AIDS in the Workplace

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Imagine you are plant manager at a meat packing plant. You have recently implemented policies regarding workers who have contracted the human immunodeficiency virus (HIV). Proud of this accomplishment, you decide to share your program with the media so that others might look on it as a model of prudent yet humane response to the effects of this tragic disease. Product sales decline. Accompanying this decline come hundreds of letters from customers expressing their concern about your AIDS policies. They are afraid that an infected employee would spread the virus if he or she sneezed, bled, or perspired on meat products during the packaging process. Further complicating the problem is the fact that some of your best workers are seeking jobs elsewhere. These workers believe they should be able to choose not to work next to an employee with AIDS and that they should have a right to know who has AIDS so they can further protect themselves.

These complaints, however, are the least of your problems. Chris, whom you know tested HIV positive, has just been in your office with distressing news. Two weeks ago she cut her hand on a meat grinder machine and had to receive several stitches. Blood inadvertently fell on the meat. At the time she didn’t pay much attention, but now that she has tested HIV positive she is concerned that someone may get AIDS from eating “infected” meat.

What is your responsibility as plant manager? Should you recall all of your products, even though there is no known case of a human being getting AIDS from AIDS infected food? Should you reevaluate your “sound” AIDS policies?

THE AIDS EPIDEMIC

Acquired Immune Deficiency Syndrome (AIDS) has captured global attention. There has been no other epidemic like it. Several previous diseases such as the
bubonic plague, influenza, typhus, and smallpox have ravaged various parts of the world. Eventually, however, all of these diseases have been brought under control through development of vaccines or treatment with drugs. Though AIDS is caused by a virus, to date it has confounded attempts at prevention. Further complicating the problem is the fact that the retrovirus may lay dormant in the host for ten years or more before the actual disease symptoms appear. Therefore, it is not an easily detected disease, as with past epidemics.

After extensive epidemiological studies, the Centers for Disease Control (CDC) have concluded that the HIV is transmitted in the following ways:

- through the exchange of blood, semen or vaginal secretions during intimate sexual contact;
- through the shared use of contaminated hypodermic needles;
- from transfusions of HIV-contaminated blood products; and
- from an infected pregnant woman to her fetus.

(Flanders and Flanders, 1991, p. 18)

Although other means of transmission remain open to question, public health authorities believe that no case of transmission of the AIDS virus through "casual contact" can be conclusively demonstrated. The HIV has been found in saliva, tears, and blood, but no instance of the virus spreading through contact with these bodily fluids has been verified (Flanders and Flanders, 1991, p. 18).

The table below identifies the high-risk groups that are currently affected by this pandemic. The percentages were reported by the CDC after an analysis of all reported AIDS cases through December 31, 1989.

<table>
<thead>
<tr>
<th>Causes of AIDS, by group (91%, 9%) percent</th>
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<th>B</th>
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<td>A. Sexually active homosexual men, 61%</td>
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<td>B. IV drug users who share needles, 21%</td>
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<td>C. Homosexual men who are IV drug users, 7%</td>
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<td>D. Sexually active heterosexuals, 4%</td>
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<td>E. Unidentified causes, 3%</td>
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<td>F. Blood transfusion related, 2%</td>
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<td>G. Hemophilia related, 1%</td>
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According to the Flanders' statistical compilation: 20 percent to 30 percent of the estimated 1.0 to 1.5 million persons infected with the human immunodeficiency virus (HIV) in the United States will progress to AIDS or an AIDS-related illness within five years. The U.S. Public Health Service predicts ap-
proximately 365,000 cases by the end of 1992 (1991, p. 55). These numbers underscore the potential challenge society faces concerning this issue. Clearly, AIDS is an issue which needs to be addressed in the workplace. The remainder of this article will focus on the legal and social ramifications for business organizations in regard to AIDS carriers’ rights.

LEGAL CONSTRAINTS REGARDING AIDS IN THE U.S.

