To the extent that employers and providers of housing, public accommodations and services are not covered by federal law, state law will determine what constitutes unfair discrimination. North Carolina law prohibits discrimination against individuals infected with HIV in the areas of housing, public services, use of places of public accommodations, or continued employment. Currently, the North Carolina Communicable Diseases Act does not prohibit employment discrimination against job applicants infected with HIV. Although denial of employment may be based on a positive HIV test, it should be noted that informed consent is required for testing, and that an individual has the right to refuse to be tested. As noted, pre-employment HIV screening is restricted by the ADA, which supersedes any lower or conflicting state laws or standards.

Protection against the spread of HIV in the workplace has been addressed by the Occupational Safety and Health Administration (OSHA), which has issued final rules regarding occupational exposure to HIV. OSHA’s rules are intended to protect employees who are likely to come in contact with blood and body fluids at work. Under these rules, employers must identify those job-related duties that may result in an occupational exposure and develop written infection control procedures, protective occupational and engineering controls, and requirements for personal protective equipment. Additionally, OSHA’s rules contemplate that employers will provide HIV testing and counseling, along with confidential medical evaluations for all employees experiencing occupational blood and body fluid exposures. North Carolina’s Administrative Code provides guidelines regarding all exposures, including those governed by OSHA.

What Are The Rights To Public Services?

The ADA also prohibits discrimination against HIV-infected persons in the areas of public service and places of public accommodation. State and local governments and their agencies are prohibited from discriminating in the provision of services to people on the basis of their disabilities, including HIV infection. Public accommodations, whether operated by governmental or private entities, include hotels, restaurants, health care provider offices, mental health agencies, substance abuse treatment centers, hospitals, public transportation, schools, day care centers, and exercise or recreational facilities, among others.

Do Any Restrictions Apply To HIV-Infected Health Care Workers?

Yes. Health care workers who know that they are HIV infected and who perform certain invasive procedures that may result in an occupational exposure and body fluid exposures. North Carolina’s Administrative Code provides guidelines regarding all exposures, including those governed by OSHA.

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Do Any Restrictions Apply To HIV-Infected Health Care Workers?

Yes. Health care workers who know that they are HIV infected and who perform certain invasive procedures have a responsibility to take steps to avoid transmission to patients, and will be required to notify the State Health Director in writing. Such notification is to be addressed to Chief, Communicable Disease Control Section, PO Box 27687, Raleigh, NC 27611-7687. The health care worker’s infection status will be held in confidence, and may be disclosed only to the extent necessary to obtain vital information. Upon finding that a significant risk of transmission to patients exists, the State Health Director appoints an expert panel to evaluate the worker’s practices and patient environment. If the expert panel recommends restrictions as necessary to prevent transmission from the worker, the State Health Director may restrict the health care worker’s practice. If, prior to the panel’s report, the Director perceives the need for immediate practice restrictions, the Director may issue an isolation order. Patients exposed to HIV through the health care worker may be contacted to be tested.

To protect themselves and patients (regardless of HIV status), health care workers who perform invasive or other procedures which create a risk of transmission must use “universal” precautions to prevent the spread of blood borne pathogens, such as AIDS, HIV or hepatitis B, with all patients. The Centers for Disease Control and Prevention recommends the use of examination, procedure or surgical gloves as a barrier to such diseases, as well as other sterilizing procedures. Finally, health care workers should know their HIV antibody status, in addition to that of their patients.

What Estate Planning And Other Arrangements Should Be Made?

At a minimum, a health care power of attorney, a durable power of attorney, and, if desired, a living will should be executed. Preparing a standard will may be important, particularly if the person owns real property. If minor children are involved, HIV-infected individuals should also consider making custody arrangements and establishing trusts for the children in the event of death. See the This is the Law pamphlet “Making Your Will” and “Living Wills” for more information.

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This pamphlet was prepared as a public service by the Communications Committee and is not intended to be a comprehensive statement of the law. North Carolina laws change frequently and could affect the information in this pamphlet. If you have specific questions with regard to any matters contained in this pamphlet, you are encouraged to consult an attorney. If you need an attorney please contact the North Carolina Lawyer Referral Service, a nonprofit public service project of the North Carolina Bar Association, toll free: 1-800-662-7660. (Wake County residents call: 677-8574.)
What Is AIDS?

Acquired Immune Deficiency Syndrome (AIDS) is the end stage of a disease caused by the human immunodeficiency virus (HIV). Although not everyone infected with the virus will develop AIDS, and though it may take a period of time for others to show symptoms of the disease, everyone with HIV is considered to be infected with the virus to others. Once infected with HIV, the immune system is compromised and one eventually loses the ability to fight illnesses, which can ultimately lead to death. At this time, there is no cure for AIDS or vaccine for HIV.

How is HIV Transmitted?

HIV is transmitted through contact with bodily fluids carrying the virus (i.e., blood, semen, breast milk, vaginal fluids) or through medical care such as surgery. HIV can be transmitted through sexual contact, exposure to infected blood (as through sharing needles or receiving contaminated blood products), and transmission from mother to her baby. There is no medical evidence that HIV can be spread through casual contact (such as handshaking, kissing or using the same toilet). Nevertheless, the fear of spread through casual contact (such as handshaking, kissing or using the same toilet) is sometimes mandated by state health department regulations. Under those regulations, the physician of an HIV-infected patient has the duty to inform the person that has been exposed to the patient’s blood or other body fluids and to monitor the patient’s immune system for signs of progression of the disease.

What Responsibilities Are There For Those Diagnosed With AIDS Or HIV?

Sexual and needle-sharing partners must be notified. North Carolina has a crime of “obstructing justice” (N.C. Gen. Stat. § 130A-25). Future partners must be notified prior to sexual activity. Those diagnosed with AIDS or HIV must comply with the physician-provided control measures which are established by the Health Department. For example, the infected person must use condoms during sexual intercourse and cannot share injecting equipment (needles or syringes). Donated blood products, organs, tissues, plasma, platelets, semen, ovum or breast milk are prohibited. Failure to comply with any of the control measures can result in a court order from the state or local health director which requires compliance with an individual plan established to reduce the risk of transmission.

Is HIV Status Confidential?

All HIV-positive persons have a qualified right to have their health care information kept confidential under the public health confidentiality provisions of physician/patient confidentiality. In fact, North Carolina law requires strict confidentiality of medical information, except under limited circumstances (N.C. Gen. Stat § 130A-143). The information, however, may be disclosed in certain circumstances such as to the persons who need to know your medical information. In the absence of consent, disclosure is permissible in some circumstances, including (1) by a medical or dental professional who knows the identity of the patient or patient’s spouse and has not notified and counseled him or her (with the patient’s consent), the physician must report the spouse’s name to the Health Department. Division of Epidemiology as well. The spouse will then be contacted and counseled by a trained specialist. Furthermore, a physician who has reason to believe that a patient is not following control measures and poses a significant risk of transmission must notify the local health director.

What Is Informed Consent?

Informed consent generally requires health care personnel to provide the patient with information regarding the HIV test, its implications for testing and the meaning of test results (N.C. Gen. Stat. § 90-21.13). The goal is to provide enough information for the person to make an informed decision about whether or not to be tested. Although the law permits oral consent, some physicians or health care facilities may require a signed statement indicating that the person has consented to the test.