

- **If I am a spouse of an HIV+ person who has passed away, do I have a right to employment in his/her place?**

If your spouse was working in the government/public sector and the employer has a scheme for compassionate employment, you as the dependant family member can apply for a job on compassionate grounds provided you are fit to perform the job functions and qualified to work in accordance with the scheme.

- **Am I entitled to benefits even if I am HIV+?**

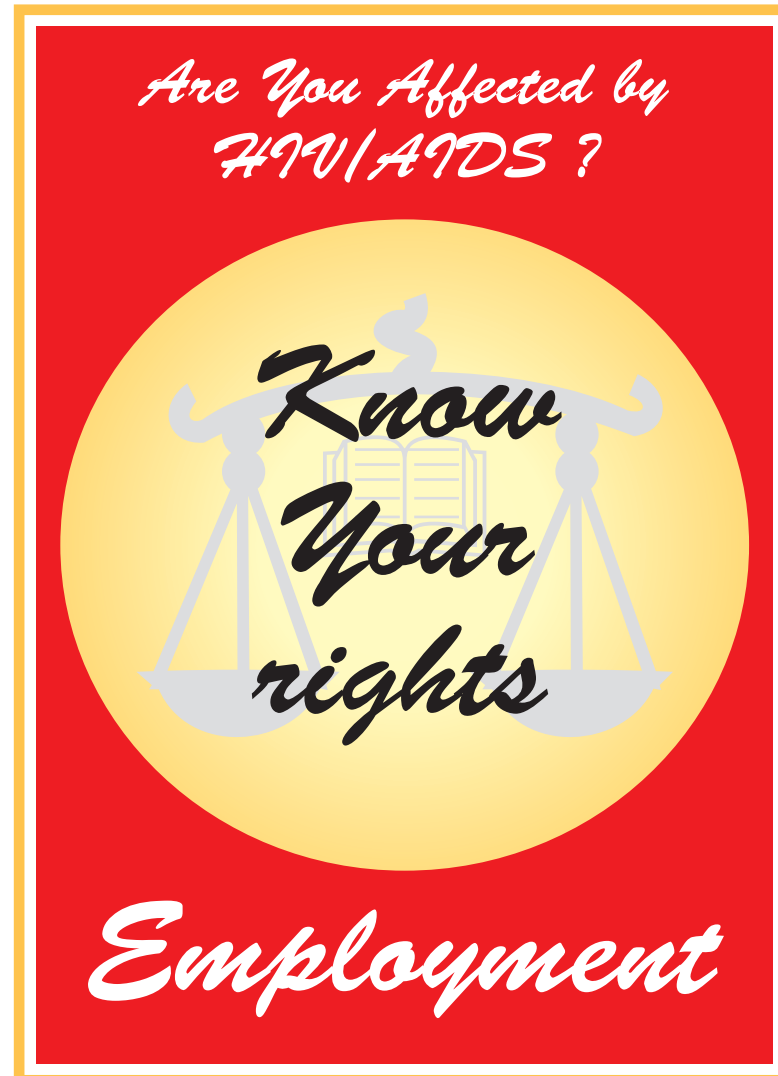
All employees, irrespective of their status, are entitled to terminal benefits. You are entitled to all employment benefits such as pensions, provident funds and housing as well as those relating to spouse, children and/or dependants. However only insured employees i.e. those covered under the Employees State Insurance Act or other insurance schemes, are entitled to medical benefits.

Lawyers Collective HIV/AIDS Unit provides free legal aid and advice to people affected by HIV/AIDS. For more information, contact :

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- Can I be denied employment or be removed from my job if I am HIV+ ?

No. If you are fit to perform your job functions, otherwise qualified and do not pose a substantial risk to your fellow workers, a government/public sector employer cannot deny you employment because you are HIV+.

This has been held by the Bombay High Court in *MX v ZY* and arises from your fundamental rights to work, to be treated equally and to earn a livelihood under the Indian Constitution.

Similarly, you cannot be removed from your job by any employer because you are HIV+, provided you are fit to continue to perform your job functions and do not pose a substantial risk to your colleagues.

- What are the remedies available to me if I am removed from my job due to my HIV+ status ?

You cannot be removed from your job merely due to your HIV+ status. However, if you are, you have different remedies under the law depending on certain variables. Your remedies could include approaching the Labour or Industrial Court for reinstatement and back wages or approaching a civil court for damages or the High Court, if you are in the government/public sector, for setting aside the termination as violative of your fundamental and/or statutory rights.

- If, due to my medical condition, I am not fit to perform my current job, can I be transferred to a different department within the same organization ?

If your medical condition does not permit you to perform your job functions, you may be offered an alternate job. But this arrangement should not pose any undue financial or administrative burden on the employer.

- Can an employer make me undergo a compulsory HIV test as part of a medical examination at the time of recruitment or during the course of my employment ?

No. The purpose of a medical examination is to decide whether a person is fit enough to do a particular job during employment. A medical examination tests a person's functional abilities by examining aspects of her/his health that are relevant to the job s/he performs e.g. tests for the heart, eyesight, breathing etc. An HIV test does not indicate the capacity of the individual to perform her/his job functions.

Government testing policy states that a compulsory HIV test should not be imposed as a pre-condition of employment or for providing health care facilities during employment or as an assessment of fitness to work.

An HIV test can be a voluntary part of a medical examination and should only take place with the specific informed consent of the employee.

However, the above may not apply to a private employer.

- Do I need to inform my HIV+ status to my employer ?

No. You are not obliged to inform your employer about your HIV+ status unless required by a statutory law because your status is not relevant for the determination of your fitness or capacity to perform your job functions.

- Can a doctor inform my employer of my HIV status ?

The doctor has an obligation to maintain the confidentiality of her/his patient's medical status. However, the doctor may disclose the status if the employee agrees, either expressly or impliedly, to waive her/his right to confidentiality.