In merely a brief decade the AIDS epidemic has produced significant amounts of U.S. legislation. AIDS carriers have turned to the courts both to secure their rights and to eliminate discrimination. Individuals fearful of AIDS, in turn, have asked the judicial system to protect them and the community from the spread of this disease. As a result of these opposing forces, current legislation concerning AIDS is somewhat unclear and ambiguous. At present, it is mainly aimed at protecting those who are infected with the AIDS virus. Such legislation imposes several constraints on the way an organization can legally respond to an employee with AIDS.

Management must know how to deal with AIDS in the workplace legally because any illegal policies or practices managers endorse may lead to costly lawsuits. For example, in Oregon a court recently ordered Portland’s public transit agency to pay $500,000 to a former dispatcher with AIDS. The court said he had been discriminated against illegally (Smith, 1991, p. 7).

Under the 1990 Americans with Disabilities Act, AIDS sufferers are currently classified as “handicapped.” This categorization requires managers to understand the legal issues regarding “handicapped” individuals, as well as the following related legal issues: at-will employment; the Federal Rehabilitations Act of 1973; the Americans with Disabilities Act of 1990; reasonable accommodation; undue hardship; bona fide occupational qualifications; and AIDS testing practices.

The majority of employees in the United States labor force are at-will employees, meaning that employers have the right to terminate them for any reason—or for no reason at all. However, as a result of state and local legislation, at-will employees may have some protection from discriminatory practices involving employment decisions—if the employee is handicapped (Myers and Myers, 1986, p. 589). The Federal Rehabilitations Act of 1973 provides protected status for the handicapped and requires employers to make reasonable efforts to accommodate handicapped applicants and workers. Protected status means that the employer must clearly justify the use of any employment
standard, criterion, or job description that tends to exclude or adversely affect the protected class (Nau, 1991, p. 9). For example, an airplane pilot must not be colorblind. This is a clearly justifiable employment standard because a colorblind pilot could jeopardize the safety of his or her passengers.

The Americans with Disabilities Act of 1990 (ADA) is potentially far more demanding than the Federal Rehabilitations Act of 1973. Under this bill, employers with more than 15 workers are prohibited from discriminating against individuals with disabilities. The ambiguous language of this act is problematic at best for employers. If a person is believed to have AIDS (whether or not actually infected) the individual may be classified as handicapped. According to Charles Nau’s analysis of the act: an individual with a “disability” is one who has a physical or mental impairment that substantially limits one or more major life activities, or who has a record of having such an impairment. Thus, one who is actually HIV negative may be “disabled” if he or she is regarded by others as having AIDS (p. 9). The broad terms of this act make management practices such as hiring, training, advancement, discharge, compensation, and conditions or privileges of employment especially troublesome.

Reasonable accommodation is required for an employee who is classified as handicapped. Nau defines this as “providing assistance that would enable an otherwise qualified employee to perform those essential functions” (1991, p. 9). Examples of reasonable accommodation may include: making existing facilities readily accessible; job restructuring; modifying work schedules; reassigning to vacant positions; acquiring or modifying equipment or devices; adjusting or modifying examinations, training materials or policies; and providing readers or interpreters. However, an employer is not required to make accommodations that would create an undue hardship on the business. An undue hardship is one that creates wrongful suffering or privation. The factors considered in classifying an action as an undue hardship are the nature and cost of the requested accommodation. Could restructuring a job to allow for frequent periods of rest be considered undue hardship if the worker with AIDS still could not maintain previous productivity? Could a cost/hardship index be established to indicate the amount of investment an employer might make in equipment modifications before it would constitute undue hardship? It seems clear that current laws may require greater clarification in the future, both by legislators and managers.

