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Office of
National AIDS Policy

Correspondence Routing Slip

Tracking Number: 61681

Date Rcvd: 7/17/95

From: Michael A. Grant - Office of Personnel-
Management

Staff Action:

Reviewed By Jeff:_____ **Reviewed By: Patsy**_____

Assigned To: Jane

RCVD:_____ **DONE:**_____

Recommendations/Instructions:

To Support Staff:_____

Date of Response:_____

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UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

OFFICE OF THE DIRECTOR

JUL 12 1995

Ms. Patricia S. Fleming
Director, Office of
National AIDS Policy
Executive Office of the President
Washington, DC 20503

Dear Ms. Fleming:

Enclosed you will find the report from the Office of Personnel Management (OPM) which was requested in your memorandum of March 27, 1995. In addition to the chart showing action items, I have also included a brief narrative report of OPM's activities regarding HIV/AIDS in the workplace, for your information. I hope you will find it helpful.

If there are any questions on the report, please have your staff contact John Rogers of OPM's Employee Health Services Policy Center at (202) 606-4318.

Sincerely,

Michael A. Grant

Michael A. Grant
Director,
Agency Initiatives

Enclosures

U.S. Office of Personnel Management
National HIV/AIDS Plan
June 5, 1995

Area: Prevention
Goal: Implement and improve workplace policies and employee benefits

Objective	Action Steps	Resources FY 1995	Resources FY 1996	Populations Served	Constituency Involved	Unmet Needs
Implement and Improve workplace guidelines	1. Publish and distribute OPM's HIV/AIDS Policy Guidelines Due date: June, 1995	$10,000	none	Federal agencies and employees, including labor organizations	Same	none
	2. Publish and distribute OPM personnel manuals on related HIV/AIDS issues. Due date: December, 1995	$10,000	$15,000	Federal agencies and employees, including labor organizations	Same	none
Improve Life insurance benefits programs	1. Distribute guidance on 'living benefits" upfront insurance benefits. Due date: June 30, 1995	Not reportable as this benefit is not soley focused on HIV/AIDS.	none	Federal agencies, and employees and retirees covered by the Federal Employees Group Life Insurance Program.	Same	none
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DRAFT

HIV/AIDS Policy Guidelines

United States Office of Personnel Management

May 1995

General

This guidance is designed to assist Federal agencies in establishing effective programs and policies in dealing with Acquired Immune Deficiency Syndrome (AIDS) and human immunodeficiency virus (HIV). In this guidance, the term AIDS is used to refer either to the general AIDS phenomenon or clinically diagnosed AIDS. The term HIV is used when discussing the range of medical conditions associated with HIV-infection or the actual infection itself, without regard to the onset of AIDS.

Guidelines issued by the Public Health Service's Centers for Disease Control (CDC) dealing with HIV/AIDS in the workplace state that "the kind of nonsexual person-to-person contact that generally occurs among workers and clients or consumers in the workplace does not pose a risk for transmission of [AIDS]." In addition, people with HIV-infection live for many years without any symptoms and people who develop AIDS live for a number years after their diagnosis. Therefore, employees with HIV/AIDS must be allowed to continue working as long as they are able to maintain acceptable performance and do not pose a safety or health threat to themselves or others in the workplace. If performance or safety problems arise, agencies should address them by applying existing Federal and agency personnel policies and practices.

HIV infection can eventually result in medical conditions which impair the employee's health and ability to perform safely and effectively. In these cases, agencies should treat employees with HIV/AIDS in the same manner as employees who suffer from any other serious illnesses. This means, for example, that employees may be granted sick leave or leave without pay when they are incapable of performing their duties or when they have medical appointments. In this regard, agencies must consider accommodation of employees' HIV/AIDS-related conditions in the same manner as they would other medical conditions which warrant such consideration.

There is no medical basis for employees refusing to work with fellow employees or agency clients who are HIV-infected or diagnosed with AIDS. Additionally, employees may not engage in behavior that creates an uncomfortable or hostile environment for employees who are HIV-infected or who have AIDS. Co-workers who engage in this type of conduct may be subject to disciplinary action, and supervisors are accountable for ensuring that HIV/AIDS workplace policies are understood and complied with. Nevertheless, the concerns of these employees should be taken seriously and should be addressed with appropriate information and counseling. In addition, employees, such as health-care

personnel, who may come into direct contact with the body fluids of persons having HIV/AIDS should be provided appropriate information and equipment to minimize the risks of such contact.

