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HIV AND AIDS (ANTI-DISCRIMINATION) ACT, 2014



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HIV AND AIDS (ANTI-DISCRIMINATION) ACT, 2014

ACT No. 7

AN ACT TO MAKE PROVISION FOR THE PREVENTION OF HIV AND AIDS-BASED DISCRIMINATION AND PROTECT THE FUNDAMENTAL HUMAN RIGHTS AND DIGNITY OF PEOPLE LIVING WITH AND AFFECTED BY HIV AND AIDS ;
AND FOR RELATED MATTERS

[27th Day of November, 2014]

Commence-
ment.

ENACTED by the National Assembly of the Federal Republic of Nigeria—

PART I—OBJECTIVES

1. The purpose of the Act is to protect the rights and dignity of people living with and affected by HIV and AIDS by— Objectives.

- (a) eliminating all forms of discrimination based on HIV status ;
- (b) creating a supportive environment so that people living with HIV and AIDS are able to continue working under normal conditions for as long as they are medically fit to do so ;
- (c) promoting appropriate and effective ways of managing HIV in the workplace, community, institutions and other fields of human endeavour ;
- (d) creating a safe and enabling working and learning environment for all persons ;
- (e) creating a balance between the rights and responsibilities of all persons in the society ; and
- (f) giving effect to human rights guaranteed in Chapter 4 of the 1999 Constitution of the Federal Republic of Nigeria, as amended, and obligations under international and regional human rights and other instruments.

2.—(1) This Act applies to all persons living with and affected by HIV and AIDS in Nigeria. Application.

(2) This Act applies to all employers of labour and employees in the public and private sectors including the Nigeria Armed Forces, Nigeria Police, State Security Services, other Para-Military Organizations, Schools, Hospitals and places of worship.

PART II—PROTECTION OF THE RIGHTS OF PEOPLE LIVING WITH OR AFFECTED BY HIV OR AIDS FROM DISCRIMINATION ON THE BASIS OF THEIR HIV STATUS

3.—(1) People living with or affected by HIV or AIDS have a right to freedom from discrimination on the basis of their real or perceived HIV status concerning access to and continued employment, conditions of employment, employment benefits, comprehensive health services, education, use of public Non-Discrimination on the basis of HIV Status.

facilities and other social services, provided by the employer, individual, community, government or any other establishment.

(2) Individual, communities, institutions, employers and employees have a mutual responsibility to prevent HIV-related stigma and discrimination in the society.

(3) No culture, practice or tradition shall encourage practices that expose people to the risk of HIV infection.

Protection of
the Rights of
People
Living with
HIV.

4.—(1) Every individual, community, institution and employer shall take steps to protect the human rights of people living with or affected by HIV or AIDS by eliminating HIV-related discriminations in all settings, including employment, health and educational institutions, policies and practices.

(2) Every individual, community and employer shall take steps to promote equality of opportunity and treatment and non-discrimination on the basis of real or perceived HIV status and HIV-related illness.

Right to take
affirmative
action.

5.—(1) No individual, community, institution, employer or employee shall discriminate, directly or indirectly, against any person in the society on the basis of the person's HIV status or perception of same in employment, delivery of services and other benefits.

(2) For the purpose of this Act, it is not unlawful to—

(a) take affirmative action consistent with the purpose of this Act; or

(b) distinguish, exclude or prefer any person on the basis of an inherent requirement of a job or any other service.

(3) Affirmative action in accordance with the purpose of this Act shall include measures designed to—

(a) ensure that people living with or affected by HIV or AIDS enjoy equality of opportunities and treatment in relation to employment and occupation;

(b) identify and eliminate barriers which adversely affect people living with and affected by HIV or AIDS; and

(c) further diversity (including gender diversity) in the society based on equal dignity and respect for all people.

(4) Nothing in this section shall require an individual, community, employer or employee to engage in any act or omission concerning policies and or practices that would establish a barrier to the continued enjoyment of personal or constitutionally guaranteed rights on the basis of their real or perceived HIV status.

6. It is an offence to discriminate against any person on the basis of their real or perceived HIV status by—

Acts
amounting to
discrimination.

