

# CORPORATE LEGAL TIMES

## Dealing with the Problem of AIDS in the Workplace

BY LAWRENCE R. LEVIN

BEFORE LAST NOVEMBER, WE often discussed with clients whether they had an AIDS policy. The response usually was, "We don't need one, it can't happen here." When clients invited us to conduct seminars on labor issues, we often had conversations like the following:

"Shall we discuss the Americans with Disabilities Act with your managers?" — "Yes." — "How about sexual harassment?" — "Of course." — "How about AIDS policies?" — "No way."

Then, last November, the devastating news about Earvin "Magic" Johnson testing positive for the HIV virus hit the headlines. Many employers now want to address the AIDS issue.

Under some local ordinances, most state anti-discrimination laws, and the Federal Rehabilitation Act of 1973, individuals who are HIV positive or have AIDS are considered to be handicapped and must be "reasonably accommodated." When the employment provisions of the Americans With Disabilities Act (ADA) go into effect this July, employees with life-threatening diseases will be well-protected. Most employers will be required to accommodate such individuals unless doing so would constitute an "undue hardship," i.e., a "significant difficulty or expense."

In view of Magic Johnson's announcement and the ADA, employees' awareness of their rights will heighten. Rather than ignoring the issue, employers should address it now, by adopting life-threatening illness policies. Such a policy can assist employers from a legal perspective. It can reduce the chances that employees will be treated in-

consistently. It can assist in educating employees about AIDS, and have a favorable effect on employee morale by demonstrating compassion and understanding.

If employers fail to adopt life-threatening illness policies and employees with AIDS seek accommodation, such employers will have to deal with their situations and develop policy on an ad hoc basis. The need for immediate action may not give them a full opportunity to consider or implement the best policy choices. They also reduce the opportunity to educate employees about diseases such as AIDS, and run the risk of having uninformed employees refuse to work with afflicted employees.

One of our clients learned that an employee was suffering from AIDS. The client called us, and we devised a strategy to act responsibly. The employer determined that the employee did not pose a health threat, and assured him that he could work as long as he was able. The employer assisted the employee in obtaining benefits under its insurance plans. It also obtained the employee's permission to discuss feasible work assignments with the employee's doctor. Based on that discussion, the employee moved to an hourly paid position where he worked fewer hours on a flexible schedule. The employee worked on this basis for several months before succumbing to the disease. The employee benefitted by being treated with dignity and compassion. The employer benefitted by improved morale among other employees who felt that their co-worker had been fairly treated, and by retaining a valued employee for as long as possible.

It is important to have a policy—but what should be in it? Although policies will vary depending upon the working environment,

they should include: recognition that many employees with life-threatening illnesses desire to lead normal lives, continuing to work as long as their health permits; recognition that continued employment may have therapeutic value; an explanation of the nature of various diseases such as AIDS and how they are and are not transmitted; the kind of reasonable accommodation that may be offered (i.e., flexible work areas, transfer to another position); reasonable assurances of confidentiality; guidance in utilizing company benefit and community programs; guidance as to how the employer will deal with employees who refuse to work with persons who have, or are perceived to have, a life-threatening illness; and reservation of the employer's right to determine whether an employee's condition poses a real safety or health risk.

Although the news about Magic Johnson is sad, if employers act responsibly by implementing appropriate policies and by educating their employees, there may be some positive results. **CLT**

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