

SAMPLER OF JOURNALISTIC REPORTS
o n
AIDS in the American Workplace

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Employers and AIDS: Be careful

Seminar finds bosses
can do little — legally

By Louis Trager
OF THE EXAMINER STAFF

LOS ANGELES — Most things an employer does in response to AIDS in the workplace are illegal, gay rights and management lawyers agree.

Legal and illegal employment practices were among the few points on which the 50 participants agreed at yesterday's seminar on the legal issues created by AIDS.

Most were lawyers, some were health professionals. They paid \$225 a head to attend the seminar, sponsored by the company that publishes the National Law Journal.

A dozen were from Northern California, and others came from as far as New York and Hawaii. Discussion topics ranged from libel to eviction.

But because few AIDS cases have been decided by appellate courts, few legal precedents exist, and the answers to many questions raised by the disease are few, too.

A Los Angeles lawyer, Anthony Oliver, represents corporations on employment issues. He said he has been "inundated with calls" on AIDS questions. Almost invariably, Oliver said, his answer is "no."

No, he said, California employers cannot:

- Ask job applicants about AIDS — just whether they have any condition preventing them from doing the required work.
- Require antibody tests of applicants, selectively or across the board.
- Automatically deny work to AIDS victims because they have a short life expectancy.

- Deny work on the ground that victims threaten the health of co-workers or customers, or scare them.

- Fire a worker in the expectation that AIDS will prevent adequate work in the future.

Oliver said that about all bosses can do along these lines, legally, is fire workers so debilitated by AIDS they can't perform their duties.

He expects his view to be bolstered by the state Fair Employment and Housing Commission. It's considering a claim against Raytheon Corp. by a worker who says AIDS is a handicap for purposes of a state anti-discrimination law.

Thomas Stoddard, a lawyer for the gay-rights Lambda Legal Defense and Education Fund. Stoddard gave some examples of legal challenges to employer actions taken in response to AIDS cases or fear of the disease. Among them:

Florida county employee with AIDS has won the first round of a challenge to his firing.

A restaurant manager quietly decided not to hire homosexual men because they are in a high-risk group for AIDS. There is precedent from New York that this violates a law against handicap discrimination, Stoddard said, but proving why certain people aren't hired is difficult.

Running through the discussion was a basic conflict between the rights of AIDS victims or those suspected of being at risk, and the power of institutions and individuals to halt the spread of the disease and fear of it.

8/8/86

San Francisco Chronicle

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EDITORIALS

More Protection For AIDS Victims

IF MORE EVIDENCE were required to prove the need for greater public education on AIDS and for anti-discrimination legislation to protect AIDS patients, recent events have surely provided more than enough.

■ An AIDS patient was ordered off an Atlanta-to-San Francisco flight because airline personnel thought he couldn't care for himself and needed an attendant. The patient and his medical advisors disagree and the state health director now says he plans to mount an education campaign to inform all airlines operating in California on "myths and facts" about AIDS.

■ An administrative law judge ruled that AIDS patients are not protected under present California law from discrimination in housing or employment, although Governor Deukmejian cited this protection in vetoing a bill that would have prohibited AIDS discrimination.

■ The U.S. Health and Human Services Department said it has no choice but to comply with a ruling of the Justice Department that AIDS victims are not protected by federal handicap anti-discrimination laws. Under that ruling, persons working on federal jobs or for companies with federal contracts can be fired from their jobs just because their supervisors believe they have AIDS and fear they may be contagious, even though health researchers say the disease cannot be spread by casual contact.

AIDS IS A TERRIBLE disease, but it must be dealt with like other terrible diseases. Decisions should be based on medical and scientific knowledge, not on exaggerated fears of the disease or prejudice toward its victims. At the same time, however, medical decisions must not be influenced by political considerations.

The recent events show clearly that a better job must be done of educating the public about AIDS, particularly about its evidently very limited and very specific means of transmission. They also show that protection of AIDS patients from baseless discrimination must be written into state law. The legislation vetoed by Governor Deukmejian should be passed by the Legislature again and this time he should sign it.

Deukmejian

Herndon Tribune
July 1, 86

A U.S. Ruling on AIDS Lets Baseless Fear Discriminate

By Charles Krauthammer

WASHINGTON — Two years after the accident at the Unit 2 nuclear reactor at Three Mile Island, a suit was filed to prevent the restart of the other, undamaged reactor. The argument was not that this reactor was a health hazard. The Nuclear Regulatory Commission had produced 22,000 pages of hearing transcripts to determine that it was not.

