

Legal Alert ? September 2010 ? **HIV and AIDS Protection Law**

In this Issue:-

1. Legal Alert for September, 2010 ? Lagos State HIV/AIDS Protection Law
2. Subscribe & Unsubscribe to Legal Alerts.
3. Disclaimer Notice

Introduction

The stigmatisation, segregation and discrimination of people living with HIV and or people afflicted or affected by AIDS remains rampant in Nigeria. Save for some provisions on fundamental human rights in Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria, there are no specific laws on the protection of people living with either HIV or people afflicted with AIDS. That is until the Lagos State Government, in 2007, passed into law "the protection of persons living with HIV and affected by AIDS Law" 2007. This Law came into force on 18th May, 2007.

In spite of the Lagos State HIV and AIDS Protection Law, the menace and cost of this illness, with the response of most members of the society to it remain unabatedly negative.

A recent law suit filed at the Lagos State High Court is currently under the jurisdictional challenge of whether the Lagos State House of Assembly has the constitutional authority to legislate on labour/employment and human rights matters? Despite this law suit, employers and employees are advised to be sensitised to the existence of this law and its application.

Lagos State HIV and AIDS Protection Law

Section 1 of the Lagos State HIV and AIDS Protection Law guarantees the protection of all persons living with HIV and or affected by AIDS by among other things providing these persons with access to health care institutions in Lagos State including access to life prolonging drugs, treatments and therapies. Persons living with HIV or affected by AIDS also have the right to voluntary counseling in all Public Health Institutions established in Lagos State in addition to HIV and anti-body tests in all Public Health Institutions established in the State.

An anti-retroviral drugs trust fund is established to ensure the purchase of anti-retroviral drugs which shall be distributed free of charge to persons living with HIV or persons affected by AIDS. Such persons include pregnant women and children living with HIV or affected by AIDS.

Contributors to this Fund include the Federal, State and Local Governments, corporate bodies, philanthropic organisations and individuals, International charitable organisations, non-governmental organisations, other interested persons and other nations of the world.

Unlawful and Discriminatory Actions

The following actions and other similar acts are regarded by this law to be unlawful and discriminatory against persons living with HIV and affected by AIDS:

- (a) The refusal of a Landlord to accept as a tenant a person living with HIV and or affected by AIDS.
- (b) The stigmatisation and denial of such a person free and easy access to a private or public health Institution
- (c) The denial of the right of the affected person to pursue his or her academic career in an educational institution
- (d) The discrimination and stigmatisation of such a person in any social, religious or political gathering.
- (e) The segregation, discrimination and stigmatisation of the affected person at any place of employment.
- (f) The subjection of employees to compulsory and mandatory HIV test.

It is also unlawful for a person living with HIV or affected by AIDS to have his employment terminated by reason of his AIDS or HIV status. To provide some further guarantee for this provision, all corporate organisations are mandatorily required to have an HIV/AIDS policy for the benefit of their employees living with HIV and or affected by AIDS.

Other protections provided by this Law include:-

- (i) Persons who die as a result of complications arising from HIV/AIDS infections have the right of admission at any mortuary or hospital, with the further right to a decent burial.
- (ii) They also have the right to sue against discrimination or stigmatisation.

Offences

Any organisation that uses the medium of HIV/AIDS to harm, defraud or act in any manner that is morally wrong or criminal shall be liable to closure and blacklisting while its principal officers shall be liable on conviction to a fine of N250,000 with or without the option of a 5 year jail term. Any person who knowingly or willfully endangers other people by infecting them with the AIDS virus commits an offence and is liable on conviction to a fine not exceeding N200,000 or imprisonment for a term not exceeding 10 years or to both the fine and term of imprisonment. Any health worker who intentionally reveals the health status of any person living with HIV and infected with AIDS shall be suspended from his or her duties, and may be relieved of his or her duties.

Any person who fails to comply with some of the above mentioned provisions on discrimination, stigmatisation, denial of access to facilities, etc commits an offence and shall be liable on conviction to a fine not exceeding N50,000 or imprisonment for a term not exceeding two years or

to both the fine and the term of imprisonment.

Any employer of labour who fails to comply with the provisions of this Law commits an offence and shall be liable on conviction to a fine not exceeding N100,000 or imprisonment for a term not exceeding two years.

Any person or persons, or organisation that lay claim to unsubstantiated remedy or remedies, or proffers cure of HIV with intent to defraud members of the public shall be liable to a fine of N1,000,000 or to a 5 years jail term on conviction.

Conclusion

The constitutionality or otherwise of the HIV and AIDS Protection Law must not inhibit Nigeria from embracing the current global best practices of penalising all forms of discrimination, stigmatisation or discrimination of persons living with HIV/AIDS. The Federal and State Houses of Assemblies must therefore harmonise a common position and pass into Law Federal and State anti-HIV/AIDS discrimination, stigmatisation or segregation law(s).

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