

HIV/AIDS

drafts

See also

course

taught

W. Prof Baltimore

DEALING WITH THE FEAR OF AIDS

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Fear of AIDS causes extraordinary tension and stress, for employees and managers and their spouses. Fear of AIDS is now a problem for management; consider these examples:

A manager sees company cafeteria workers whispering in the hallway. When she asks what the trouble is, they say angrily they are afraid that a co-worker has AIDS. The manager tries to reassure them, but in the following days rumors spread. Suddenly, absenteeism among the workers soars, and other company employees boycott the cafeteria. Angry family members call in, to the company president.

In shock, an executive vice president sits in the company ombudsman's office, telling her about the recent phone call from his sick son. What will he tell people? Can his son, who has AIDS, come home? What will happen to his career?

James, the head of a large bank's international division, tells the bank's general manager that he is going into the hospital. He explains that he has AIDS. After James leaves the office, the general manager sits down, faintly nauseated, and appalled at the images that suddenly flood his mind. With a sense of unreality and self-mockery, he carefully covers the ceramic coffee cup James used with a napkin, and drops both into the wastebasket.

By now many employers know that the Centers for Disease Control consider that the AID virus is a "fragile virus" that is unlikely to be transmitted by ordinary workplace activities. What many managers are not yet prepared for is that fear of AIDS has troublesome side effects. It can cause fear, tension, and severe conflict among employees and between employees and spouses. Managers need to be prepared to handle these problems calmly, and responsibly.

There are many roots to the fears and tension surrounding this new disease with its imprecise name: Acquired Immune Deficiency Syndrome. The disease thus far has been universally fatal. It is closely associated with sex (including

homosexual sex among men) and with illegal, intravenous drug use. And there is much still to be learned about the virus so many people feel very cautious. Much of what we know, in fact comes from epidemiological studies (see box).

While the epidemiological facts may help put the situation in perspective, most managers will never before have confronted an epidemic that upsets people so much. As a result, managers dealing with AIDS may doubt their own capacity to make rational, responsible decisions. In light of this fear, managers must stay well-informed, and need to talk with colleagues--in terms of what they can do personally to cope with fear of AIDS in the work place, in terms of the legal climate, to avoid discrimination claims and liability, and in terms of helping their companies to plan for management of the fear of AIDS.

The central legal concerns

One question in many managers' minds is, "Can I be sued for negligence by an employee or member of the public who contracted AIDS from a worker whom I knew or believed had AIDS?" This question arises quickly when an employee is believed to have the disease. The epidemiological answer is that transmission of the disease is extremely unlikely in the ordinary work place (see box). The legal answer is that an employer can defend on the grounds that medical evidence, including the November 15, 1985 advice from the CDC, indicates that AIDS cannot be spread through casual contact of the kind normally found in the work place; and that handicap laws constrain an employer from taking discriminatory action against AIDS victims who can do their jobs.

Employers should be aware that in most states, AIDS victims will be protected by state and federal handicap statutes. These laws, limit what employers can and cannot do to an employee affiliated with the disease. The statutes, however, are not uniform in their content or application, so employers should ascertain whether, and how, they are subject to handicap regulation.

Despite variations in language among jurisdictions, most handicap statutes seek to prohibit discrimination against "otherwise qualified handicapped individuals" that is, individuals who can perform the essential requirements of the job, though perhaps with some accomodation for their disability. These laws support people who suffer from a physical or mental impairment to secure and retain work that they can currently perform capably. In most cases, handicap discrimination laws protect not only those who are in fact handicapped, but also those with a record of having been handicapped and those whom others (including an employer) may simply perceive as handicapped. Thus legal protection will, under some statutes, extend to those with ARC and to those who are not afflicted but

are members of a high-risk group--homosexuals, for example--if employers perceive them as "handicapped."

Under most handicap laws, an employer may deny employment to a handicapped individual only if the employee cannot do the job and/or there is a reasonable probability of substantial injury to the individual or others. This is a strict standard.

Based on the CDC guidelines, it is unlikely that having AIDS so interferes with an employee's duties that it poses a "risk of substantial injury." It is also unlikely that an employer will be deemed competent to determine whether and how an employee's work is endangering his or her health. Barring some clear direction from a doctor to keep an AIDS victim from continuing to work, the employer will still have an obligation to employ the victim and to accommodate him or her, for example, by reassigning work.

