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Revised, 2017
Public Sector Workplace Policy

On

HIV and AIDS

Revised, 2017
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GLOSSARY OF TERMS AND CONCEPTS

**Affected:** A person who is experiencing the impact of HIV and AIDS through sickness or loss of relatives, friends or colleagues or a person whose life is changed in any way by HIV and AIDS due to the broader impact of the epidemic.

**AIDS:** Acquired Immunodeficiency Syndrome which results from advanced stages of HIV infection and is characterised by opportunistic infections or HIV related cancers, or both.

**Care:** Promotion of a person’s well-being through medical, physical, psychosocial and spiritual among others.

**Comprehensive Care:** A range of services offered to People Living with HIV including treatment, clinical, physical, nutritional and psychosocial support.

**Counselling:** A skilled helping relationship in which a counsellor assists client(s) to resolve their issues and/or cope with situations.

**Confidentiality:** The right of every person, employee or job applicant to have his/her medical/other information, including HIV status kept private.

**Discrimination:** Treating others differently or denying them their rights based on their HIV status.

**HIV:** Human Immunodeficiency Virus that lowers the human immunity.

**HIV Screening:** Assessment of ones’ HIV status through testing and identifying risk-taking behaviours.

**HIV Testing:** A medical test to determine a person’s HIV status.

**Incidence of HIV:** The number of people getting new HIV infections every year.

**Infected:** A person living with the HIV.

**Maisha:** A slogan used to refer to the prevention and management of HIV and AIDS in Kenya.

**Maisha Certification System:** A compliance and accountability mechanism for delivery of the Maisha Performance Contract targets for the Ministries, Counties, Departments and Agencies.

**Post Exposure Prophylaxis:** Immediate treatment given to a person
who has been exposed to HIV given within 72 hours of exposure.

**Prevalence of HIV:** The number of people with HIV at a particular point in time often expressed as a percentage of the total population.

**Prevention:** A programme designed to combat HIV infection and transmission.

**Programme:** A plan of action that includes planning, resource allocation, implementation, monitoring and evaluation.

**Sexual Harassment:** The act of persistently making unwelcome sexual advances or requests against the wishes of a person.

**Stigma:** A spoilt identity, mark of disgrace or labelling due ones’ HIV status that makes one feel disrespected, unloved or devalued.

**Psychosocial Support:** Psychological and social services that are provided to help a person cope with difficult situations and challenges.

**HIV Testing and Counselling:** A process that enables people to willingly undergo a medical test to know their sero-status to help them plan their lives and make informed decisions.

**Vulnerability:** Predisposing factors for HIV and AIDS due to circumstances that are beyond ones’ control.

**Risks:** Predisposing factors for HIV and AIDS due to personal choice of behaviour and practices.

**Workplace:** Occupational settings, stations and places where employees spend time for gainful employment.

**Workplace Programme:** An intervention to address a specific issue within workplace.
### ACRONYMS AND ABBREVIATIONS

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>ACU</td>
<td>Aids Control Unit</td>
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<tr>
<td>ADSA</td>
<td>Alcohol, Drug and Substance Abuse</td>
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<td>AIDS</td>
<td>Acquired Immunodeficiency Syndrome</td>
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<td>BMI</td>
<td>Body Mass Index</td>
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<td>CEO</td>
<td>Chief Executive Officer</td>
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<td>DOSHS</td>
<td>Directorate of Occupational Safety and Health Services</td>
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<td>DPSM</td>
<td>Directorate of Public Service Management</td>
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<td>GIPA</td>
<td>Greater Involvement of People Living with HIV and AIDS</td>
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<td>GBV</td>
<td>Gender Based Violence</td>
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<td>HAPC</td>
<td>HIV and AIDS Prevention and Control</td>
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<td>HBHTC</td>
<td>Home Based HIV Testing and Counselling</td>
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<td>HIV</td>
<td>Human Immunodeficiency Virus</td>
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<td>HOD</td>
<td>Head of Department</td>
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<td>HLM</td>
<td>High Level Meeting</td>
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<td>HTC</td>
<td>HIV Testing and Counselling</td>
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<td>IEC</td>
<td>Information, Education and Communication</td>
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<td>ILO</td>
<td>International Labour Organisation</td>
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<td>KAIS</td>
<td>Kenya AIDS Indicator Survey</td>
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<td>KASF</td>
<td>Kenya AIDS Strategic Framework</td>
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<td>KNASP</td>
<td>Kenya National AIDS Strategic Plan</td>
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<td>SDGs</td>
<td>Sustainable Development Goals</td>
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<td>M&amp;E</td>
<td>Monitoring and Evaluation</td>
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<td>MCDAs</td>
<td>Ministries, Counties, Departments and Agencies</td>
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<td>MLSSS</td>
<td>Ministry of Labour, Social, Security Services</td>
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<td>MIR</td>
<td>Minimum Internal Requirements</td>
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<td>MIPA</td>
<td>Meaningful Involvement of People Living with HIV and AIDS</td>
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<td>MPSYGA</td>
<td>Ministry of Public Service, Youth and Gender Affairs</td>
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<td>MTEF</td>
<td>Medium Term Expenditure Framework</td>
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<td>Acronym</td>
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<td>NACC</td>
<td>National AIDS Control Council</td>
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<td>NHIF</td>
<td>National Hospital Insurance Fund</td>
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<td>PEP</td>
<td>Post-Exposure Prophylaxis</td>
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<td>PITC</td>
<td>Provider Initiated Testing and Counselling</td>
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<td>PLHIV</td>
<td>People Living with HIV</td>
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<td>PMCTHIV</td>
<td>Prevention of Mother to Child Transmission of HIV</td>
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<td>PSLHIV</td>
<td>Public Servants Living with HIV</td>
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<td>PSC</td>
<td>Public Service Commission</td>
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<td>PSGCP</td>
<td>Public Service Guidance and Counselling Policy</td>
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<td>PTSD</td>
<td>Post Traumatic Stress Disorder</td>
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<td>RBM</td>
<td>Results-Based Management</td>
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<td>STIs</td>
<td>Sexually Transmitted Infections</td>
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<td>VMMC</td>
<td>Voluntary Medical Male Circumcision</td>
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FOREWORD

