

NGQUSHWA LOCAL
MUNICIPALITY



HIV/AIDS POLICY
2022/2023

Summary

Publication Date	11 July 2022
Review Date	19 March 2022
Related Legislation/Applicable Section of Legislation	Municipal Offices Bearers Handbook
Related Policies, Procedures, Guidelines, Standards, Frameworks	Basic Condition of Employment Act, Collective Agreement, Municipal System Act, Employment Equity Act, Municipal Staff Regulations
Replaces/ Repeals (whichever is relevant, if any)	None
Policy Officer (Name/Position)	<i>Director Corporate Services</i>
Policy Officer (Phone)	040 6732 081
Policy Sponsor (Name/Position)	Mkhuseli Mxekezo
Department Responsible	Corporate Services
Unit responsible	Human Resources
Applies to	All staff and External candidates
Key Words	HIV AND AIDS Policy
Status	Reviewed/ Amended
Council approval date	8 July 2022
Version	1

REVISION RECORD

Date

Version

Revision Description

Table of Contents

PREAMBLE OF THE POLICY	53
1. POLICY NAME/TITLE	64
2. POLICY OBJECTIVES AND SCOPE	64
3. COMMENCEMENT AND VALIDITY	64
4. POLICY DEFINITIONS	75
5. LEGISLATIVE FRAMEWORK	75
6. POLICY /PROCEDURE AND TARGET AUDIENCE	86
6.1 GENERAL PROVISIONS	86
6.2 POLICY PROCEDURES	97
6.2.1 Awareness, Prevention and Care Programmes	97
6.2.1.1 Awareness Programmes	97
6.2.1.2 Prevention, Education and Care Programmes	108
6.2.2 Workplace Exposure and Safety	119
6.2.3 Voluntary Counselling and Testing	1249
6.2.9 HIV/AIDS Testing	1249
6.2.10 Confidentiality and Disclosure	1314
6.3 POLICY IMPLEMENTATION SUPPORT SCHEMES	1344
6.3.1 Compensation for HIV/AIDS Infection at Work	1344
6.3.2 Employee Benefits Scheme	1412
6.3.3 Medical Aid Scheme	1412
6.3.4 Pension/Retirement Funds	1412
6.4 POLICY MANAGEMENT AND MONITORING	1412
6.4.1 Managing HIV Positive Employees	1412
6.4.2 Grievance Procedure	1513
6.4.3 Dismissal	1513
6.4.4 HIV/AIDs Workplace Committee	1614
7. POLICY IMPLEMENTATION AND MONITORING	1614
8. ROLES AND RESPONSIBILITIES	1614
9. PENALTIES	1715
10. DISPUTE RESOLUTION	1816
11. BUDGET AND RESOURCES	1816
12. POLICY COMMUNICATION	1816
13. RECORD AND REPORTING	1816
14. REVIEW OF POLICY	1916

PREAMBLE OF THE POLICY

The Municipality recognizes the seriousness of the HIV/AIDS epidemic and its impact on the workplace. The municipality supports national efforts to reduce the spread of infection and minimize the impact of the disease.

The Municipality as an employer recognizes the importance of its employees and its responsibility to care for their personal wellbeing in the workplace. In doing so, it encourages optimal work attendance and job performance. The employer is committed to address the psychosocial issues which may disturb employees infected and affected by HIV/AIDS and assents to create a supportive and caring environment for those affected and infected by HIV/AIDS.

Why Have a Policy?

A workplace policy provides the framework for action to reduce the spread of HIV/AIDS and manage its impact. It:

- *Makes an explicit commitment to municipality's action;*
- *Ensures consistency with appropriate national laws;*
- *Lays down a standard of behavior for all employees (whether infected or not);*
- *Gives guidance to supervisors and managers;*
- *Helps employees living with HIV/AIDS to understand what support and care they will receive, so they are more likely to come forward for voluntary testing;*
- *Helps to stop the spread of the virus through prevention programmes;*
- *Assists the municipality to plan for HIV/AIDS and manage its impact, so ultimately saving money.*

4. POLICY DEFINITIONS

For the purpose of this policy unless the context otherwise indicates

- 5.1 "LLF" means the Local Labour Forum
- 5.2 "**HIV/AIDS**" means Human Immunodeficiency Virus/ Acquired Immune Deficiency Syndrome
- 5.3 "**Municipality**" means Ngqushwa Local Municipality (Also referred to as "NGQUSHWA"). A local government and legal entity with full legal capacity as contemplated in section 2 of the Systems Act read with the provision of the Chapter 7 of the Constitution and Section 12 and 14 of the Structures Act.

