HOUSEKEEPING, AND WASTE DISPOSAL TO PREVENT TRANSMISSION OF HTLV-III/LAV

Sterilization and disinfection procedures currently recommended for use (*22,23*) in health-care and dental facilities are adequate to sterilize or disinfect instruments, devices, or other items contaminated with the blood or other body fluids from individuals infected with HTLV-III/LAV. Instruments or other nondisposable items that enter normally sterile tissue or the vascular system or through which blood flows should be sterilized before reuse. Surgical instruments used on all patients should be decontaminated after use rather than just rinsed with water. Decontamination can be accomplished by machine or by hand cleaning by trained personnel wearing appropriate protective attire (*24*) and using appropriate chemical germicides. Instruments or other nondisposable items that touch intact mucous membranes should receive high-level disinfection.

Several liquid chemical germicides commonly used in laboratories and health-care facilities have been shown to kill HTLV-III/LAV at concentrations much lower than are used in practice (*25*). When decontaminating instruments or medical devices, chemical germicides that are registered with and approved by the U.S. Environmental Protection Agency (EPA) as "sterilants" can be used either for sterilization or for high-level disinfection depending on contact time, germicides that are approved for use as "hospital disinfectants" and are mycobactericidal when used at appropriate dilutions can also be used for high-level disinfection of

devices and instruments. Germicides that are mycobactericidal are preferred because mycobacteria represent one of the most resistant groups of microorganisms; therefore, germicides that are effective against mycobacteria are also effective against other bacterial and viral pathogens. When chemical germicides are used, instruments or devices to be sterilized or disinfected should be thoroughly cleaned before exposure to the germicide, and the manufacturer s instructions for use of the germicide should be followed.

Laundry and dishwashing cycles commonly used in hospitals are adequate to decontaminate linens, dishes, glassware, and utensils. When cleaning environmental surfaces, housekeeping procedures commonly used in hospitals are adequate. surfaces exposed to blood and body fluids should be cleaned with a detergent followed by decontamination using an EPA-approved hospital disinfectant that is mycobactericidal. Individuals cleaning up such spills should wear disposable gloves. Information on specific label claims of commercial germicides can be obtained by writing to the Disinfectants Branch, Office of Pesticides, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., 20460.

In addition to hospital disinfectants, a freshly prepared solution of sodium hypochlorite (household bleach) is an inexpensive and very effective germicide (*25*). Concentrations ranging from 5,000 ppm (a 1:10 dilution of household bleach) to 500 ppm (a 1:100 dilution) sodium hypochlorite are effective, depending on the amount of organic material (e.g., blood, mucus, etc.) present on the surface to be cleaned and disinfected.

Sharp items should be considered as potentially infective and should be handled and disposed of with extraordinary care to prevent accidental injuries Other potentially infective waste should be contained and transported in clearly identified impervious plastic bags. If the outside of the bag is contaminated with blood or other body fluids, a second outer bag should be used. Recommended practices for disposal of infective waste (*23*) are adequate for disposal of waste contaminated by HTLV-III/LAV. Blood and other body fluids may be carefully poured down a drain connected to a sanitary sewer.

CONSIDERATIONS RELEVANT TO OTHER WORKERS

Personal-service workers (PSWs). PSWs are defined as individuals whose occupations involve close personal contact with clients (e.g., hairdressers, barbers, estheticians, cosmetologists, manicurists, pedicurists, massage therapists). PSWs whose services (tattooing, ear piercing, acupuncture, etc.) require needles or other instruments that penetrate the skin should follow precautions indicated for HCWs. Although there is no evidence of transmission of HTLV-III/LAV from clients to PSWs, from PSWs to clients, or between clients of PSWs, a risk of transmission would exist from PSWs to clients and vice versa in situations where there is both (1) trauma to one of the individuals that would provide a portal of entry for the virus and (2) access of blood or serous fluid from one infected person to the open tissue of the other, as could occur if either sustained a cut. A risk of transmission from client to client exists when instruments contaminated with blood are not sterilized or disinfected between clients. However, HBV transmission has been documented only rarely in acupuncture, ear piercing, and tattoo establishments and never in other personal-service settings, indicating that any risk for HTLV-III/LAV transmission in personal-service settings must be extremely low.

All PSWs should be educated about transmission of bloodborne infections, including HTLV-III/LAV and HBV. Such education should emphasize principles of good hygiene, antisepsis, and disinfection. This education can be accomplished by national or state professional organizations, with assistance from state and local health departments, using lectures at meetings or self-instructional materials. Licensure requirements should include evidence of such education. Instruments that are intended to penetrate the skin (e.g., tattooing and acupuncture needles, ear piercing devices) should be used once and disposed of or be thoroughly cleaned and sterilized after each use using procedures recommended for use in health-care institutions. Instruments not intended to penetrate the skin but which may become contaminated with blood (e.g., razors), should be used for only one client and be disposed of or thoroughly cleaned and disinfected after use using procedures recommended for use in health-care institutions Any PSW with exudative lesions or weeping dermatitis, regardless of HTLV-III/LAV infection status, should refrain from direct contact with clients until the condition resolves.

PSWs known to be infected with HTLV-III/LAV need not be restricted from work unless they have evidence of other infections or illnesses for which any PSW should also be restricted.

Routine serologic testing of PSWs for antibody to HTLV-III/LAV is not recommended to prevent transmission from PSWs to clients.

Food-service workers (FSWs). FSWs are defined as individuals whose occupations involve the preparation or serving of food or beverages (e.g., cooks, caterers, servers, waiters, bartenders, airline attendants). All epidemiologic and laboratory evidence indicates that bloodborne and sexually transmitted infections are not transmitted during the preparation or serving of food or beverages, and no instances of HBV or HTLV-III/LAV transmission have been documented in this setting.

All FSWs should follow recommended standards and practices of good personal hygiene and food sanitation (*26*). All FSWs should exercise care to avoid injury to hands when preparing food. Should such an injury occur, both aesthetic and sanitary considerations would dictate that food contaminated with blood be discarded. FSWs known to be infected with HTLV-III/LAV need not be restricted from work unless they have evidence of other infection or illness for which any FSW should also be restricted.

Routine serologic testing of FSWs for antibody to HTLV-III/LAV is not recommended to prevent disease transmission from FSWs to consumers.

Other workers sharing the same work environment. No known risk of transmission to co-workers, clients, or consumers exists from HTLV-III/LAV-infected workers in other settings (e.g., offices, schools, factories, construction sites). This infection is spread by sexual contact with infected persons, injection of contaminated blood or blood products, and by perinatal transmission. Workers known to be infected with HTLV-III/LAV should not be restricted from work solely based on this finding. Moreover, they should not be restricted from using telephones, office equipment, toilets, showers, eating facilities, and water fountains. Equipment contaminated with blood or other body fluids of any worker, regardless of HTLV-III/LAV infection status, should be cleaned with soap and water or a detergent. A disinfectant solution or a fresh solution of sodium hypochlorite (household bleach, see above) should be used to wipe the area after cleaning.

OTHER ISSUES IN THE WORKPLACE

The information and recommendations contained in this document do not address all the potential issues that may have to be considered when making specific employment decisions for persons with HTLV-III/LAV infection. The diagnosis of HTLV-III/LAV infection may evoke unwarranted fear and suspicion in some co-workers. Other issues that may be considered include the need for confidentiality, applicable federal, state, or local laws governing occupational safety and health, civil rights of employees, workers' compensation laws, provisions of collective bargaining agreements, confidentiality of medical records, informed consent, employee and patient privacy rights, and employee right-to-know statutes.