The argument instead was that people believed it was dangerous. Thus if the reactor were reopened it might produce "intense anxiety" ("tension and fear, ac-

Of course, in the workplace there are no contagious effects. You have about as much chance of catching AIDS in the workplace as you do of catching cancer or multiple sclerosis. So: Your employee has AIDS or cancer or multiple sclerosis. The employee is harmless. But you are afraid of him anyway. Can you fire him? The Justice Department says yes.

The immediate effect of this ruling will be to permit AIDS firings left and right. Is there an easier claim than the claim of irrational fear? The more general effect is to debase the idea underlying the anti-discrimination laws.

The whole point of such laws is to say this: It may indeed cause you psychological distress to mix with others whom you irrationally dislike or fear. Too bad. The state has decided that these particular prejudices are destructive and irrational. So the state will prohibit you — even in "private-sector" transactions like hiring or firing or serving people in your own luncheonette — from acting upon your groundless prejudices.

The point of the Rehabilitation Act was to add another class of irrationality — about the disabled — to the catalog of those which the state will no longer countenance. Now comes the Justice Department, in essence, to add: "except for one category of irrationality, the fear of contagion. The state will permit you to fire disabled people on that account."

Even as a piece of reasoning, this casuistry fails. After all, why in general do people shrink from — and end up discriminating against — disability if not from fear of contagion? Moreover, if contagion were really the problem, private employers would not have to worry about it at all. The state can handle that. It has more sweeping powers against people with serious contagious diseases than it does against criminals. If you are innocent of all sin but have tuberculosis, the government can lock you away.

The problem of AIDS in the workplace is not contagion. It is, as someone well acquainted with disability once observed, fear. Fear itself does not deserve special protection in our public life.

There is no greater intellectual laziness than the proposition that perception is reality. The last place that Orwellian slogan ought to find refuge is in the law. The whole point of the law is to determine which perceptions are real and which aren't, and to give legal standing to one and not the other.

It does not matter if people think you murdered. If you didn't, you don't go to jail. It does not matter if people think the Three Mile Island reactor is dangerous. If it isn't, it stays open. It should not matter if people think you can get AIDS in the Xerox room. You can't. Ignorance is a cause of discrimination. It is not a justification for it.

Washington Post Writers Group.

The Orwellian proposition that perception is reality is the height of intellectual laziness. The last place it should be found is in law.

panied by physical disorders including skin rashes, aggravated ulcers and skeletal and muscular problems"), and that anxiety would be a hazard to the surrounding communities.

A novel idea. Something is safe, but because people think it is dangerous, that makes it, well, (psychologically) unsafe. Perception is reality.

The Supreme Court, however, was unimpressed. It ruled unanimously that the Nuclear Regulatory Commission did not have to consider imaginary effects.

Fear is undoubtedly an unpleasant state, but in itself it does not create actionable claims. If it did, the line of litigants invoking such claims would be endless. Is there anything, after all, that people do not irrationally fear?

If a groundless fear is enough to endow one with legal rights, then there is no piece of nonsense that cannot result in yet another claim upon others. Your neighbor has a dog. The dog is harmless. But you are afraid of dogs anyway. Can you impound the dog?

In the case of Three Mile Island, the Reagan Justice Department argued no. Now, another year, another place, and another piece of nonsense.

The hysteria this time is not about gamma rays, but about AIDS, the irradiated irrationality of the 1980s.

The Justice Department has considered again the question of whether perception is reality. It has issued a ruling on what kind of discrimination is permissible against AIDS victims. The Rehabilitation Act of 1973 prohibits discrimination on the basis of handicap. The department decided that an employer may not fire an AIDS victim if the employer is concerned about the "disabling effect of AIDS." But he may fire the victim if he is concerned about the contagious effects of AIDS.

State AIDS Bias Bill Vetoed Again

By Robert B. Gunnison
Chronicle Correspondent

Sacramento

Oct. 1, 1986

Governor Deukmejian has again vetoed a bill to outlaw housing and job discrimination against AIDS sufferers, calling such a step "unnecessary and inappropriate."

In an unusually long veto mes-

sage yesterday that showed the political volatility of the issue, Deukmejian defended his own record on AIDS and described the legislative maneuvering on the bill "unconscionable."

The Republican governor did sign two bills yesterday that are designed to promote development and distribution of an anti-AIDS vaccine.

One bill would provide \$3 million in grants for private firms searching for a vaccine. The grants would be repaid if the vaccine were found, and the state would share any royalties.