Non-Discrimination

Employees infected with HIV, or perceived as such, are employees with a disability whose rights are protected by the Rehabilitation Act of 1973 (29 U.S.C. 794). The Rehabilitation Act was amended in 1992 (Public Law 102-569, Section 506, dated October 29, 1992) to conform with the Americans with Disabilities Act of 1990 with regard to standards used to determine employment discrimination. However, it is the Rehabilitation Act which governs Federal workplace issues, and discrimination on the basis of such a disability is a violation of the Rehabilitation Act. Discriminatory acts include not only actions by supervisors but may also include actions by co-workers such as harassment or creation of a hostile work environment. Agency efforts directed at achieving a non-discriminatory workplace should include dealings with the public and clients, as well as employees.

Information and Education Programs

In a directive to heads of agencies on September 30, 1993, the President directed that all agencies develop and deliver training on HIV/AIDS prevention, transmission and workplace policies for all employees and supervisors. Guidelines issued by the Office of National AIDS Policy on April 7, 1994, discussed the methods of delivery and the content of such training. The guidelines called for training to include information on the disease, transmission, prevention, workplace policy, and resources. That phase of the training under this initiative was completed on March 31, 1995. As a second phase, agencies are encouraged to incorporate this training into appropriate future employee orientation and supervisory training. Any additional training and education should be offered on an on-going and planned basis, but may also be presented as a response to a particular situation at the worksite (e.g., when an employee reveals that he/she is HIV-infected or has AIDS).

HIV/AIDS Training and Religious Accommodation

Employees who object to attending HIV/AIDS training based on a personal religious belief or practice may request a reasonable accommodation. Title VII of the 1964 Civil Rights Act and Equal Employment Opportunity Commission (EEOC) regulations (29 CFR Part 1605) state that employers have an obligation to accommodate the religious practices of an employee unless the employer can demonstrate that accommodation would result in undue hardship on the conduct of its business. 29 CFR Part 1605 also provides that a refusal to accommodate is justified only when an employer can demonstrate that an undue hardship would in fact result from each available alternative method of accommodation.

Agencies have an obligation as the result of the President's initiative to inform employees of their responsibilities concerning laws and policies relating to HIV/AIDS in the workplace. The mechanism

for providing employees with the information presents opportunities for reasonable accommodation based on religious belief or practice. If an employee requests not to attend the training based on religious belief or practice, the same written information which is distributed during the scheduled training should be given to the employee.

Employees granted an accommodation based on a religious belief or practice should be told that such accommodation does not relieve them of their responsibility to conform with applicable laws and policies prohibiting discrimination against persons with HIV/AIDS. Agencies should request that employees provide a brief written statement concerning the personal religious belief or practice and its conflict with the agency's requirement. The employee should request a specific reasonable accommodation.

Employee Assistance Programs

For employees who have personal concerns about HIV/AIDS, agency employee assistance programs (EAPs) can be an excellent source of information and counseling and can provide referrals, as requested, to community testing and counseling services, treatment, and other resources. EAPs can also provide counseling to employees who have apprehensions regarding the communicability of the disease or other related concerns. Because EAPs are in a unique position to offer information and assistance, agencies are encouraged to establish HIV/AIDS information, counseling, and referral capabilities in their EAPs and to make employees and supervisors aware of available services. In addition, EAPs can be a good source of managerial/supervisory training on HIV/AIDS in the workplace. As with other services provided by the EAP, strict adherence to applicable privacy and confidentiality requirements must be observed when advising employees with HIV/AIDS-related concerns. In addition to services provided by the EAP, the agency's occupational health program, health unit, or medical staff should be prepared to assist employees seeking information and counseling on HIV/AIDS.

Relationship to Personnel Management Issues

When HIV/AIDS becomes a matter of concern in the workplace, a variety of personnel issues may arise. These issues should be addressed within the framework of existing procedures, guidance, statutes, case law, and regulations. Following is a brief discussion of HIV/AIDS-related issues which could arise in various personnel management areas, along with some basic guidance on how to approach and resolve such issues. Agencies are cautioned that, as with any complex personnel management matter, the resolution of a specific problem must be based on a thorough assessment of that problem and how it is affected by contemporary information and guidance about HIV/AIDS, current law and regulation bearing on the involved issue, and the agency's own policies and needs.

Employees' Ability to Work

An employee with HIV/AIDS may develop a variety of medical conditions. These conditions can range all the way from immunological impairment in early stages of HIV-infection to clinically diagnosed AIDS. At some point, a concern may arise as to whether such an employee, given his or her medical condition, can perform the duties of the position in a safe and reliable manner. This concern will typically arise at a point when the HIV-infected employee suffers health problems which affect his or her performance, conduct, or ability to report for duty. Also, in some situations the concern may stem from the results of a medical examination required by the employee's position.