HIV and AIDS is a public health, socio-economic and developmental challenge that has adversely impacted on various sectors of the economy. It is estimated that approximately 1.6 million Kenyans are living with HIV in the country (KDHS, 2014). The Public Sector has also been affected. This has negatively impacted on the public servants’ productivity which threatens to reverse the socio-economic gains made in the past years.

The Government of Kenya recognizes that a healthy workforce enhances productivity and in acknowledgement of this, the Public Sector Workplace HIV and AIDS Policy was developed in 2005 and revised in May, 2010 to harmonize the response to HIV and AIDS in the Public Sector. The implementation of the Constitution of Kenya, 2010, however, brought about new governance structures that led to the shift of HIV and AIDS strategy from Kenya National AIDS Strategic Plan (2009/10-2013/14) to Kenya AIDS Strategic Framework (2014/15-2018/19). This necessitated the review of the Public Sector Workplace HIV and AIDS Policy.

The revised Policy provides a framework to address HIV and AIDS in the Public Sector. It focuses on improving productivity, reducing stigma, discrimination and enhancing health outcomes and wellness of public servants living with HIV. It also affirms the commitment of Ministries, Counties, Departments and Agencies to scale-up a harmonised HIV and AIDS response in the Public Service. The implementation of this Policy will therefore, ensure that Ministries, Counties, Departments and Agencies, in collaboration with other stakeholders, are able to sustain the provision of quality services despite the challenge of HIV and AIDS.

I call upon Ministries, County Governments, Departments and Agencies to domesticate this Policy and align it to their respective mandates and needs, in order to enable the Public Service to stay on course in the fight against HIV and AIDS and to remain committed to this course.

Sicily K. Kariuki (Mrs.), E.G.H.,
CABINET SECRETARY,
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ACKNOWLEDGEMENT

This second review of the Public Sector Workplace Policy on HIV and AIDS was necessitated by provisions in the Constitution of Kenya, 2010 and emerging socio-economic issues in the Country. The review has been a collaborative effort and in consultations with various stakeholders, to whom I wish to sincerely extend my uttermost gratitude.

I therefore, take this opportunity to first thank the Cabinet Secretary for Public Service, Youth and Gender Affairs, for steering the review process to completion by providing clear guidance and visionary leadership.

In a special way, I also wish to express my deep appreciation to Principal Secretaries, Chief Executive Officers of State Agencies and their representatives, who gave their invaluable inputs and comments on the document, which enriched the content and its coverage. The technical and financial support provided by the National AIDS Control Council and International Labour Organization, AIDS, towards this process was an enormous contribution to the review of this Policy, to which the Ministry is very grateful.

I also wish to acknowledge the contribution of officers of the Directorate of Public Service Management and in particular the staff in the HIV and AIDS Secretariat for effective coordination and technical assistance, that led to finalization of the Policy.

[Signature]

Lillian Mbogo-Omollo, C.B.S.,
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MINISTRY OF PUBLIC SERVICE YOUTH AND GENDER AFFAIRS.
CHAPTER ONE: INTRODUCTION

1.1 Background

Since the Government of Kenya adopted a multi-sectoral approach to address HIV and AIDS and declared the epidemic a national disaster in 1999, substantial progress has been made. However, the epidemic continues to be a global health priority and constitutes one of the most formidable challenges to development and social progress. It continues to have an enormous negative socio-economic impact on households, communities, workplaces and businesses. The epidemic is eroding decades of development gains, undermining economies, threatening security and destabilising societies. The number of people living with HIV worldwide has continued to grow, reaching an estimated 35 million by the end of 2013 (UNAIDS, 2014), of which 70% are in Sub-Saharan Africa.

In Kenya, HIV and AIDS has profoundly disrupted the economic and social bases of families. It mainly affects people in their prime years of life, the hardest hit being those in the productive ages of between 15 and 49 years. Stigma and discrimination related to HIV and AIDS leads to frequent violations of fundamental rights at the workplace. The Kenya Demographic Health Survey (2014) estimated the national HIV prevalence at 6%, which means approximately 1.6 million Kenyans are now living with HIV. This makes Kenya the 4th largest HIV epidemic globally. The Kenya AIDS Indicator Survey (KAIS, 2012) showed variations in prevalence by Counties, with the highest and lowest prevalence rate of 25.7% in Homa-Bay and 0.2% in Wajir Counties respectively. The survey further indicated that women are more affected (7.6%) than men (5.6%).

