

HIV/AIDS DISCRIMINATION

Are You Breaking The Law?



HALSA HIV & AIDS
Legal Services
Alliance

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In the 1980s, discrimination against people with HIV or AIDS was rampant: landlords were evicting tenants who were HIV positive or had AIDS; employers were firing HIV positive employees; and schools were expelling students with HIV and AIDS. It was against this backdrop of overt discrimination that California passed confidentiality and anti-discrimination laws related to HIV and AIDS.

Why are HIV –related laws needed?

The purpose of the confidentiality laws and anti-discrimination laws are straightforward – to ensure that people with HIV and AIDS are treated the same way as everyone else. However, despite these laws people with HIV or AIDS still face social stigma as well as housing discrimination, loss of employment and denial of healthcare. Recent studies show that discrimination against people with HIV and AIDS is almost as prevalent today as it was 20 years ago when the disease was first recognized.

Practically every complaint of HIV or AIDS discrimination begins with the unnecessary disclosure of an individual's HIV or AIDS status to someone without the training or understanding to handle it. Because the two issues are so entwined, this booklet will address both confidentiality and discrimination.

Knowing how to deal properly with the knowledge of someone's HIV or AIDS status is important for the person and organization receiving it, and for the person with the disease. Handling the information properly reduces the possibility of wrongfully disclosing someone's confidential medical information and helps prevent discrimination.

CONFIDENTIALITY AND HIV STATUS

Information about a person's HIV or AIDS status is that individuals' personal and confidential medical information and as such is entitled to privacy protection. HIV or AIDS confidentiality laws mean that in general HIV positive individuals, and people with AIDS, decide who gets to know that they have HIV/AIDS and who does not.

Deciding who to tell that you have HIV or AIDS can be difficult. There are some people that you will want to tell. Your friends and family may give you support. Your doctor can help you stay healthy.

There are some people you may not want to tell. People might react badly if you tell them. People may discriminate

against you. The right to confidentiality is the best weapon against discrimination. If people do not know that you have HIV or AIDS, they cannot discriminate against you.

The right to confidentiality is really three different rights:

1. In general, you have the right not to tell anyone you have HIV or AIDS.
2. In some circumstances, you have the right to stop someone from telling other people that you have HIV or AIDS.
3. In most cases, you have the right not to be tested for HIV or AIDS without your permission.

Remember these three rights. **There are some exceptions to them.** This booklet explains the most common exceptions. If someone is violating your rights, call the HIV & AIDS Legal Services Alliance (HALSA) for advice at (213) 201-1640. HALSA is dedicated to providing legal services to individuals with HIV and AIDS.

1. In general, you have the right not to tell anyone you have HIV/AIDS.

In general, it is up to you, the individual with HIV or AIDS, to decide whom to tell that you are HIV positive or have AIDS. However, under some circumstances you might be sued or charged with a crime if you have

unprotected sex or share needles with someone without telling them that you have HIV or AIDS.

Do I have to tell my employer or co-workers that I have HIV/AIDS?

No. It does not matter what type of work you do. You have no legal obligation to tell your employer you have HIV or AIDS. If you do tell your employer, you may be discriminated against.

Under the Americans with Disabilities Act and other laws, people with HIV or AIDS may be termed “disabled” and entitled to get “reasonable accommodation” at work. By law, you can get certain changes in your job so you can continue to work even if you do not feel completely well. Generally, a letter from a physician stating you have a “disability” is sufficient for a reasonable accommodation request - in most situations you do not have to tell the employer you are HIV positive or have AIDS.

Before you decide to tell an employer or co-worker that you have HIV or AIDS, or that you need reasonable accommodations, call HALSA and learn more about your rights. ¹

¹ If a medical exam or questions about your health are “job related and consistent with business necessity,” your employer may be able to ask you for medical information that could include information about your HIV or AIDS status. If you are not an employee but are applying for a job, medical examinations and related questions are permitted only after a conditional job offer has been made. Consult an attorney for more information about your specific situation.