All terminology not defined under clause 2 of this policy shall bear the same meaning as in the applicable legislation.

5. LEGISLATIVE FRAMEWORK

- 5.1 All persons with HIV/AIDS have a common law and constitutional right to privacy regarding their HIV/AIDS status. Accordingly, there is no legal duty on an employee to disclose their HIV/AIDS status to their employer. The Municipality will respect this right except where there is a risk to the employer in delivering services to its clients,
- 5.2 Section 6(1) of the Employment Equity Act (55 of 1998) provides that no person may unfairly discriminate against an employee or prospective employee on the basis of his or her HIV status.
- 5.3 Section 7(2) of the Employment Equity Act (55 of 1998) provides that no employee or prospective employee may be required to undertake a HIV test in order to ascertain that employee's or prospective employee's HIV status unless such testing is determined as justifiable by the Labour Court
- 5.4 According to Section 185 of the Labour Relations Act 66 of 1995 an employee with HIV/AIDS may not be dismissed simply on the basis of his or her HIV/AIDS status. However, where he or she no longer has the capacity to work, his/her services may be terminated in accordance with section 198(1) and (l).

5.5 The of the Occupational Health and Safety Act 85 of 1993 provides in section 8(1) that an employer is obliged to provide, as far as is reasonably practicable, a safe environment for all its employees

5.6 The Basic Conditions of Employment Act 75 of 1997 enjoins every employer to ensure that all employees are entitled to certain basic standards of employment, including a minimum number of sick days provided in terms of section 22 of this Act.

5.7 In accordance with section 22 of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 an employee who is affected with HIV as a result of an occupational exposure to infected blood or bodily fluids, is entitled to compensation.

5.8 The Medical Schemes Act 131 of 1998, section 24(3) and section 29(n) provides that registered Medical Aid schemes may not discriminate directly or indirectly on the basis of a person's "health status" and they must, in terms of section 57(g) offer a minimum level of benefits to all members.

5.9 The Municipality will use this policy in conjunction with the Code of Good Practice and the Technical Guideline (In relation to the Employment Equity Act) In order to ensure an effective implementation of an HIV/AIDS programme.

6. POLICY /PROCEDURE AND TARGET AUDIENCE

This policy is applicable to all councillors, officials and other persons who enters the or uses the offices, vehicles and other facilities of the NGQUSHWA

6.1 GENERAL PROVISIONS

The Ngqushwa Local Municipality will ensure that the following principles are adhered to:

- 6.1.1 The principle of **voluntarism**, which acknowledge that the most effective form of referral is self-referral.
- 6.1.2 The principle of **confidentiality**, which safeguards the details that employees reveal, and includes the safeguarding of all records, the non-sharing of any information other than with the employee's consent and that interviews be conducted in a place which is considered private. This Information will not be part of the personnel file.
- 6.1.3 The principle of **neutrality**, that the role and function of the HIV/AIDS Counsellor should not be tainted by workplace issues pursued by management and the workforce and thus maintain a state of neutrality as defined by Section 16(5)(c) of the Labour Relations Act, 1995.

- (b) Sexually Transmitted Diseases (STD's) and Tuberculosis (TB) and their link to HIV.
- (c) Risk assessment and Safer sex practices.
- (d) Sexuality, Sexual Orientation, Sexual and Reproductive Health.
- (e) Gender and Cultural issues related to HIV/AIDS.
- (f) Relationships and Communication.
- (g) Attitudes and Values, Discrimination (to decrease stigma).
- (h) Living with HIV/AIDS (management, support, care, referral).
- (i) Universal Precautions.
- (j) Legal and Ethical issues (employment, confidentiality and disclosure).
- (k) HIV/AIDS and Pregnancy.
- (l) Pre and Post Test Counselling, HIV Testing.