DEVELOPMENT OF THESE RECOMMENDATIONS

The information and recommendations contained in these recommendations were developed and compiled by CDC and other PHS agencies in consultation with individuals representing various organizations. The following organizations were represented: Association of State and Territorial Health Officials, Conference of State and Territorial Epidemiologists, Association of State and Territorial Public Health Laboratory Directors, National Association of County Health Officials, American Hospital Association, United States Conference of Local Health Officers, Association for Practitioners in Infection Control, Society of Hospital Epidemiologists of America, American Dental Association, American Medical Association, American Nurses' Association, American Association of Medical Colleges, American Association of Dental Schools, National Institutes of Health, Food and Drug Administration, Food Research Institute, National Restaurant Association, National Hairdressers and Cosmetologists Association, National Gay Task Force, National Funeral Directors and Morticians Association, American Association of Physicians for Human Rights, and National Association of Emergency Medical Technicians. The consultants also included a labor union representative, an attorney, a corporate medical director, and a pathologist. However, these recommendations may not reflect the views of individual consultants or the organizations they represented.

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PARTNER OF AIDS VICTIM
ENTITLED TO UC BENEFITS

A California man who voluntarily quit his job to care for his "family partner" who was dying of AIDS is entitled to unemployment compensation, a state administrative law judge rules.

The ALJ for the California Unemployment Insurance Appeals Board reverses a decision of the state Employment Development Department denying the claimant unemployment insurance benefits on the grounds that he had voluntarily left his employment without good cause.

The claimant requested and was granted a leave of absence from April 8 through June 3, 1985, to provide 24-hour care for his partner, who was in the terminal stages of AIDS. The partner was expected to die within two months.

In May, however, the claimant, feeling that his partner was showing signs of improvement, decided he would not be able to return to work as scheduled, and requested an extension of his leave. When the employer denied the request, the claimant submitted his resignation.

His claim for unemployment benefits was rejected under provisions of the California Unemployment Insurance code which disqualify a claimant from benefits "if the individual left the most recent work voluntarily without cause."

According to the ALJ, a claimant may show "good cause" when he leaves work for the purpose of providing care for an ill family member or relative. Although the claimant's partner "was not related to him by blood or marriage," the ALJ says "it is recognized that nonblood, nonlegal relationships may be established which are as meaningful, if not more meaningful, than relationships created by blood or the bonds of marriage."

Deciding that the claimant is entitled to benefits, the ALJ says the circumstances of the case show that the claimant "had established such a meaningful relationship and that he did not act unreasonably in leaving his employment in order to care for his family partner."

Roberta Achtenberg, directing attorney of the Lesbian Rights Project in San Francisco and lawyer for the complainant, told BNA the decision is significant because to date, only "blood family members" have been able to establish "good cause" for voluntarily leaving work to care for someone who is dying. Achtenberg added that while the decision is "technically not precedent-setting," it "symbolically revalidates" the notion that family relationships encompass more than blood ties.

(*Case No. SF-24774*, Calif. Unemployment Insurance Appeals Board, Sept. 13, 1985.)

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NEW YORK BUSINESS GROUP OPPOSES
JOB SCREENING FOR AIDS EXPOSURE

NEW YORK (By a BNA Staff Correspondent) — The New York Business Group on Health adopts a statement opposing routine screening of job applicants or employees for acquired immune deficiency syndrome (AIDS).

The group said screening for exposure to the HTLV-III virus, which is believed to cause AIDS, "is not practical. It is performed only in specialized centers, is very expensive, and a positive test only reflects previous exposure and does not confirm the presence of the disease."

The statement said AIDS should "be treated by employers no differently than any other serious and costly disease."

Business Group Executive Director Dr. Leon Warshaw said most of the group's members, including many of New York's largest corporations, are dealing with the AIDS problem without hysteria. "Once they get over an initial period of acute anxiety, they take a very reasoned and calm approach," Warshaw said. "They see that it's no different than anything else."

Warshaw acknowledged that the enormous cost of medical treatment for AIDS victims, now averaging $140,000 per patient, is a matter of concern for both insurers and employers. But he pointed out that "a cluster of cancers or heart problems in the workplace will also raise costs substantially."

Warshaw's remarks came at a Dec. 3 conference on AIDS-related employment issues sponsored by the Business Group.

Stuart Bompey of Baer, Marks & Upham said: "This is no different than the 1950s, when white workers didn't want to work with blacks. An education effort was made, backed up by the force of the law, and today whites and blacks work together without thinking about it."

Bompey suggested that when management is faced with a group of employees not wanting to work with a colleague who has or is suspected of having AIDS, the first resort should be to educate the frightened workers to the fact that AIDS is not communicable through casual contact. However, Bompey said, if it comes to a choice between dismissing the real or perceived AIDS victim or dismissing the rebellious co-workers, the coworkers will have to go.

Bompey added that an effective way to stop news of a worker's medical condition from spreading around the office might be to remind those privy to it that they could be subject to legal action for defamation and/or slander if they do not keep quiet. This point was reinforced by Irwin Davison, chief counsel to the New York City Department of Health. Often, Davison said, there are valid business reasons for a supervisor's knowing an employee's medical prognosis. A breach of this confidential information, though, "may be read as legal injury."

Bompey reported that there has been one AIDS-related labor arbitration. This arose when United Airlines placed a flight attendant who had AIDS on unpaid medical leave, on the grounds that passengers would object to being served by him. The AIDS victim was reinstated with back pay, Bompey said.

Other speakers and attendees took up issues related to insurance for AIDS victims. One attendee made the point that since most policies prohibit payment for experimental treatments and all AIDS treatments are at this point experimental, there is bound to be confusion over what is covered. Dr. Timothy Tomassi, medical director for the *New York Daily News*, said he considered as covered those experimental treatments that have been approved by the Food and Drug Administration.

Another attendee maintained that insurance companies are routinely trying to avoid liability for AIDS victims by classifying AIDS as a condition existing prior to the beginning of employment and thus not covered under most policies for a certain time after employment.

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Tomassi said that, medically speaking, a diagnosis of AIDS is warranted when a patient is presenting one or more of the opportunistic infections associated with the syndrome, and is immuno-suppressed for no identifiable reason, such as undergoing chemotherapy. If such a situation has been identified prior to employment, then the exclusion is reasonable. If not, he implied, the insurers must pay.

Dr. Mathilde Krim, chairperson of the AIDS Medical Foundation, expressed concern that while employers are prohibited from discriminating against AIDS victims, they are free to discriminate against homosexual males. However, Davison, of New York's Health Department, maintained that the AIDS epidemic may actually provide homosexual men, at least in New York State, with legal protections they did not have before. This is because the state's Human Rights Commission has classified as a protected group persons perceived to have AIDS or to be in a group that is particularly susceptible to the disease.

WISCONSIN EASES LAW BARRING AIDS TESTING IN EMPLOYMENT

Wisconsin's flat ban on testing for exposure to the virus that causes acquired immune deficiency syndrome (AIDS) as a condition of employment and in insurance decision-making is eased considerably with amendments to the state law giving the state epidemiologist final authority to decide whether tests are appropriate for use by employers and insurance underwriters.

The changes, effective Nov. 23, amend a law passed earlier this year (1985 DLR 189: A-6). The original law was enacted without hearings and was immediately targeted for repeal by the insurance industry, which claimed that an inability to use the test for individual policy decisions could threaten the industry's solvency.

The amended law permits insurers to require tests for AIDS in underwriting individual health, accident, and life insurance policies when the state epidemiologist finds that such tests are "medically significant and sufficiently reliable" in determining presence of antibodies, and the state insurance commissioner designates by rule that those tests are "sufficiently reliable for use in the underwriting of individual life, accident and health insurance policies."

The ban on use of tests for group policy underwriting and for determination of premiums remains in effect.

The new law still bars employers from requiring a test for AIDS as a condition of employment, and from disciplining or discharging an individual based on the results of a test. Employers also are barred from offering employment or a benefit in exchange for taking a test.

However, those prohibitions do not apply if the state epidemiologist determines that individuals infected with the AIDS virus "may, through employment, provide a significant risk" of transmitting the virus to other individuals.