At a prevalence rate of 6% and an annual HIV incidence of 101,560, many workplaces risk losing out significantly if they fail to take action. HIV and AIDS manifests in increased labour costs due to absenteeism, bereavement, sick leave, medical costs and labour turnover. It also manifests in reduced productivity and employee morale, increased need for training and mentoring of replaced staff. These effects lead to decrease in demand and declining customer base resulting into an enormous impact on Country’s productivity hence a negative impact on the National Gross Domestic Product.
Through Sessional Paper No. 4 of 1997 on AIDS in Kenya, the Government put in place a national policy and defined an institutional framework to strengthen intervention measures for prevention, management, control and mitigation of impact of HIV and AIDS. It was within this framework that the National AIDS Control Council (NACC) was set up in 1999 and charged with the responsibility of providing strategic policy direction for the multi-sectoral response to HIV and AIDS in Kenya.

The Public Sector response to HIV and AIDS has been positive in that 146 (90.7%) institutions have developed a workplace policy, the Government has increased funds allocated to the prevention and management HIV and AIDS in the Public Sector (NACC, 2016). For instance, during the 4th quarter reporting period, approximately Ksh. 70,323,658 was allocated for HIV and AIDS activities. As a result MCDAs were able to reach 16,504 employees with counselling and testing services, 39,450 with comprehensive knowledge on HIV and AIDS prevention and 17,067 with ART treatment literacy. In addition MCDAs distributed 1,029,547 condoms and sensitized 39,510 staff on reducing stigma and discrimination towards PLHIV. According to the 4th quarter MAISHA score card, 4,366 staff and family members reported uptake of services that include PEP, VCT, VMMC, PMTCT and ART. Additionally, out of the 161 organizations that reported in the 4th quarter, 65 reported to have put in place workplace benefits, such as health insurance, and food baskets catering for PLHIV.

The review of this policy was necessitated by the implementation of the Constitution (2010), devolution, Executive Orders No. 2/2013 and No.1/2016 on the Organisation of Government of the Republic of Kenya, the implementation of the Kenya AIDS Strategic Framework 2014/15-2018/19 (KASF), Maisha Certification System 2015 and other relevant legislative developments.

This policy aims at providing guidance on the management of HIV and AIDS in the public sector workplaces and defines the public sector’s position on HIV and AIDS. The Policy will also guide public sector HIV interventions towards the achievement of Sustainable Development Goals (SDGs). The policy covers key areas such as legal and regulatory framework, guiding principles, and management of human resource, strategies, minimum internal requirements, implementation structure, monitoring and evaluation.
1.2 Rationale

HIV and AIDS present an enormous challenge to the development of this country and this exerts immense pressure on Kenyan workplaces. The epidemic has led to loss of skilled and experienced workers due to HIV-related deaths, loss of working hours due to HIV-related illnesses, increased absenteeism, reduced performance, increased stress, HIV-related stigma and discrimination, and loss of institutional memories, among others.

As a result of the negative impact of HIV and AIDS at the workplace, the Government of Kenya, as being a major employer, recognised that a workplace policy framework is central to putting in place and implementing effective workplace programmes. This policy demonstrates the Government’s concern and commitment in taking concrete steps to prevent and manage HIV and AIDS and provide guidance on the development of sector-specific workplace policies in the Public Service. The policy will provide guidance for the management of public servants in the public sector on issues of HIV and AIDS in a consistent, coherent, harmonised and equitable approach.

1.3 Policy Goal, Objectives and Scope

1.3.1 Policy Goal

This policy provides a framework and sets standards for addressing HIV and AIDS in the Public Sector

1.3.2 Policy Objectives

The specific objectives are to:

(a) Define the public sector’s position on HIV and AIDS;

(b) Guide the management and employees on workplace rights and obligations regarding HIV and AIDS;

(c) Establish structures, rights-based approaches and minimum internal requirements for responding to HIV and AIDS in the public sector;

(d) Contribute to the delivery of Kenya AIDS Strategic Framework
2014/15-2018/19 results and targets; and

(e) Provide a framework for domestication by all Ministries, Counties, Departments and Agencies (MCDAs).

1.4 Scope

The policy applies to all public servants in both National and County Governments. These include Disciplined Services, Public Universities and Learning Institutions, Public Service Commission, Judicial Service Commission, Parliamentary Service Commission, Teachers Service Commission, other Constitutional Commissions, Independent Offices, County Public Service Boards, State Agencies and stakeholders.
CHAPTER TWO: LEGAL AND REGULATORY FRAMEWORK

This policy takes cognizance of the International Labour Conventions, Constitution of Kenya (2010) and other Kenya National Legislations which support HIV and AIDS interventions at the workplace.

2.1 International Labour Conventions

Workplace HIV and AIDS in the Public Service will be undertaken within the following ILO Conventions:

**Code of Practice on HIV and AIDS and the World of Work (2010)**

The Code provides for utilization of both the external and internal professional workplace counselling services where public servants are informed of their rights and benefits in relation to statutory service security programmes and occupational schemes and any life skills which may assist them cope with HIV and AIDS.

**ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111)**

It advocates for the promotion of equality of opportunity and treatment in employment and occupation for all persons through;

1) Access to vocational guidance, placement services and training and employment of the employees’ choice on the basis of individual suitability for such training or employment;

2) Advancement in accordance with their individual character, experience, ability and diligence;

3) Security of tenure of employment;

4) Conditions of work including hours of work, rest periods, annual holidays with pay, occupational safety and occupational health measures, as well as social security measures and welfare facilities and benefits provided in connection with employment, and

5) Remuneration for work of equal value.
Code of Practice on HIV and AIDS and World of Work, 2001

The Code provides for the utilization of professional counselling services or internal workplace counselling where confidentiality is upheld. Counsellors are to inform all workers of their rights and benefits in relation to statutory service, occupational schemes, security programmes and any life skills programmes which may assist workers cope with HIV and AIDS.