6.2.2 Workplace Exposure and Safety

6.2.2.1 There are numerous ways in which employees could be exposed to HIV/AIDS in the workplace, for example:

- a. Injuries that occur resulting in bleeding and blood staining of clothes, tools and objects.
- b. Health care employees exposed to body fluids or HIV – infected materials.
- c. Resuscitation and first aid measures.
- d. Rape or sexual penetrating assault.
- e. Assault with sharp instruments or bleeding injuries

6.2.2.2 Creating a Safe Working Environment

6.2.2.2.1 The Municipality will strive to provide and maintain, a working environment that is safe and without risk to the health of its employees.

6.2.2.2.2 The Municipality will provide psycho- social support to the counsellors and affected staff wherever possible.

6.2.2.2.3 The Municipality will take steps to ensure the risk of HIV transmission at work is minimized. These will include:

- (a) Assessing the risk, if any, of the occupational transmission of HIV within the workplace.
- (b) Providing appropriate training on how to deal with and reduce the risk of HIV transmission at work.
- (c) Providing appropriate equipment and materials to deal with and reduce the risk of transmission at work.

6.2.2.2.4 Where a real possibility of HIV transmission has occurred following an occupational accident, rape or a penetrating assault, the Municipality will take all reasonably necessary steps to assist the employee to:

a. Assess the risk of HIV transmission (counselling)

b. Prevent the risk of HIV transmission prior to zero-conversion (testing and treatment/prophylaxis)

6.2.2.2.5 The Municipality will provide guidelines regarding steps to be taken in the event of an occupational incident with a risk of HIV infection and to prevent cross infections

6.2.3 Voluntary Counselling and Testing

6.2.4 The employer shall encourage all employees to be tested to determine their HIV status

6.2.5 Such testing shall be voluntary and shall be accompanied by pre and post- test counselling to ensure informed consent.

6.2.6 Counselling and testing records will remain confidential.

6.2.7 Employees/prospective employees who voluntarily disclose their HIV status will not be refused employment/promotion on the grounds of their HIV status.

6.2.8 All employees have the legal right to confidentiality about their HIV/AIDS status, except in circumstances where the employer is legally required to disclose such information.

6.2.9 HIV/AIDS Testing

6.2.9.1 HIV testing is any form of medical testing to determine the HIV status of a person,

6.2.9.2 HIV testing must be carried out with informed consent, which means that the individual has been made aware of, and understands, the implications of the test,

6.2.9.3 Pre-test counselling should be given before an HIV test, to make sure that the person has sufficient information to make an informed decision about having a HIV test,

6.2.9.4 Post-test counselling should be provided when an individual receives his/her HIV test result.

6.2.9.5 The municipality is permitted and may provide testing to an employee who has requested a test in the following circumstances:

(a) As part of a health care service provided in the workplace.

(b) In the event of an occupation accident carrying a risk of exposure to blood or other body fluids.

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

6.2.9.6 Such testing may only take place within the following defined conditions:

- (a) At the initiative of an employee.
- (b) Within a health care worker and employee-patient relationship.
- (c) With informed consent and pre- and post-test counselling.
- (d) With strict procedures relating to confidentiality of an employee's HIV status.

6.2.9.7 Employers who require testing must adhere to the Labour Legislation In, amongst others, the following circumstances:

- a. During an application for employment.
- b. As a condition of employment.
- c. During procedures related to termination of employment.
- d. As an eligibility requirement for training staff development programmes.
- e. As an access requirement to obtain employee benefits.

6.2.9.8 There shall be a protocol/guideline for needle sticks injuries and other sources of exposure to blood and blood products." These guidelines will include such elements as:

- (a) Creating an awareness of the risk of HIV transmission in the event of an occupational incident involving blood or bodily fluids.
- (b) HIV testing of the parties involved in an accident.
- (c) Reporting procedures.

6.2.10 Confidentiality and Disclosure

6.2.10.1 All persons with HIV/AIDS have the legal right to privacy regarding their HIV status in all aspects of employment,

6.2.10.2 An employee is under no obligation to inform the employer of his/her HIV status,

6.2.10.3 Where an employee chooses to disclose his/her HIV status to the employer, this information will not be disclosed to others without the employee's express consent.

6.3 POLICY IMPLEMENTATION SUPPORT SCHEMES

6.3.1 Compensation for HIV/AIDS Infection at Work

6.3.1.1 The Municipality will take all reasonable steps in terms of the Compensation for Occupational Injuries and Diseases Act (130 of 1993), to assist employees with claims for compensation and compensate for cost of testing and prophylactic therapy before zero-conversion as performed by specified health centres.