Do I have to tell my doctor or dentist that I have HIV/AIDS?

No. The law does not require that you tell health care providers your HIV or AIDS status. You may want to tell your doctor or dentist however, so he or she can provide you with better medical care.

Do I have to tell people that I have sex or share needles with that I'm HIV positive or that I have AIDS?

The safest course is to share with people that you have sex or share needles with information about your HIV or AIDS status. If you do not tell them, under certain circumstances they may be able to sue you, even if they do not become infected with HIV. If improper intent is shown you also may be charged with a crime. Crimes such as attempted murder can be used to punish a person who knowingly infects someone else with HIV. To protect yourself from such prosecutions, it is best to disclose your status to your sex partner and to practice safe sex.

2. In some circumstances, you have the right to stop someone from telling other people your HIV or AIDS status.

In general, doctors and healthcare providers cannot reveal fact that you are HIV positive without your written permission. If your employer or insurance company learns that you have HIV or AIDS because you file insurance claims, they cannot tell other people. It is harder to stop others (like family, friends, church members, co-workers and neighbors) who learn this information from disclosing it.

Can my doctor tell other people that I have HIV?

In general, no. Healthcare providers cannot tell people outside of their office that you are HIV positive unless you sign papers saying it is okay. Your doctor must get your consent in writing every time he or she wants to disclose your HIV test results to other individuals.

There are a few exceptions to this rule. For example, your doctor can tell another doctor or healthcare provider your HIV/AIDS status if it is necessary for your medical care. If you are in the hospital, the hospital can give general information about your condition to visitors unless you tell the hospital not to.

If I test HIV positive, will my doctor report me to the government?

Doctors in California are not required to report the names of people who are **HIV positive** to the government. In July 2002, the California Department of Health implemented a system of recording each and every HIV positive diagnosis. Under this new system all HIV positive test results must be reported to the Department of Health. While the HIV positive result is reported, the positive person's name and address are **NOT** reported to the Department of Health. Instead the positive result information is reported and recorded using a complex system of numbers and letters that allows the Department of Health to observe the spread of the disease without knowing the identity of positive individuals.

However, if you are diagnosed with AIDS (remember, there is a difference between being HIV positive and having AIDS), your doctor must report your name to the California Department of Health. This rule has been in place since the beginning of the epidemic. The Department of Health will report your name to the Centers for Disease Control (CDC). Both the CDC and the Department of Health are required to keep your name confidential. They are not allowed to give your name to other parts of the government or anyone else.

Can my doctor tell my sexual partner or spouse my HIV or AIDS status without my permission?

No. Your doctor can tell your partners that they are at risk for getting HIV without giving them your name or telling them your HIV or AIDS status. A doctor can do this only if the doctor has good reason to think you are going to put your partner at risk for HIV by having unsafe sex or sharing needles. Also, your doctor must believe you will not tell that person that you have HIV or AIDS, and the doctor must tell you that this step is being taken. The law does not require your doctor to notify your partners. It only says that your doctor can notify them if he or she wants to. If your doctor asks you for names of persons you have sex or share needles with, you do not have to tell your doctor their names.

Can my doctor tell my insurance company that I'm HIV positive or have AIDS?

Generally, your doctor cannot tell your insurance company without your written consent. However, if you are seeing the doctor for treatment of HIV or AIDS, the doctor will need to disclose your HIV or AIDS status to get your insurance to pay for your medical bills. In this case, the only way not to have your HIV or AIDS status revealed to your insurance company is to pay the bills yourself.

If you are seeing a doctor for some other reason besides HIV or AIDS, your doctor should not include your HIV or

AIDS status when he or she submits your medical records to the insurance company. Remind your doctor not to include your HIV or AIDS status when he or she submits non- HIV or AIDS related claims.

Once an insurance company knows your HIV or AIDS status, they may share the fact that you have a blood infection with a central data bank called the Medical Information Bureau (MIB). All other insurance companies can access to this data bank.