(a) denying or removing from such person any treatment, medication or any supporting and enabling facility for their functioning in the society ;

(b) refusal to accept and offer treatment by a qualified medical personnel, except in such cases when the special care or facilities specifically required for treatment of HIV or AIDS does not exist in that health facility ;

(c) failure to remove, eliminate or ameliorate any obstacle that unfairly limits or restricts such a person from enjoying equal opportunities or failing to take steps to reasonably accommodate the needs of such a person ;

(d) refusal to admit into school or not allowing them to continue in an educational institution ;

(e) denial of access to and use of religious or worship areas and services ;

(f) denial of access to and use of communal places, residential spaces and other social facilities ;

(g) depriving such persons of the right to an elected or appointed public or private office or admission to a public or private function ;

(h) denial of access to credit, loans and insurance services so long as the person has disclosed, where required, in utmost good faith, his or her status to the insurance company or financial institution ;

(i) denial of access to any other places of human endeavour ;

(j) prohibiting such persons from marrying anyone of their choice provided the latter's informed consent is obtained in a right frame of mind and he or she is informed about his or her partner's HIV status ;

Provided that the status, nature or conduct of the person so concerned is not such as may expose other persons to the danger of contracting the virus.

7. An individual, community or employer shall provide reasonable accommodation to support people living with or affected by HIV.

Provision of
reasonable
accommoda-
tion.

8.—(1) Prior to accessing any public or privately delivered services, employment and any other opportunity, no individual, institutions or bodies shall require a person to disclose his or her HIV status or the status of any other person, by asking questions, orally or in writing, directly or indirectly.

Disclosure
of HIV
Status.

(2) Notwithstanding the provisions of this section, any partner in a marriage or co-habiting relationship has the right to be informed of his or her partner's HIV status in a situation where he or she considers himself or herself at risk of being infected by a partner.

HIV testing.

9.—(1) No employer, institution, body or individual shall require an HIV test as a precondition to an offer of employment, access to public or private services or opportunities, except where it is shown, on the certification of two competent medical authorities (working independently) to the Court, that failure to take such a test constitutes a clear and present danger of HIV transmission to others.

(2) No educational institution shall require HIV testing as part of its routine medical testing requirements for admission or accreditation of learners.

(3) For the purpose of subsection (1) of this section, the compilation of the list of competent medical authorities shall be the responsibility of the Ministry of Health.

(4) HIV testing under this section shall be carried out with the informed and full consent of the person concerned, in accordance with national guidelines on confidentiality and counseling.

(5) Nothing in subsection (1) of this section shall prevent the medical testing of persons for fitness for work and any other responsibility as a precondition for an offer of employment and any other responsibility as provided in any existing law.

Provision of
testing on
request.

10.—(1) An employer or relevant body may provide HIV testing in compliance with the National HIV Counseling and Testing Guidelines to any person who has requested a test in the following circumstances—

(a) as part of a health care service ;

(b) in the event of an occupational accident or other incidents carrying a risk of exposure to blood or other body fluids ; and

(c) for the purposes of applying for compensation following an occupational accident or other incidents involving a risk of exposure to blood or other body fluids.

(2) The tests referred to in subsection (1) shall only take place within the following defined conditions—

(a) at the instance of an individual who voluntarily requests ;

(b) within the context of a health care worker and employee-patient relationship ; and

(c) with informed consent and pre- and post-test counseling provided by the employer and other relevant bodies.

(3) Where a person chooses to voluntarily disclose his or her HIV status to the employer, employees and relevant bodies, this information shall not be disclosed to other persons without the written consent of the person making

such disclosure, provided that where such written consent is not possible, the employer or body in receipt of the disclosure shall take all necessary steps to confirm that such person wishes to disclose his or her status.

11.—(1) No person shall, except with the written consent of the individual to whom the information relates, disclose any information relating to the HIV status of that individual unless the disclosure is required by law.

Prohibition
of disclosure
of Status
without
Consent.

(2) For the purposes of Section 11, a person or institution shall be deemed to have breached confidentiality where an individual who receives information about another individual's HIV positive status in the course of their relationship discloses such to a third party without the written consent of the HIV positive employee.

