

**MTAS was asked what employee and employer notification responsibilities were in respect to an employee suspected of having AIDS.**

MTAS Answer:

In general, employees are not required to disclose their medical conditions to their employer, nor should the employer inquire about an employee's suspected medical condition.

The only exception to this would be if a health condition could pose a direct risk to others. It is rare that HIV would be a legitimate and direct threat to safety in the workplace.

High-risk jobs are those likely to involve contact with blood, semen, vaginal fluids, or body fluids and waste that contain visible blood. People in such jobs should wash hands with soap and water, wear latex gloves, sterilize all equipment that may penetrate the skin or have contact with blood, cover open sores or broken skin, adhere to Occupational Safety and Health Administration (OSHA) standards, and follow all other employee safety rules.

**What happens if the information is disclosed?**

If that information is disclosed, it must be protected and kept confidential.

**Discrimination against persons with HIV/AIDS is prohibited by federal law.**

Under the Americans with Disabilities Act (ADA), HIV/AIDS qualifies as a "disability," even if asymptomatic, and employers are prohibited from discriminating on that basis:

- The law applies even if a person is only perceived to be HIV-positive or to have developed AIDS
- The law covers all public employers and those private employers with 15 or more employees, and prohibits discrimination in all employment practices such as hiring, firing, application procedures, job assignment, training, promotions, wages and benefits.
- A person is protected by the ADA if they meet legitimate employment requirements and can perform essential functions of the position with or without reasonable accommodation.
- A reasonable accommodation is any modification which would not be significantly difficult or expensive in relation to the size of the employer. A potential loss of

customers or co-workers because an employee has HIV/AIDS does not constitute an undue hardship.

- Although an employer can always consider health and safety when making employment decisions, HIV transmission will very rarely be considered a legitimate direct threat to safety.
- Although an employer may inquire about health conditions that interfere with job performance, the employer is prohibited from inquiring about HIV status. If medical information/HIV status is disclosed (e.g., to request an accommodation), the ADA requires that information to be kept confidential.