



1988

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## Recommended Citation

Sevel, Adam Jason (1988) "Acquired Immune Deficiency Syndrome and Employment Discrimination: A Workplace Dilemma," *University of Baltimore Law Forum*: Vol. 18 : No. 2 , Article 4.  
Available at: <http://scholarworks.law.ubalt.edu/lf/vol18/iss2/4>

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# Acquired Immune Deficiency Syndrome and Employment Discrimination: A Workplace Dilemma

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by Adam Jason Sevel

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## Introduction

Acquired Immune Deficiency Syndrome (AIDS) is presently one of the most publicized and controversial topics in the United States, its consequences appearing regularly in newspapers and on television. The controversy surrounding AIDS is due in part to the nature of the disease itself and in part to unfounded fears and misconceptions about the disease by the general populous.

Touching almost all aspects of life, AIDS has recently become a very sensitive employment issue, presenting the employer with a variety of problems. These problems in the workplace take many forms. Some employers may refuse to hire an individual who they believe is a member of an AIDS risk group or is infected with the disease. Other employers might suspend, discharge or place that individual in an isolated setting upon the diagnosis that the employee is infected.

The employer must try to manage his business and provide a safe workplace, while at the same time protect the rights of an employee with AIDS by not discriminating against him or her. Discrimination in the workplace is heavily regulated by federal, state and local governments. Thus, the employer, while managing his business must be careful not to make any

adverse employment decisions affecting individuals with AIDS that may be actionable under the applicable laws protecting the employee.

## Background

In June of 1981, Acquired Immune Deficiency Syndrome first appeared in five men in Los Angeles, California. The cause of AIDS is now known to be a retrovirus known as Human Immunodeficiency Virus (HIV), which was first isolated by scientists at the National Cancer Institute in 1984.<sup>1</sup> This virus had previously been called different names including Human T-lymphotrophic Virus, Type III (HTLV-III), Lymphadenopathy Associated Virus (LAV) or AIDS-Related Retrovirus (ARV).<sup>2</sup> The virus infects white blood cells, T-lymphocytes, and inhibits the body's natural ability to resist disease.

Existing tests do not confirm the presence of the virus, but merely indicate the presence of antibodies to the HIV. The initial blood test to detect HIV is usually the Enzyme Linked Immunoabsorbant Assay (ELISA), the method first used to test donated blood in 1985. ELISA is a simple and rapid test that measures antibodies to HIV proteins. Since ELISA is a highly sensitive test and yields a small number of false posi-

tive results, it is usually repeated if the first test yields a positive result.<sup>3</sup> If a positive result is obtained a second time a more specific test, the Western Blot, is performed. Western Blot is a more expensive test which uses radioactive identified proteins to identify and measure most of the HIV antibodies in a blood sample. If persons test positive on the Western Blot it is assumed they have HIV antibodies.

HIV is not transmitted by social or casual contact. It is primarily transmitted through two body fluids: blood and semen.<sup>4</sup> For a person to become HIV infected he must be exposed to contaminated blood through injection or infusion or exposed to the virus through sexual contact.<sup>5</sup>

HIV infection results in a wide range of conditions. The lowest level is asymptomatic HIV infection where there are no identifiable symptoms. An individual may remain in this state for months, years or indefinitely.

The intermediate level of infection, characterized by the emergence of clinical symptoms, is AIDS Related Complex (ARC). Symptoms can include tiredness, fever, loss of appetite, weight loss, diarrhea, night sweats and swollen glands.<sup>6</sup> For an individual to be classified as ARC he must have two or more of the identifiable symptoms and two or more related labor-

atory findings.<sup>7</sup> Most people who are diagnosed as having ARC maintain this intermediate status without progressing to the final stage of infection.

