

Briefing

Employment adjustments for people with HIV or AIDS

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Introduction

The Human Immunodeficiency Virus (HIV), as defined by its name, is a virus that weakens the immune system.

It does so by attacking a certain type of immune system cell, called CD4 or T cells, which have an essential role in fighting infections and diseases. The virus is found in blood, semen, breast milk and vaginal and anal fluids. HIV cannot be transmitted through sweat, saliva, breath or urine.

As per 2017, more than 93,000 people are diagnosed with HIV in the UK and it is estimated that around 8,000 people in the UK are undiagnosed.[1]

There is currently no cure for HIV. However anti-retroviral treatment (ART) is now so effective it means that people who are living with HIV have the same life expectancy as the general population and the virus can be suppressed to the point that it cannot be passed on.[2]

Acquired Immune Deficiency Syndrome (AIDS) is the most advanced stage of the HIV infection, when someone has HIV and an “AIDS-defining” disease. Life-threatening conditions can develop when the immune system can no longer fight them. Very few people in the UK develop AIDS – in 2016, there were only 278 AIDS diagnoses.[3]

[1] Progress towards ending the HIV epidemic in the United Kingdom, Public Health England, November 2018 [accessed December 2018]

[2] Progress towards ending the HIV epidemic in the United Kingdom, Public Health England, November 2018 [accessed December 2018]

[3] Progress towards ending the HIV epidemic in the United Kingdom, Public Health England, November 2018 [accessed December 2018]

Employment and people with HIV or AIDS

The vast majority of people with HIV have no problems at work. The employer may not even be aware that they have HIV or AIDS.

However for some people a few minor adjustments could be needed. Adjustments will vary from one individual to another as their condition affects them differently.

People who have HIV or AIDS are protected under the Equality Act 2010 from the point of diagnosis but may not consider themselves to be disabled. Nevertheless employers have a legal obligation to make reasonable adjustments and not discriminate against employees who might be facing barriers at work because of a disability or long-term condition – even if it has not been diagnosed as a disability or accepted as such by the individual.

To access reasonable adjustments, an employee must tell their employer that they are living with HIV. Many people living with HIV will choose not to tell their employer about their HIV, because they do not feel it is relevant to their job and they do not require any adjustments. However, some people will require adjustments but not want to tell their employer about their HIV because of concerns around confidentiality.

Employers should be aware that non-visible disabilities such as HIV might mean that specific barriers can be less obvious. This means adjustments may be harder for employers to determine and put in place. There are organisations which offer specialist advice and disability awareness training to help employers ensure that their recruitment process accounts for barriers faced by those with HIV or AIDS – see page 21 for further details.

Employment adjustments for people with HIV or AIDS

People can acquire HIV during the course of their employment. Managers need to be able to respond sensibly to individuals who have recently been diagnosed.

It is important that employers have an honest conversation with new and existing employees about the barriers that may be present in the workplace and what simple measures might help. The best practice approach is to make adjustments for anyone who needs them in order to work effectively and contribute fully to your organisation.

Most employers will want to know what is 'reasonable'. Doing what seems fair for the individual and others who work for you given the size and resources of your organisation is a good place to start.

This guidance will help you deliver best practice. Remember:

- You might need to treat people differently in order to treat them fairly.
- Don't make assumptions about what people can and can't do.
- Ensure that everyone knows who is responsible for doing what and when it must be done.
- Involve the individual in generating solutions and respect their right to confidentiality.

For more detail on the law and making reasonable adjustments contact **Business Disability Forum's Advice Service** on telephone number **+44-(0)20-7403-3020** or by email **advice@businessdisabilityforum.org.uk** or see the Briefing on The Equality Act 2010.

Reasonable adjustments and best practice

The majority of people with HIV are people of working age, with 13.18% of people aged 25-34, 45.06% aged 35-49 and 33.06% aged 50-64.[4]

You may:

- Have people living with HIV applying for jobs.
- Be managing existing employees who have HIV but have not told you about their condition.
- Be managing the retention of those who are experiencing symptoms or treatment side-effects, and are able to continue working.
- Have employees who are unaware they have HIV, because they have not been tested.

Many employees who have HIV do not require any adjustments, but simply require a positive attitude by their employer, backed up by an effective policy on HIV. Where adjustments are needed they may well be simple and inexpensive and make good business sense.

Without adjustments, good candidates may not apply for jobs and good employees could be lost. Precise requirements will vary from one individual to another but may include things like time off to attend hospital and clinic appointments, flexibility in working hours and the request to work at home occasionally. Always ask the person what they need.