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ANALYSIS

Insurers' Growing Concern Over Medical Benefits for AIDS Victims

DEVELOPMENT: Insurers are grappling with how to address benefit claims coming in from victims of AIDS — acquired immune deficiency syndrome — whose medical costs can range from $40,000 to $140,000 and who are eligible for life insurance and disability benefits.

'Staggering Costs'

"If current trends continue," AIDS will result in "staggering costs to the insurance industry," according to Karen Clifford, an attorney for the Health Insurance Association of America (HIAA). Some health insurers have seen claims of $300,000 to $500,000 per AIDS patient, she noted, with 14,288 cases diagnosed thus far and 250,000 to 300,000 expected by 1990. Because AIDS is a new disease that "we didn't even consider until 1981," Clifford said, the industry has not had time to allocate resources and establish reserves.

The overall death rate for those contracting AIDS is 51 percent, but becomes 77 percent three years after diagnosis, according to Dr. Ann Hardy, an epidemiologist at the federal Centers for Disease Control. CDC believes 500,000 to 1 million people have been exposed to or infected with the virus. From 5 to 20 percent of those who test positive on the ELISA (enzyme-linked immunosorbent assay) and Western Blot blood tests for the presence of antibodies to the AIDS HTLV-III virus will develop the disease. The incubation period is six months to five years.

Insurance Coverage

Employers and insurers generally feel that employees with AIDS should be covered under group health insurance and group life insurance plans the same as any other illness or disease. Opinions differ, however, when it comes to preventing future coverage or buying additional coverage.

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Section 2

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Insurance companies seem to agree that it would be impossible to administer the AIDS blood tests to employees under group health plans. The industry is adamant, however, about wanting to be able to use the results of the tests in underwriting individual health and life insurance policies, even though the tests are not always accurate.

"The insurance industry relies on the basic concepts of underwriting, which is based on predicting risks," Clifford said. Since the AIDS antibody blood tests are "valid and statistically significant predictors of increased risk," the industry's "basic bottom line" is that it wants to take the results of the tests into consideration when underwriting policies, she explained.

"We should [not] and cannot be foreclosed from relying on the test," Clifford argued, adding that "to prohibit us from using the test results is an inability to protect our policyholders at large." James Dorsch, Washington counsel for HIAA, said that "it's not against the law" for someone with AIDS to buy a large life insurance policy, but that the "system can get destroyed." It is a question of "protecting the other policyholders from the few who have advance knowledge they'll die in the next five years," he said.

Insurers generally want to apply the test results in traditional underwriting of individual policies, according to Clifford. They traditionally don't apply individual underwriting principles to group policies, she said, noting that 85 percent of all health insurance policies are for groups. Traditional underwriting principles are used in group policies only for small groups, or when an employee refuses the group policy and later decides to take it.

Reactions of Insurers

Insurers have already undertaken several initiatives, including formation of a task force of insurance companies' chief executives. The Association of Life Insurance Medical Directors recently devoted a session at its ninety-fourth annual meeting to the latest medical and insurance-related data on AIDS, and the Law Journal Seminars-Press sponsored a conference on the legal aspects of the AIDS crisis.

In October, the Equitable Life Assurance Society sent out a cassette tape on various health care topics, with the first item entitled "Impact of AIDS on Benefits Costs Varies Widely." Equitable said that "AIDS cases are likely to be covered like any other disease by most medical plans." But it admitted, "We know as little about the typical AIDS cost as we do about curing the disease." One problem, the insurer said, is that an AIDS case may not show up as such on medical claims because several symptoms often are discovered before AIDS is diagnosed and because physi-

cians sometimes withhold an AIDS diagnosis to protect patient confidentiality.

Nationwide Insurance of Columbus, Ohio, announced that it is revising its homeowners, mobile home, condominium, and personal excess umbrella liability policies to exclude "communicable diseases" from coverage because such policies "never were designed or priced to pay claims for transmission of communicable diseases." It has received approval from 28 state insurance departments for the exclusionary endorsements.

Northwestern Mutual Life Insurance Co. of Milwaukee, Wis., the tenth largest life insurer and one that sells only individual life and disability insurance and annuities, has received permission from 17 of the 50 states to ask one AIDS-related question on insurance applications. For 1984 and 1985, Northwestern Mutual paid $1.1 million on 17 policies for AIDS deaths. It is contesting two claims because "we believe they may have known [about AIDS] but not revealed it" on their applications, according to Mark Lucius, advertising and corporate information specialist.

"We plan to require certain life insurance applicants to undergo antibody tests, but we're not going to rush into it," Lucius stated. AIDS testing probably will be required "similar to what we do now" for certain age groups and levels of insurance coverage, he said.

Lincoln National Life Insurance Co. of Fort Wayne, Ind., the seventh largest stockholder-owned life insurance firm in the United States, has paid $1.5 million on 80 different AIDS-related claims, mostly major medical coverage, some life insurance, and a "handful of disability income claims," according to Dr. Donald C. Chambers, vice president and chief medical director. Chambers said that Lincoln National has received permission from 40 states to ask three AIDS-related questions on individual applications for life insurance policies, but the insurer wants to get approval from more states before reprinting its application form. The AIDS questions, as well as questions on marital status, age, and residence, would be asked of males aged 25-55 living in the "high risk" areas of New York, San Francisco, Los Angeles, Miami, Newark, and Houston, he stated.

SIGNIFICANCE: Insurers wishing to use the AIDS antibody tests in underwriting are running into roadblocks such as

- A California law that maintains the confidentiality of AIDS test results, prohibits requiring AIDS tests unless individuals consent, and prohibits use of blood test results in determining "insurability or suitability for employment;"
- A Wisconsin law that prohibits employers from making submission to the AIDS antibody tests a condition of employment and

bars insurance companies from using the test results in making decisions on policy coverage;

• A Florida law similar to the one in Wisconsin but covering state and local, not private-sector, employees.

AIDS victims also have been beneficiaries of government action in areas other than testing. Thus, Los Angeles has an ordinance banning discrimination against victims of AIDS, and the California Insurance Department last month rejected a request by Blue Cross of California to offer group health insurance policies that would exclude coverage for AIDS and other sexually transmitted diseases.

Shortly after the AFL-CIO Convention passed a resolution opposing "screening workers for AIDS unless and until the Centers for Disease Control recommends such actions either for all employees or for specific job classifications," CDC issued guidelines stating that such screening is unnecessary. AIDS "is not spread by the kind of nonsexual, person-to-person contact that occurs . . . in such settings as offices, schools, factories, and construction sites," CDC said. (120 LRR 222)

Note also should be taken of suggestions that AIDS is a protected handicap under the federal Rehabilitation Act of 1973 and under most state handicap-discrimination laws. (1985 DLR 213: A-4) In a recent case involving a teacher fired because of susceptibility to tuberculosis, a federal appeals court stated that "persons with contagious diseases" are covered by the Rehabilitation Act. (Arline v. Nassau Cty. School Bd., CA 11, 1985, 39 FEP Cases 9)

New Publication

AIDS Policy and Law, a new biweekly publication, will be launched in January by Buraff Publication, a BNA subsidiary. This new publication will monitor the rapid development of guidelines, policies, and laws concerning discrimination against AIDS victims in employment, housing, and schools; screening by employers and insurers; health and life insurance coverage; the impact of new scientific information on law and policy; and related matters.

The charter subscription price for *AIDS Policy and Law* will be $287 until February 28, 1986, and $337 thereafter. For more information, call (202) 452-4428.

CHAPTER 22

(Assembly Bill No. 403)

An act to add Chapter 1.11 (commencing with Section 199.20) to Part 1 of Division 1 of the Health and Safety Code, relating to health, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 3, 1985. Filed with Secretary of State April 4, 1985.]