The final stage of HIV infection is AIDS. This stage of infection is presently incurable and inevitably fatal. However, not everyone who is exposed to HIV will develop AIDS. Studies show that only about thirty percent of persons infected with HIV will develop AIDS within five years.<sup>8</sup> Once a person reaches this stage the immune system deteriorates and certain cancers or opportunistic infections may develop.

The two most common causes of death for AIDS patients are *Pneumocystis carinii* pneumonia (PCP) and Kaposi's sarcoma (KS). PCP is the most common opportunistic infection, having been diagnosed in over sixty-one percent of AIDS patients.<sup>9</sup> It is caused by a protozoa commonly present in the environment, which cannot be destroyed by the body's weakened immune system. KS is a form of cancer that has been diagnosed in about thirteen percent of AIDS patients.<sup>10</sup> It is characterized by purple spots appearing on the skin caused by tumors located in the walls of blood vessels. If the tumors involve any of the major organs then death usually occurs.

As of August 31, 1987, ninety-seven percent of all AIDS cases nationally fell within the following groups: Sixty-six percent gay or bisexual men without history of IV drug use; sixteen percent heterosexual drug users; eight percent gay or bisexual men with history of IV drug use; four percent heterosexually transmitted; two percent recipients of contaminated blood or blood products; and one percent hemophiliacs.<sup>11</sup> The distribution of AIDS cases in Maryland differs slightly from the national distribution.<sup>12</sup>

Throughout the United States 40,795 cases of AIDS and approximately 410,000 ARC cases have been reported since 1981. It is also estimated that 1.5 million people are presently infected with HIV.<sup>13</sup> In Maryland, 650 AIDS cases have been reported and it is estimated that this figure could increase to 3,700 over the next four years.<sup>14</sup> While in Baltimore City alone, there were 86 cases of AIDS reported between January 1, 1987 and September 30, 1987.<sup>15</sup>

#### Section 504 of the Rehabilitation Act

There are many federal and state laws that already forbid discrimination against handicapped individuals. However, questions remain as to whether these laws apply to persons with the AIDS, ARC and HIV infections.

On March 3, 1987 the Supreme Court decided *School Board of Nassau County, Florida v. Arline*,<sup>16</sup> the only case to expressly address the issue of whether a communicable disease is to be included within the definition of handicap under the Rehabilitation Act.

From 1966 until 1979, Gene H. Arline taught elementary school in Nassau County, Florida. In 1957 Arline was hospitalized for tuberculosis. Her disease was in remission until 1977 when a culture indicated that it was again active. After her second relapse in the spring of 1978 and third relapse in November of 1978, Arline was suspended for the remainder of the school year with pay. The school board decided to discharge Arline after her third relapse "not because she had done anything wrong," but because of the "continued reoccurrence [sic] of tuberculosis."<sup>17</sup>

The district court held that Arline suffered from a handicap, but she was not a handicapped person within the meaning of the Rehabilitation Act. The court went on to explain that it could not "conceive that Congress intended contagious diseases to be included within the definition of a handicapped person."<sup>18</sup>

However, the Court of Appeals for the Eleventh Circuit reversed, finding that section 504 covers persons with contagious diseases and that Arline's condition would be covered by the Act. The Supreme Court in its opinion affirmed the decision of the court of appeals.

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Section 504 of the Rehabilitation Act states: "No otherwise qualified handicapped individual in the United States, as defined in section 706(7) of this title, shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. . . ." <sup>19</sup>

#### Handicapped Individuals

The threshold element which must be satisfied under the Rehabilitation Act is that any individual claiming discriminatory treatment must be handicapped as defined by the Act.