Only if the disease has progressed to the point where it is severely debilitating and the employee with AIDS cannot perform the essential tasks of the job may an employer properly take adverse action against the employee. In practice, however, those AIDS victims who physically cannot perform their jobs are likely to be at an advanced stage of the disease and will, in most cases, have left their positions. If they have not done so, the employer may still have a burden under most handicap statutes to accommodate their handicaps by providing an extended medical or disability leave. By extension, the obligation to accommodate the handicapped individual means that an employer will likely never be justified in discriminating against an AIDS victim who only sporadically misses work for medical treatment or episodes of serious infection.

AIDS testing. Even if a test is administered legally--that is, to all employees and in the context of a more general physical examination--legal problems will abound. First, the test itself may only properly be given if its purpose is to determine whether AIDS, as a handicap, substantially interferes with an employee's ability to perform the essential functions of a particular job. Second, an employer may take no action based on test results unless they reveal that the employee in fact cannot do his or her job. This is virtually impossible, however, since the results of the AIDS antibody test are unreliable, and a positive reading cannot even indicate if the virus is currently active or if any AIDS symptoms will develop. Thus, for example, if several employees in a cafeteria demand that a co-worker be tested for AIDS, the employer should politely refuse and direct the employees' attention, by way of a strong educational program, to the lack of a risk of contagion in the work place. Managers should treat job applicants according to the same principles that guide their actions toward employees, and should steer clear of AIDS testing and its attendant problems.

Privacy. In a sudden crisis co-employees may clamor to have a manager disclose the identity of, and medical information about, an employee with AIDS--for example, if the sick employee uses the same telephones or a common kitchen. In no way should employers succumb to such pressure; if they do, they face tremendous potential liability to the AIDS victim, who may sue on the basis of the handicap laws, defamation, invasion of privacy, and violation of civil rights. The manager must remember that only medical personnel have a right to such information; the consequences of any other voluntary disclosure must be weighed carefully.

Safety. Finally, co-employees may, fearing for their own safety, collectively refuse to work with an employee thought to have AIDS. This situation has occurred in many health care institutions, and may come to crisis on a sudden basis. It is possible that under the National Labor Relations Act, this action would constitute "protected concerted activity" for which the employee could not be disciplined if they had a "good faith" belief about the evidence of a hazard. Under these circumstances, employers have a choice. They can either refrain from disciplining their workers but replace them with other workers for as long as the work stoppage continues, or the employer can proceed with appropriate sanctions. Employers should choose the latter course only if they have carefully educated their workers about the known facts of the disease, so as to dispel any possible claims of "a good faith belief in hazard."

Clients and customers. Employers are under an obligation not to discriminate against clients or customers who may be AIDS sufferers. Refusal properly to serve an AIDS victim could possibly violate both handicap discrimination laws and so-called "public accommodation" statutes, so employees who serve clients and customers urgently need appropriate training.

What the manager can do

While the handicap statutes provide a framework for what managers legally may and may not do, when dealing with AIDS in the work place, case-by-case managerial and personal issues are much more difficult to handle. Wise managers will acknowledge and discuss their own fears about AIDS so that their decisions may be as compassionate and responsible as possible. Because attitudes toward AIDS range from moral outrage--(both against victims, and against homophobia)--to quiet sympathy, managers need to prepare themselves for the unexpected.

Human resource and medical departments in many companies have literature on AIDS. Excellent training programs are now widely available. (See Resource List); this is especially helpful if an AIDS case suddenly appears in the work place. Managers should read at least one major booklet before a

case actually occurs in their own companies. Managers need to keep up-to-date about the legal issues surrounding the disease since the legal facts often surprise people. In-house counsel can help provide the necessary information. Employers should consider cooperating with others, on a local and regional basis, to support AIDS resource programs, public education programs, and research.