LEGISLATIVE COUNSEL'S DIGEST

AB 403, Agnos. Health.

(1) Existing law provides that the results of specified blood tests shall be confidential and not open to public inspection.

This bill, in addition to existing law, would provide that no person shall be compelled, as specified, to identify any individual who is the subject of a blood test to detect antibodies to the probable causative agent of acquired immune deficiency syndrome. The bill would provide penalties for disclosure, as defined, of the results of the blood test, as defined, except as specified, including the assessing of civil penalties and the creation of a new misdemeanor. It would establish a right of action for actual damages. Creation of a new misdemeanor constitutes a state-mandated local program.

This bill would permit the State Department of Health Services to require blood banks and plasma centers to submit reports summarizing data concerning tests to detect the presence of viral hepatitis and antibodies to the probable causative agent of AIDS, as specified.

It would prohibit a person, except as specified, from testing a person's blood for evidence of antibodies to the probable causative agent of AIDS without the written consent of the subject.

This bill would prescribe that the results of the blood test not be used in any instance for the determination of insurability or suitability for employment.

It would also prescribe that neither the state department nor any blood bank or plasma center, including a blood bank or plasma center operated by a public entity, be liable for any damages resulting from a specified notification of test results.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed $500,000 statewide and other procedures for claims whose statewide costs exceed $500,000.

This bill would provide that no reimbursement shall be made from the State Mandates Claims Fund for costs mandated by the state pursuant to this act, but would recognize that local agencies and school districts may pursue any available remedies to seek reimbursement for some of these costs.

This bill would provide that, notwithstanding Section 2231.5 of the Revenue and Taxation Code, this bill does not contain a repealer, as required by that section; therefore, the provisions of the bill would remain in effect unless and until they are amended or repealed by a later enacted bill.

The bill would take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Chapter 1.11 (commencing with Section 199.20) is added to Part 1 of Division 1 of the Health and Safety Code, to read:

CHAPTER 1.11

Mandated Blood Testing and Confidentiality to Protect Public Health

§ 199.20. To protect the privacy of individuals who are the subject of blood testing for antibodies to the probable causative agent of acquired immune deficiency syndrome (AIDS) the following shall apply:

Except as provided in Section 1603.1 or 1603.3, as amended by AB 488 of the 1985–86 Regular Session, no person shall be compelled in any state, county, city, or other local civil, criminal, administrative, legislative, or other proceedings to identify or provide identifying characteristics which would identify any individual who is the subject of a blood test to detect antibodies to the probable causative agent of AIDS.

§ 199.21. (a) Any person who negligently discloses results of a blood test to detect antibodies to the probable causative agent of acquired immune deficiency syndrome to any third party, except pursuant to a written authorization, as described in subdivision (g), or except as provided in Section 1603.1 or 1603.3, as amended by AB 488 of the 1985–86 Regular Session, shall be assessed a civil penalty in an amount not to exceed one thousand dollars ($1,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(b) Any person who willfully discloses the results of a blood test to detect antibodies to the probable causative agent of the acquired immune deficiency syndrome, to any third party, except pursuant to a written authorization, as described in subdivision (g), or except as provided in Section 1603.1 or 1603.3, as amended by AB 488 of the 1985–86 Regular Session, shall be assessed a civil penalty in an amount not less than one thousand dollars ($1,000) and not more than five thousand dollars ($5,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(c) Any person who willfully or negligently discloses the results of a blood test to detect antibodies to the probable causative agent of acquired immune deficiency syndrome to a third party, except pursuant to a written authorization, as described in subdivision (g), or except as provided in Section 1603.1 or 1603.3, as amended by AB 488 of the 1985–86 Regular Session, which results in economic, bodily, or psychological harm to the subject of the test, is guilty of a misdemeanor, punishable by imprisonment in the county jail for a period not to exceed one year or a fine of not to exceed ten thousand dollars ($10,000) or both.

(d) Any person who commits any act described in subdivision (a) or (b) shall be liable to the subject for all actual damages, including damages for economic, bodily, or psychological harm which is a proximate cause of the act.

(e) Each disclosure made in violation of this chapter is a separate and actionable offense.

(f) The results of a blood test to detect antibodies to the probable causative agent of acquired immune deficiency syndrome shall not be used in any instance for the determination of insurability or suitability for employment.

(g) "Written authorization," as used in this section, applies only to the disclosure of test results by a person responsible for the care and treatment of the person subject to the test. Written authorization is required for each separate disclosure of the test results, and shall include to whom the disclosure would be made.

(h) Nothing in this section limits or expands the right of an injured subject to recover damages under any other applicable law.

(i) Nothing in this section shall be construed to impose liability or criminal sanction for disclosure of a blood test to detect antibodies to the probable causative agent of AIDS in accordance with any reporting requirement for a diagnosed case of AIDS by the state department or the Centers for Disease Control under the United States Public Health Services.

(j) The state department may require blood banks and plasma centers to submit monthly reports summarizing statistical data concerning the results of tests to detect the presence of viral hepatitis and antibodies to the probable causative agent of AIDS. This statistical summary shall not include the identity of individual donors or identifying characteristics which would identify individual donors.

(k) "Disclosed," as used in this section, means to disclose, release, transfer, disseminate, or otherwise communicate all or any part of any record orally, in writing, or by electronic means to any person or entity.

(l) "Results of a blood test," as used in this section, means to identify or provide identifying characteristics of the person to whom the results apply.

§ 199.22. No person shall test a person's blood for evidence of antibodies to the probable causative agent of AIDS without the written consent of the subject of the test, and the person giving the test shall have a written statement signed by the subject confirming that he or she obtained the consent from the subject.

This requirement does not apply to a test performed at an alternative site, as established pursuant to Article 8 (commencing with Section 1630) of Chapter 4 of Division 2. This requirement also does not apply to any blood and blood products specified in paragraph (2) of subdivision (a) of Section 1603.1, as amended by Assembly Bill 488 of the 1985–86 Regular Session.

§ 199.23. Neither the state department nor any blood bank or plasma center, including a blood bank or plasma center owned or operated by a public entity, shall be held liable for any damages resulting from the notification of test results, as set forth in paragraph (3) of subdivision (a) of, and in subdivision (c) of, Section 1603.3, as amended by AB 488 of the 1985–86 Regular Session.

SEC. 2. (a) No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because part of the costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

(b) No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law.

SEC. 3. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect the confidentiality of persons undergoing a blood test for the detection of anitbodies to acquired immune deficiency syndrome, and to encourage individuals who are stricken with the disease to undergo treatment which would ultimately benefit the health and welfare of all citizens of the State of California, it is necessary that this act take immediate effect.

CHAPTER 23

(Assembly Bill No. 488)

An act to amend Sections 199.21 and 1603.1 of, to add Sections 1603.3 and 1603.4 to, and to add Article 8 (commencing with Section 1630) to Chapter 4 of Division 2 of, the Health and Safety Code, relating to health, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 3, 1985. Filed with Secretary of State April 4, 1985.]

LEGISLATIVE COUNSEL'S DIGEST

AB 488, Roos. Blood banks and plasma centers: AIDS.

(1) Existing law requires each blood bank, as defined, to make tests of all human whole blood received to detect the presence of viral hepatitis.

This bill would require each blood bank and plasma center, as defined, to test for the probable causative agent for acquired immune deficiency syndrome, except as specified. It would prohibit blood or blood components to be used in vivo for humans, unless the blood or blood components have been so tested and labeled nonreactive, except as specified. It would require all blood donors to be given a specified written notice and to sign a written confirmation of this notification. It would require blood banks and plasma centers to utilize self-deferral and callback procedures. It would require blood banks and plasma centers, after a confirmation test, to report information to the State Department of Health Services to be included in a Donor Deferral Register, as specified. It would require laboratories which make the antibody test to be specially approved by the department. It would require each blood bank and plasma center to provide a specified notice of sites available for the antibody test. It would establish procedures for notifying donors of test results. Violation of these requirements would be a misdemeanor punishable, as specified. To the extent these new requirements would apply to blood banks and plasma centers, operated by public agencies it would impose a state-mandated local program.