Under OPM's regulations in 5 CFR Part 339, Medical Qualification Determinations, it is primarily the employee's responsibility to produce medical documentation regarding the extent to which a medical condition is affecting job performance, conduct, or availability for duty. However, when the employee does not produce sufficient documentation to allow agency management to make an informed decision about the extent of the employee's capabilities, the agency may offer a medical examination, and in some cases order (i.e., when there are medical standards for the job series or a specific position, or when the job requires on-going medical exams) the employee to undergo a medical examination. Accurate and timely medical information will allow the agency to consider alternatives to keeping the employee in his or her position if there are serious questions about safe and reliable performance. It will also help determine whether the HIV-infected employee's medical condition is sufficiently disabling to consider reasonable accommodation under the Rehabilitation Act of 1973.

Leave Administration

Employees with HIV/AIDS may request sick or annual leave or leave without pay to pursue medical care or to recuperate from the ill effects of their medical condition. In these situations, the agency should make its determination on whether to grant leave in the same manner as it would for other employees with medical conditions. In addition, employees with HIV/AIDS may be entitled to 12 weeks of unpaid leave under the Family and Medical Leave Act of 1993, and they may also be eligible to participate in leave transfer or leave bank programs.

Family and Medical Leave Act

The Family and Medical Leave Act of 1993 (FMLA) provides eligible employees an entitlement to a total of 12 administrative workweeks of leave without pay (LWOP) during any 12-month period for certain family medical needs including the care of a spouse, son, daughter, or parent with a serious health condition or for an employee's own serious health condition. Agencies may also expand on the definition of family member. Employees may elect to substitute accrued annual or sick leave for unpaid FMLA leave, consistent with current law and regulations. Upon return from FMLA leave, an employee must be returned to the same position or to an equivalent position with equivalent pay, benefits, status and other conditions of employment. OPM issued interim regulations on the FMLA

(5 CFR part 630, Subpart L) in the Federal Register on July 23, 1993 (58 FR 39596).

Federal Employees Family Friendly Leave Act

With the enactment of Public Law 103-388, *The Federal Employees Family Friendly Leave Act*, most full time employees may use a total of up to 104 hours (13 days) of sick leave each leave year to care for sick family members or for purposes relating to the death of a family member. The law allows employees to use at least 40 hours of sick leave per year for these purposes but permits a total number of up to 104 hours as long as employees retain at least 80 hours of sick leave in their leave accounts.

Under the Act, family member means: spouse, and parents thereof; children, including adopted children, and spouses thereof; parents; brothers and sisters, and spouses thereof; and any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship. OPM issued final regulations (5 CFR Part 630) in the Federal Register (59 FR 62266) on December 2, 1994, which was also the effective date of the provisions.

Federal Leave Sharing Programs

On October 8, 1993, the President signed into law the Federal Employees Leave Sharing Amendments Act of 1993 which make permanent the voluntary leave transfer and leave bank programs. Leave transfer programs allow Federal employees to donate annual leave to other Federal employees who have personal or other family medical emergencies and who have exhausted their own leave. Leave bank members with medical emergencies can withdraw leave from the bank if they exhaust their own leave. Each agency has established its own methods of administering these programs.

Changes in Work Assignment\Location

Agencies considering changes such as job restructuring, detail, reassignment, flexible scheduling, or alternative workplace arrangements (flexiplace) for employees with HIV/AIDS should do so in the same manner as they would for other employees whose medical conditions may affect the employee's ability to perform in a safe and reliable manner. In considering changes in work assignments, agencies should observe established policies governing qualification requirements, internal placement, and other staffing requirements.

With flexiplace programs, agencies have the authority to permit employees to work at locations other than the regular office. Employees on flexiplace typically work at home but can work at other agency-approved locations, such as one of several Interagency Telecommuting Centers in outlying areas of the Nation's Capital and in California. The General Services Administration (GSA) is planning an expansion of satellite centers to 30 cities. Flexiplace is an ideal accommodation for employees who have temporary or continuing health problems or who might otherwise have to retire because of disability.

Employee Conduct

There may be situations where fellow employees express reluctance or threaten refusal to work with employees or clients with HIV/AIDS. Such reluctance is often based on misinformation or lack of information about the transmission of HIV. According to leading medical research, there is no known risk of transmission of HIV through normal workplace contacts. Nevertheless, OPM recognizes that the presence of such fears, if not addressed in an appropriate and timely manner, can be disruptive to an organization. Usually an agency will be able to deal effectively with such situations through information, counseling, and other means. However, in situations where such measures do not solve the problem and where management determines that an employee's unwarranted threat or refusal to work with an employee or client with HIV/AIDS is impeding or disrupting the organization's work, it should consider appropriate corrective or disciplinary action against the threatening or disruptive employee(s).

In other situations, management may be faced with an employee with HIV/AIDS who is having performance, conduct, or attendance problems. Management should deal with these problems through appropriate counseling, remedial, and, if necessary, disciplinary measures. In pursuing appropriate action in these situations, management should be sensitive to the possible contribution of anxiety over the illness to work behavior and to the requirements of existing Federal and agency personnel policies, including any obligations the agency may have to consider reasonable accommodation for the employee with HIV/AIDS.

