



Working it out

HIV disclosure in the workplace

by Autumn Chilcote

Our personal health information is one of the most sensitive and private matters that we live with on a daily basis. For many people living with HIV/AIDS (PWAs), guarding our HIV status may be the only thing keeping us from suffering discrimination in the workplace or even losing our jobs. There are a number of issues to consider with respect to HIV disclosure in the workplace, from individual privacy rights for PWAs, to decisions about sharing personal health information with employers and/or colleagues.

The *Personal Information Protection and Electronic Documents Act* (PIPEDA) is an important piece of federal privacy legislation that limits your employer's collection of personal information, and mandates that the collection of such information is reasonable only as part of a *bona fide* employment circumstance.

PIPEDA also has strict rules about security of storage and use of your personal information, as well as your right to access this information to review and correct any inaccuracies.

The PIPEDA legislation is specific to federal employees; as a result, it applies to individuals working in the field of

telecommunications or broadcasting, and inter-provincial or international transportation, including trucking, shipping, rail, aviation, and maritime navigation. It also applies to employees in the banking industry, nuclear energy, and anyone working in the Yukon, Nunavut, or the Territories.

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Although BC does not have a specific provincial Act related to healthcare information or disclosure, many of these issues

are covered by the *Freedom of Information and Protection of Privacy Act* (FIPPA). This provincial legislation regulates the protection of personal information—including medical and health information—for individuals working in British Columbia that are not federal employees. FIPPA allows access to information held by public bodies (such as ministries, universities, and hospitals) and determines how public bodies may collect, use, and disclose personal information.

There are various employment-related circumstances where the issue of HIV disclosure has the potential to arise in the workplace, so it is important for both employers and employees to be aware of privacy rights and responsibilities.

Pre-employment medical exam. Your employer may only ask you to complete a physical exam before your job if doing so constitutes a “*bona fide* occupational requirement.”

Completing insurance forms and medical questionnaires. If the employer has no legitimate need to see your insurance form, you may send your forms directly to the insurance company, and keep your medical information private.

Providing a doctor’s note for health-related absences. If your employer requires a doctor’s note due to an extended period of absence, the letter need only state that you were seen by the doctor and that you were ill; it is optional for the doctor to list general symptoms of your illness. For the protection of the patient’s privacy, a doctor’s note should not identify a specific illness. Similarly, a doctor’s note should never be faxed to an employer, and an employer is not permitted to request this. As well, the details of the doctor’s note must not be shared with any other member of the business or workplace except the individual that requested it.

Requesting accommodation. An employer is required to make accommodations for employees with disabilities assuming that these accommodations do not cause “undue hardship” to the employer. So if, for example, you need to request different working hours due to side effects of your medication, there is no requirement that you need to share the type of medication or your specific diagnosis with your employer. Instead, your doctor need only supply information about your working limitations and requirements in order to allow your employer to make the necessary health-related accommodations.

You may have personal relationships with work colleagues, and might consider disclosing to them within a friendship context. By disclosing your HIV status to work-related friends, you are building a network of support and actively reducing the sense of isolation that is often felt by concealing the truth. Choosing the right time and place, as well as ensuring that your privacy at work is protected, is very important. You may feel vulnerable immediately after you disclose, and it is best to be prepared to receive both positive and negative reactions.

Selectively disclosing your HIV status to your employer and/or colleagues also means that you have less control over how that information is shared. Before deciding, consider what

would happen within your work environment if your other office-mates became aware of your status. Would your position or reputation in the workplace be threatened? This is a difficult question that must be considered from the standpoint of the organizational structure, culture, and values.

Thinking positive, living positive, and acting positive may help decrease stigma and discrimination associated with HIV disclosure at work.

An alternate viewpoint in favour of HIV disclosure in the workplace is the opportunity that presents itself in educating co-workers about AIDS and living with HIV. If you feel confident that you will not experience discrimination because of your serostatus, you may take it upon yourself to engage your workplace in education by demonstrating and expressing the realities of living with HIV. Perhaps you can enlist the support of your colleagues by coordinating volunteer opportunities with groups like BCPWA Society, AIDS Vancouver, or YouthCO, or organizing a company team for the AIDS Walk for Life.

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To stay healthy, we need access to employment that is both meaningful and feels safe. It is important that we feel we can control the information about our medical history within our workplace. More information about privacy can be found at the Office of the Information and Privacy Commission for British Columbia, www.oipcbc.org or Canadian HIV/AIDS Legal Network, www.aidslaw.ca. ☺

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