In 1974, Congress amended the definition of handicapped individual to preclude discrimination against a person who has a history of, or is falsely perceived as being handicapped, but who may at present have no actual incapacity at all. The definition of a handicapped individual as amended is "any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment."<sup>20</sup>

This definition reflects Congress' concern in protecting individuals from discrimination due to prejudice, "archaic attitudes and laws" and "from the fact that the American people are simply unfamiliar with and insensitive to the difficulties confront[ing] individuals with handicaps."<sup>21</sup>

Further definitions of the relevant terms of section 504 are found in regulations promulgated by the Department of Health and Human Services. Physical impairment is "any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genitourinary; hemic and lymphatic; skin; and endocrine. . . ." <sup>22</sup>

"Major life activities" are defined as "functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working."<sup>23</sup> "Has a record of such an impairment" means "has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activity."<sup>24</sup>

Fear and misapprehension on the part of the public about disease can sometimes be just as handicapping as the physical limitations that are caused by the actual disease or impairment. Perhaps the most misplaced fear is that of contagiousness. Society in the past has discriminated against people with noninfectious diseases, such as cancer, based on the misplaced fear that they are contagious. "Allowing discrimination based on the contagious effects of a physical impairment would be inconsistent with the basic purpose of [section] 504, which is to ensure that handicapped individuals are not denied jobs or other benefits because of the prejudiced attitudes or the ignorance of others."<sup>25</sup>

The school board argued that since Arline was discharged based on her contagiousness and not on diminished physical capabilities, she was not handicapped under the Act. The Court did not agree stating that:

[I]n defining a handicapped individual under [section] 504, the contagious effects of a disease can be meaningfully distinguished from the disease's physical effects on a claimant in a case such as this. Arline's contagiousness and her physical impairment each resulted from the same underlying condition, tuberculosis. It would be unfair to allow an employer to seize upon the distinction between the effects of a disease on a patient and use that distinction to justify discriminatory treatment.<sup>26</sup>

Thus, if an individual is contagious and has an existing impairment or a record of an impairment then he is within the definition of handicapped under the Act.

The United States argued that it is possible to be a carrier of a disease and capable of spreading it, such as AIDS, without suffering from any symptoms or having a physical impairment. It concluded that discrimination on the basis of contagiousness is not discrimination on the basis of handicap. However, in *Arline*, the tuberculosis led to the physical impairment and the contagiousness. The Supreme Court indicated that the issue of whether "a carrier of a contagious disease such as AIDS could be considered to have a physical impairment, or whether such a person could be considered, solely on the basis of contagiousness, a handicapped person as defined by the Act,"<sup>27</sup> would not be considered since this situation did not exist in *Arline*.

Thus, *Arline*, does not answer the question of whether an individual will be considered impaired if he tests positive for HIV infection, thus being contagious, but has no record of impairment or existing impairment. Future litigation will be required to determine whether being contagious, without more, would constitute an impairment. However, it is clear from *Arline* that if an individual is HIV infected and is suffering from the effects of infection he is covered under the Act and cannot be discriminated against.

#### Limitations of *Arline*

*Arline* is limited in scope since it extends protection only to persons with contagious diseases and only to organizations receiving federal funds. This means that there are some major limitations to the

protections afforded by *Arline*. First, it covers private organizations or entities only if they receive federal funds. Second, it covers only the individual programs or activities that are receiving federal funds, and may not cover an entire institution. Third, it might not apply to asymptomatic carriers of the AIDS virus who are discriminated against solely because of their perceived contagiousness.<sup>28</sup>

#### State Anti-discrimination Laws

Presently, all fifty states and the District of Columbia have statutes generally prohibiting discrimination against the handicapped, but the amount of coverage varies from state to state. Additionally, most states have physical handicap laws which protect private sector employees from discrimination in employment situations.<sup>29</sup>

Maryland's employment discrimination policy is based on the State's "police power for the protection of the public safety, public health and general welfare, for the maintenance of business and good government and for the promotion of the State's trade, commerce and manufacturers to assure all persons equal opportunity in receiving employment . . . regardless of . . . physical or mental handicap."<sup>30</sup> Under Maryland law it is:

an unlawful employment practice for an employer: (1) To fail or refuse to hire or discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . physical or mental handicap unrelated in nature and extent so as to reasonably preclude the performance of the employment . . .<sup>31</sup>

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*"if an individual is contagious and . . . impair[ed] . . . then he is . . . handicapped . . ."*

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The code further defines physical or mental handicap to be "any physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect or illness . . . and any mental

impairment or deficiency . . ."<sup>32</sup> Since the suppression of the body's immune system by HIV infection is a physical disability or infirmity caused by an illness, individuals with AIDS or HIV infection would be covered under the statute.