[4] Progress towards ending the HIV epidemic in the United Kingdom, Public Health England,, November 2018 [accessed December 2018]

Multi-national organisations

36.7 million people globally are living with HIV.^[5] For organisations that have employees in countries where HIV is more widespread, the business case for best practice on HIV may be even stronger as a sizeable number of employees may have HIV.

You will need to have a separate HIV policy and respond to the economic impact and the welfare of employees in certain countries. You may want to consider partnerships with local governments and educate employees about the risk of HIV.

As your organisation builds its knowledge on HIV in one country, you will be able to use this learning for the benefit of your business worldwide.

Decisions about suitability for employment, promotion or retention are too often based on general assumptions or misconceptions, rather than a factual assessment. This can lead to discrimination against existing or potential employees. Consider the skills, abilities and aspirations of each individual and implement appropriate and reasonable support so that everyone can maximise their potential; this can have a positive effect on an organisation as it unlocks different ways of tackling problems and making decisions.

[5] UNAIDS, 2016 figures [accessed May 2018]

Recruitment and selection

Candidates with HIV may be prevented from demonstrating their abilities and potential by conventional recruitment processes.

You need to make sure you do not discriminate against a disabled job applicant during the recruitment process. You may also have to make reasonable adjustments. It is important not to make assumptions about what the applicant can or cannot do; instead, ask applicants about reasonable adjustments they may require during the recruitment process. If you use external recruitment agencies, ask for evidence that they make reasonable adjustments for disabled applicants and work to the standards that underpin this guidance.

Further information on best practice for recruitment and selection is also available from the Government's Disability Confident scheme; for further information, visit: disabilityconfident.campaign.gov.uk or contact **Business Disability Forum's Advice Service** on telephone number +44-(0)20-7403-3020 or by email advice@businessdisabilityforum.org.uk.

Remember it is unlawful to ask questions about health or a disability prior to job offer under the Equality Act 2010 unless the question relates directly to an intrinsic aspect of the role for which the person is applying, or is for the purpose of making reasonable adjustments to the application or interview process. Questions about disability can still be asked on equal opportunities monitoring forms.

Job descriptions

When drawing up job descriptions and candidate specifications:

- Be specific about what skills are needed and what the job involves.
- Be flexible. Very often minor changes can make a significant difference, e.g. reallocating an inessential task that a candidate with HIV or AIDS finds difficult to someone else in the team.
- Do not needlessly exclude someone with HIV or AIDS. Concentrate on what is to be achieved in a job rather than on how it is achieved.

Advertising and attracting applicants

When advertising a job:

- Use positive wording like “we welcome disabled applicants” or, for Partners and Members of BDF: “We are a Member of Business Disability Forum and committed to becoming a disability-smart employer’.
- Provide a point of contact for people who are concerned about the recruitment process, using a range of contact methods, e.g. email and telephone.
- Display or mention the Disability Confident symbol if you signed up to the scheme.
- Be clear that you are willing to make reasonable adjustments.
- Consult your local Jobcentre Plus which can help you make your recruitment process accessible. As well as advising on your recruitment process, Work Coaches and Disability Employment Advisers at Jobcentre Plus may also know of individuals with HIV or AIDS who may be suitable candidates. Business Disability Forum Members and Partners can contact us for help.

Application forms

Adjustments may need to be made to the shortlisting process because an applicant may:

- Apply for a job for which they are over qualified because they need to regain confidence.
- Have gaps in their CV due to their disability.
- Have gained experience outside of paid employment, e.g. work experience and voluntary work.

Do not ask someone if they have HIV or AIDS on application forms. It is unlawful under the Equality Act 2010 to ask candidates general questions about their health or disability prior to job offer.

You can ask such questions after a job offer has been made but you are at risk of a claim of discrimination if adverse decisions are subsequently made such as withdrawing the offer. It is best practice and legally least risky therefore only to ask questions that are directly relevant to the person's ability to do the job for which they are applying. Avoid general questions about health, disability or medical history.

Remember, the risk of infection of HIV is extremely low in the workplace; remaining risks can be handled with appropriate health and safety measures.

Interviews, tests and assessment centres

Ensure that candidates who have HIV or AIDS are able to demonstrate their ability to do the job and to show what they can contribute to your organisation. Focus on the person's abilities not on the person's HIV or AIDS. If you have any doubts about a person's ability to do an intrinsic function of the job simply ask how they would do it.

When you invite applicants for an interview make sure you ask them all if they require any adjustments to be made for the interview. With adjustments, the interview allows you to assess the ability of applicants with HIV or AIDS:

- Allow flexibility in terms of interview dates and times.
- Build in rest or toilet breaks.
- Provide ready access to drinking water.