Privacy and Confidentiality

In general, employees are under no obligation to reveal whether or not they are HIV-infected or have AIDS to anyone at work. However, situations may arise where an employee may need to reveal some medical information regarding their medical condition to obtain a benefit such as extended leave or reasonable accommodation of a disabling condition. Because of the nature of the disease, HIV-infected employees will have understandable concerns over confidentiality and privacy in connection with medical documentation and other information relating to their condition. Agencies should be aware that any medical documentation submitted to an agency for the purposes of an employment decision and made part of the file pertaining to that decision becomes a "record" covered by the Privacy Act.

The Privacy Act generally forbids agencies to disclose a record which the Act covers without the consent of the subject of the record. However, these records are available to agency officials who have a need to know the information for an appropriate management purpose. Officials who have access to such information are required to maintain the confidentiality of that information. In addition, supervisors, managers, and others included in making and implementing personnel management decisions involving employees with HIV/AIDS must strictly observe applicable privacy and confidentiality requirements governing any information given by an employee in confidence, whether written or oral. Agencies should, however, limit the type and amount of medical information

made available by a particular employee to only that needed to make a decision. For example, a supervisor might need to know that an employee has a disabling condition that may require accommodation and that the accommodation is medically warranted but would not necessarily need to know the full clinical diagnosis.

Benefits

Employees with HIV/AIDS can continue their coverage under the Federal Employees Health Benefits (FEHB) Program and/or the Federal Employees' Group Life Insurance (FEGLI) Program in the same manner as other employees. Their continued participation in either or both of these programs would not be jeopardized solely because of their medical condition. The health benefits plans cannot exclude coverage for medically necessary health care services based on an individual's health status or a pre-existing condition. Similarly, the death benefits payable under the FEGLI Program are not cancelable solely because of the individual's current health status. However, any employee who is in a leave-without-pay (LWOP) status for 12 continuous months faces the statutory loss of FEHB and FEGLI coverage but has the privilege of conversion to a private policy without having to undergo a physical examination.

Employees who lose FEHB coverage upon separation from Federal service may generally continue their FEHB coverage for up to 18 months by paying 102 percent of the full premium. They can then convert to a private policy without undergoing a physical. Employees who are seeking to cancel previous declinations and/or obtain additional levels of FEGLI coverage must prove to the satisfaction of the Office of Federal Employees' Group Life Insurance that they are in reasonably good health. Any employee exhibiting symptoms of any serious and life-threatening illness may be denied the request for additional coverage.

With the passing of Public Law 103-409, the FEGLI Living Benefits Act (enacted on October 25, 1994 and effective on July 25, 1995), Federal employees who are diagnosed as terminally ill with a life expectancy of nine months or less may elect to receive all or a portion of their FEGLI (Basic only) life insurance benefit as a "living benefit." In addition, Public Law 103-336, enacted and effective on October 3, 1994, gives all Federal employees and former Federal employees the right to irrevocably assign their FEGLI coverage (Basic and Option A and Option B). Employees who are terminally ill may choose to assign their FEGLI coverage to another person(s), trust(s), or to a viatical settlement company which will then pay them a cash amount for these benefits. This provides a means of obtaining financial resources for terminally ill employees other than the through the Living Benefits Act provisions. It also provides an option for terminally ill employees/annuitants with a life expectancy longer than nine months.

Disability Retirement

Employees with HIV/AIDS may be eligible for disability retirement if their medical condition warrants and if they have the requisite years of Federal service to qualify. OPM considers applications for disability retirement from employees with HIV/AIDS in the same manner as

OFFICE OF PERSONNEL MANAGEMENT
NATIONAL PLAN ON HIV/AIDS

The Office of Personnel Management (OPM) has a number of programs which relate to HIV/AIDS prevention and services for Federal employees. These services range from policy development to insurance and retirement services.

Policy Development

OPM has recently revised its policy guidelines on HIV/AIDS in the workplace. The former guidance, Federal Personnel Manual Letter 792-21, "Acquired Immune Deficiency Syndrome in the Workplace," has been eliminated along with the entire Federal Personnel Manual system. It is being replaced by the attached "HIV/AIDS Policy Guidelines" which will be disseminated to all Federal agencies. The policy is unchanged from its predecessor with the exception of adding new information on Federal employee leave benefits programs including the Family and Medical Leave Act, the Family Friendly Leave Act, "Living Benefits" provisions to life insurance, and leave transfer and leave bank programs.

In addition to issuing the policy guidelines, OPM is preparing guidance for Federal agencies on HIV/AIDS-related issues such as providing reasonable accommodation for employees with HIV/AIDS and information on educational resources. This guidance will be part of a handbook on employee health- related issues which will initially be distributed to agencies in small quantities and then be available for purchase at low cost from the Government Printing Office.