The manager confronted with a rumor or a case of AIDS among employees, should first get advice from company professionals or outside resources and then should deal with the issues in a gentle, direct way. (The primary fact to keep in mind is that fear of the disease, and homophobia, are likely to be far more serious problems than is the disease itself.) One may go to an individual thought to have AIDS, discuss rumors, perhaps recommend resources, offer support. In most jurisdictions, the manager must respect confidentiality and privacy. A manager may, however, suggest to the sick employee that misconceptions abound and that an individual employee with AIDS may be better off if the matter can be discussed openly and a training program brought into the department. Medical opinion should also be sought on any issue of protecting co-workers, or, more likely, protecting the immune-compromised (AIDS) employee from infection from co-workers.

Most authorities also recommend an internal company approach that deals with AIDS victims in the work place on a case-by-case basis. (The authors do not recommend having a special "AIDS policy" but rather a general policy for all catastrophic illnesses and accidents.) Since cases vary widely, the case-by-case method emerges most humane, least expensive, and most practical; making it work however requires meticulous internal communications and teamwork.

If a medium or large-sized company has not yet pulled together an internal task force, it should do so before the first case occurs on site. The task force should include representatives from human resources, equal opportunity, employee assistance, medical personnel, legal counsel. Those dealing with benefits, safety issues, any kind of complaint-handling (on company hotlines or in ombudsman offices), and security (for example, on-site emergency medical technicians and police) should also be included. This task force may need to continue over time, after initial company planning is accomplished. Initial tasks will include review of medical and legal issues; policy decision making; internal management training and communications plans; and plans for dealing with a very wide variety of concerns and complaints.

Managers should support and recommend these task forces and training programs. Until effective vaccines and treatment are available, preventing further spread of the disease is the most powerful weapon against AIDS. Experience shows that

education in the work place sharply reduces fear and stress. It also provides a public service.

SUMMARY

AIDS is not like other diseases. AIDS scares people more, both managers and employees, despite the fact that problems like alcohol, flu, and interpersonal violence kill far more people each year. The fear of AIDS springs from very deep feelings about sexuality, chastity, and death which we would rather not have intrude in the work place. And, no one likes a medical problem which seems "out of control." Nevertheless, the fear of AIDS is a real management problem. If you have any doubt about this fact, ask a number of colleagues about how they would deal with an employee who becomes very upset about a co-worker with AIDS. You are likely to find sharp disagreements, high emotions, considerable fear and anger and little understanding of epidemiological data and legal issues.

There are real management tools to deal with this fear: informing, ourselves and others about the epidemiological facts; rejecting myths; understanding the legal situation; pulling together the appropriate management team to cope, on a case-by-case basis; encouragement of rational discussion and rational compassion. Of these tools, by far the most important is that each manager should have dealt with his or her own feelings, in order to prepare to deal with the feelings of others.

RESOURCE LIST:

The Centers for Disease Control (CDC), under HHS, are the central federal information agency on the medical and epidemiological aspects of AIDS, as well as for federal guidelines and recommendations on the work place aspects of AIDS. Your company medical department may wish to subscribe to the CDC's Morbidity and Mortality Weekly Report, which provides updates on research, new cases reported and public health recommendations from the Centers. MMWR subscriptions are available from MMS Publications, C.S.P.O. Box 9120, Waltham, MA 02254. Centers for Disease Control Information Office, 1600 Clifton Road; Atlanta, GA 30333. The CDC also produce periodic public information Fact Sheets on AIDS.

The business information service Bureau of National Affairs (BNA) began publishing a bi-weekly update, AIDS Policy and Law, in January, 1986. It covers legal developments and analyses, guidelines issued from a variety of sources and employer policies. Available from Buraff Publications, telephone: (202) 452-4428.

The Bar Association for Human Rights publishes a newsletter that covers AIDS-related legal issues. Lesbian/Gay

Law Notes, P.O. Box 1899 GCS, NY, NY 10163.

Some state health departments, such as NY, CA, MA, are producing public information materials on AIDS. Their mailing lists may be uncertain; it is best to make periodic calls to secure the latest materials and policy statements.

The American Management Association has produced a 1986 briefing book, AIDS: The Work Place Issues, covering legal, human resource, medical and insurance issues. AMA, 135 West 50th Street, NY, NY 10020.

Bureau of National Affairs, "Bulletin to Management" series, November 14, 1985, Vol. 26 #20.