Can my employer find out about my HIV or AIDS diagnosis from my insurance company?

Maybe. Your insurance company cannot tell your employer about your HIV or AIDS status. However, some employers handle insurance claims themselves. These employers require you to file insurance claims with someone at your company. An employer may also get information about insurance claims filed by workers to monitor its health insurance costs. Therefore, it is possible that your employer may learn of your diagnosis.

If your employer does learn of your HIV or AIDS status, your employer has to keep this information confidential. Your insurance claim records have to be kept in a separate file from your personnel records. Your employer cannot tell your co-workers.

What can I do if I find out that someone is telling people that I have HIV or AIDS without my permission?

This may be against the law. Especially if a doctor, or health worker, has told someone without your permission. In some circumstances it may even be against the law for a co-worker, friend or family member to tell other people. This is especially true if someone is telling a lot of people. If you want to get someone to stop telling other people that you have HIV/AIDS, call HALSA for advice at (213) 201-1640. An attorney may be able to help you to get the person to stop.

3. In Most Cases, You Have The Right Not To Be Tested For HIV Without Your Permission.

In general, it is illegal for anyone to test you for HIV unless you sign papers saying it is okay. Here are the most common exceptions to this rule:

- **Your personal doctor may test you after you give informed oral consent.** This means that your doctor has to explain to you that he or she is going to give you an HIV test. It is then up to you to agree to take the test, or not.
- If you are applying **for legal residency or a green card**, you will be required to take an HIV test. If you are a **member of the U.S. Military, the Peace Corps, or the Foreign Service**,

current laws provide that you can be tested without your consent.

Can my employer make me take an HIV test?

No. Only in very unusual circumstances can an employer legally require an existing employee to take an HIV test. For example, if your employer is the U.S. Military you can be subjected to such a test. Call HALSA for advice before you agree to take any HIV test given by an employer.

Can I be required to take an HIV test when I apply for a job?

No. In general, an employer cannot ask your HIV or AIDS status or make you take an HIV test before you are offered a job (there are some exceptions such as the U.S. Military and the Peace Corps).

After the employer offers you a job, you can be required to have a medical exam. This medical exam can include an HIV test if the employer requires all applicants for the same job to take an HIV test (this would be extremely unusual scenario and if it occurs you should contact HALSA for advice). However, the employer cannot use the results of a HIV test to determine whether or not you are suitable for the job. The employer cannot withdraw your job offer after your HIV test unless the employer also proves that

because of your HIV status you are not qualified for the job. This would be hard to prove.

Can an insurance company require me to take an HIV test?

It depends on what type of insurance you are applying for. If you are applying for **health insurance** in California, you cannot be asked to take an HIV test or whether you are HIV positive. Health insurance companies can ask if you have HIV -related symptoms. They can ask if you have AIDS, or take HIV or AIDS medications. If you are applying for **life or disability insurance**, you can be required to take an HIV test.

For more information about HIV/AIDS and insurance, call the Benefits Department of **AIDS Project Los Angeles (APLA)** at (213) 201-1472, to schedule an appointment with a counselor or visit their Website at www.apla.org. For information about getting and keeping health insurance visit: www.healthinsuranceinfo.net.

If a health insurance company refuses to cover HIV-related expenses, the insured should contact the **California Department of Managed Care**. For more information visit their Website at www.hmohelp.ca.gov or call (888) 466-2219.

Can I be tested for HIV without my knowledge while I'm in the hospital?

No. You must give your permission before you can be tested.

What can I do if I find out that I was given an HIV test without my consent?

You should call HALSA for advice. The person who tested you may be fined.

Call HALSA if:

- You want to tell your employer or your co-workers your HIV or AIDS status.
- You are applying for a job and you are required to take an HIV test or are asked your HIV or AIDS status.
- You are applying for insurance (except for life or disability insurance) and you are required to take an HIV test or are asked if you are HIV positive.
- Someone is telling other people about your HIV or AIDS status and you want them to stop.
- Someone tested you for HIV without your permission.