Retirement Programs

OPM operates both the regular retirement and disability retirement programs for Federal employees. Under the disability retirement program, employees are eligible for an annuity when they meet specific criteria. The criteria for disability require that a deficiency in work or performance caused by a documented medical condition, that cannot be accommodated, be shown. In addition, criteria regarding pre-existing conditions and requisite years of service are also considered in the disability application.

In cases involving terminal illness or life threatening conditions, including AIDS, OPM expedites applications for disability retirement. Cases such as these can be approved within 72 hours or less. Agencies will often help this process along by alerting OPM when they are sending in such cases and by expediting their paperwork requirements for the disability process.

Disability retirements due to AIDS and other HIV-related conditions are continuing to increase each year. In 1990, there were 200 HIV/AIDS-related disability retirements. In 1994, that number was 387 with HIV/AIDS-related cases becoming the fourth leading cause for disability retirement for Federal employees.

Insurance Programs

Health Insurance

OPM administers the Federal Employees Health Benefits Plan which covers Federal employees, annuitants, and eligible family members. The agency does not gather data on health insurance claims relating to HIV/AIDS from the various insurance carriers. This is primarily due to privacy issues, resource issues relating to the employees that would be required to gather and analyze the data, and the issue of reliably determining exactly which episodes of treatment are actually due to HIV/AIDS.

Life Insurance

OPM administers the Federal Employees' Group Life Insurance program. Recent changes to the laws now allow employees and annuitants the option of making an irrevocable assignment of life insurance benefits to other persons, trusts, and viatical firms. This allows an employee or retiree with a terminal illness the option of receiving payment of a portion of his or her life insurance benefit while still living. Another option that will be available beginning June 25, 1995 will allow employees and retirees with terminal illnesses, and a documented life expectancy of 9 months or less, the option of receiving payment of his or her basic life insurance benefit while still living.

Workplace Education

OPM has been providing training for Federal agencies to meet the President's HIV/AIDS training initiative since its inception. While the initiative called for agencies to have completed training by March of 1995, OPM still receives requests to conduct training for groups of employees and supervisors and to also conduct train-the trainer classes for agencies. During the period of the training initiative, OPM provided the basic HIV/AIDS workplace course for over 16,000 Federal employees from various agencies nationwide.

Office of
National AIDS Policy

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Employees' Ability to Work

An employee with HIV/AIDS may develop a variety of medical conditions. These conditions can range all the way from immunological impairment in early stages of HIV-infection to clinically diagnosed AIDS. At some point, a concern may arise as to whether such an employee, given his or her medical condition, can perform the duties of the position in a safe and reliable manner. This concern will typically arise at a point when the HIV-infected employee suffers health problems which affect his or her performance, conduct, or ability to report for duty. Also, in some situations the concern may stem from the results of a medical examination required by the employee's position.

Under OPM's regulations in 5 CFR Part 339, Medical Qualification Determinations, it is primarily the employee's responsibility to produce medical documentation regarding the extent to which a medical condition is affecting job performance, conduct, or availability for duty. However, when the employee does not produce sufficient documentation to allow agency management to make an informed decision about the extent of the employee's capabilities, the agency may offer a medical examination, and in some cases order (i.e., when there are medical standards for the job series or a specific position, or when the job requires on-going medical exams) the employee to undergo a medical examination. Accurate and timely medical information will allow the agency to consider alternatives to keeping the employee in his or her position if there are serious questions about safe and reliable performance. It will also help determine whether the HIV-infected employee's medical condition is sufficiently disabling to consider reasonable accommodation under the Rehabilitation Act of 1973.

Leave Administration

Employees with HIV/AIDS may request sick or annual leave or leave without pay to pursue medical care or to recuperate from the ill effects of their medical condition. In these situations, the agency should make its determination on whether to grant leave in the same manner as it would for other employees with medical conditions. In addition, employees with HIV/AIDS may be entitled to 12 weeks of unpaid leave under the Family and Medical Leave Act of 1993, and they may also be eligible to participate in leave transfer or leave bank programs.

Family and Medical Leave Act

The Family and Medical Leave Act of 1993 (FMLA) provides eligible employees an entitlement to a total of 12 administrative workweeks of leave without pay (LWOP) during any 12-month period for certain family medical needs including the care of a spouse, son, daughter, or parent with a serious health condition or for an employee's own serious health condition. Agencies may also expand on the definition of family member. Employees may elect to substitute accrued annual or sick leave for unpaid FMLA leave, consistent with current law and regulations. Upon return from FMLA leave, an employee must be returned to the same position or to an equivalent position with equivalent pay, benefits, status and other conditions of employment. OPM issued interim regulations on the FMLA

(5 CFR part 630, Subpart L) in the Federal Register on July 23, 1993 (58 FR 39596).