(2) Under existing law, the department compiles a list of carriers and possible carriers of viral hepatitis who are prohibited from donating blood along with specified information.

This bill would require the department to include on the list individuals who test positive for antibodies to the probable causative agent of AIDS. It would name the list, the Donor Deferral Register. It would permit the state department to develop guidelines governing the instances when a person is removed from the registry, as specified.

(2.5) Existing law requires a physician or hospital in certain instances to report to the department prescribed information concerning persons with viral hepatitis. Existing law requires the county health officer to investigate all transfusion-associated hepatitis cases and report certain information to the department. Existing law requires the department, if possible, to contact certain carriers of viral hepatitis.

This bill would require the reports of a physician or hospital concerning persons with viral hepatitis to include the date of birth of the person. It would require a hospital or physician to report all transfusion-associated AIDS cases to the county health officer. It would require a hospital to report all confirmed cases of AIDS, as specified. It would require the county health officer to investigate all transfusion-

associated AIDS cases. It would require county health or department officials to contact all persons with confirmed cases of AIDS, as specified. These new requirements on local public operated facilities or local public officials impose a state-mandated local program.

(3) This bill would require counties designated by the State Director of Health Services, as specified, to establish a testing program, within the funds available, for the detection of antibodies to the probable causative agent of AIDS and a program for confidential information and referral services for individuals who seek testing. These requirements would impose a state-mandated local program. It would permit the director to waive these requirements. It would require the alternative test sites established pursuant to its provisions to be under the supervision of a physician and surgeon or be a clinic or health facility licensed by the state department and to meet prescribed criteria. It would appropriate $5,000,000 from the General Fund to the state department which would be disbursed to counties by the department for these purposes, as specified. The appropriation would also be used to fund the development, procurement, and distribution by the state department of material on the antibody test and for the state department's administrative costs. It would provide a delayed operative date for the provisions described in paragraphs 1 to 2.5, inclusive.

(4.5) This bill would provide that public and private entities shall not be held liable for unintentional disclosures of test results, as specified. It would also provide that neither the state department nor any blood bank or plasma center, including a blood bank or plasma center owned or operated by a public entity, shall be liable for any damages resulting from a specified notification of test results.

(4.7) This bill would amend a section added by AB 403 of the 1985–86 Regular Session which provides penalties for disclosure, as defined, to a third party of the results of a blood test, as defined, including the assessing of civil penalties and the creation of a new misdemeanor.

This bill would delete the definition of "results of a blood test" and instead clarify that the prohibited disclosure of the results of the blood test to a third party involves a disclosure which identifies or provides identifying characteristics of the person to whom the test results apply.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed $500,000 statewide and other procedures for claims whose statewide costs exceed $500,000.

This bill would provide that reimbursement for costs mandated by the bill shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed $500,000, shall be payable from the State Mandates Claims Fund.

(6) This bill would provide that, notwithstanding Section 2231.5 of the Revenue and Taxation Code, this bill does not contain a repealer, as required by that section; therefore, the provisions of the bill would remain in effect unless and until they are amended or repealed by a later enacted bill.

(7) This bill would take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares that acquired immune deficiency syndrome is a serious and growing viral-based epidemic in the United States.

The incidence of acquired immune deficiency syndrome (AIDS) caused by blood transfusions is a growing and serious problem and is expected to increase and since

a test will soon be available to indicate exposure to the probable causative agent of AIDS, it is crucial that donations of blood be tested for the presence of the antibodies to the probable causative agent of AIDS to safeguard against the possibility of transmitting the disease by transfusion.

The Legislature finds and declares it is a desired goal to discourage individuals in high-risk groups, as defined by the State Department of Health Services, who are expected to be exposed to AIDS, from donating blood in order to safeguard against transmitting the disease by transfusion.

Furthermore, the Legislature declares that it is imperative to delay notification of all persons who test reactive for the antibody test at a blood bank or plasma center for that period of time necessary to discourage members from high-risk groups from visiting a blood donation site.

SEC. 1.5. Section 199.21 of the Health and Safety Code, as added by Assembly Bill No. 403 of the 1985–86 Regular Session, is amended to read:

§ 199.21. (a) Any person who negligently discloses results of a blood test to detect antibodies to the probable causative agent of acquired immune deficiency syndrome to any third party, in a manner which identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), or except as provided in Section 1603.1 or 1603.3, as amended by AB 488 of the 1985–86 Regular Session, shall be assessed a civil penalty in an amount not to exceed one thousand dollars ($1,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(b) Any person who willfully discloses the results of a blood test to detect antibodies to the probable causative agent of the acquired immune deficiency syndrome to any third party, in a manner which identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), or except as provided in Section 1603.1 or 1603.3, as amended by AB 488 of the 1985–86 Regular Session, shall be assessed a civil penalty in an amount not less than one thousand dollars ($1,000) and not more than five thousand dollars ($5,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(c) Any person who willfully or negligently discloses the results of a blood test to detect antibodies to the probable causative agent of acquired immune deficiency syndrome to a third party, in a manner which identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), or except as provided in Section 1603.1 or 1603.3, as amended by AB 488 of the 1985–86 Regular Session, which results in economic, bodily, or psychological harm to the subject of the test, is guilty of a misdemeanor, punishable by imprisonment in the county jail for a period not to exceed one year or a fine of not to exceed ten thousand dollars ($10,000) or both.

(d) Any person who commits any act described in subdivision (a) or (b) shall be liable to the subject for all actual damages, including damages for economic, bodily, or psychological harm which is a proximate cause of the act.

(e) Each disclosure made in violation of this chapter is a separate and actionable offense.

(f) The results of a blood test to detect antibodies to the probable causative agent of acquired immune deficiency syndrome, which identifies or provides identifying characteristics of the person to whom the test results apply, shall not be used in any instance for the determination of insurability or suitability for employment.

(g) "Written authorization," as used in this section, applies only to the disclosure

of test results by a person responsible for the care and treatment of the person subject to the test. Written authorization is required for each separate disclosure of the test results, and shall include to whom the disclosure would be made.

(h) Nothing in this section limits or expands the right of an injured subject to recover damages under any other applicable law.

(i) Nothing in this section imposes liability or criminal sanction for disclosure of a blood test to detect antibodies to the probable causative agent of AIDS in accordance with any reporting requirement for a diagnosed case of AIDS by the state department or the Centers for Disease Control under the United States Public Health Services.

(j) The state department may require blood banks and plasma centers to submit monthly reports summarizing statistical data concerning the results of tests to detect the presence of viral hepatitis and antibodies to the probable causative agent of AIDS. This statistical summary shall not include the identity of individual donors or identifying characteristics which would identify individual donors.

(k) "Disclosed," as used in this section, means to disclose, release, transfer, disseminate, or otherwise communicate all or any part of any record orally, in writing, or by electronic means to any person or entity.

SEC. 2. Section 1603.1 of the Health and Safety Code, is amended to read:

§ 1603.1. (a) Except as provided in this subdivision, no blood or blood components shall be used in vivo for humans in this state, unless the blood or blood components have been tested and found nonreactive for the probable causative agent of acquired immune deficiency syndrome or the blood or blood components are used for research or vaccination programs pursuant to an informed consent.

Additional exceptions to the requirement of this subdivision are as follows:

(1) Frozen red blood cells of a rare type, as determined by the blood bank or plasma center, collected prior to the effective date of this paragraph, for which no specimen is available.

(2) Inventories of blood and blood components collected prior to 60 days after the effective date of this paragraph or the date of licensing of a test by the Federal Drug Administration to determine exposure to the antibodies to the probable causative agent of AIDS, whichever is later.