12.—(1) Nothing in the foregoing Sections shall preclude anonymous, unlinked surveillance or epidemiological HIV testing provided that such is undertaken in accordance with ethical and legal principles regarding such research and the information obtained shall not be used to discriminate against individuals or groups of persons.

Anonymous
HCT testing
not
precluded.

(2) Testing will not be considered anonymous if there is a reasonable possibility that a person's name or personal identifying features can be linked to the test.

13.—(1) All persons living with HIV or affected by AIDS shall have the right to protection of data with respect to their health and medical records.

Confidentiality.

(2) A person who fails to comply with the provisions of this section, commits an offence and is liable on conviction to a fine of not less than ₦500,000 for an individual and ₦1 million for an institution or for a term not exceeding two years, or to both fine and imprisonment.

14.—(1) Subject to any existing law, the HIV status of an employee shall not affect his or her eligibility for any occupational or other benefit scheme provided for employees.

Eligibility
for social
security, care
and support
benefits.

(2) Where under any existing law, the eligibility of a person for any occupational or other benefit scheme is conditional upon an HIV test, the conditions attached to HIV and AIDS shall be the same as those applicable in respect of comparable chronic conditions.

(3) Where an employee decides not to undergo an HIV testing for the purposes of subsection (2), no inferences concerning the HIV status of the employee may be drawn from such exercise.

(4) Where an employee undergoes an HIV testing for the purpose of subsection (2), the employer shall not, unless the occupational or other benefit scheme is operated by the employer, be entitled to information concerning the HIV status of the employee concerned.

(5) Real or perceived HIV status shall not be a cause for termination of employment.

Occupationally
acquired
HIV
infection.

15. Every employer has a duty, as far as is practicable, to provide a safe workplace and this shall include ensuring that the risk of occupational exposure to HIV is minimized.

Duty to
provide
safety
procedure
against
occupational
transmission.

16. Every employer engaged in business where there is a risk of occupational transmission of HIV within the workplace shall ensure that it adopts a safety procedure that provides—

(a) appropriate training, awareness and education on the use of universal infection control measures so as to identify, deal with and reduce the risk of HIV transmission in the workplace ;

(b) appropriate personal protective equipment and materials to protect employees from acquiring or transmitting HIV ;

(c) the steps to be taken following an occupational accident including the appropriate management of occupational exposure to HIV and other blood borne pathogens, including access to post-exposure prophylaxis ;

(d) the procedures to be followed in applying for compensation for occupational infection ; and

(e) adequate monitoring of occupational exposure to HIV to ensure that the requirements of possible compensation claims are met.

Report of
Occupational
acquired
HIV
infections to
the Minister.

17.—(1) Every employer shall ensure that all occupationally acquired HIV infections are reported to the Minister from the date of discovery.

(2) It is an offence for an employer to fail to comply with the provisions of subsection (1) of this section, or to knowingly or recklessly make any statement or produce any document that is false in any material particular unless such employer shows that he had taken all reasonable steps to ascertain the truth of the statement made or contained in any document so produced or to satisfy itself as to the genuineness of any such document.

(3) An employer who contravenes subsection (2) of this Section commits an offence and is liable on conviction to a fine of not less than ₦250,000.00 or to imprisonment for a period not exceeding one year or to both such fine and imprisonment.

(4) To protect the confidentiality of the infected employee, the report shall be sent directly from employer to a designated Desk Officer at the Office of the relevant Minister.

18. An employer in whose workplace an employee becomes infected with HIV shall provide the employee with reasonable support prior to sero-conversion and during sero-conversion phases of the infection including costs of medical tests and supply of medicines and treatment for opportunistic infections.

Provision of Support.

19.—(1) Subject to the provisions of subsection (2) of this section, an employee or client who becomes infected with HIV in the course of employment or receiving a service shall be entitled to compensation :

Compensation.

Provided that an employer or provider of service is not liable for HIV infection arising from an act not done for the purpose of, and in connection with, the employer's or service provider's business or trade.

(2) Notwithstanding the provisions of subsection (1) of this Section, an employer or service provider shall not be liable to pay compensation under this Act if it is proved that the infection resulted from the willful act of self-injury or gross negligence of the employee or client.