If selection normally involves a test, be sure that it does not discriminate against someone with HIV or AIDS:

- Consult candidates with HIV or AIDS so that necessary adjustments can be made.
- Discuss the test with the test publisher and seek guidance on possible adjustments.

Post job-offer

Once someone has been offered a job you may need to make adjustments to ensure they can perform to the best of their ability.

Start getting the adjustments in place as soon as practicable after you have made an appointment – it may take time to set up reasonable adjustments and, in some instances, to secure Access to Work funding. Consult the individual and make sure the employee's manager or supervisor understands the agreed adjustments. Appropriate disability awareness training can be useful for the candidate's team but only if the individual is comfortable with this.

Building in regular reviews of adjustments, for example at the end of the probationary period, in supervisory sessions and performance appraisals will help ensure that the adjustments are still effective.

Ensure that you take the same approach to adjustments when a person with HIV or AIDS applies for promotion, again not making assumptions about what the employee can or cannot do.

Completing a 'tailored adjustment plan' with new employees who have a disability, mental health condition or with an employee who develops one is a good way of recording and reviewing adjustments that have been agreed and actions that will be taken if the employee is off sick.

To see an example of a tailored adjustment plan and to download a template, visit Business Disability Forum's website at **businessdisabilityforum.org.uk** or contact **Business Disability Forum's Advice Service** on telephone number **+44-(0)20-7403-3020** or by email **advice@businessdisabilityforum.org.uk**.

Working arrangements to retain employees

Adjustments will depend on the nature of the HIV or AIDS-related illness and the treatment. For further information consult our range of briefings on specific impairments and adjustments.

It is very important to involve the person concerned when considering or making any adjustment. If required, further adjustments may include:

- Allowing the person to work from home, on a regular or ad-hoc basis, for example when the employee has diarrhoea (usually due to a change in drug treatment).
- Flexible working hours, or short breaks if the person has fatigue.
- Allowing ad hoc toilet breaks.
- An ergonomic assessment of seating arrangements if the person's weight loss leads to discomfort.
- Reallocating tasks if the person's HIV or AIDS-related illness means they cannot perform a certain duty.
- Allowing time off to attend medical appointments, rehabilitation or assessments. See our 'Managing sickness absence' briefing.
- Reallocation of inessential duties to other team members.
- Redeployment to an alternative position/employment/premises.

Rehabilitation

Do not assume that employees with HIV will take a lot of time off sick. They may need the occasional clinic appointment to monitor and maintain their health. Appointments are:

- Usually every six to twelve months although some employees can have more regular appointments.
- Usually carried out by NHS clinics so the appointments are likely to be in working hours.
- Likely to be infrequent but regular so they can be planned in advance.

They should not pose any more difficulties than similar arrangements you probably already manage, such as doctor or dentist appointments or arrangements with other specialists. Time off for rehabilitation and treatment could be a reasonable adjustment under the Equality Act 2010 for a disabled person and could be recorded as disability leave. For more information on recording sickness absence and disability leave, see our '**Managing sickness absence**' briefing.

There are two main 'flash points' when someone's HIV is more likely to impact on work life: when they are diagnosed; and when they start or switch treatment.^[6] During these times, they may need to attend a clinic more frequently to monitor their response to treatment more closely. Most people diagnosed with HIV will start treatment immediately.

During these times, some people may experience some psychological difficulties. The employer should ensure they are supportive, look at short-term adjustments, such as reallocating tasks, extending deadlines and sign post the employee to the employee assistance program if available. With new treatment, it may take a few weeks for side-effects to settle down.

[6] National AIDS Trust (2009) Working with HIV. [accessed July 2018]

Employment adjustments for people with HIV or AIDS

If an employee is undergoing drug treatment, they may need a significant number of pills and to be strict about what and when they eat. You should:

- Ensure drinking water is readily available.
- Wherever possible allow the employee to eat at their desk, provide food preparation areas and be flexible over eating times.
- Give the employee notice of any disruption to routine, e.g. canteen closure, training days or overtime and travel requirements.
- Ensure the employee can store medication safely and confidentially.
- Allow the employee flexibility to attend appointments when necessary.

Some people may need short periods of time off due to bouts of illness. Absences should be managed according to the standards outlined in our '**Managing sickness absence**' briefing. You should discuss with the employee if they want their HIV or AIDS to remain confidential. Self-certificated absences for HIV or AIDS-related reasons should refer to the specific illness and not just be HIV related, however these absences should still be recorded as disability related.

Induction, training and development

Disability and the need to make adjustments should be embedded in all policies such as those on sickness, training and performance appraisals.

New recruits should be made aware of these policies during the induction procedure.