The Maryland Commission on Human Relations has taken the position that AIDS is covered under its mandate on physical handicap. The Governor's Task Force on AIDS (Task Force) has endorsed the Commission's position that these conditions should be treated as a handicap for discrimination purposes.

Any action to be taken on the part of the employer should be decided on a case by case basis. Furthermore, employer decisions should be based on guidelines set down by the State, the Task Force or other professional organizations.

The Task Force has taken the position that AIDS, ARC, or positive HIV antibody tests are not "sufficient grounds for denying employment or terminating employment unless there is evidence of another infection, illness or complication of HIV infection for which such restrictions would be warranted,"<sup>33</sup> and condemns discrimination based on AIDS, ARC or HIV infection.

Additionally, the Task Force does not recommend AIDS antibody tests to be used routinely as a condition of employment.<sup>34</sup> At present only a minority of states including California,<sup>35</sup> Florida,<sup>36</sup> Massachusetts,<sup>37</sup> Wisconsin<sup>38</sup> and the District of Columbia have passed legislation which bans the use of HIV test results as a condition of employment.<sup>39</sup>

Some local jurisdictions, such as Los Angeles<sup>40</sup> and San Francisco,<sup>41</sup> California and Austin, Texas<sup>42</sup> have passed anti-discrimination laws which pertain specifically to AIDS.<sup>43</sup> Maryland, however, has not passed any specific legislation dealing with AIDS discrimination.

Even though specific AIDS discrimination laws do not exist in most states, numerous state human rights commissions, including Maryland's, are beginning to broadly interpret state laws to apply to individuals with AIDS, ARC and HIV infection. Thirty-three states and the District of Columbia have declared that they will accept AIDS-related discrimination complaints under their existing handicap laws.<sup>44</sup> Presently, twenty-four states have indicated that they will interpret and extend their existing state handicap discrimination laws to individuals with AIDS.<sup>45</sup> Additionally, ten states have reported that they will extend their laws to cover individuals with ARC and individuals with HIV infection.<sup>46</sup>

### Otherwise Qualified Individuals

Even if a person meets the definition of handicapped individual, he is not necessarily entitled to relief. Under the Rehabilitation Act and most state anti-discrimination laws an individual claiming discriminatory treatment must be both handicapped and otherwise qualified.

To determine if a person is otherwise qualified an inquiry as to the qualification of a specific individual has to take place and there must be appropriate findings of fact. This inquiry is essential to ensure that handicapped individuals are protected from discrimination based on misplaced fear, prejudice or stereotypes, "while giving appropriate weight to such legitimate concerns of grantees as avoiding exposing others to significant health and safety risks."<sup>47</sup>

When deciding whether an individual with a contagious disease is otherwise qualified for employment the findings of fact should be based on:

reasonable medical judgments given the state of the medical knowledge, about (a) the nature of the risk (how the disease is transmitted), (b) the duration of the risk (how long is the carrier infectious), (c) the severity of the risk, (what is the potential harm to third parties) and (d) the probabilities the disease will be transmitted and will cause varying degrees of harm.<sup>48</sup>

In employment, a person would be otherwise qualified if they can perform the essential functions of the job. If the individual is unable to carry out the essential functions of the job "the court must also consider whether any reasonable accommodations by the employer would enable the handicapped person to perform those functions."<sup>49</sup>

