

CUPE: HIV and AIDS Bargaining checklist

The HIV and AIDS bargaining checklist is a resource tool for local unions, bargaining committees, members and other activists to support those infected and affected by HIV and AIDS.

Unions have an important role to play in advancing the rights of people who are dealing with the health, economic and social impacts of HIV in the workplace. All workers must be safeguarded against discrimination, and treated fairly. We can protect workers' income security and employment, and require employers to face their responsibilities.

HIV and AIDS are considered chronic and episodic disabilities, and may affect a person's ability to work for periods of time. All jurisdictions in Canada prohibit discrimination on the basis of disability. While human

rights and labour codes apply to employers on a number of grounds, including disability, unions provide a critical source of protection through collective agreements.

The CUPE national policy on HIV and AIDS can also be a good conversation starter in your workplace when looking to discuss the issues, core values and positions that will frame collective agreement language and workplace policies.

See *CUPE's national policy booklet on HIV and AIDS*.

Anti-discrimination, anti-harassment, anti-violence

A clear and comprehensive anti-discrimination clause will spell out that employers cannot discriminate with respect to any terms and conditions of employment on the grounds of disability, including HIV status.

Acts of discrimination can be challenged through the grievance and arbitration processes, even if the collective agreement does not mention it. Human rights legislation is implied in all collective agreements. All workplace policies and practices must conform to human rights, labour standards, health and safety, and other laws governing the workplace, both federally and provincially.

Workers may need access to information, education, and counselling to help create a supportive work environment. Specific collective agreement clauses can help members access such programs.

For more information see *CUPE's stop harassment guide*.

Confidentiality, privacy and testing

Workers, their families and dependants must enjoy the confidentiality and protection of their privacy. Information about a worker's disabilities, including HIV status, is irrelevant to the workplace in most circumstances. Most jobs do not pose a risk of HIV transmission. Except in limited circumstances, there is no legal obligation to disclose one's status, and generally, it is unlawful for employers to request this information.

In health care settings there may be some exceptions to the general rule about disclosure. There may be a small risk of HIV transmission in certain job tasks such as performing certain medical procedures. Any requirement to disclose can only be justified if the specific job duties pose a real risk of HIV exposure to someone else. There may be special requirements about HIV disclosure set out by professional regulatory bodies in each province, and by specific provincial legislation.

People with HIV and AIDS have a right to employment without discrimination, as do all workers with disabilities. Employers cannot discriminate based on HIV status upon hire, remuneration, promotion, transfer, layoff, recall, and any other terms and conditions of employment. They have a legal obligation to adapt work and workplaces unless it would cause undue hardship.

Personal health information should not be collected, used, disclosed or retained unless there is reasonable circumstance to do so. If such circumstance arises, the employer may be entitled to limited health information; they must respect and maintain privacy and confidentiality at all times.

Employers are not legally allowed to test for HIV or ask about a worker's status except in limited circumstances, and they should not make assumptions. Unions have a responsibility to help protect members' privacy and confidentiality.

Worker health and safety

Employers are responsible for maintaining a safe and harassment-free workplace. Unions have a duty to protect against harassment, and this duty extends to all aspects of health and safety.

Collective agreement language will help strengthen the union's position in ensuring that normal disciplinary procedures will come into effect should discrimination, harassment, or mistreatment occur.

Workers must be protected from blood and bodily fluids. Good health and safety practices and procedures are necessary in all work environments as appropriate for the work performed.

Where there is risk of exposure to blood and body fluids employers should institute appropriate infection control. These practices and procedures must be accompanied by effective education and recurrent training on risk prevention, as well as proper use of protocols and personal protective equipment.

CUPE's Health and Safety fact sheet on HIV and AIDS provides further details on occupational health and safety measures.

Duty to accommodate

HIV is a chronic, recurring and episodic disability, quite often with long periods of health interrupted by periods of illness and disability. It is important to ensure the recognition of "episodic disability" in our collective agreements, and to extend our health benefits to cover these circumstances. Many illnesses are considered episodic and such a clause will benefit many workers including those who are living with HIV, cancer, lupus, multiple sclerosis, diabetes, mental and mood disabilities, and others.

Accommodation becomes essential for persons living with HIV and AIDS to continue working as long as possible. With new advances in medication and treatments, HIV positive workers continue long and productive careers. They may at times require support to protect meaningful employment.

