

## **EO Club Sharing Forum on “No More Discrimination against Employees with HIV/AIDS”**

In a survey conducted in 2010 by the EOC, it was found that one-third of the respondents showed "avoidance and repulsion" towards people living with HIV/AIDS, making them one of the most stigmatised and marginalised groups of people with disabilities.

Human resources practitioners and employers often have questions when dealing with HIV/AIDS related issues in the workplace. These questions may include: is it unlawful under the Disability Discrimination Ordinance (DDO) if an employer requests an employee to have a medical examination or declaration on HIV/AIDS? How should employers handle employees' medical reports and protect their privacy? Can HIV/AIDS be transmitted by social contact in the office, including using the same restroom? Does HIV/AIDS affect the capacity to work? How does one treat employees and job seekers living with HIV/AIDS in a non-discriminatory manner? How can employers avoid stigma and discrimination in the workplace?

In order to address the above issues, the EO Club organized a seminar in June 2012 to correct general misunderstandings on HIV/AIDS and encourage a discussion about practical skills on handling employment issues in relation to HIV/AIDS. Over 70 EO Club members attended the seminar. Several speakers from various fields shared their expertise, with the key points of the discussion summarized below.



## The Myths of HIV/AIDS

Loretta Wong, the then Chief Executive of AIDS Concern, offered clarifications on some of the myths about HIV/AIDS, such as “employing an HIV-positive person will increase my chance of getting HIV, and I will have to disinfect the office every day” and “I’m straight and I’m not a drug addict, so there is no chance I will contract HIV”. She explained that HIV/AIDS is transmitted through four transmission routes, namely (1) unsafe sex; (2) sharing of needles; (3) blood transfusion or using blood products; and (4) mother-to-child transmission via three bodily fluids: semen, vaginal secretion and blood. One would not get HIV/AIDS just because a colleague is HIV-positive and they are sharing the same office and using the same restroom. With greater understanding on the disease, people should not overreact to or discriminate against people living with HIV/AIDS.

Loretta also introduced the International Labour Organization (ILO) Code of Practice on HIV/AIDS and encouraged employers to formulate human resources policy to raise their staff’s awareness on the issue. Employers can do more in the workplace, including distributing red ribbons on World AIDS Day, organizing health talks to staff, supporting AIDS programme through sponsorship, and providing volunteer services to AIDS organizations. The core message of all the positive measures should be “Support, Care and No Discrimination in the Workplace”.

### **Ten Principles of the ILO Code of Practice on HIV/AIDS:**

1. Recognition of HIV/AIDS as a workplace issue
2. Non-discrimination
3. Gender equality
4. Healthy work environment
5. Social dialogue
6. Screening cannot be used for purposes of exclusion from work or work processes
7. Confidentiality
8. Continuation of employment relationship
9. Prevention
10. Care and support

## Sharing of Good Management Practices

Another guest speaker, Charles Ho, Human Resources Director (Greater China) of Levi Strauss Limited (LS&Co), shared his corporate experience on implementing good management practices of employing persons living with HIV/AIDS. He pointed out that employees vary in their level of knowledge about HIV/AIDS and how to find related services. Generally, staff is concerned about confidentiality as well as discrimination in the workplace. LS&Co thus holds global Employee HIV/AIDS Programme (Programme) to improve employees' access to HIV/AIDS prevention and treatment in order to take care of themselves and their families.

Charles added that the Programme improves their employee engagement to a large extent as it adopts a comprehensive approach:

- Worldwide HIV/AIDS policy and leadership communication: the policy focuses on creating a non-hostile working environment with fair employment practices, absolute confidentiality of employees' health information and compliance with local and international good practice guidelines.
- Employee HIV/AIDS survey: participation in the survey is completely voluntary and the information collected is confidential and solely used for staff training purpose.
- Education to staff at all levels: it helps all staff members to better understand HIV/AIDS. Training also equips managers with skills of how to address staff issues relating to HIV/AIDS effectively.
- Provision of HIV/AIDS testing, treatment and care services: the services are provided by an outside contractor in order to ensure confidentiality.
- Education for dependents of staff

## The Disability Discrimination Ordinance and HIV/AIDS

Florence Chan, Senior Training Officer of the EOC, illustrated how the Disability Discrimination Ordinance (DDO) protects employees living with HIV/AIDS against discrimination and harassment in the workplace with cases. Under the DDO, HIV/AIDS is considered a disability and it is unlawful to treat an employee less favorably, such as dismissing that person, because he/she is an AIDS patient or a HIV-positive person. Employers are not allowed to request health information from an employee or a job applicant in order to treat that person less favorably. Florence quoted a real case as an example.

Case: The Complainant, Mr. Wong, was sent to a clinic for a medical examination after he had commenced employment with a company. A couple of weeks later, the clinic informed Mr. Wong that he tested positive for HIV. Mr. Wong was unaware that he had been tested for HIV, and he was dismissed on the next day. His employer explained that the dismissal was due to a surplus of staff, which Mr. Wong had not heard about before. Mr. Wong lodged a complaint with the EOC. Finally, both parties opted for early conciliation. The employer agreed to give monetary compensation and a written apology to Mr. Wong. They also agreed to review the company policy in order to ensure all staff and job applicants have a discrimination-free workplace.

In this case, it would be unlawful under the DDO if Mr. Wong was treated less favorably due to his disability, unless his employer could prove that Mr. Wong was unable to carry out the inherent requirements of the job or that the related accommodations needed by Mr. Wong would impose unjustifiable hardship on the employer.

Inherent requirements should be essential or intrinsic to the job. How the job is done is irrelevant. An example may include the requirement of not posing a risk to the health and safety of fellow employees. The risk, however, should be objectively assessed as a real risk. The assessment should not be influenced by the myths surrounding HIV/AIDS and stereotyping. Moreover, employers should determine whether the related employee could carry out the job duties safely with

reasonable accommodation, such as providing him or her the necessary facilities.

At the seminar, a person living with HIV, who is AIDS Concern's Positive Speaker, also shared his real life experience of overcoming stereotypes and discrimination to lead a meaningful life.

Mr. Lam Woon-kwong, the EOC Chairperson, appealed to the Club members at the seminar to respect the rights of people with disabilities and create a workplace with equal opportunities for all.