2.2 Kenyan Statutes


The Constitution of the Republic of Kenya is the Supreme Law of Kenya and lays the foundation for all other national laws. It addresses matters relating to equality, freedom from discrimination and universal access to services as below:

(a) Chapter 4 on the Bill of Rights, Article 27 provides for equality before the Law, right to equal protection and equal benefit. The state shall not discriminate directly or indirectly against any person on any grounds, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth;

(b) Article 31 and 43 on the right to privacy, confidentiality and the right to the highest attainable standard of health which includes the right to health care services; and

(c) Article 6 (3) provides for national state organs to ensure reasonable access to its services in all parts of the Republic. This implies that all public servants working at National Government and County Governments workplaces need to have access to HIV related services.

Therefore, public servants who have been diagnosed with HIV have the right to relevant, scientific based and up to date information and services to ensure they are protected from re-infection, stigma and discrimination, disease progression including having access to care and management of their health conditions for sustenance of life and enhanced productivity. This policy sets standards for the protection of the dignity and respect
of all employees irrespective of their sero-status and protection from exposure to infections/re-infection through provision of counselling and testing services and protection materials.

**Counsellors and Psychologists Act (2014)**

The Counsellors and Psychologists Act 2014 outlines the qualifications of a professional counsellor and regulates the counselling practice in line with set standards and code of ethics. Under this provision, counsellors providing counselling services to HIV and AIDS clients must meet the set standards.

**Public Service Commission Regulations (2005)**

The Public Service Commission Regulations (2005) prohibits discrimination in appointment, promotion and transfer of public servants. The regulations provides for the following:

(a) The appointment, promotion and transfer of a public officer shall take into account only the merit, ability, seniority, experience and official qualifications of the candidate;

(b) If a public officer is incapable by reason of any infirmity of mind or body of discharging the functions of public office, he/she may present himself/herself before a Medical Board with a view to it being ascertained whether or not he/she is incapable as aforesaid; and

(c) Any public servant who is ill shall seek and obtain permission as per existing regulations for absence from the workplace on account of ill health.

These provisions imply that no public servant shall be discriminated against on the basis of his/her actual or perceived HIV-status.

**HIV and AIDS Prevention and Control Act (2006)**

This Act makes specific reference to HIV and AIDS in relation to provision of education and information at the workplace, discrimination, privacy, confidentiality and human rights. Specifically the Act provides that:-

(a) Under sections 4 and 7, the Government shall promote public awareness about the causes, means of transmission, consequences and means of prevention and control of HIV and AIDS through
a comprehensive nationwide educational and information campaign at all places of work and ensures the provision of basic information and instructions on HIV prevention and control to all public employees. Section 7 further notes that such information to be provided, shall cover issues of confidentiality at the workplace and attitudes towards infected employees;

(b) Under section 13, no person shall compel another to undergo an HIV test save where a person is charged with an offence of a sexual nature under the Sexual Offences Act (2006);

(c) Section 22 prohibits the disclosure of an HIV test result or any related assessment result of another person without his/her written consent;

(d) In Part VIII, the Act makes it an offence for any person to be discriminated against on the grounds of actual, perceived or suspected HIV status, in relation to employment, access to education, credit, insurance, healthcare, travel, habitation or seeking public office; and

(e) Section 25 makes provision for establishment and functioning of the HIV Tribunal with jurisdiction to examine cases of HIV-related discrimination thereby implementing the fundamental rights of persons living with or affected by HIV.

**Sexual Offences Act No. 3 (2006)**

The Sexual Offences Act No. 3 of 2006 addresses issues of sexual offences, their definition, prevention and protection of all persons from harm from unlawful sexual acts. The relevant sections expressly relate to this policy are 3, 4, 23-26.

**Persons with Disability Act (2003)**

Disability Act makes provisions for non-discrimination and non-stigmatization in respect to access to services and opportunities.

**The Employment Act (2007)**

The Act defines the fundamental rights of employees and the basic conditions of employment. It addresses issues on discrimination (Part II Section 5) and sexual harassment (Part II Section 6).
It sets out the minimum standards applicable for conditions of employment, relating to wages, leave, health and contracts of service including termination of the contract. Under this Act, no employer shall discriminate directly or indirectly against an employee on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, mental status or HIV status. The employer shall provide proper healthcare for employees during serious illness. The employer can only discharge this function if the employee notifies the employer of the illness.

The Act implies that there shall be no discrimination on the grounds of HIV status, and states in Section 46 (g) that HIV and AIDS does not constitute a fair reason for dismissal or for imposition of disciplinary penalty on an employee.

**The Labour Relations Act No. 14 (2007)**

The Act protects the employee and prospective employee from discrimination based on their real or perceived HIV status (Part II Section 5a) ensuring equal rights to opportunities for the infected and affected in training, employment, promotions and other employment benefits.

**The Labour Institutions Act, No.12 (2007)**

The Act provides for workplace interventions by appropriating the responsibility of providing these services on the employer while the employee is charged with the responsibility of accessing them (Part V Section 37a).


Part VII of the Act, section 45 (1) provides for workplace equipment and service for first aid to employees in case of accidents. In Section 38 (i), it provides for compensation to employees for work related injuries and diseases contracted in the course of their employment. The interpretation of this section provides for post-exposure prophylaxis (PEP) to those who, in line of duty, accidentally come into contact with potentially infectious HIV contaminated material and also sets grounds for reasonable compensation for those who get infected in this way.