(3) An employer or service provider shall take reasonable steps to assist employees or clients with the application for compensation benefits including—

(a) providing information to affected employees or clients on the procedures that will need to be followed in order to qualify for a compensation claim ; and

(b) assisting with the collection of information which will assist in proving that employees or clients were occupationally exposed to HIV infection.

20. An employer shall ensure that the rights of employees living with or affected by HIV or AIDS, and the remedies available to them in the event of a breach of such rights are integrated into existing workplace grievance procedures.

Grievance Procedures.

21.—(1) An employer employing five persons or more shall, in consultation with the employees or their representatives, adopt a written workplace policy that is consistent with the National HIV and AIDS Workplace Policy for its working environment :

Workplace Policies.

Provided that an organization in business as at the commencement of this Act, shall be required to adopt such policy within twelve months of the commencement of this Act and for an organization established after the commencement of this Act, within twelve months of commencement of business.

(2) An employer shall lodge a copy of the organization's adopted HIV and AIDS Workplace Policy with the Minister within one month of its adoption for approval.

(3) Where a co-operation agreement between employers and employees' unions or representatives on HIV and AIDS workplace programming exists, an employer shall lodge a copy of such agreement with the Minister within one month of its adoption.

(4) Any employer who fails to comply with the provisions of this section commits an offence and is liable on conviction—

(a) in the case of subsection (1), to a fine of ₦250,000 for the first year of default and ₦100,000 for each subsequent year or part thereof that the offence continues ;

(b) in the case of subsections (2) and (3), to a fine of ₦10,000 for every day or part thereof that the offence continues.

(5) An employer who, with intent to deceive, gives false information about the existence of a workplace policy or co-operation agreement commits an offence and is liable on conviction to a fine of ₦500,000.

PART III—GENERAL OFFENCES

Threats,
intimidation
or offer of
inducement.

22.—(1) It is an offence under this Act to—

(a) discriminate against any person or groups of persons who exercise any right under this Act ;

(b) threaten to or prevent any person from exercising any right under this Act ;

(c) favour or promise to favour any person in exchange for that person not exercising a right to formally report a contravention under this Act or participate in any proceeding under this Act.

(2) Discrimination against any person under subsection (1) (a) of this Section includes, but is not limited to, prejudicing anyone because of a past, present or anticipated disclosure of information that he or she is lawfully entitled to or required to give in any proceeding under this Act, exercising any right conferred by this Act or participating in any proceeding under this Act.

Penalty for
non-
compliance.

23. Subject to the provisions of this Act relating to other offences, any person or institution, who contravenes any of the provisions of this Act commits an offence and is liable on conviction to a fine of not less than ₦500,000 for individuals and ₦2,000,000 for organizations, or imprisonment for a period of not less than one year or to both such fine and imprisonment but in the case of an organization, the head or representatives of the board of the organization shall be held liable.

PART IV—MONITORING AND LEGAL ENFORCEMENT

24.—(1) The Minister of Justice shall ensure compliance with and enforce the provisions of this Act and, for that purpose, the Minister of Justice shall have the power to—

Minister's
duty to
ensure
compliance.

- (a) conduct an inquiry into any allegation of a contravention of this Act ;
- (b) make necessary recommendations to an institution or individual pursuant to an inquiry carried out under paragraph (a) of this subsection ; and
- (c) commence criminal proceedings against anyone in a Court of competent jurisdiction.

(2) A person who has been affected by a contravention of this Act or who has knowledge of a contravention of this Act shall have the right to petition the Minister of Justice.

(3) Subject to the provisions of section 25 of this Act, the Minister of Justice shall cause an Inquiry to be instituted into the said contravention within two weeks of receiving the petition.

(4) The procedure for an inquiry into a contravention under subsection (1) of this Section shall be specified in the regulations made under this Act by the Minister of Justice after consultation with all affected parties' representatives provided that such regulations are adopted within twelve months of the commencement of this Act.

25.—(1) Where at the conclusion of the inquiry, it is shown that there has been a contravention, the Minister of Justice may make a recommendation to the contravening individual or institution stating—

Recommendation based on inquiry.