The second would spend \$6 million for clinical trials of a vaccine, provide liability limitations for pro-

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AIDS BIAS BILL VETOED

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ducers and guarantee a market for the vaccine

Deukmejian noted in a press release that the state will spend \$35.8 million in the current fiscal year on fighting AIDS, more than all other states combined.

Although the governor has been willing to spend more money on AIDS, he showed no change of heart on the discrimination issue since August when he vetoed a similar bill.

At the time, he said that there was no good reason to isolate AIDS-sufferers for special treatment and that there was no evidence they were being discriminated against.

Assemblyman Art Agnos, D-San Francisco, then drew up a new version of his vetoed bill. This time he extended the civil rights protections to people with AIDS, cancer, polio, multiple sclerosis and high blood pressure.

He said that AIDS sufferers had filed 159 discrimination complaints with the state.

Agnos also noted that when Deukmejian was attorney general, he argued before the state Supreme Court that people with high blood pressure should be protected from job and housing discrimination.

Deukmejian was not swayed. "I believe legislative efforts to provide categories of special rights and benefits based upon having the condition of AIDS are unnecessary and inappropriate as I made clear in my veto of (the bill) by the same author, on the same subject."

Agnos called the action "devastating and arrogant." He said the governor refused to meet personally even with his own top health advisers and had become "willfully isolated."

"This shows the people of California that while many politicians grow in public office, Governor Deukmejian has shrunk in public office," Agnos declared.

Deukmejian also vetoed two other AIDS-related bills.

One would have required AIDS alternative test sites to provide counseling at the site rather than referring individuals to existing facilities.

The other bill would have granted the presumption that AIDS sufferers and AIDS-Related Condition sufferers were disabled for determining their eligibility for Medi-Cal.

In both cases, the governor said, existing law adequately covers the situations.

AIDS Job Bias Ruled Illegal In California

J. F. Chronicle
Feb. 11, 1987

By Bill Gordon

California employers who discriminate against workers with AIDS violate state law barring bias against the handicapped and face stiff fines, state employment officials ruled yesterday.

For the first time, the decision declares AIDS a "physical handicap" under the state Fair Employment and Housing Act.

The unanimous ruling by the Fair Employment and Housing Commission ordered that damages of about \$6,000 be paid to survivors of a Santa Barbara man who died of

AIDS-related cancer in January 1985.

The man, John Chadbourne, filed a complaint with the commission after managers at a Raytheon Co. plant in Goleta (Santa Barbara County) refused to let him return to work after he was diagnosed with the deadly disease. Chadbourne worked as a quality control analyst at the electromagnetic systems plant of the defense contractor. He was diagnosed with the disease in December 1983 and died a little more than a year later at age 36.

Raytheon officials refused to let Chadbourne return to work after his initial diagnosis out of fear that co-workers might contract the disease.

But the commission ruled that medical evidence at the time made it clear that the disease cannot be spread through casual contact in the workplace. It ordered Raytheon to pay Chadbourne's estate five months of back salary plus interest.

"It's a vindication not only for John Chadbourne but also for those other employees who have AIDS and are able to work," said Leonard Graff, a lawyer for National Gay Rights Advocates, which represented Chadbourne's estate.

Jeffrey Charney of Raytheon said, "Obviously, we are disappointed. We feel we acted reasonably and in good faith and did not violate Mr. Chadbourne's rights."

Charney noted that the decision to exclude Chadbourne from the plant occurred three years ago when less was known about the disease. He refused to speculate how the situation might be handled now.

Raytheon will make a decision in the next two weeks on appealing the ruling in Superior Court, Charney said.

The commission's ruling upholds the contention of the Department of Fair Employment and Housing that state law bars discrimination against AIDS patients. The ruling overturns an administrative law judge's opinion that no state law exists to protect those with the disease.

Governor Deukmejian twice vetoed bills that would have explicitly forbidden job discrimination against AIDS patients, saying he believed state law already prohibited bias against workers with the disease.

Chris Redburn, a spokesman for the AIDS discrimination division of the Legal Aid Society in San Francisco, acknowledged that the commission ruling follows Deukmejian's argument, but he criticized the governor's vetoes for delaying the "clear signal to people with AIDS that they can go to the government for protection."

Specifically, the commission ruled that AIDS patients are covered by laws barring discrimination against the handicapped.