Bona fide occupational qualification (BFOQ) is another somewhat ambiguous term which is applicable to the AIDS challenge. A BFOQ is a qualifi-
cation that is inherent to the job. For example, routinely professional theatre directors must cast male and female roles. Therefore, the requirement that the female roles be played by females is a BFOQ. In the context of the AIDS issue, jobs most likely to be classified as possessing BFOQs regarding AIDS would be those with duties that involve any risk of AIDS transmission, such as some health care positions (Cohen and Cohen, 1989, p. 413). Also, occupations that place responsibility on the employee for the safety of many, may constitute a BFOQ. For example, an air traffic controller or bus driver must be in excellent physical condition in order to provide safe transportation for hundreds of passengers daily. BFOQs represent a condition where AIDS testing and monitoring should be implemented.

AIDS testing has become a significant topic within this tangled web of legislation. Under the Americans with Disabilities Act, an offer of employment may be conditioned on the results of an AIDS test, but only if all employees are required to take such physicals prior to hiring and only if the information obtained is kept confidential. However, AIDS testing cannot be conducted for firing purposes (Nau, 1991, p. 9).

Clarification of existing legislation is necessary if organizations are expected to comply with the law when developing policies in response to the AIDS challenge. Furthermore, to date legislation has focused primarily on protecting AIDS sufferers. Although such incidence is small, AIDS can be transmitted in other ways besides sexual intercourse and contaminated needles. Because of this, perhaps it is appropriate to consider legislation which protects those not infected. Perhaps it is an error to consider “discrimination” always to be unjust. As Nelson (1987) notes, “Society has become accustomed to equating ‘discrimination’ with ‘unfairness’ and no longer recognizes that there can be such a thing as ‘fair’ discrimination” (p. 22).

Classifying AIDS sufferers as “handicapped” may be at the root of legislative difficulties. AIDS sufferers are different from other protected classes. When seeking to comply with equal employment opportunity laws, managers and supervisors can usually determine whether a person is male or female, white or minority, young or old, and seek to avoid discriminating on these bases. Many disabilities, like cerebral palsy or deafness, are also manifest and the employer can plan for suitable accommodation. However, those only recently diagnosed as HIV positive might well appear to be fully healthy, and often mandatory AIDS testing is not practical. Since an employer has the same type of obligation with regard to AIDS sufferers as to those whose handicap is physically obvious, it may be impossible for the employer to know such an ob-
ligation actually exists, leaving the employer open to later legal liability. For example, a manager may deny an AIDS carrier a promotion without knowing that he or she is HIV positive. The employee could potentially file a lawsuit against the company, explaining that s/he was discriminated against because s/he had contracted the AIDS virus. In this circumstance, the employer might be left vulnerable under the current framework of legislation.

SOCIAL ISSUES SURROUNDING AIDS IN THE U.S.

Besides these legal constraints, management also needs to be aware of the social issues involving AIDS. Social issues can also construct a barrier to effective organizational response. Michael Whitty, a professor of business at the University of Detroit, states (1989) that:

The fact that most AIDS patients in the United States are male homosexuals and intravenous illegal drug users has undoubtedly affected the response of society to this disease... Truthfully, fear and loathing of outcasts and outlaw groups has been the major barrier to responsive treatment of people with AIDS and those identified as high risk populations. (p. 184)

Such emotional response makes it more difficult for management to confront the issue of AIDS in the workplace. First, managers must look to themselves. If they truly do fear and loathe those infected with AIDS, they may be hesitant to enact positive responses to lessen the effects of this tragic disease. However, managers can expect to face increased discrimination claims if they do nothing. According to West and Durity, writers for Personnel, “the number of AIDS discrimination cases increased from fewer than 400 in 1984 to 92,548 in 1988, and 37 percent of those were employment related” (1991, p. 5).