(a) steps that must be taken to redress the contravention, which steps may include but shall not be limited to—

- (i) hiring or admitting the person adversely affected,
- (ii) Reinstatement or reabsorbing of the affected person,
- (iii) restoration of benefits, entitlements or rights denied as a result of such contravention,
- (iv) payment of compensation or damages to the person affected by the contravention ;

(b) the period within which those steps must be taken ; and

(c) alternative recourse to be taken where the contravening person or institution refuses, fails or neglects to implement the recommendations.

Provided that nothing in this Section shall preclude the Minister of Justice from exercising power to commence criminal prosecution against the contravening person or institution under this paragraph.

Right of an individual or group to commence a civil suit.

26.—(1) Nothing in this Act shall limit the personal right of an individual or group affected directly by a contravention of this Act to bring a civil action in court against any person or institution provided that whoever elects to do so shall communicate his or her decision to the Minister of Justice in writing alongside the petition.

(2) Where an individual or group exercises the right to commence a civil suit under Subsection (1) of this Section and notifies the Minister of Justice accordingly, the Minister of Justice shall not conduct an inquiry under Section 24.

Civil remedies and sanctions of the Court.

27. Notwithstanding the express provisions of this Act relating to the imposition of criminal sanctions, where the Court decides that an individual or group has been unfairly discriminated against, the Court may make any appropriate order that is just and equitable in the circumstances including—

(a) payment of compensation to the affected person or group ;

(b) payment of damages to the affected person or group ;

(c) an order directing the individual or institution to take steps to prevent discrimination or other contraventions occurring in the future in respect of others ; or

(d) an order directing the deregistration of a corporate body or withdrawal of an individual professional license.

Constitutional right of redress.

28. Nothing in this Act shall preclude a person living with HIV or affected by AIDS from seeking redress against any person or institution for any breach of his or her constitutional rights in accordance with the provisions of Section 42 of the 1999 Constitution of the Federal Republic of Nigeria as amended.

Liability of a legal person.

29. An individual or body corporate shall be liable for the acts of its officers contravening the provisions of this Act, provided that nothing in this Section shall exclude such officers from personal liability for their acts.

Interpretation.

30. In this Act—

“admission” means an act of allowing to enter, act or condition of being received or accepted in a position, institution, facility, profession, occupation, office or appointment ;

“AIDS” means Acquired Immune Deficiency Syndrome ;

“adverse action” includes, but is not limited to termination, refusal to hire or admit, rehire, promote, or any other discrimination in the terms or conditions of employment, admission, service provision, policies or practices based on an individual’s real or perceived HIV status ;

"correctional facilities" means a penal institution, prison, remand homes, detention camps ;

"court" means a Court of Competent Jurisdiction ;

"discrimination" means discrimination as defined in Section 42 of the 1999 Constitution of the Federal Republic of Nigeria as amended and the International Human Rights Instruments ;

"employee" includes any person, other than an independent contractor, his representative and agent who—

(a) works for another person or for the state and who receives, or is entitled to receive any remuneration; and has entered into or works under a contract (whether expressed, implied, oral or written) with an employer, whether the contract is for manual labour, clerical work or for the discharge of administrative, executive, technical or professional functions including armed forces and uniformed services, and whether such contract is a contract of service or a contract personally to execute any work or labour ;

(b) is an apprentice ;

(c) is a volunteer ; job-applicant ; or

(d) is employed and "employment" shall have corresponding meanings ;

"employer" means a person or association of persons, bodies corporate or unincorporated employing one or more persons under a contract (whether express, implied, oral or written), whether the contract is for manual labour, clerical work or for the discharge of administrative, executive, technical or professional functions and whether such contract is a contract of service or a contract personally to execute any work or labour and includes the Private Sector, Federal, State or Local Governments of Nigeria and the Legal Personal Representative of a deceased employer ;

"employment policy or practice" includes, but is not limited to—

(a) recruitment procedures, advertising and selection criteria ;

(b) appointments and the appointment processes ;

(c) job classification and grading ;

(d) remuneration, employment benefits, terms and conditions of employment ;

(e) job assignments ;

(f) the working environment and facilities ;

(g) employee assistance programmes ;

(h) training and development ;