"While AIDS did not impair Chadbourne's physical ability to do his job until long after he was first excluded from it ... there was not simply a possibility but a tragic certainty that the condition would at some time in the future seriously impair his physical ability and ultimately kill him," the ruling said. "AIDS thus falls squarely within the physical handicap coverage of the (Fair Employment and Housing) Act."

The commission rejected suggestions that "ignorance or fear" of AIDS justifies any departure from the established rules and procedures governing cases of physical handicap.

"The decision is tremendously important because the commission refused to rewrite the law or bend the rules out of fear or pressure," said Redburn of the Legal Aid Society.

Redburn argued that the protection against discrimination extends to housing cases and to individuals who do not have AIDS but have been exposed to the virus or who fall into one of the groups at "high risk" of contracting the disease, including homosexuals.

State law bars discrimination against people with "real or perceived" physical handicaps, he noted.

The commission did not consider Raytheon's actions "malicious or oppressive" and declined to impose punitive damages against the company or compensatory damages for emotional distress suffered by Chadbourne. But such fines may be imposed in future cases, the commission warned.

"We will look with growing skepticism upon employer claims that they were legitimately, if mistakenly, uncertain about the casual transmissibility of AIDS in the workplace," the ruling stated.

The commission's ruling stands in contrast to the U.S. Justice Department's statement last summer that an employer's irrational fear of AIDS spreading in the workplace would justify job discrimination.

Graff said a survey by the San Francisco-based National Gay Rights Advocates, a nonprofit law firm, found that 34 states have rejected the Justice Department opinion and ruled that discrimination against AIDS patients is illegal.

Other large states declaring AIDS-related discrimination illegal include New York, New Jersey, Texas, Pennsylvania, Illinois, Michigan, Florida and Ohio. The District of Columbia is also in this category.

S.F. Examiner, Feb. 12, 1987

GOP legislator vows to kill AIDS bias rule

Says state ruling elevates rights of AIDS victims over co-workers'

By Louis Trager
OF THE EXAMINER STAFF

A landmark decision from a state commission barring employment discrimination against people suffering from AIDS has drawn a vow from a Republican legislator who says he'll overturn the ruling.

Meanwhile, gay-rights advocates in San Francisco applauded Tuesday's ruling, saying it provides a broad precedent for the rights of AIDS victims and homosexuals.

State Sen. John Doolittle, R-Citrus Heights, said he would introduce a bill to overturn a ruling by the state Fair Employment and Housing Commission. He said it elevated the rights of AIDS victims above those of their co-workers.

The commission ruled unanimously that Raytheon Corp., a large military contractor, broke a state law barring discrimination based on physical handicap when it fired a Santa Barbara employee in 1984 for having AIDS.

"I think it's a horrible public policy decision that will have devastating consequences," Doolittle said.

"It's going to have to be overturned, and I predict that it will be overturned. I don't think the climate's quite right, but give us a few months."

A Raytheon spokesman said the company hadn't decided whether to fight the ruling in Superior Court. A legal challenge eventually could go to the state Supreme Court, which is expected to be more sympathetic to employers after the November election defeat of Chief Justice Rose Bird and two liberal colleagues.

A spokeswoman for Gov. Deukmejian — who twice last year vetoed AIDS-discrimination legislation sponsored by Assemblyman Art Agnos, D-San Francisco — said the commission ruling vindicated the governor's position that a new law was unnecessary.

"This basically reaffirms what the governor said last year in his veto message," said assistant press secretary Donna Lipper.

At a press conference in San Francisco, attorney Chris Redburn said the Agnos measure would have been a "clear signal" to employers, months earlier, that they may not discriminate against AIDS victims.

Bruce Kears, a San Franciscan who said Neiman-Marcus had fired him in October because he has AIDS, said he hoped the new ruling "will be a great foreshadow for people with AIDS."

Redburn and fellow civil-rights
— See AIDS, B-7

lawyers Leonard Graff and Katherine Franke applauded the commission ruling because it:

- Says damages to compensate for emotional injury and punitive damages may be awarded in future AIDS discrimination cases, in addition to the back pay and interest awarded in this case.

- Applies to employees wrongly suspected of having AIDS and to workers who have been exposed to the virus that causes the syndrome, even if they don't have symptoms.

- Calls for the state lawyers to seek immediate court orders in discrimination cases, so AIDS victims can get reinstated to their jobs before they die.

- Will help AIDS victims keep the insurance benefits and self-esteem that go along with holding their jobs.

- Will provide a precedent against housing discrimination.