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- You are not sure whether you should tell someone your HIV or AIDS status.
HALSA: (213) 201-1640.

LAWS RELATED TO HIV/AIDS DISCRIMINATION

Following is a brief overview of some of the laws prohibiting discrimination based on HIV or AIDS, followed by the government agencies where complaints for violations should be filed. The first step to pursuing a discrimination claim is to file an administrative complaint with one of the agencies listed below.

Federal Law

There are two federal laws that protect persons living with HIV/AIDS from discrimination: the Americans With Disabilities Act (ADA) and the Rehabilitation Act of 1973 (Rehab Act). The ADA protects individuals with disabilities, including people living with HIV/AIDS, from discrimination in employment, government services, and public accommodations, including service establishments such as hotels, restaurants, theaters, businesses and healthcare providers.

The employment provisions of the ADA apply to employers with 15 or more employees (California law makes the ADAs protection apply to employers of five or more). A claim for employment discrimination under the ADA should be filed with the **U.S. Equal Employment Opportunity**

Commission (EEOC) by calling (800) 669-4000. More information is available at www.eeoc.gov. A complaint may also be filed with the **California Department of Fair Employment and Housing (DFEH)** at (800) 884-1684 or www.dfeh.ca.gov.

The Rehab Act prohibits discrimination by the federal government or recipients of federal funds based on physical disability, including HIV/AIDS. The Act covers employers who receive financial assistance from any federal agency or department. The administrative complaint should be filed with the **Office of Civil Rights (OCR)** of the federal agency that is funding the employer. For the **Department of Health and Human Services** call (800) 368-1019, or visit their Website at www.hhs.gov for further information.

State and Local Laws

The California Fair Employment & Housing Act (FEHA) prohibits discrimination based on physical or mental disability. Any violation of the federal ADA or the Unruh Act, California's broad civil rights law, is also a violation of FEHA.

FEHA does not apply to the federal government or to employers of fewer than five employees. To begin investigation of a violation under the FEHA, a complaint must be filed with the **California Department of Fair Employment and Housing (DFEH)** at (800) 884-1684, or visit their Website at www.dfeh.ca.gov.

California also prohibits discrimination based on disability by any program or activity that is funded directly by the State or receives any financial assistance from the State. The applicable law is similar to the federal prohibition of discrimination under the Rehabilitation Act of 1973. Although in many respects, California law is even more protective of the rights of people living with HIV or AIDS than federal law.

At the local level, a number of cities and counties have enacted laws that prohibit HIV/AIDS discrimination in a variety of settings including: employment, housing, schools and business establishments. The cities with HIV/AIDS discrimination laws include Los Angeles, Santa Monica, West Hollywood, Pasadena and Long Beach. The counties with such laws include Los Angeles, Ventura and Riverside. To file a complaint, a client should contact the city attorney or county counsel of the appropriate jurisdiction. In the City of Los Angeles contact the **City Attorney's AIDS/HIV Discrimination Unit** at (213) 978-8060, or visit their Website at: www.lacity.org/atty/atycb1c2a.htm.

SOME SPECIFIC EXAMPLES OF PROTECTION FROM DISCRIMINATION

Employers

Employers cannot discriminate against a “qualified individual” in hiring or employment because the individual has HIV or AIDS, or because the employer thinks the individual might have HIV or AIDS. Anti-discrimination laws protect persons who are wrongfully treated as if they have HIV or AIDS, whether they actually do or not. This means that employees do not have to disclose their status to seek protection under these laws.

An employer is required to make “reasonable accommodations” for a person with HIV or AIDS. Failure to do so is a violation of state and federal anti-discrimination laws.

Physicians and Dentists

Physicians and dentists cannot refuse to treat a person with HIV or AIDS simply because of their HIV or AIDS status. Medical professionals can refuse to treat if the specific medical condition being treated is outside of their medical expertise. In those instances, doctors and dentists have an ethical duty to refer patients to practitioners who are qualified to treat the condition.