An employer has an obligation to handicapped employees to make reasonable accommodation by trying to remove the impediment imposed by the handicap. Some forms of accommodation include leaves of absence, lighter work or changes in the individual's work schedule. If an employee is not qualified for the job he is doing, the employer does not have to find the employee another job, but he "cannot deny an employee alternative employment opportunities reasonably available under the employer's existing policies."<sup>50</sup>

If there is a significant risk that an infectious disease could be communicated in the workplace, such as a communicable opportunistic infection that accompanies AIDS, and reasonable accommodation does not eliminate that risk, the individual will not be otherwise qualified. Addi-

tionally, if "reasonable accommodation does not overcome the effects of a person's handicap, or where reasonable accommodation cause undue hardship to the employer, failure to hire or promote the handicapped person will not be considered discrimination."<sup>51</sup>

Under the same reasoning, the Supreme Court's decision would prohibit discrimination against individuals because of the disabling physical aspects of HIV infection or the perception that an infected individual is physically impaired. The Court's decision "could also be used to extend the concept of making 'reasonable accommodations' for 'otherwise qualified handicapped individuals' to persons with AIDS, ARC or diagnosed HIV infection."<sup>52</sup> Thus, as long as the employee poses no real risk to other workers, the employer falling within the Act would have to keep an individual with AIDS, ARC, HIV infection or one

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*"individual claiming discriminatory treatment must be both handicapped and otherwise qualified."*

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perceived as having the disease working as long as possible. However, if an individual with a contagious disease, such as AIDS or ARC, were incapable of working for medical reasons, the employer would be allowed to dismiss the individual. Thus, it seems that the main protection afforded an individual is not to be dismissed because of prejudice, stereotype or unfounded fear.<sup>53</sup>

### Employer Defenses

Many employers might attempt to claim as a defense to their firing or discriminatory treatment of an individual with HIV infection or AIDS that their action falls within certain circumstances which are

not covered by the federal or state laws prohibiting discrimination.

The first defense that an employer might assert is that the employee is unable to perform the job he is assigned. Both federal and state anti-discrimination laws charge the employer with the positive responsibility of making reasonable accommodation for the employee. This accommodation of the employee will differ from case to case depending on the degree of impairment. If an employee is physically incapable of performing any job function, the employer might have no way of accommodating the individual. While if the individual is only HIV infected, there is no reason why the individual cannot be accommodated, and therefore should not be dismissed.<sup>54</sup>

The second defense that is raised in justifying dismissal is fear of contagion. Since HIV is not spread by casual transmission, the Center for Disease Control and numerous public health officials have taken the position that employees with HIV infection or AIDS present no danger of contagion to fellow employees in the workplace.<sup>55</sup> The only time when an employer could rightfully use the defense of fear of contagion is if the employee has contracted an easily transmissible opportunistic infection. In the absence of an employee having a contagious opportunistic infection the employer will not be allowed to dismiss the employee.

The third defense, future risk, covers situations where the employment could aggravate the severity of the individual's handicap. Thus, to be a viable defense, the employee's condition must make employment in that position hazardous to his health. If the employee is physically able to work and there is no showing that the requirements of the employment aggravate the disease, the defense would not prevail.

The fourth defense concerns the cost required to train an employee who is being hired or moved to a different position. The employer will usually argue that it is unreasonable to require it to spend time and money in training an individual since the individual has a potentially fatal disease. This is not a valid defense because once diagnosed as HIV infected only a small proportion of individuals actually develop AIDS. Additionally, it is possible for an individual to remain HIV infected but asymptomatic indefinitely, thus there is no way to determine the individual's future productivity. Hence, if an individual is capable of accomplishing the job, he must be hired even if there is a chance that at some future date he will not be able to carry out the essential functions of the job.

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## AIDS

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The last defense used by employers is that the employee will disrupt the workplace. In many instances the employer will want to treat an infected individual differently because co-workers refuse to work with him or customers refuse to patronize that establishment. This is similar to the contagion defense in that the co-workers or customers action is based on the same fear. This defense will fail for the same reason as the contagion defense, that the disease is not transmitted by casual contact, so the employee cannot be fired.