(3) Blood or blood products released for transfusion in emergency circumstances, as determined by the state department.

(4) Blood used for autologous purposes.

(b) Blood banks and plasma centers shall make laboratory tests of all human whole blood and plasma received to detect the presence of viral hepatitis and antibodies to the probable causative agent of acquired immune deficiency syndrome in the manner specified in Section 1603.3. If the blood bank or plasma center finds the presence of viral hepatitis, or an antigen thereof, in the blood tested, it shall report that finding, the date of the human whole blood donation, the name, address, and social security number of the person who donated the blood, and the name and address of the blood bank which received the human whole blood from the person and any additional information required by the department, to the department and the county health officer within 72 hours of the confirmation of the presence of viral hepatitis, or an antigen thereof, in the blood tested.

(c) As soon as practicable following diagnosis, a physician shall report to the department and the county health officer the name, date of birth, address, and social security number of all carriers of viral hepatitis under his treatment, the type of viral hepatitis contracted if known, and any additional information required by the department and shall report immediately all transfusion-associated hepatitis and transfusion-associated AIDS cases to the county health officer for investigation.

(d) As soon as practicable following hospitalization, a hospital shall report to the

department and to the county health officer the name, date of birth, address, and social security number of all confirmed cases of AIDS carriers, as determined by a person responsible for the care and treatment of a person with AIDS, and all carriers of viral hepatitis hospitalized for treatment of viral hepatitis or AIDS, the name of the hospital, the date of hospitalization, the type of viral hepatitis contracted if known, and any additional information required by the department and shall report immediately all transfusion-associated hepatitis and all confirmed transfusion-associated AIDS cases, as determined by a person responsible for the care and treatment of a person with AIDS, to the county health officer for investigation.

(e) The county health officer shall investigate all transfusion-associated hepatitis cases and transfusion-associated AIDS cases and shall, if possible, trace the sources of human whole blood which was transfused. The county health officer shall report to the department within 72 hours following an investigation the name, date of birth, address, and social security number of carrier donors, possible carrier donors and carriers of viral hepatitis and any additional information required by the department.

(f) The department shall compile two times each month a list of carrier donors, possible carrier donors, and carriers of viral hepatitis and persons who test reactive for antibodies to the probable causative agent of the acquired immune deficiency syndrome and shall distribute the list to blood banks and plasma centers two times each month. The list shall include the name, date of birth, address, and social security number of people who are carrier donors, possible carrier donors and carriers of viral hepatitis and persons reactive for, the antibody to the probable causative agent of AIDS, and confirmed cases of AIDS, as determined by a person responsible for the care and treatment of a person with AIDS, the date of the human whole blood donation if applicable, the name and address of the blood bank who received the human whole blood donation if applicable, and any other information which the department deems necessary to protect the public health and safety. This list shall be known as the Donor Deferral Register and shall include names of individuals who are indefinitely deferred from blood donations without identifying the reasons for the deferral. The state department may develop guidelines governing the instances when a person is to be removed from the register. These guidelines may include, but shall not be limited to nor be required to include, death of an identified donor or the licensure by the Federal Food and Drug Administration of a new, confirmatory test for AIDS which would allow the state department to more accurately determine if a person should be kept on the registry due to any threat to the state's blood supply that the prospective donor may represent.

(g) The department shall, if possible, contact carrier donors to inform them that they may be carriers of viral hepatitis and should not make blood donations, and shall suggest appropriate treatment alternatives. County health or state department officials shall contact all persons who have confirmed cases of AIDS, as determined by a person responsible for the care and treatment of the person with AIDS, to suggest appropriate treatment alternatives and for the purposes of epidemiological studies and followup.

(h) The department may adopt regulations governing the procedures in this section as it deems necessary to protect the public health and safety.

(i) The state department may replace the test for the antibody to the probable causative agent for AIDS with a superior antibody test, as the state department deems appropriate.

(j) "Plasma center," as used in this chapter, means any place where the process of plasmapheresis is conducted, as defined in Section 1025 of Title 17 of the California Administration Code and includes a place where leukopheresis or platlet pheresis, or both, is conducted.

(k) "AIDS," as used in this chapter, means acquired immune deficiency syndrome.

(l) "Blood components", as used in this chapter, means preparations separated from single units of whole blood or prepared for hemapheresis and intended for use as final products for transfusions.

SEC. 3. Section 1603.3 is added to the Health and Safety Code, to read:

§ 1603.3. (a) Prior to a donation of blood or blood components each donor shall be notified in writing of, and shall have signed a written statement confirming the notification of, all of the following:

(1) That the blood or blood components shall be tested for evidence of antibodies to the probable causative agent of acquired immune deficiency syndrome.

(2) That donors found to have serologic evidence of the antibodies shall be placed on a confidential statewide blood donor deferral register without a listing of the reason for being included on the register.

(3) That the donor shall be notified of the test results in accordance with the requirements described in subdivision (c).

(4) That the donor blood or blood component which is found to have the antibodies shall not be used for transfusion.

(5) That blood or blood components shall not be donated for transfusion purposes by a person if the person has reason to believe that he or she has been exposed to acquired immune deficiency syndrome.

(6) That the donor is required to complete a health screening questionnaire to assist in the determination as to whether he or she has been exposed to acquired immune deficiency syndrome.

(b) A blood bank or plasma center shall incorporate voluntary means of self-deferral for donors. The means of self-deferral may include, but is not limited to, a form with checkoff boxes specifying that the blood donated is for research or test purposes only and a telephone callback system for donors to use in order to inform the blood bank that blood donated should not be used for transfusion.

(c) Blood or blood products from any donor initially found to have serologic evidence of antibodies to the probable causative agent of AIDS shall be retested for confirmation. Only if a further test confirms the conclusion of the earlier test shall the donor be notified of a reactive result by the blood bank or plasma center, as provided in paragraph (1) or (2) of this subdivision.

(1) The state department shall permit a blood bank to inform blood donors of the test result if all of the following apply:

(A) The alternative test sites required pursuant to Article 8 (commencing with Section 1630) are established and operational in the county where the blood bank is located.

(B) The state department has determined that the alternative test sites are functioning in an adequate manner in the county where the blood bank is located and has established a date after which these test sites were functioning in this manner.

After the date determined in category (B) is established, the blood bank shall wait three months. When the three-month period elapses, blood banks may inform a donor of blood or blood components of the test results no sooner than 60 days from the date of donation.

(2) In the case of a plasma center on or after the operative date of this section, a donor donating for the first or second time in any 60-day period shall not be notified of the test result, but upon a third or subsequent donation within that period, the plasma center may notify the donor of the test result.

The state department shall develop permissive guidelines for blood banks and

plasma centers on the method or methods to be used to notify a donor of a test result. Each blood bank or plasma center shall, upon positive confirmation using the best available and reasonable techniques, provide the information to the state department for inclusion in the Donor Deferral Register. Blood banks and plasma centers shall provide the information on donations testing reactive for the antibodies to the probable causative agent of AIDS and carrier donors of viral hepatitis to the department on a single list in the same manner without specification of the reason the donor appears on the list.

(d) The Donor Deferral Register, as described in subdivision (e) of Section 1603.1, shall include names of individuals who are deferred from blood donations without identifying the reasons for deferral.

(e) Each blood bank or plasma center operating in California shall prominently display at each of its collection sites a notice which provides the addresses and phone numbers of sites, within the proximate area of the blood bank or plasma center, where tests provided pursuant to Article 8 (commencing with Section 1630) may be administered without charge.

SEC. 3.5. Section 1603.4 is added to the Health and Safety Code, to read:

§ 1603.4. (a) Notwithstanding Chapter 1.11 (commencing with Section 199.20) of Part 1 of Division 1, as added by Assembly Bill No. 403 of the 1985–86 Regular Session, or any other provision of law, no public entity or any private blood bank or plasma center shall be liable for an inadvertent, accidental, or otherwise unintentional disclosure of the results of a test for the probable causation agent for acquired immune deficiency syndrome or information in the Donor Referral Register.