**Occupational Safety and Health Act No 15 (2007)**

The Act provides for the safety, health and welfare of public servants
and all persons lawfully present at workplaces and for matters connected therewith. It charges the employers with ensuring a safe and healthy work environment by ensuring all health risks and their associated hazards are closely monitored and managed.

Section 16 (1) prohibits persons from engaging in any improper activity or behaviour at the workplace, which might create or constitute a hazard to that person or any other person. The implication of this Act, with regards to HIV, is that the employer must ensure the safety of the workplace so that employees are not at risk of infection at the workplace. This is in recognition that HIV is a workplace occupational hazard.

**Alcoholic Drinks Control Act (2010)**

The Act addresses the harm reduction strategies related to alcohol and its role in HIV transmission. This is addressed in the Act in Part VII on education and information (Section 65-67).


CHAPTER THREE: GUIDING PRINCIPLES

The guiding principles are drawn from the International Statutes, Constitution of Kenya (2010) and other national Statutes. The following guiding principles will form the basis for specific provisions in this policy:

Recognition of HIV and AIDS as a Workplace Issue

HIV and AIDS is a workplace issue and should be treated like any other condition or illness that may affect employees. All public sector workplaces shall integrate HIV and AIDS into core functions and put into place structures to coordinate HIV and AIDS related activities at the workplace.

Non-discrimination

There should be no stigmatisation or discrimination of public servants, including job applicants, on the basis of real or perceived HIV status.

Gender Responsiveness

HIV and AIDS affects and impacts on women and men, boys and girls differently due to their biological, social, cultural and economic circumstances. Application of this policy should be responsive to their different and specific needs through gender sensitive, responsive and transformative HIV programmes targeting men, women, boys and girls including promotion of equal gender relations and generation of gender disaggregated data.

Measures shall be taken in or through the workplace to reduce the transmission of HIV and alleviate its impact by:

(a) Ensuring gender equality and the empowerment of women; and

(b) Ensuring actions to prevent and prohibit sexual harassment, abuse, exploitation and violence in the workplace.

Involvement in these vices shall be treated as gross misconduct and where proven, shall lead to disciplinary action as stipulated in existing Laws and Service regulations.

Safe and Healthy Work Environment

A safe and healthy working environment is critical for optimal health, wellbeing and productivity. The management has the responsibility of
minimising the risk of HIV transmission by adopting appropriate Universal Infection Standard Precautions at the workplace where appropriate. These will include promotion of hand hygiene, proper personal protective equipment (gloves, gowns and face shields), prevention of needle stick injuries, respiratory hygiene and cough etiquette, environmental cleaning, proper handling of soiled linens, proper waste disposal and handling of soiled patient care equipment.

Social Dialogue
Consultation brings about concurrence and is critical for successful implementation of workplace HIV programmes. Implementation of HIV and AIDS programmes requires the building of trust, co-operation, willingness and a common purpose between the management and employees. This is cultivated through communication, open discussions and dialogue. Efforts shall be made to promote dialogue, consultations and negotiations on wellness and HIV related matters.

HIV Testing or Screening and Fair Labour Practices
HIV testing or screening is not a requirement for recruitment, appointment, continuation of employment or promotion and no employee shall be compelled to undergo an HIV test for any of the above. However, all public service workplaces will promote and facilitate access to HIV testing voluntarily for all employees in line with the HIV and AIDS Prevention and Control Act 2006.

Every person has the right to fair labour practices in terms of recruitment, appointment and continued enjoyment of employment, promotion, training and any other workplace benefits. Real or perceived HIV status is not a cause for termination of employment. All employees with HIV-related illness should be allowed to work for as long as they are fit to work, with reasonable accommodation if needed, to enable them to carry out the tasks of their job.

When an individual’s condition progresses and he/she becomes unable to perform their current job, alternative work arrangements shall be considered to allow them to remain in employment for as long as possible. The employee with HIV should be encouraged to consider voluntary retirement for the employee’s own benefit and the management shall observe all the procedural safeguards required in the circumstances in line with prevailing Service Regulations.
Confidentiality

Access to personal data relating to an employee’s HIV status shall be bound by the rules of confidentiality consistent with existing Laws such as HIV and AIDS Prevention and Control Act 2006, International Labour Organisation (ILO) Code of Practice on HIV and AIDS, Medical Ethics, ILO Code of Practice on the Protection of Workers’ Personal Data (1997) and other relevant regulations.

Prevention of New HIV Infections

HIV infection is preventable through creation of comprehensive HIV and AIDS knowledge, behaviour change, treatment and creation of a stigma-free and non-discriminatory environment. All Public Service workplaces shall put in place vibrant HIV prevention programmes targeting staff, their immediate family members and clients in line with the Kenya AIDS Strategic Framework 2014/15-2018/19.

Treatment, Care and Support for Employees Living with HIV

HIV prevention without treatment, care and support for the public servant living with HIV is only partially effective. Positive dignity and health programmes and HIV treatment is a more holistic and effective approach. Public sector workplaces shall facilitate employees’ access to affordable treatment, care and support services and related employees assistance programmes through medical insurance, referrals and other viable options.

Measures to redeploy employees with HIV-related illnesses to work reasonably adapted to their abilities, to find other work through training or to facilitate their return to work should be encouraged, taking into consideration the relevant National and International labour instruments.

Forging Strategic Partnerships

Strategic partnerships, networking, bench-marking and collaboration with the relevant service providers will be initiated and sustained for effective HIV and AIDS programming and service delivery.