### Conclusion

It is clear that AIDS or HIV infection is classified as a protected handicap under federal, state and local anti-discrimination laws. Being so classified, an employee cannot be dismissed unless his ability to perform his assigned job is impaired to such a degree that reasonable accommodation on the part of the employer will not overcome the impediment imposed by the handicap.

Additionally, the employer should not let his judgment be influenced by other employees' fear of contagion. By taking the time to educate employees the employer can produce an environment which is reasonably free of fear and thus avoid pressure to terminate or discriminate against an infected individual. The employer should initially educate its management about the disease and virus transmission, so that management will be qualified to discuss any problems with employees. Such concern by the employer will show the work force that the employer is trying to protect all of his employees from potential health hazards. In addition to management action, the employer should arrange for informational lectures, brochures and films from AIDS organizations and health agencies to be available, and supply as much information about the disease as possible through a company newsletter. Thus, through education the employer can assure the work force that their health and rights are being protected, while avoiding liability by not taking any action that would violate the applicable anti-discrimination laws.

### NOTES

- <sup>1</sup> Estreicher, *Introduction: History of AIDS and Communicable Diseases in the Workplace*, in *Communicable Diseases in the Workplace* 28 (1986).
- <sup>2</sup> U.S. Dept. of Health & Human Services, The Public Health Service, *Facts About AIDS* (Spring 1986).