Federal Employees Family Friendly Leave Act

With the enactment of Public Law 103-388, *The Federal Employees Family Friendly Leave Act*, most full time employees may use a total of up to 104 hours (13 days) of sick leave each leave year to care for sick family members or for purposes relating to the death of a family member. The law allows employees to use at least 40 hours of sick leave per year for these purposes but permits a total number of up to 104 hours as long as employees retain at least 80 hours of sick leave in their leave accounts.

Under the Act, family member means: spouse, and parents thereof; children, including adopted children, and spouses thereof; parents; brothers and sisters, and spouses thereof; and any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship. OPM issued final regulations (5 CFR Part 630) in the Federal Register (59 FR 62266) on December 2, 1994, which was also the effective date of the provisions.

Federal Leave Sharing Programs

On October 8, 1993, the President signed into law the Federal Employees Leave Sharing Amendments Act of 1993 which make permanent the voluntary leave transfer and leave bank programs. Leave transfer programs allow Federal employees to donate annual leave to other Federal employees who have personal or other family medical emergencies and who have exhausted their own leave. Leave bank members with medical emergencies can withdraw leave from the bank if they exhaust their own leave. Each agency has established its own methods of administering these programs.

Changes in Work Assignment\Location

Agencies considering changes such as job restructuring, detail, reassignment, flexible scheduling, or alternative workplace arrangements (flexiplace) for employees with HIV/AIDS should do so in the same manner as they would for other employees whose medical conditions may affect the employee's ability to perform in a safe and reliable manner. In considering changes in work assignments, agencies should observe established policies governing qualification requirements, internal placement, and other staffing requirements.

With flexiplace programs, agencies have the authority to permit employees to work at locations other than the regular office. Employees on flexiplace typically work at home but can work at other agency-approved locations, such as one of several Interagency Telecommuting Centers in outlying areas of the Nation's Capital and in California. The General Services Administration (GSA) is planning an expansion of satellite centers to 30 cities. Flexiplace is an ideal accommodation for employees who have temporary or continuing health problems or who might otherwise have to retire because of disability.

Employee Conduct

There may be situations where fellow employees express reluctance or threaten refusal to work with employees or clients with HIV/AIDS. Such reluctance is often based on misinformation or lack of information about the transmission of HIV. According to leading medical research, there is no known risk of transmission of HIV through normal workplace contacts. Nevertheless, OPM recognizes that the presence of such fears, if not addressed in an appropriate and timely manner, can be disruptive to an organization. Usually an agency will be able to deal effectively with such situations through information, counseling, and other means. However, in situations where such measures do not solve the problem and where management determines that an employee's unwarranted threat or refusal to work with an employee or client with HIV/AIDS is impeding or disrupting the organization's work, it should consider appropriate corrective or disciplinary action against the threatening or disruptive employee(s).

In other situations, management may be faced with an employee with HIV/AIDS who is having performance, conduct, or attendance problems. Management should deal with these problems through appropriate counseling, remedial, and, if necessary, disciplinary measures. In pursuing appropriate action in these situations, management should be sensitive to the possible contribution of anxiety over the illness to work behavior and to the requirements of existing Federal and agency personnel policies, including any obligations the agency may have to consider reasonable accommodation for the employee with HIV/AIDS.

Privacy and Confidentiality

In general, employees are under no obligation to reveal whether or not they are HIV-infected or have AIDS to anyone at work. However, situations may arise where an employee may need to reveal some medical information regarding their medical condition to obtain a benefit such as extended leave or reasonable accommodation of a disabling condition. Because of the nature of the disease, HIV-infected employees will have understandable concerns over confidentiality and privacy in connection with medical documentation and other information relating to their condition. Agencies should be aware that any medical documentation submitted to an agency for the purposes of an employment decision and made part of the file pertaining to that decision becomes a "record" covered by the Privacy Act.

The Privacy Act generally forbids agencies to disclose a record which the Act covers without the consent of the subject of the record. However, these records are available to agency officials who have a need to know the information for an appropriate management purpose. Officials who have access to such information are required to maintain the confidentiality of that information. In addition, supervisors, managers, and others included in making and implementing personnel management decisions involving employees with HIV/AIDS must strictly observe applicable privacy and confidentiality requirements governing any information given by an employee in confidence, whether written or oral. Agencies should, however, limit the type and amount of medical information

made available by a particular employee to only that needed to make a decision. For example, a supervisor might need to know that an employee has a disabling condition that may require accommodation and that the accommodation is medically warranted but would not necessarily need to know the full clinical diagnosis.