Meaningful Involvement of People Living with HIV and AIDS (MIPA)

The involvement of people living with HIV in decision making, formulation
and implementation of HIV and AIDS policies and programmes shall be promoted at all levels of the public sector and in line with GIPA principles as spelt out in GIPA Guidelines. Workplaces shall implement positive health and dignity programmes and forge strategic partnerships with networks and communities of PLHIV in the implementation of this policy.
CHAPTER FOUR: OPERATIONAL GUIDELINES AND IMPLEMENTATION FRAMEWORK

4.1 Overview

The Ministry of Public Service, Youth and Gender Affairs will coordinate, monitor and evaluate the implantation of this policy in the Public Service. A HIV and AIDS Secretariat will be established in the Ministry to develop policies, strategies, programmes and guidelines for effective and efficient management of workplace HIV and AIDS. This will ensure that the public servants’ needs and concerns are fully addressed in order to help create a culture of prevention at the work place.

4.2 Operational Guidelines

Human resources are the most important factor of production in any organisation. The success or failure of an organisation depends largely on its human resources and therefore, there is always a need to examine the issues that affect it such as HIV and AIDS. Public Service has an obligation to address the issues posed by HIV and AIDS on work force both at organisational and individual levels. This part of the policy addresses the human resource management aspects as follows:

Recruitment and Promotion

Real or perceived HIV status shall not be used as a basis for discrimination preventing the recruitment, appointment, deployment, promotion, continued employment or pursuit of equal opportunities in the public service. However, while fulfilling the requirement that all newly appointed persons undergo a medical examination for purposes of deployment, the provisions of the relevant legislations on medical examination shall apply.

Sick Leave

Sick leave will be provided for as stipulated in the relevant service regulations. However, additional sick leave days will be considered for public servants living with HIV as part of reasonable accommodation.

Working Hours

Official working hours will continue to apply for all Public Service employees as stipulated in the relevant service regulations. However, a reasonable accommodation in the form of flexible working hours for
employees infected or affected by HIV will be applied based on voluntary confidential disclosure. The employees’ voluntary disclosure of HIV status will be kept strictly confidential.

**Guidance and Counselling Services**

The Government has recognised psychological challenges facing the public servants. In view of this, guidance and counselling services were introduced in 2006 and this was followed by the development of the Public Service Guidance and Counselling Policy (PSGCP). MCDAs will ensure that these services are provided at the workplace as stipulated in the relevant service regulations to support the prevention and management of HIV in the Public Service.

**Medical Benefits**

The Government has established a comprehensive Medical Insurance Cover to provide medical benefits for public servants, their spouses and dependant children. The normal provision of medical benefits will continue to apply to all public servants. Public Servants Living with HIV (PSLHIV) shall enjoy the benefits of comprehensive medical insurance like any other Public Servant.

**Deployment and Transfers**

The existing service regulations will continue to apply regarding deployment and transfers of public servants. However, the Government shall ensure that:

(a) As much as possible, spouses are not separated to minimise vulnerability;

(b) Where public servants are deployed in remote areas, the period served in such areas is limited to three years. Public servants in these areas will also be allowed to make visits to their families in line with the Service Regulations governing Leaves;

(c) Staff requiring access to family support or medical care are deployed appropriately; and

(d) Where fitness to work is impaired by illness, reasonable alternative working arrangements are made.
Work Performance, Reasonable Accommodation and Relief Services

The management shall take measures to reasonably accommodate public servants infected and affected with HIV. Where an employee is temporarily unable to perform their current jobs due to ill health or care giving responsibility for an immediate family member, relief services, alternative work arrangements, time off for medical appointments, flexible working hours and extended sick leaves shall be provided as may be appropriate. This is intended to allow the PSLHIV to work for as long as possible.

Housing and Accommodation

All public officers are eligible for house allowance applicable to their grades as stipulated in service regulations and in Government Circulars issued from time to time. All public servants will be eligible to benefit from the Government mortgage scheme regardless of their HIV-status.

Training and Development

The Government policy on training shall apply to all public servants. In addition, the Government will:

(a) Educate and sensitise all its employees on HIV and AIDS related issues;

(b) Monitor and evaluate human resource dynamics so that there is adequate supply of appropriate skills and competencies to meet service delivery needs;

(c) Mainstream HIV and AIDS in all training programmes curricula and undertake regular reviews to respond to the dynamics of HIV and AIDS; and

(d) Ensure HIV and AIDS-related training is integrated in institutional training plans and projections.

Occupational Safety and Health

The working environment should be safe and healthy. In order to prevent transmission of HIV at the workplace safety and health measures to prevent employees exposure to HIV. These include universal precautions, accident and hazard prevention measures, work practice controls,
personal protective equipment, environmental control measures, post exposure prophylaxis and other safety measures to minimize the risk of contracting HIV.

The Government should take measures to ensure that prevention, safety and health are provided for in accordance with relevant standards. Concrete steps shall be taken to minimise occupational HIV infection, appropriate first-aid equipment will be readily available to deal with spilt blood or any other body fluids and staff shall be trained on safety steps to be taken following an accident. Occupational health and safety services and workplace mechanisms shall address HIV and AIDS. However, the presence of a person living with HIV should not be considered a workplace hazard.

All Authorized Officers shall maintain healthy and safe working environments for public officers under their respective Ministry, State Department, County or Agency and all officers shall ensure safety to themselves and others when performing their duties.