Employers and unions share a duty to accommodate workers with disabilities. The employer must fully review the working terms and conditions for any modification that would keep the worker employed, without causing undue hardship.

Unions should negotiate collective agreement provisions that remind the employer of their obligations, while ensuring that bargaining language has no discriminatory effect. Unions will also support members through the accommodation process, and file grievances under the collective agreement if the employer fails to provide reasonable accommodation.

*For more information, see CUPE's **duty to accommodate fact sheets**.*

Medical and health benefits

Medication and therapies can be costly. Unions negotiate extended health benefits that cover the partial or full cost of prescription medication, health care services and products that are not covered publicly.

Additional provisions will need to be considered to address specific HIV therapies, including coverage for anti-retroviral treatment, and other care.

Members are further supported financially if the costs are paid directly without the need for workers to seek reimbursement. There should be no exclusions or annual maximums.

All benefits should be reviewed so that they do not discriminate against people with HIV and AIDS, or any other chronic illnesses and disabilities. Employers and insurance companies should not deny access to benefits or coverage based on HIV status.

In some cases, insurance companies provide health benefits that contain “pre-existing conditions” clauses. Members may need to pay additional charges for coverage, or require wait periods before making a health claim. In such cases, top-ups to the plans will need to be considered.

We should also negotiate language to cover all doctor’s notes and medical documents requested by the employer.

Pensions

Workplace pension plans need to include disability pensions as well as retiree health care benefits.

For surviving partners and children in case of death, bargaining pension payout language will benefit the families of our members.

Early retirement benefits and bridging can provide more viable financial choices for members who are

faced with declining health, or who need to focus on maintaining good health and quality of life as they age.

Retiree health benefits are most often found in the collective agreement, as few union members are under combined pension/benefit trusts.

Leave provisions

Negotiating short-term sick leave provisions and long-term disability (LTD) programs can support basic needs for persons with HIV and AIDS, as well as for other workers with chronic and episodic disabilities. Seniority also needs to be protected for members on sick leave or LTD.

Negotiating benefit coverage that has the employer continuing to pay their share of the premiums while an employee is on sick leave and LTD is very important.

Bereavement and compassionate leaves must be expanded to meet the unique leave requirements associated with HIV and AIDS. Improved leave benefits are important for those whose support network is a family of choice rather than a biological family. Occasions may arise when the main caregiver does not reside with the person with the medical needs. We need to negotiate contract language that enables leave in these situations, and can benefit everyone in the bargaining unit.

Unions have a responsibility to develop workplace policies and strong contract language to support members with disabilities, including HIV and AIDS. We can go a step further by facilitating opportunities for worker education and awareness to help eradicate stigma and discrimination, and create healthy and safe work environments.

Ask your servicing representative for more information and advice.

Resources

CUPE Resources – cupe.ca

- **CUPE national policy on HIV and AIDS**
cupe.ca/hiv-aids-policy
- **Bargaining Disability Rights**
cupe.ca/bargaining-disability-rights
- **What is the Duty to Accommodate?**
cupe.ca/duty-to-accommodate
- **The Duty to Accommodate: How Far does an employer have to go?**
cupe.ca/full-scope-duty-to-accommodate
- **Health and Safety fact sheet on HIV and AIDS**
cupe.ca/hiv-aids-fact-sheet
- **Stop harassment: A guide for CUPE locals**
cupe.ca/stop-harassment

Canadian AIDS Legal Network

aidslaw.ca

Activist network that addresses legal and human rights issues related to HIV. Advocating at both the policy and community levels, they defend the rights of people affected by HIV, from women, newcomers and gay men, to prisoners, people who use drugs, sex workers, and men who have sex with men.

Know Your Rights is a series of eight brochures (available in seven languages) addressing the privacy rights and disclosure obligations of people living with HIV in a variety of day-to-day contexts, including the workplace.

Canadian Working Group on HIV and Rehabilitation (CWGHR)

hivandrehab.ca

National organization that responds to the rehabilitation needs of people living with HIV and AIDS through research, education and cross-sector partnerships, working to improve the lives of people with HIV.

Labour Research Service (LRS)

lrs.org.za/index.php/10-resources/resources/69-hiv-a-aids-agreement

A South African non-profit organization working to develop strategies for labour to play a role in the effective implementation, monitoring, evaluation and improvement of the South African Government's National HIV and AIDS Strategic Plan.

The HIV & AIDS Model Agreement is a resource to build trade union capacity and awareness on HIV and AIDS workplace policies and collective agreements.