6.3.1.2 A claim to the Compensation Commissioner will only be submitted upon confirmation of zero-conversion of the employee.

6.3.2 Employee Benefits Scheme

6.3.2.1 The Municipality will endeavor to ensure that employees with HIV/AIDS not be discriminated against with the allocation of employee benefits.

6.3.3 Medical Aid Scheme

6.3.3.1 The Municipality will prevail on these funds to maintain a non-discriminatory attitude towards patients with HIV/AIDS and to treat such patients in a similar manner to those affected by other life-threatening diseases.

6.3.3.2 Normal benefits should be available to all who initially qualify for admission to the funds via normal procedures.

6.3.4 Pension/Retirement Funds

6.3.4.1 The Municipality will prevail on the funds to maintain a non-discriminatory attitude towards patients with HIV/AIDS and to treat such patients in a similar manner to those affected by any other life-threatening disease,

6.3.4.2 No person should be denied access to the Pension or Retirement funds provided they fulfil initial criteria for admission.

6.4 POLICY MANAGEMENT AND MONITORING

6.4.1 Managing HIV Positive Employees

6.4.1.1 Employees living with HIV/AIDS will continue to work under normal conditions in their current employment for as long as they are medically fit to do so,

6.4.1.2 This takes into consideration not only their ability to perform their assigned duties but also susceptibility to infection (e.g. nursing staff working in a TB clinic).

6.4.1.3 The Municipality will work towards ensuring that the performance of every staff member is maintained, where possible. The above includes taking reasonable steps to accommodate employees with related HIV/AIDS impairments within the workplace, to assist them to continue in productive employment.

6.4.1.4 Employees with HIV/AIDS will be governed without distinction or discrimination to existing sick leave allocations (ill health policy).

6.4.1.5 If health care facilities or services are not available at the workplace, employees will be referred to appropriate services within the community.

6.4.1.6 The Municipality will endeavor to provide support or take steps to assist employees with HIV/AIDS to have access to appropriate medical treatment. These will also include:

- (a) Giving the employee time off according to the sick leave policy to attend clinics or counselling.
- (b) Transferring the employee to lighter or less stressful duties, where it is both necessary and possible.
- (c) When the employee is no longer able to work, the employee will be dealt with in terms of the Municipality's conditions of service and policies as well as applicable labour legislation.

6.4.2 Grievance Procedure

6.4.2.1 The Municipality will ensure that the rights of employees living with HIV/AIDS, and remedies available to employees in the event of a breach of such rights become integrated into the existing grievance procedure,

6.4.2.2 The Municipality will create an awareness and understanding of the remedies available to employees who are discriminated against on the basis of their HIV status.

6.4.2.3 The Municipality will develop special measures to ensure confidentiality of the complainant during such proceedings, including ensuring that such proceedings are held in private. Where disputes may arise in relation to HIV/AIDS in the workplace, the Municipality will take steps to deal with this issue, including:

- (a) An investigation into the nature and cause of the dispute.
- (b) Attempt to resolve the dispute through the relevant dispute resolution mechanism.
- (c) Provide counselling and additional education to all those involved.
- (d) As a final resort, the taking of disciplinary steps against staff causing the disruption

6.4.3 Dismissal

6.4.3.1 Employees with HIV/AIDS have the right not to be unfairly dismissed on the basis of their HIV status.

6.4.3.2 Diagnosis of a person's HIV/AIDS status is not a sufficient reason to dismiss an otherwise healthy person.

- 6.4.3.3 The Municipality is obliged to follow accepted guidelines regarding dismissals for incapacity before terminating an employee's services. The above will include attempts to accommodate the employee's disability and to find alternatives to dismissal.
- 6.4.3.4 The Municipality will ensure that as far as possible, the employee's right to confidentiality regarding his or her HIV status is maintained during an incapacity proceeding.
- 6.4.3.5 An employee cannot be compelled to undergo a HIV test or to disclose his or HIV status as part of incapacity proceedings.
- 6.4.3.6 Where an employee no longer has the capacity to continue working, the Municipality may lawfully terminate the employee's services. It would need to follow fair procedures as stipulated in the Labour Relations Act 66 of 1995.