It is important that your standard induction and training programme is accessible, so an employee with a disability or long-term condition can access the same information as everyone else. You may also want to provide a workplace mentor to ensure supportive training. This can provide another employee with valuable personal development experience.

Ensure that employees with HIV or AIDS have equal access to further in-house and external training, meetings and career development opportunities.

Health and safety

It is important to remember that in the UK there is no risk of HIV transmission through everyday work contact for either colleagues or the public.

It is not therefore necessary to conduct specific health and safety risk assessment for people with HIV or AIDS.

First aid training should include universal precautions related to transmissions of HIV. If you provide first aid training for your employees, ensure this is included.

Travelling and working overseas

If your employees are required to travel abroad, you should provide information on risks associated with such travel, including advice on sexual transmission, HIV and the reliability of blood products abroad.

If vaccines are required for travel, this should be notified to employees well in advance. Thanks to improvements in treatment, people living with HIV can now receive a number of live vaccines that were previously advised against. However there are exceptions and employees living with HIV should always discuss any required vaccinations with their HIV clinician.[7]

[7] For further information on HIV and travel vaccinations, visit THT's website [Accessed July 2018]

Employment adjustments for people with HIV or AIDS

You may also want to allow employees to arrange their own travel insurance, and reimburse them, rather than use group travel insurance. This enables employees with a certain medical conditions, including HIV, to obtain specialised travel insurance without having to disclose their medical information to their employer. Contact Terrence Higgins Trust's (THT) helpline 'THT Direct' for a list of specialist travel insurers that provide cover to people living with HIV.[8]

Some countries require evidence that travellers do not have HIV before a visa or work permit can be issued. This should be brought to the attention of employees due to work overseas.

If a work permit or visa cannot be obtained because of the person's HIV status, consider other countries where there are no visa restrictions. If a core part of the person's job is to travel to countries where a visa cannot be obtained then you may need to consider redeployment as a reasonable adjustment. These decisions need to be made in consultation with the employee. Do not base such decisions on management assumptions.

[8] THT Direct can be contacted on +44(0)-0808-802-1221. For further information, visit THT Direct helpline webpage [Accessed July 2018]

Harassment

A person who has HIV or AIDS may be particularly vulnerable to harassment from their colleagues.

As an employer, you must take all reasonable steps to deal with harassment. Harassment includes not only physical or verbal abuse but also anything which violates a person's dignity or creates an intimidating, hostile, degrading humiliating or offensive environment.

Harassment stems from stereotyping, lack of understanding, intolerance of difference and fear. To prevent bullying and harassment of anyone you should:

- Ensure your organisation has clear policies on workplace bullying and harassment and that complaints are investigated promptly and effectively. Ensure these policies are communicated across the organisation through campaigns and awareness raising initiatives.
- Make it clear that any harassment, including on grounds of disability, will not be tolerated and that offenders will be dealt with through your disciplinary procedures.
- Ensure management understands that people who have HIV or AIDS experience increased risk of harassment, and provide training for line managers to help them to identify and manage incidents connected to bullying and harassment in the workplace.
- Make the employee aware of their right to equal treatment, their entitlement to make a complaint and to initiate a grievance.
- Allow employees access to support networks internally or externally from work. If possible ensure employees who have experienced bullying or harassment have access to professional and confidential counselling.
- Ensure appropriate disability awareness training is implemented across your workforce to challenge stereotyping.

Further sources of reference

Useful organisations

Business Disability Forum

Nutmeg House, 60 Gainsford Street,
London SE1 2NY

Tel: +44-(0)20-7403-3020

Website: businessdisabilityforum.org.uk

Business Disability Forum (BDF) is a not-for-profit membership organisation that supports businesses to recruit and retain disabled employees and serve disabled customers.

Business Disability Forum provides pragmatic support, expertise, advice, training and networking opportunities between businesses. Our aim is to transform the life chances – and experience – of disabled people as employees and consumers.



National AIDS Trust

Second Floor, 397-405 Archway Road,
Highgate, London, N6 4EY

Tel: +44(0)20-7814-6767

Website: nat.org.uk

The National AIDS Trust is the UK's leading charity dedicated to transforming society's response to HIV. Business Disability Forum gratefully acknowledges the help of National AIDS Trust with the advice and guidance included in this Briefing.

Terrence Higgins Trust

Acorn House, 314-320 Grays Inn Rd,
London WC1X 8DP

Tel: +44(0)20-7812-1600

Website: tht.org.uk

Positively UK

345 City Rd, London EC1V 1LR

Tel: +44(0)20-7713-0444

Website: positivelyuk.org

Positively UK is a charity allowing people with HIV or AIDS to talk to and meet with other people with HIV as well as supporting individuals.

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Registered in England No: 2603700.**



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