Benefits

Employees with HIV/AIDS can continue their coverage under the Federal Employees Health Benefits (FEHB) Program and/or the Federal Employees' Group Life Insurance (FEGLI) Program in the same manner as other employees. Their continued participation in either or both of these programs would not be jeopardized solely because of their medical condition. The health benefits plans cannot exclude coverage for medically necessary health care services based on an individual's health status or a pre-existing condition. Similarly, the death benefits payable under the FEGLI Program are not cancelable solely because of the individual's current health status. However, any employee who is in a leave-without-pay (LWOP) status for 12 continuous months faces the statutory loss of FEHB and FEGLI coverage but has the privilege of conversion to a private policy without having to undergo a physical examination.

Employees who lose FEHB coverage upon separation from Federal service may generally continue their FEHB coverage for up to 18 months by paying 102 percent of the full premium. They can then convert to a private policy without undergoing a physical. Employees who are seeking to cancel previous declinations and/or obtain additional levels of FEGLI coverage must prove to the satisfaction of the Office of Federal Employees' Group Life Insurance that they are in reasonably good health. Any employee exhibiting symptoms of any serious and life-threatening illness may be denied the request for additional coverage.

With the passing of Public Law 103-409, the FEGLI Living Benefits Act (enacted on October 25, 1994 and effective on July 25, 1995), Federal employees who are diagnosed as terminally ill with a life expectancy of nine months or less may elect to receive all or a portion of their FEGLI (Basic only) life insurance benefit as a "living benefit." In addition, Public Law 103-336, enacted and effective on October 3, 1994, gives all Federal employees and former Federal employees the right to irrevocably assign their FEGLI coverage (Basic and Option A and Option B). Employees who are terminally ill may choose to assign their FEGLI coverage to another person(s), trust(s), or to a viatical settlement company which will then pay them a cash amount for these benefits. This provides a means of obtaining financial resources for terminally ill employees other than the through the Living Benefits Act provisions. It also provides an option for terminally ill employees/annuitants with a life expectancy longer than nine months.

Disability Retirement

Employees with HIV/AIDS may be eligible for disability retirement if their medical condition warrants and if they have the requisite years of Federal service to qualify. OPM considers applications for disability retirement from employees with HIV/AIDS in the same manner as

for other employees, focusing on the extent of the employee's incapacitation and ability to perform his or her assigned duties. OPM makes every effort to expedite any applications where the employee's illness is in an advanced stage and is life threatening.

Labor-Management Relations

HIV/AIDS in the workplace may be an appropriate area for partnership and cooperative labor-management activities, particularly with respect to providing employees education and information and alleviating HIV/AIDS-related problems that may emerge in the workplace. To the extent that an agency proposes HIV/AIDS-related policies or programs which would affect the working conditions of bargaining unit employees, unions must be accorded any rights they may have to bargain or be consulted as provided for under 5 U.S.C. Chapter 71.

Health and Safety Standards

In 1985, the Centers for Disease Control and Prevention (CDC) published guidelines relating to the prevention of HIV transmission in most workplace settings. Since that time several updated documents have been issued. OPM strongly encourages agencies, especially those with employees occupying health care and related positions, to establish health and safety practices consistent with the following guidance:

- The CDC published specialized guidelines in 1987 relating to health-care workers, *CDC Recommendations for Prevention of HIV Transmission in Health-Care Settings*, 36 MMWR Supp. no. 2s (August 21, 1987). A year later an update was released as: *Update: Universal Precautions for Prevention of Transmission of Human Immunodeficiency Virus, Hepatitis B Virus and other Bloodborne Pathogens in Health Care Settings, 37 MMWR 24, June 24, 1988.* The 1987 version should be consulted for specific recommendations not addressed in the 1988 update.

- *Guidelines for Prevention of Transmission of Human Immunodeficiency Virus, Hepatitis B Virus to Health-Care and Public Safety Workers. MMWR 1989:38 (no. S-6)* was published June 23, 1989. It includes the principles and application of infection control, employer responsibilities, with special sections for fire and emergency medical services and law-enforcement and correctional facility officers. This document was reprinted in May 1991.

-In 1989, the National Institute for Occupational Safety and Health (NIOSH) published *A Curriculum Guide for Public-Safety and Emergency-Response Workers. Prevention of Transmission of Human Immunodeficiency Virus and Hepatitis B Virus, NIOSH Publication No. 89-108, HIV/NIOSH/2.89/002.* This is a course of study for the prevention of bloodborne pathogens (BBP) transmission. It contains curriculum, tips for trainers, lecture outline, overheads, case studies, resources, glossary, and copies of all the above mentioned documents.