**Retirement on Medical Grounds**

The service regulations on retirement on medical grounds shall continue to apply and where an employee is medically unfit to continue working, the Government will hasten the process of retirement for the benefit of the employee and with due regard to the relevant service regulations.

**Terminal Benefits**

The service regulations on payment of terminal benefits shall continue to apply. The Government will facilitate speedy processing of terminal benefits and both the employers and employees shall ensure the next of kin records are updated regularly.

**Testing, Confidentiality and Disclosure**

The Government rejects HIV testing as a prerequisite for recruitment, access to training and promotion. However, all public service workplaces will promote and facilitate access to voluntary confidential HIV testing for all employees. All HIV Testing and Counseling (HTC) programmes shall be in line with the HIV and AIDS Prevention Act, 2006.

HIV and AIDS is a complex and sensitive issue and disclosure of HIV status shall be on a voluntary basis. Such disclosure of HIV status shall
be handled in a discreet, private and confidential manner and in line with the prevailing legislation. However, employees shall be encouraged to be open about their HIV status and the Government shall endeavour to create a work environment in which employees will feel safe to disclose their HIV-status.

Public service workplaces shall not take responsibility for personal disclosure to other members of the public and public servants shall not draw unnecessary inferences on perceived or suspected HIV-status of colleagues.

**Stigma, Discrimination and Rights**

The Government understands that stigma and discrimination undermines employees’ welfare, safe healthy work environment and HIV prevention efforts, which depend on openness, trust and respect for basic rights. Employees living with HIV shall be protected against stigma, discrimination, victimisation or harassment.

It is an offence for any person to discriminate against another on the basis of actual, perceived or suspected HIV status. Employees shall not refuse to work or interact with fellow colleagues on basis of their actual, perceived or suspected HIV status and such refusal shall constitute to misconduct. Service regulations on disciplinary and grievance procedures shall apply equally to all employees except for where reasonable accommodation is required.

**Grievances, Concerns, and Recourse**

All authorised officers/accounting officers/C.E.Os shall establish and maintain communication channels and fora for public servants to raise grievances and concerns. Accessible mechanisms for dispute resolution shall be put in place for redress where public servants’ rights as provided for in this policy have been violated. Disciplinary action will be taken against any public servant who violates the provisions of this Policy. Public servants shall be sensitised on functions of the HIV Tribunal and encouraged to report cases of stigma and discrimination to the Tribunal.

**Interventions for Prevention of HIV and AIDS**

MCDAs’ HIV and AIDS interventions shall be aligned to the Maisha Performance Contract Guidelines and Maisha Certification System. The
proposed interventions for workplace HIV and AIDS interventions include:

(a) Adoption and implementation of this workplace policy on HIV and AIDS;

(b) Promotion of male and female condom distribution and training on use and disposal;

(c) Creation of comprehensive HIV and AIDS knowledge among public servants, their immediate family members and clients including peer education as well as establishing functional Maisha shelves in institutional resource centres at the workplace. This will include education and training on the modes of HIV transmission, the use of condoms and on the importance of confidentiality and maintaining a stigma and discrimination free workplace to support a culture of HIV prevention;

(d) Conduct a baseline survey on staff knowledge level on HIV and AIDS and implement the survey recommendations;

(e) Facilitation of public servants, their immediate family members and clients to access HIV Testing Counselling services;

(f) Sensitisation of staff and clients to reduce stigma and discrimination towards PLHIV;

(g) HIV treatment literacy and promotion of positive health and dignity at the workplace;

(h) Putting in place non-discriminatory workplace benefits such as comprehensive medical insurance/or National Hospital Insurance Fund (NHIF) cover for all public servants;

(i) Referrals for facility based HIV services such as Post Exposure Prophylaxis, Voluntary Medical Male Circumcision, Antiretroviral therapy, Prevention of Mother to Child Transmission of HIV and HIV Testing and Counselling;

(j) Linkages for public servants’ wellness and psycho-social assistance for HIV and AIDS, Gender Based Violence (GBV), post-traumatic stress disorders (PTSD), alcohol, drugs and substance abuse (ADSA), nutrition, physical exercise and other addictive behaviours including glucose, cholesterol, blood pressure and BMI checks;
(k) Putting in place non-discriminatory mechanisms on gender equality, empowerment of women and prohibition of GBV at the workplace;

(l) Utilisation of corporate mandates to influence HIV and AIDS policies and programmes; and

(m) Strengthening institutional health facilities, where available to provide comprehensive HIV services through integration of related services.

**Minimum Internal Requirements**

The implementation of the HIV and AIDS prevention interventions, by all MCDAs, is anchored on the Minimum Internal Requirements (MIR) as outlined below:

(a) Provision of public servants’ education and training on modes of transmission and measures to prevent exposure and infection including personal protective equipment and post-exposure prophylaxis where required;

(b) AIDS Control Unit Committee constituted and operational with at least 5 members and with 40% membership drawn from senior and middle level management;

(c) Establish/reconstitute and operationalize HIV and AIDS Control Unit with 40% of the membership drawn from the senior and middle levels;

(d) Prepare Annual work plans for the implementation of HIV and AIDS interventions targeting staff, their immediate family members and clients developed and submitted to NACC at the beginning of each financial year;

(e) Allocate a budget for the HIV activities targeting staff, their family members and clients;

(f) Collect and disseminate routine information on absenteeism, morbidity and mortality for purposes of Human Resource Planning; and

(g) Submit quarterly reports to NACC using the Maisha I and II manual or online reporting tools.
4.3 Implementation Framework

The following institutions and officers will play a pivotal role in the implementation of this policy:

Ministry of Public Service, Youth and Gender Affairs (MPSYGA)

The responsibility of MPSYGA, through DPSM, will be to:

(a) Facilitate the development, implementation and review of the Public Sector HIV and AIDS Workplace policy;
(b) Ensure that DPSM HIV and AIDS Secretariat is constituted and strengthened to support the implementation of this policy;
(c) Advise ACUs on Human Resource aspects required to implement this policy;
(d) Ensure HIV and AIDS workplace policy is integrated into the DPSM human resource policies quality assurance programmes; and
(e) Submit reports to NACC in line with the Public Sector Maisha Certification Guidelines.