As used in this section, "public entity" includes, but is not limited to, any publicly owned or operated blood bank or plasma center and the state department.

(b) Neither the state department nor any blood bank or plasma center, including a blood bank or plasma center owned or operated by a public entity, shall be held liable for any damage resulting from the notification of test results, as set forth in paragraph (3) of subdivision (a) of, or in subdivision (c) of, Section 1603.3.

SEC. 4. Article 8 (commencing with Section 1630) is added to Chapter 4 of Division 2 of the Health and Safety Code, to read:

ARTICLE 8

Antibody Testing

§ 1630. The Legislature finds and declares it is of great benefit to the public health and essential to the protection of safe blood and blood components available for transfusion to provide testing for the presence of antibodies to the probable causative agent of acquired immune deficiency syndrome (AIDS) as a function separate from the donation of blood or blood components.

§ 1631. The director shall, in order to protect the public health and in order to make blood and blood components safe for transfusion, designate counties which shall establish alternative testing sites, within the funds available, pursuant to this article. When designating a county pursuant to this section, the director may consider whether the county contains a permanent operational blood bank. All alternative test sites, established pursuant to this article, shall be under the supervision of a physician and surgeon or be a clinic or health facility licensed by the state department.

§ 1632. (a) Each county, designated by the director, shall make the test available within its jurisdiction without charge, in an accessible manner and the tests shall be made available by the county on a confidential basis through use of a coded system with no linking of individual identity with the test request or results. The number and location of sites in each county designated by the director shall be approved by

the director. The test shall be made available by the county either directly or by contract with a physician and surgeon or with any clinic or health facility licensed by the state department. Neither the county nor anyone else administering the test described in this article, shall ask for the name, social security number, or any other information which could reveal the identity of the individual who takes the test. Each alternative test site shall make available confidential information and referral services, within the funds available, to individuals who seek testing. A county may subcontract with individuals or entities to provide information and referral services.

All alternative test sites shall provide a referral list of physicians and surgeons or clinics knowledgeable about AIDS, to all persons who have any known risk factor for AIDS, especially those who have a reactive antibody test, for further information and explanation of the test results and for medical evaluation.

At a minimum, individuals seeking testing shall be informed about the validity and accuracy of the antibody test before the test is performed. All testing site personnel shall be required to attest to having provided the above information. Furthermore, all individuals who are tested at the sites established by this article shall be given the results of this test in person. All sites providing antibody testing pursuant to this article shall have a protocol for referral for 24-hour inpatient and mental health services. All individuals awaiting test results and all persons to whom results are reported shall be informed of available crisis services and shall be directly referred, if necessary.

Each county, designated by the director, shall be required to submit a plan to the state department within 45 days after the effective date of this section which details where testing and pretest and posttest information and referral will be provided and the qualifications of the staff who will be performing the services required by this article. The state department shall make training available, especially to smaller counties.

(b) The state department shall establish a reimbursement process for counties within 30 days after the effective date of this section for the following services:

(1) Informing test applicants on the test's reliability and validity.

(2) Administration of tests, analysis of test samples, and costs associated with the laboratory work required by this antibody test.

(3) Short-term information and referral sessions, of no more than one visit per person tested for the purpose of transmitting the person's test results and, as requested, for referral to available followup services.

The state department shall establish the amounts to be reimbursed for each of these services, but the amounts shall be established at a level to ensure that the purposes of this article are carried out. Reimbursements shall be made for each service provided.

(c) The state department may replace the test for the antibody to the probable causative agent for AIDS with a superior antibody test, as the state department deems appropriate.

(d) The director may grant a waiver to a county from the requirements of this article if the county petitions the director for the waiver and the director determines that the waiver is consistent with the purposes of this article.

(e) A participating county or the state department may accept grants, donations, and in-kind services for purposes of carrying out this article.

SEC. 5. Tests to be performed for the detection of antibodies to the probable causative agent for AIDS shall only be performed by laboratories specifically approved by the State Department of Health Services to perform this test.

SEC. 6. The sum of five million dollars ($5,000,000) is hereby appropriated from the General Fund to the State Department of Health Services for purposes of administering Article 8 (commencing with Section 1630) of Chapter 4 of Division 2

of the Health and Safety Code and making reimbursements to counties pursuant to Section 1632 of the Health and Safety Code. In addition, the state department shall use up to two hundred seventy-five thousand dollars ($275,000) of this appropriation for the development and procurement of materials about the antibody test, as set forth in Article 8, and for the distribution of this material for use in the alternative sites established pursuant to Article 8.

All federal moneys received by either the state department or by a county for the purposes enumerated in this section shall be used prior to the moneys appropriated by this section.

SEC. 6.7. Sections 2 and 3 of this act shall become operative 60 days after the effective date of this act or the date of the licensing of a test by the Federal Drug Administration to determine exposure to the antibodies to the probable causative agent of AIDS, whichever is later.

SEC. 7. Reimbursement to local agencies and school districts for costs mandated by the state pursuant to this act shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code and, if the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), shall be made from the State Mandates Claims Fund.

SEC. 8. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Since a blood test to detect the antibodies to the probable causative agent of acquired immune deficiency syndrome has recently been licensed by the federal government, in order to safeguard the blood supply and to provide for a testing, information, and referral system for persons who suspect they may have been exposed to AIDS, it is necessary for this act to take effect immediately.

EXPLANATORY NOTES CH 23:

H & S C § 199.21. (1) Added "in a manner which identifies or provides identifying characteristics of the person to whom the test results apply," in subds (a)-(c); (2) added ", which identifies or provides identifying characteristics of the person to whom the test results apply," in subd (f); (3) substituted "imposes" for "shall be construed to impose" after "this section" near the beginning of subd (i); and (4) deleted former subd *(l)* which read: "*(l)* 'Results of a blood test,' as used in this section, means to identify or provide identifying characteristics of the person to whom the results apply."

H & S C § 1603.1. (1) Added subd (a); (2) redesignated former subds (a)-(g) to be subds (b)-(h); (3) amended the first sentence of subd (b) by adding (a) "and plasma centers" near the beginning; (b) "and plasma" after "whole blood"; and (c) "and antibodies to the probable causative agent of acquired immune deficiency syndrome in the manner specified in Section 1603.3"; (4) amended the second sentence of subd (b) by adding (a) "or plasma center" after "blood bank" near the beginning; and (b) "of the confirmation of the presence of viral hepatitis, or an antigen thereof, in the blood tested" at the end of the sentence; (5) added "date of birth" before "address, and social" in subds (c)-(f); (6) added "and transfusion-associated AIDS cases" in subds (c) and (e); (7) amended subd (d) by adding (a) "confirmed cases of AIDS carriers, as determined by a person responsible for the care and treatment of a person with AIDS, and all"; (b) "or AIDS"; and (c) "and all confirmed transfusion-associated AIDS cases, as determined by a person responsible for the care and treatment of a person with AIDS,"; (8) amended subd (f) by adding (a) "persons who test reactive for antibodies to the probable causative agent of the acquired immune deficiency syndrome and" and "and plasma centers" in the first sentence; (b) "people who are" after "security number of" and "and persons reactive for, the antibody to the probable causative agent of AIDS, and confirmed cases of AIDS, as determined by a person responsible for the care and treatment of a person with AIDS" in the second sentence; and (c) the third, fourth, and fifth sentences; (9) added the second sentence of subd (g); (10) substituted "adopt" for "make" in subd (h); and (11) added subds (i)-*(l)*.

FILE NO._____ ORDINANCE NO._____

(AIDS Discrimination; Amended by amending section 3801.)
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 Accomodations
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. In adopting this ordinance, the Board of Supervisors does not intend to proscribe any activity the proscription of which would constitute an infringement of the free exercise of religion as guaranteed by the United States and California constitutions.