- The Occupational Safety and Health Administration (OSHA) published their final rule for occupational exposure to BBPs in the Federal Register, Department of Labor, 29 CFR Part 1030,

December 6, 1991. Effective March 6, 1992, the rules mandate that each employer having employees with exposure to BBPs establish a written control plan. The plan should be designed to eliminate or minimize employee exposure. It must encompass, but is not limited to, practices and procedures for the following elements: BBP exposure determination, methods for compliance (universal precautions, engineering and work practice controls, personal protective equipment, housekeeping, regulated waste, laundry), BBP training, hepatitis B vaccinations, post-exposure evaluation and follow-up, and communication of hazards to employees and recordkeeping. A supplementary booklet, *Occupational Exposure to Bloodborne Pathogens, OSHA 3127, 1992*, offers an explanation of the various parts of the standard and sources for assistance. This document was reprinted in 1993.

Blood Donations

One area of personnel management which agencies may overlook when considering HIV/AIDS policies and practices is employee blood donations. OPM joins the American Red Cross in urging agencies to encourage employees to consider donating blood. Under guidelines established by the American Red Cross, there is no risk of contracting HIV/AIDS from giving blood, and agencies should continually inform employees of this when planning blood drives and conducting HIV/AIDS workplace training.

For further information regarding these HIV/AIDS policy guidelines, please contact the Employee Health Services Policy Center, Office of Personnel Management, 1900 E Street, N.W., Room 7412, Washington, D.C. 20415 (or phone (202) 606-1269, FAX (202) 606-2613).

OFFICE OF PERSONNEL MANAGEMENT
NATIONAL PLAN ON HIV/AIDS

The Office of Personnel Management (OPM) has a number of programs which relate to HIV/AIDS prevention and services for Federal employees. These services range from policy development to insurance and retirement services.

Policy Development

OPM has recently revised its policy guidelines on HIV/AIDS in the workplace. The former guidance, Federal Personnel Manual Letter 792-21, "Acquired Immune Deficiency Syndrome in the Workplace," has been eliminated along with the entire Federal Personnel Manual system. It is being replaced by the attached "HIV/AIDS Policy Guidelines" which will be disseminated to all Federal agencies. The policy is unchanged from its predecessor with the exception of adding new information on Federal employee leave benefits programs including the Family and Medical Leave Act, the Family Friendly Leave Act, "Living Benefits" provisions to life insurance, and leave transfer and leave bank programs.

In addition to issuing the policy guidelines, OPM is preparing guidance for Federal agencies on HIV/AIDS-related issues such as providing reasonable accommodation for employees with HIV/AIDS and information on educational resources. This guidance will be part of a handbook on employee health- related issues which will initially be distributed to agencies in small quantities and then be available for purchase at low cost from the Government Printing Office.

Retirement Programs

OPM operates both the regular retirement and disability retirement programs for Federal employees. Under the disability retirement program, employees are eligible for an annuity when they meet specific criteria. The criteria for disability require that a deficiency in work or performance caused by a documented medical condition, that cannot be accommodated, be shown. In addition, criteria regarding pre-existing conditions and requisite years of service are also considered in the disability application.

In cases involving terminal illness or life threatening conditions, including AIDS, OPM expedites applications for disability retirement. Cases such as these can be approved within 72 hours or less. Agencies will often help this process along by alerting OPM when they are sending in such cases and by expediting their paperwork requirements for the disability process.

Disability retirements due to AIDS and other HIV-related conditions are continuing to increase each year. In 1990, there were 200 HIV/AIDS-related disability retirements. In 1994, that number was 387 with HIV/AIDS-related cases becoming the fourth leading cause for disability retirement for Federal employees.

Insurance Programs

Health Insurance

OPM administers the Federal Employees Health Benefits Plan which covers Federal employees, annuitants, and eligible family members. The agency does not gather data on health insurance claims relating to HIV/AIDS from the various insurance carriers. This is primarily due to privacy issues, resource issues relating to the employees that would be required to gather and analyze the data, and the issue of reliably determining exactly which episodes of treatment are actually due to HIV/AIDS.

Life Insurance

OPM administers the Federal Employees' Group Life Insurance program. Recent changes to the laws now allow employees and annuitants the option of making an irrevocable assignment of life insurance benefits to other persons, trusts, and viatical firms. This allows an employee or retiree with a terminal illness the option of receiving payment of a portion of his or her life insurance benefit while still living. Another option that will be available beginning June 25, 1995 will allow employees and retirees with terminal illnesses, and a documented life expectancy of 9 months or less, the option of receiving payment of his or her basic life insurance benefit while still living.

Workplace Education

OPM has been providing training for Federal agencies to meet the President's HIV/AIDS training initiative since its inception. While the initiative called for agencies to have completed training by March of 1995, OPM still receives requests to conduct training for groups of employees and supervisors and to also conduct train-the trainer classes for agencies. During the period of the training initiative, OPM provided the basic HIV/AIDS workplace course for over 16,000 Federal employees from various agencies nationwide.