(i) performance evaluation systems ;

- (j) promotion ;
- (k) transfer ;
- (l) demotions ;
- (m) disciplinary measures other than dismissal ; and
- (n) dismissal ;

“*everyday*” means every working day and excludes weekends and public holidays officially declared by the State or Federal Government ;

“*facility*” means an institution designed, built or installed to serve a specific function affording a convenience or service, e.g. educational, transportation, research, rehabilitation, vocational, recreational, medical services, etc. ;

“*HCT*” means HIV Counseling and Testing ;

“*HIV*” means Human Immunodeficiency Virus ;

“*HIV Testing*” includes any test, question, inquiry, direct analysis of the blood or other body fluid or any other means designed or which has the effect of enabling anyone to infer or determine the presence of HIV or other antibodies to HIV ;

“*informed consent*” means that consent which is given or obtained only after the individual has been provided with information about what the test is, why it is necessary, the benefits, risks, alternatives and any possible social implications of the outcome, understands it and based on this has agreed to undertake the HIV test ;

“*institution*” means an organization establishment, foundation, society devoted to the promotion of a particular cause or program especially one of a public, educational or charitable character ;

“*Minister*” means the Minister in charge of Labour and Productivity or whosoever the office may, from time to time, designate ;

“*people with HIV*” means persons who have tested positive to the virus HIV, even if they are asymptomatic and have no outward or manifest signs of illness ;

“*people affected by HIV and AIDS*” means persons who have not tested-positive to HIV but who are direct relatives, associates or friends of persons living with HIV in particular their children, spouses, partners, parents, siblings and primary care providers ;

“*reasonable accommodation*” means any modification or adjustment to a job description, school or workplace or institution that is reasonably practicable and will enable a person living with HIV or AIDS to have access to, participate or advance in his or her chosen endeavor ;

“*sero-conversion*” means the development of HIV antibodies; when people develop antibodies to HIV, the “*sero-conversion*” goes from antibody-negative to antibody-positive. It may take from as little as from one week to several months or more after infection with HIV for antibodies to the virus to develop. After antibodies to HIV appear in the blood, a person should test positive on antibody test ;

“*society*” means the totality of Nigeria, i.e. a group of people sharing the same geographical or virtual territory subject to the same political authority ; and

“*workplace*” includes all places where workers need to be or to go by reason of their work and which are under the direct or indirect control of the employer.

31. This Act may be cited as the HIV and AIDS (Anti- Discrimination) Act, 2014. Citation.

I certify, in accordance with section 2 (1) of the Acts Authentication Act, Cap. A2, Laws of the Federation of Nigeria 2004, that this is a true copy of the Bill passed by both Houses of the National Assembly.

SALISU ABUBAKAR MAIKASUWA, OON, mni
Clerk to the National Assembly
26th Day of November, 2014.

EXPLANATORY MEMORANDUM

This Act makes provisions for the prevention of HIV and AIDS-based discrimination and protects the fundamental human rights and dignity of people living with and affected by HIV and AIDS in Nigeria.

SCHEDULE TO HIV AND AIDS (ANTI-DISCRIMINATION) BILL, 2014

(1) <i>Short Title of the Bill</i>	(2) <i>Long Title of the Bill</i>	(3) <i>Summary of the Contents of the Bill</i>	(4) <i>Date Passed by the Senate</i>	(5) <i>Date Passed by the House of Representatives</i>
HIV and AIDS (Anti- Discrimination) Bill, 2014.	An Act to make provisions for the prevention of HIV and AIDS-based discrimination and protect the fundamental human rights and dignity of people living with and people affected by HIV and AIDS ; and for related matters.	This Bill seeks to make provisions for the prevention of HIV and AIDS-based discrimination and protect the fundamental human rights and dignity of people living with and people affected by HIV and AIDS in Nigeria.	9th April, 2014.	15th October, 2014.

Federation of Nigeria, 2004.

I ASSENT



SALISU ABUBAKAR MAIKASUWA, OON, MNH
Clerk to the National Assembly
26th Day of November, 2014

DR. GOODLUCK EBELE JONATHAN, GCFR
President of the Federal Republic of Nigeria
27th Day of November, 2014