The New York City Department of Health has produced AIDS: A Resource Guide for New York City. Useful for company medical and Employee Assistance personnel who need to refer employees who are sick or fearful. NYCDH, 125 Worth Street, NY, NY 10013.

Federal Guidelines on employer responses to AIDS were released by HHS in the November 15 Morbidity and Mortality Weekly Report (MMWR). These guidelines are summarized in our article and in a number of business publications. The full text is available from CDC.

A 1984 book, updated in 1985, provides readable history of the AIDS crisis, a clear presentation of medical and epidemiological aspects, a glossary and a resources section. The Truth About AIDS, Ann G. Fettner and William A. Check, M.D. Holt Rinehart paperback, NY 1985.

Two bibliographies, each of which is updated periodically, are available from federal sources. The National Library of Medicine literature search 85-16 presents medical and epidemiological literature through April 1985. (301-496-5116). A broader bibliography, covering major newspapers and magazines as well, is available from the National Institute of Allergy and Infectious Diseases. AIDS Bibliography NIAID, 9000 Rockville Pike, Bldg. 5, Bethesda, MD 20205.

A detailed review of legal issues can be found in Arthur S. Leonard, "Employment Discrimination Against Persons With AIDS," The University of Dayton Law Review, Spring 1985, Volume 10, #3. 300 College Park, Dayton, OH 45469.

HOTLINES

National Gay Task Force Crisis line, 800-221-7044.

Center for Disease Control, AIDS (technical information) Hotline, 800-342-AIDS.

The computerized AIDS Information Network will provide up-to-date listings of organizations providing AIDS-related resources and hotline numbers for different services/information across the country. CAIN, 1213 N Highland Avenue, Hollywood, CA 90038. (213-464-7044).

The National Gay Task Force provides information about AIDS as well as referrals to other sources of information, 80 Fifth Avenue, Suite 1601, New York, NY 10011. (800-221-7044).

SIDEBAR

What are AIDS and ARC?

AIDS (acquired immune deficiency syndrome) and ARC (AIDS-related complex) are believed to be caused by a virus which is called LAV OR HTLV-III. The incubation period appears to range from a few weeks or months up to five or more years. AIDS attacks the immune system, leaving a person vulnerable to opportunistic infections (e.g., unusual forms of pneumonia and tumors) which are otherwise rarely seen. Dementia, and other serious nervous system disorders are also linked to the AIDS virus. ARC may be manifested in a wide variety of less serious ways, including swollen lymph glands, weight loss and increased susceptibility to many new or latent infections.

Secondary infections and the immune system itself can both be treated, but AIDS so far has been incurable and fatal. Because the AIDS virus appears to behave differently, in different people, and infection patterns vary country by country, and because medical research is moving fast in this area, the definition of these syndromes will probably change.

° To date AIDS and ARC are known to be spread only by intimate sexual contact where bodily fluids are exchanged, by contaminated needles, transmission of blood and blood products, from mother to unborn child, and perhaps to nursing infants. The virus has never been known to spread by ordinary human contact, toilet seats, swimming pools, sneezing, shaking hands, or ordinary family life in the same quarters.

° Both heterosexuals and homosexuals can get AIDS and in some countries nearly half the victims are women.

° Widely available "AIDS tests" test for antibodies (exposure to the virus), not for the virus itself. Tests for the virus are expensive and currently available only through medical researchers.

° The CDC estimates that 10% to 30% of people with positive antibodies will get AIDS, possibly 30% to 40% will develop ARC, some or many may remain symptom free.

° AIDS antibody tests can give false positives and false negatives. Some AIDS victims appear no longer to have the virus toward the end of their illness; some people may die of AIDS before antibodies ever appear.

° As of _____, X cases of AIDS have been reported in the United States by the Centers for Disease Control in Atlanta. A somewhat higher number have been reported worldwide in addition to cases in the United States. Perhaps ten times as many people have ARC. As many as two million

Americans may carry antibodies; possibly five or ten times this number, elsewhere in the world, carry AIDS antibodies. The doubling time for numbers of cases appears to be lengthening and is now up to about 12 months, in the United States.

There have been, in all, Y AIDS deaths reported in the United States. In contrast, more than Z people in the United States died last year of cancer.



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