- <sup>3</sup> Report of the Governor's Task Force on Acquired Immune Deficiency Syndrome, *AIDS and Maryland, Policy Guidelines and Recommendations* 2 (1986).
- <sup>4</sup> *A Profile of the AIDS Infection and How it Spreads*, The Evening Sun, Sept. 21, 1987, at B-3, col. 1.
- <sup>5</sup> U.S. Dept. of Health & Human Services, The Public Health Service, 1 *AIDS A Public Health Challenge* I-3 (1987).
- <sup>6</sup> U.S. Dept. of Health & Human Services, The Public Health Service, *Facts About AIDS* (Spring 1986).
- <sup>7</sup> U.S. Dept. of Health & Human Services, The Public Health Service, 1 *AIDS A Public Health Challenge* I-2 (1987).
- <sup>8</sup> U.S. Dept. of Health & Human Services, The Public Health Service, *Facts About AIDS* (Spring 1986).
- <sup>9</sup> Report of the Governor's Task Force on Acquired Immune Deficiency Syndrome, *AIDS and Maryland, Policy Guidelines and Recommendations* B-1 (1986).
- <sup>10</sup> *Id.* at B-2.
- <sup>11</sup> U.S. Dept. of Health & Human Services, The Public Health Service, 1 *AIDS A Public Health Challenge* I-4 (1987).
- <sup>12</sup> Sixty-six percent gay or bisexual men without history of IV drug use; thirteen percent heterosexual drug users; four percent gay or bisexual men with history of IV drug use; five percent heterosexually transmitted, six percent recipients of contaminated blood or blood products; and, one percent hemophiliacs. Associate Directorate, Disease Control and Epidemiology, DHMH, *Maryland AIDS Update*, Oct. 31, 1986.
- <sup>13</sup> U.S. Dept. of Health & Human Services, The Public Health Service, 1 *AIDS A Public Health Challenge* I-4 (1987).
- <sup>14</sup> *Chairman of Advisory Panel Disagrees with Schaefer on AIDS Testing*, The Sun, Sept. 2, 1987, at D1, col. 2.
- <sup>15</sup> Congressman Ben Cardin Reports From Washington, Nov. 1987 at 4.
- <sup>16</sup> 107 S. Ct. 1123 (1987).
- <sup>17</sup> *Id.* at 1125.
- <sup>18</sup> *Id.*
- <sup>19</sup> 29 U.S.C. § 794 (1985).
- <sup>20</sup> 29 U.S.C. § 706(7)(B) (1985).
- <sup>21</sup> S. Rep. No. 1297, 93rd Cong., 2nd Sess., reprinted in 1974 U.S. Code Cong. & Admin. News 6400.
- <sup>22</sup> 45 C.F.R. § 84.3(j)(2)(i) (1985).
- <sup>23</sup> 45 C.F.R. § 84.3(j)(2)(ii) (1985).
- <sup>24</sup> 45 C.F.R. § 84.3(j)(2)(iii) (1985).
- <sup>25</sup> 107 S. Ct. 1123, 1129 (1987).
- <sup>26</sup> *Id.* at 1128.
- <sup>27</sup> *Id.* at 1128 n. 7.
- <sup>28</sup> U.S. Dept. of Health & Human Services, The Public Health Service, 1 *AIDS A Public Health Challenge* 5-5 (1987).
- <sup>29</sup> Arizona, California, Connecticut, Florida, George, Hawaii, Idaho, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, and District of Columbia. *Id.* at 5-7.
- <sup>30</sup> Md. Ann. Code art. 49B, § 14 (1986).
- <sup>31</sup> Md. Ann. Code art. 49B, § 16 (1986).
- <sup>32</sup> Md. Ann. Code art. 49B, § 16 (g) (1986).
- <sup>33</sup> Report of the Governor's Task Force on Acquired Immune Deficiency Syndrome, *AIDS and Maryland, Policy Guidelines and Recommendations* 28 (1986).
- <sup>34</sup> *Id.*
- <sup>35</sup> Cal. Health & Safety Code § 199.20 (West 1987).
- <sup>36</sup> Fla. Stat. Ann. § 381.606 (West 1985).
- <sup>37</sup> Mass. Gen. Laws Ann. ch. 241, § 70F (West 1986).
- <sup>38</sup> Wis. Stat. § 103.15 (1985).
- <sup>39</sup> U.S. Department of Health & Human Services, The Public Health Service, 1 *AIDS A Public Health Challenge* 5-27 (1987).
- <sup>40</sup> Los Angeles, California, Municipal Code ch. III, art. 5.8, § 45.82 (1985).
- <sup>41</sup> San Francisco, California, Municipal Code ch. VIII, art. 38, § 3803 (1985).
- <sup>42</sup> Austin, Texas, Ordinance art. VI, § 7-4-122 (1986).
- <sup>43</sup> U.S. Dept. of Health & Human Services, The Public Health Service, 1 *AIDS A Public Health Challenge* 5-6 (1987).
- <sup>44</sup> *Survey on State's Approach to AIDS Bias*, 123 L.L.R. 96 (Sept. 29, 1986).
- <sup>45</sup> California, Colorado, Connecticut, Florida, Illinois, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Washington, and District of Columbia. U.S. Dept. of Health & Human Services, The Public Health Service, 1 *AIDS A Public Health Challenge* 5-7 (1987).
- <sup>46</sup> Illinois, Maryland, Michigan, Minnesota, New York, Oregon, Pennsylvania, Texas, Washington, and District of Columbia. *Id.*
- <sup>47</sup> 107 S. Ct. 1123, 1131.
- <sup>48</sup> *Id.* (quoting Brief for American Medical Association as *amicus curiae* at 19).
- <sup>49</sup> *Id.* at 1131 n. 17.
- <sup>50</sup> *Id.* at 1131 n. 19.
- <sup>51</sup> *Id.* at 1131 n. 17.
- <sup>52</sup> U.S. Dept. of Health & Human Services, The Public Health Service, 1 *AIDS A Public Health Challenge* 5-4 (1987).
- <sup>53</sup> *Id.*
- <sup>54</sup> *Id.* at 5-28.
- <sup>55</sup> Leonard, *Discrimination*, in *Communicable Diseases in the Workplace* 251 (1986).

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