Ministry of Labour, Social Security and Services

This Ministry will partner with NACC, through the Directorate of Occupational Safety and Health Services (DOSHS), for monitoring compliance with this policy. The DOSHS will use their comparative advantage and mandate as specified in the Occupational Safety and Health Act (2007) to execute the following roles:

(a) Inspect, audit, monitor and evaluate all workplaces and report compliance with this policy to NACC;
(b) Review annual Safety Audit Guidelines to include aspects on HIV and AIDS at work; and
(c) Mainstream HIV and AIDS into registration and inspection of new workplaces.

National AIDS Control Council (NACC)

The NACC was established under a Legal Notice No. 170 of September, 1999 to co-ordinate the multi-sectoral response to the HIV and AIDS
epidemic in Kenya. In respect to this policy, the NACC is responsible for:

(a) Effective strategic direction and policy leadership for the response;
(b) Provision of technical support and enhanced capacities for the implementation of this policy;
(c) Evaluate and certify MCDAs in line with Maisha Certification Guidelines for the public sector; and
(d) Receive annual work plans, quarterly reports from MCDAs and provide timely feedback.

HIV and AIDS Tribunal
The Tribunal’s role in the implementation of this policy shall be to:

(a) Hear and determine any matter or appeal considered to be unfair treatment based on individual’s HIV status as described in this policy; and
(b) Award the costs of any proceedings before it; and declare payments of damages in respect to any proven financial loss, including future loss, pain and suffering both emotional and psychological as a result of discrimination.

Authorised/Accounting Officers
The Authorised/Accounting Officer, in both levels of Government, will:

(a) Provide high level leadership and support for the implementation of this policy;
(b) Provide budgetary allocations and put in place structures to facilitate the implementation of this policy;
(c) Facilitate the adoption, implementation and review of this policy in their respective institutions; and
(d) Take immediate and appropriate corrective action when provisions of this policy are violated.

Line Managers/Supervisors
The management shall be responsible for and committed to responding to HIV and AIDS at the workplace. Further to this, the management shall:
(a) Support the implementation of this policy including integration of its implementation in their relevant departmental activities;

(b) Show leadership as part of the national campaign to address HIV and AIDS;

(c) Be educated and informed about HIV and AIDS and continuously support the disseminate information about HIV and AIDS to all public servants;

(d) Mainstream HIV and AIDS workplace issues in the respective organisation’s Strategic Plans and other operational documents;

(e) Allocate adequate resources for HIV and AIDS activities and programmes at the workplace; and

(f) Facilitate the development of the appropriate capacities to respond to HIV issues at the workplace.

**ACUs and Sub ACUs**

The ACUs/sub-ACUs will:

(a) Coordinate the implementation of this policy in the Institution;

(b) Ensure that this policy on HIV and AIDS is domesticated, reviewed and implemented;

(c) Monitor and evaluate the implementation of this policy; and

(d) Prepare annual work plans and quarterly reports on the implementation of this policy to the Accounting Officer for onward submission to NACC as stipulated in the Performance Contract Guidelines.

**Public Servants**

All public servants will be sensitised continuously on HIV and AIDS to protect themselves, their families and others from HIV infections and impact of HIV and AIDS. It is an obligation to all public servants to comply with this policy. In addition, they are required to:

(a) Actively participate and support all workplace HIV and AIDS activities,

(b) Know their HIV status and act responsibly;
(c) Maintain their preferred level of disclosure when HIV positive; and

(d) Consider voluntary confidential disclosure of his or her HIV status in the context of a request for a workplace reasonable accommodation; and

(e) Report to HIV Tribunal any matter considered to be unfair treatment based on ones’ HIV status as described in this policy.

The institutional framework for the implementation of this policy is illustrated below:

4.4 Monitoring and Evaluation

Monitoring of the implementation of this policy shall be performed on an annual basis using both primary and secondary data collection and record keeping tools. Each MCDA shall generate and maintain a database of information on the implementation of this policy including undertaking knowledge, attitudes, behaviour and practices baseline surveys to establish data, regular risks, vulnerabilities and impact for evidence-based programming. All surveys will be carried out in line with prevailing regulations on research methodologies and ethical considerations.

Manual or online quarterly reports shall be submitted to NACC using the
Maisha I and II Manual and/or online reporting tool. Accountability shall be ensured through Government performance contracting mechanism and the NACC Maisha Certification System.

4.5 Policy Development and Review

In view of the dynamic nature of the epidemic, this policy shall be reviewed after every five years to reflect emerging issues in the multi-sectoral response to HIV and AIDS in Kenya. The review will ensure the policy remains relevant to the needs of the users and in line with MCDAs Strategic Plans, Kenya AIDS Strategic Framework, Sector HIV Plans and County AIDS Strategic Plans.