Physicians and dentists cannot claim they know nothing about HIV or AIDS and so seek to refer on that basis.

Medical professionals are expected to know basic medical facts about HIV and AIDS. For instance, if a dental patient is severely immune compromised, it may be appropriate for a dentist to refer him or her for treatment to a clinic with a more sterile environment, but only if other severely immune compromised patients also would be referred. An asymptomatic person with HIV or AIDS who needs a tooth pulled presents no special medical problems and should not be refused care. Physicians and dentists cannot refuse to treat because they fear the risk of infection to themselves, their staff, or other patients. Instead, they are required by law to take universal precautions when treating any patient.

Businesses and Public Agencies

Businesses and public agencies cannot refuse to provide services to individuals because they have HIV or AIDS, except in the case of certain religious programs. The client must meet the legitimate requirements of the program or business in order to receive the services. For example, a private hospital may refuse to give a patient non-emergency treatment if the patient cannot pay; but the hospital cannot legally refuse to treat the patient just because the patient has HIV or AIDS.

If you believe you have suffered discrimination due to your HIV or AIDS status call HALSA for advice: (213) 201-1640.

Listed below are some enforcement agencies that also may be helpful:

- **U.S. Equal Employment Opportunity Commission (EEOC)**

The EEOC is a federal agency charged with enforcing the nation's employment civil rights laws, which include the Americans With Disabilities Act. A charge with the EEOC must be filed within 180 days of the discriminatory act. If the agency does proceed, an investigation is conducted, which may include a fact-finding conference. If the EEOC does not pursue the case on the employee's behalf, a right to sue letter is issued with only 90 days to file a court action. The number for the Los Angeles EEOC office is (800) 669-4000.

- **Office for Civil Rights (OCR)**

Complaints under the Rehabilitation Act of 1973 are handled by the OCR of the federal department or agency that employs the client or is funding the employer. You can locate each OCR by calling the local office of the appropriate federal department or agency. The Los Angeles number is (213) 534-1431. Complaint forms are available from OCR and must be filed within 180 days of the incident of discrimination, either in Washington or with the regional office.

- **California Department of Fair Employment and Housing (DFEH)**

The DFEH is the California State agency responsible for processing violations under the Fair Employment and Housing Act (FEHA). To begin the complaint process, you must schedule an interview with DFEH. In Los Angeles call (800) 884-1684 or visit www.dfeh.ca.gov. Based on the interview, a complaint may be prepared and filed with the DFEH. The complaint must be filed within one year of the act of discrimination. The complaint will also be served on the employer, within 45 days of filing.

The DFEH will conduct an investigation of the allegations by requesting records and statements of the employer. It will attempt to resolve the dispute and arrive at an agreement with the employer if the claim of discrimination is well founded. The DFEH may prosecute the claim before the Fair Employment and Housing Commission (FEHC), the administrative agency that has the power to conduct a hearing and make findings regarding the claim, and can award damages or order injunctive relief.

If the agency does not pursue the case and no accusation is issued as a result of the DFEH investigation, DFEH will issue a "right to sue" letter. The employee/complainant has a limited time, usually one year, from receipt of this notice within which to bring a civil suit in court.

HALSA is dedicated to providing legal services to individuals with HIV and AIDS. HALSA does not provide legal advice to other organizations or employers; such groups should contact their own legal counsel for advice.

The information contained in this material is for the sole purpose of providing general information only, and **must not** be construed as legal advice, or take the place of competent legal counsel. Do **not** rely on these materials without consulting an attorney concerning your situation.

The dissemination of this information does not create an attorney-client relationship and HALSA does not seek to represent you based upon review of this information.

Every effort has been made to ensure the information contained in the material is current. However, the law does change and general information contained within may become dated. You should seek the advice of legal counsel for specific situations and advice to the “then existing” status of the law.

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