6.4.4 HIV/AIDS Workplace Committee

- 6.4.4.1 The implementation of this policy will be coordinated by the Health and Safety Workplace Committee.
- 6.4.4.2 The Committee will submit regular progress reports to relevant Committees of the Municipality's Council.

7. POLICY IMPLEMENTATION AND MONITORING

- 7.1 In order to plan and evaluate its HIV/AIDS policy and programme effectively, the Municipality will undertake a survey to establish baseline data and regular risk and impact assessment studies.
- 7.2 The studies will include knowledge, attitudes and behavior/practices (KAB/P). Studies will be carried out in consultation and with the consent of employees and their representatives, and in conditions of complete confidentiality.

8. ROLES AND RESPONSIBILITIES

- 8.1 The policy on HIV/AIDS not only establishes certain rights but it also imposes certain responsibilities on council's functionaries,
- 8.2 It is further acknowledged that the success of the policy framework is dependent on the co-operation of all parties.

12.2.1 The Municipal Manager

The Municipal Manager takes overall responsibility for the implementation of the policy and compliance with the relevant legislation.

12.2.2 Human Resources Department

The Human Resources Department carries the following responsibilities:

- a. In conjunction with line management, the Human Resources Department must ensure that all employees are familiar with the policy.
- b. Monitor and advise the Municipal Manager of any irregular application of the policy.
- c. Arrange for counselling requested by employees. (EAP)
- d. Advise management on disciplinary steps to be taken in circumstances where the policy was breached.

12.2.3 Managers & Supervisors

All Managers and Supervisors:

- a. Must ensure that all employees are aware of and familiar with the content of the policy.
- b. Are responsible for the implementation of this policy.
- c. Must establish and maintain communication channels to raise awareness concerning HIV/AIDS in the workplace.
- d. Must make appropriate arrangements to ensure that confidential information, regarding the HIV status of an employee, is protected.
- e. Must ensure that immediate and appropriate corrective action is taken where the policy is breached.

12.2.4 Employees

Employees:

- a. Employees should acknowledge that a fellow employee's health condition is private and confidential and an employee living with HIV/AIDS is under no obligation to disclose his/her status to a manager or any other employee.
- b. Employees shall not discriminate against fellow employees who are living with HIV/AIDS and in particular an employee may not refuse to work with a colleague who is HIV positive. The Health and Safety Officer should nevertheless ensure that all employees are familiar with the basic safety procedures where there is potential exposure to HIV/AIDS.
- c. Employees shall endeavour to play a supportive role towards fellow employees who are living with HIV/AIDS.
- d. Employees who are aware of their positive HIV status shall take every precaution to ensure that fellow employees are not affected.

9. PENALTIES

- 9.1 Non-compliance to any of the stipulations contained in this policy will be regarded as misconduct, which will be dealt with in terms of the Disciplinary Code.

10. DISPUTE RESOLUTION

10.1 Any dispute arising from this policy due to ambiguous wording or phrasing must be referred to the Local Labour Forum for adjudication. Resolutions from the LLF must be incorporated into the policy.

11. BUDGET AND RESOURCES

11.1 When it becomes necessary, the Municipality will make every effort to establish a budget for HIV/AIDS activities but realizes that many Interventions can be put in place at little or no cost. Many of the required services are available in community facilities,

11.2 The Municipality will endeavor to give active support within budget limitations to Community Based Organizations (CBO's) and Non-Governmental Organizations (NGO's) involved in HIV/AIDS care and prevention services

12. POLICY COMMUNICATION

12.1 This policy, and related information on HIV and AIDS, will be communicated to all Municipal employees and Councillors using the full range of communication methods available to the municipality.

13. RECORD AND REPORTING

13.1 Data related to the implementation of the policy should be captured, analysed to determine trends to facilitate improvements.

13.2 This information should be registered and evaluated by the municipality

13.3 All documentation and correspondence emanating from or related to this policy will be kept on either personal and/or record files as dictated by the nature of issue.

14. REVIEW OF POLICY

14.1 This policy will be reviewed annually and revised as necessary in the light of changing conditions and the findings of surveys/studies conducted, by the Health and Safety Workplace Committee.

APPROVED BY COUNCIL ON 08th July 2022 UNDER AGENDA ITEM NO 5.1



MUNICIPAL MANAGER



MAYOR OBO COUNCIL