Attitudinal, as well as legal education might thus be a necessary part of any in-house management seminars. Once managerial consciousness raising has been done, managers will be in a better position to address the public stigma associated with AIDS. Many concerned consumers are still unsure about how AIDS is and is not transmitted. For example, some fear that AIDS can be spread in the process of food production and preparation. More careful educating and discriminating needs to be done in this area. Cynthia Cohen and Murray Cohen (1989) note that “organizations that deal in food-processing or food service have a great sensitivity to the public reaction to the possibility that any of their employees has AIDS” (p. 416). Too often organizational responses have been to seek to avoid and ignore the “problem” rather than to recognize and address...
This insensitivity has hindered proaction to AIDS in the work place. These social barriers suggest that more education is needed about the disease in order for business—and society in general—to respond effectively. Some organizations have begun educational seminars to help employees confront the issues associated with AIDS in the work place. Regrettably, other organizations have decided to delay their responses in order to understand the alternatives more completely.

REASONS FOR DELAYED ORGANIZATIONAL RESPONSES

Because of the legal ambiguity and social stigma, employers have generally been slow to develop and implement responses to AIDS in the work place. In a survey compiled by Joseph E. McKendrick, Jr. (1990), only eight percent of employers said they would modify their personnel plans because of AIDS and most of these said they would do so by introducing educational campaigns for employees (p. 34).

Why don’t organizations see a need to change their existing personnel plans? Cohen and Cohen (1989) state that “Some organizations indicate that their policy is to treat AIDS like any other disease. Therefore, there is no need to have a special AIDS policy” (p. 416). This type of response is inappropriate because AIDS is not like other diseases with which business must cope. Cancer and heart disease, for example, are not communicable. Furthermore, most people with contagious diseases do not work while they are able to infect others. Those with communicable diseases, such as small pox or influenza, are granted sick leave until they can return rehabilitated to the work place. Also, influenza and small pox are not fatal diseases because drug treatments and vaccinations for these illnesses are now available. AIDS, however, is not curable and those able to transmit the disease would work, generally with diminishing capacity, until their final sick leave without return.

Another reason why many organizations shy away from specific written policies is that information concerning the AIDS disease and litigation changes continuously. Bona fide occupational qualification laws (BFOQs) are an example. Because most of the laws concerning BFOQs are relatively new, case law has not developed sufficiently to determine what occupations would qualify for the BFOQ exception (Cohen & Cohen, 1989, p. 413). According to Cohen and Cohen (1989), “Organizations indicate a fear that an AIDS-specific policy may commit them to certain actions which they would later regret” (p. 416).
Such organizational responses, or rather lack of definitive response, suggest that many businesses have at least given the AIDS issue some thought. On the other hand, these justifications for doing nothing are defensive measures and not offensive strategies. Having a well-documented written policy may actually protect a company from discrimination lawsuits. Such policies can and should be changed as new information becomes available. Employer awareness and organizational involvement can lower the catastrophic health care cost associated with AIDS. Some companies view AIDS education and training as an “insurance policy” that prepares the corporation to deal effectively with this complicated issue.

PROACTIVE ORGANIZATIONAL RESPONSES

It is too early to tell whether recently implemented AIDS policies and educational programs are going to be successful in the long run. Some consider the following to be exemplary models, but there are few other programs with which to compare them. One might refer to these programs as state-of-the-art, or forerunners, to more effective programs. An examination of existing programs may assist companies in the preliminary steps of creating their own AIDS programs. Most existing programs share two major characteristics: a dependency on education as the foundation, and a commitment to treating those with AIDS the same as those with any other terminal disease. Three companies which have developed AIDS programs are Levi Strauss and Company, Digital Equipment Corporation, and Ciba Corning Diagnostic Corporation.

Levi Strauss and Company, the jeans manufacturer, began developing its AIDS program in 1982. The firm does not have a formal written policy regarding AIDS, but regards AIDS as if it were like any other life-threatening illness that cannot be transmitted in the daily course of work. AIDS victims are entitled to medical coverage and benefits. Confidentiality is promised and employees have the right to continue working as long as they are able. Education appears to be Levis Strauss’s strong suit. The firm’s program offers employee education sessions about company philosophy concerning AIDS; provides information about how AIDS is, and is not, transmitted; and supplies informational packets for employees to take home to their families. Also, Levi Strauss provides financial support for and encourages employee participation in public programs that help in the fight against AIDS (Feldman, 1991, p. 11).