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

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,

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 discreet 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 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.

(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 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

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 ofthe 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 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.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 thepublic 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 RightsCommission 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 _____
Deputy City Attorney

0162j

LOS ANGELES MAYOR BRADLEY SIGNS ORDINANCE BARRING DISCRIMINATION AGAINST AIDS VICTIMS

LOS ANGELES (By a BNA Staff Correspondent) — Los Angeles Mayor Tom Bradley signs a bill making it illegal to discriminate against victims of Acquired Immune Deficiency Syndrome (AIDS).

"Ignorance and fear are the enemy, not the AIDS victims," Bradley said in signing the ordinance. "We must educate our citizens about the nature and cause of this public health menace. I believe this ordinance is the first big step in a public education campaign which will inform and educate."

Bradley said he hopes that those people who believe they are being discriminated against will bring their problems to the city attorney rather than involve themselves in a lawsuit. He said the city will not try to punish violators but convince them through mediation and information to change their ways. Only after they refuse would the city take legal action.

The ordinance, prohibiting discrimination against AIDS victims in employment, housing, medical and dental services, business establishments, city facilities and services and other public accommodations, was approved by the City Council Aug. 14.

The council acted on the recommendation of the Committee on Public Health, Human Resources, and Senior Citizens, which held three days of hearings on the subject of AIDS before advising that the ordinance be adopted as an urgency measure. "The committee agrees with the opinion cogently express by Dr. Shirley Fannin (Los Angeles County Public Health Programs) that the sick person should not be at the mercy of people's ignorance or irrational fears," the committee report said. "Phobia concerning the disease is rampant," the report charged.

The ordinance allows for exemptions in the case of employment discrimination based on a bona-fide occupational qualification, and for housing in cases where the owner of a unit lives in common with the prospective tenant. Service facilities and establishments such as blood or sperm banks also are exempt under the ordinance.

Introduced by Councilman Joel Wachs, the ordinance originally contained criminal penalties for violators, but City Attorney James K. Hahn advised against that because discrimination against other classes of persons has not been subject to criminal prosecution. Hahn's office also said that prosecution would not result in a likelihood of conviction. The committee agreed with the city attorney, providing for civil damages and injunctive relief only.

Hahn also argued that the city had been preempted by the state in the area of employment discrimination. The committee was swayed, however, by Wachs' argument that "the AIDS situation is unique, that the determination of preemption is based upon the particular factual situation litigated, that the city at least has the ability to regulate employment conditions for its own employees, and that because of the severability clause the remainder of the ordinance would not be jeopardized even if a court made the determination that the employment field is preempted."

Testimony revealed that since the first cases involving AIDS were reported in 1981, 900 cases have been reported in Los Angeles. Reports are doubling every 14 months and the disease is now the leading cause of death of single men between the ages of 15 and 50, the report said. Wachs said the city has received inquiries from more than 30 U.S. cities and some from oversees since the council approved the bill.

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NATIONAL LABOR RELATIONS ACT

Rights Of Employees

Sec. 7. Employees shall have the right to self-organization to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

Saving Provision

Sec. 502. Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual of such labor or service, without his consent; nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this Act.

SUMMARY INFORMATION ABOUT AIDS

I. Definition and History

A. AIDS is defined by the United States Centers for Disease Control (CDC) as "a reliably diagnosed disease that is at least moderately indicative of an underlying cellular immunodeficiency in a person who has had no known underlying cause of cellular immunodeficiency nor any other cause of reduced resistance reported to be associated with that disease."

1. AIDS renders the human immune system incapable of fending off certain otherwise rare, fatal illnesses.

B. AIDS was first identified in the United States in 1981.

1. The medical community discovered the highly unusual occurrence of pneumocystis carinii pneumonia (PCP), and Kaposi's sarcoma (KS) in several dozen individuals.

a. These infections occur only in immuno-deficient persons.

b. The occurrence of these and other rare opportunistic infections focused medical attention on the condition now known as AIDS.

2. Since 1981, the incidence of AIDS has mushroomed to 15,172 adult cases in the United States as of December, 1985.

C. The cause of AIDS is believed to be a virus called Human T-Lymphotropic Virus, type III (HTLV-III). The virus is also called Lymphadenopathy-Associated Virus (LAV).

1. A test has been developed to detect antibodies to HTLV-III.

a. The antibody test is used to screen blood and plasma in order to prevent the transmission of AIDS in blood transfusions or in the use of blood products.

b. The test is also available for individuals.

(1) The presence of antibodies only means a person has been infected with HTLV-III, not that the person is still infected or will contract AIDS.

(2) The reliability of the test, including false negatives and false positives, has been questioned.

II. Increased Risk Groups

A. Ninety four (94) percent of AIDS cases in the United States have occurred in the following groups:

1. Sexually active homosexual and bisexual men with multiple partners (73%)

2. Present or past abusers of intervenous drugs (17%).

3. Persons with hemophelia or other coagulation disorders (1%).

4. Heterosexual contacts of someone with AIDS or at risk for AIDS (1%).

5. Persons who have had transfusions with blood or blood products (2%).

6. Researchers believe that transmission occurred in the remaining six (6) percent of the cases in these or similar ways.

B. Geographically, thirty-six (36) percent of the reported cases in the United States are from New York and twenty-three (23) percent are from California.

III. Transmission

A. According to the CDC, casual contact with AIDS patients or persons who might be at risk for AIDS does not place an individual at risk for the illness. No case of AIDS has been attributed to airborne infection or casual contact or touching.

1. Based on current medical opinion, a New York trial judge has ruled that AIDS is not communicable through ordinary casual contact, LaRocca v. Dalsheim, 120 Misc. 2d 697 (Sup. Ct. Duchess Co. 1983)

B. HTLV-III has been found in various body fluids including blood, semen, saliva, tears, breast milk and urine.

1. AIDS is thought to be transmitted most often through sexual contact or needle sharing, and less frequently through blood or its components.

2. AIDS may also be transmitted from an infected mother to infant during or shortly after birth.

3. There is no evidence of transmission through saliva or tears.

   a. However, the CDC has issued precautions and recommendations for dental-care personnel and health care professionals performing eye examinations or other procedures involving contact with tears.

C. HTLV-III infection is similar to hepatitis B virus (HBV) infection with respect to modes of transmission, i.e., sexual contact, blood or blood products and paranatal transmission from infected mothers to their offspring.

   1. The CDC states that the risk for HBV in transmission "far exceeds" that for HTLV-III transmission.

IV. Categories of Infected Individuals

A. Individuals who have been infected with HTLV-III fall into four general categories.

   1. The first group includes individuals who have been exposed to the virus but who display no physical symptoms.

      a. The antibody test is the primary means of identifying the members of this group.

      b. It is not known what percentage of this group will develop AIDS or whether they can transmit the infection to others.

      c. The incubation period may be as much as several years.

   2. The second group includes those with so-called "warning symptoms" that AIDS may develop.

      a. The warning symptoms include swollen lymph nodes, weight loss, abnormal fatigue, night sweats and a decrease in T-helper Lymphocytes.

b. Possibly ten times the number of persons with AIDS as defined by the CDC fall into this group.

c. Only some of the individuals in this group will develop CDC-defined AIDS.

(1) Many exhibiting these symptoms will be physically capable of working, others will be very ill.

3. The third group includes those who have contracted an opportunistic infection such as PCP or KS but who do not require hospitalization and are physically able to work.

a. These individuals fall squarely within the CDC definition of AIDS.

4. The last group includes individuals who have contracted multiple opportunistic infections, who require extended hospitalization, or who have been so weakened by infections and AIDS that they are relatively immobile. These individuals are also covered by the AIDS definition.

a. It is unlikely that these individuals could continue to work.