Digital Equipment Corporation began its program in 1989 and tailored it after the Levi Strauss program. Seeing education as the “best-and-only-weapon”
to fight AIDS, Digital has developed an educational awareness program for its 123,000 employees and managers. Besides informing its employees regarding the legal implications of the disease, Digital offers education regarding psychological implications as well. Feldman (1991) stresses that, "Digital's education program covers . . . the psychosocial issues, since such factors as fear, panic, and bereavement affect how well people manage AIDS in their personal and professional lives" (p. 11).

With 1,600 employees, the relatively small Ciba Corning Diagnostics Corporation was one of the first companies to have mandatory programs for AIDS education for all employees. Such a requirement forces employees to face the fears evoked by this disease and to receive basic AIDS education. Ciba Corning hires consultants who provide three-hour programs for supervisors and managers and two-hour programs for the remaining workers. Hiring consultants to educate employees can help avoid the costs of creating an in-house education program (Feldman, 1991, p. 11).

**IMPROVING ORGANIZATIONAL RESPONSES**

Education about AIDS itself and about AIDS related laws in the work place may decrease lawsuits against the company and help managers, supervisors, and workers better understand the complex problem of AIDS in the work environment. Feldman (1991) states that:

AIDS education gives employees and their families potentially lifesaving knowledge, making it less likely that they will need costly employer-sponsored health care. Moreover, teaching the work force the facts about AIDS also ensures that workers are less traumatized when a case arises, making it less likely that workers will discriminate against a coworker with AIDS and sparing the company a costly lawsuit. (p. 6)

Thus, education certainly provides some benefits, but there are many more factors to be considered. One such factor is that accommodating to AIDS sufferers may unjustly intrude upon the rights of people who do not suffer from AIDS. Also, AIDS programs, legal battles, and higher health insurance all increase the fixed costs of conducting business. As a rule, noninfected employees and the general public are left paying these expenses. Some medical procedures associated with AIDS can cost up to $400 dollars per day. A 1991 insurance industry analysis estimated the total cost of caring for AIDS patients in 1992 will run between $5 billion and $13 billion (Flanders and Flanders,
Treatment of AIDS is expensive and will increase overall health care costs for all covered employees. This is only one example of how noninfected coworkers will be affected. Improved AIDS programs would take into consideration noninfected coworkers as well as AIDS sufferers.

The safety of employees may indeed be at stake, especially in industries such as food processing and serving, dentistry, and medicine where bodily fluids could exchange hosts. According to the Centers for Disease Controls' statistics presented earlier, 3 out of 100 AIDS sufferers have no explanation of how they became HIV positive. Is it possible they received AIDS from infected food or from a medical accident? In light of the potentially harmful effects of accommodating an AIDS carrier, perhaps some form of mass testing and discrimination should be called fair or reasonable when making employment decisions. This would not necessarily be shunning the AIDS carrier. In fact, this would place society in the position to handle the AIDS crisis more effectively.

CONCLUSION

Today, legal and moral nuances of AIDS in the work place are as complex as its medical challenges. Here are some concrete suggestions as to how a manager can constructively respond to this dilemma. First, in regard to potentially contaminated products, recall them and be socially and morally responsible. Second, develop an education program that is accurate, complete, and which creates thoughtful responses to infected coworkers. Third, consider dismissing persons with AIDS on the grounds that not having AIDS is a BFOQ for certain health, transportation, and service occupations or, more humanely, move such employees to "safer" jobs. And fourth, create AIDS policies that take into consideration both HIV positive and HIV negative persons. Finally, even if an organization does not hire or maintain a person with AIDS, it can contribute some of its profits to AIDS research or to associations that are combating social problems related to AIDS throughout the world. All of these actions represent thoughtful and constructive approaches to an intricate situation.

References