- Rejects the Reagan administration's position that firing an employee because of co-workers' fears of contagion is not illegal discrimination.

- Stresses that AIDS cannot be caught through casual contact in the work place.

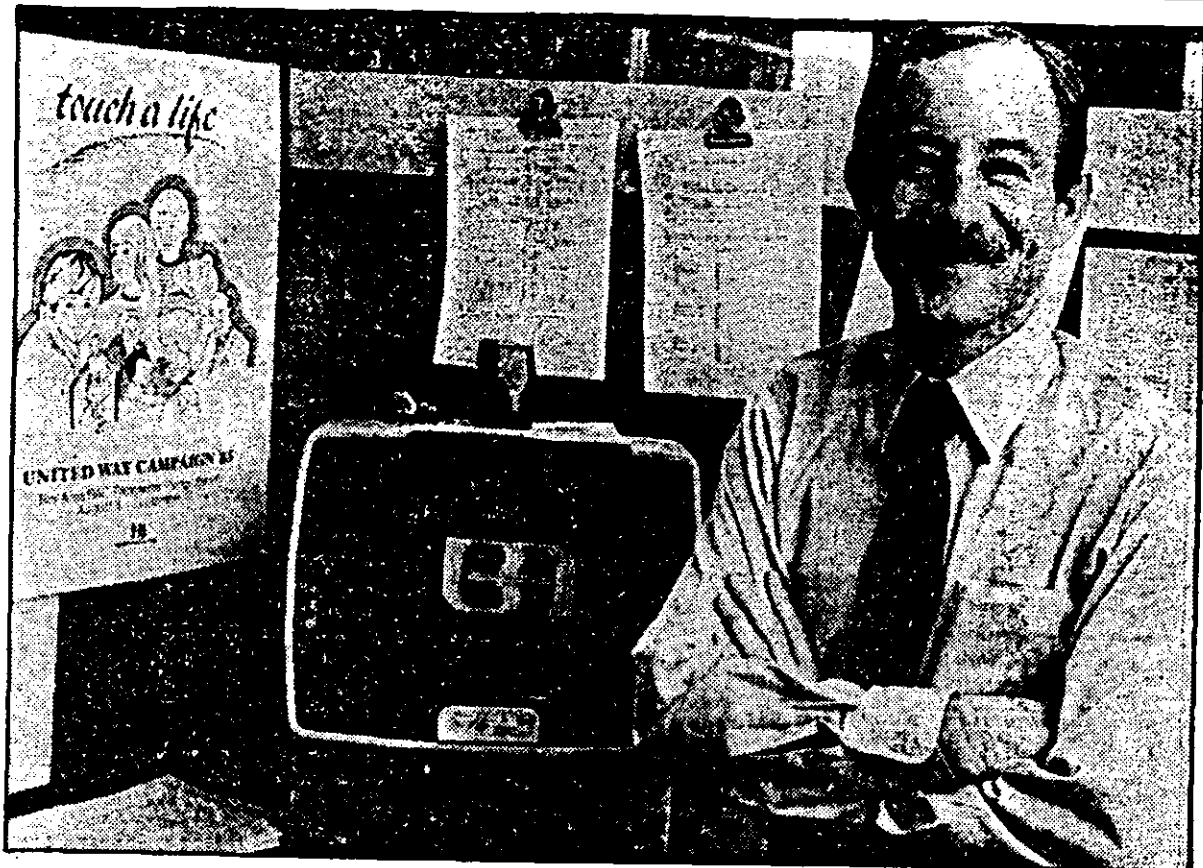
"We are acutely aware that the devastating effects of this condition and widespread lack of knowledge about it have produced deep anxieties, and considerable hysteria, about the disease and those who suffer from it," the seven-member commission said.

"But neither ignorance and fear nor the serious consequences of AIDS justify our departure from the carefully developed rules and procedures that govern our physical handicap cases."

A similar case under the federal Rehabilitation Act, governing the U.S. government and all employers that get federal money, is pending before the U.S. Supreme Court.

The fired Raytheon employee, John Chadbourne, was a quality-control analyst and a "workaholic" who was devastated by his firing in early 1984, the commission said. He died at age 36 in 1985 of an AIDS-related cancer.

The commission awarded Chadbourne's estate about \$6,000 in back pay and interest. The ruling also means that Raytheon will have to pay about \$20,000 in legal fees to National Gay Rights Advocates and the Employment Law Center of San Francisco, Graff said.



Bob Thompson, a Bank of America systems analyst who has AIDS. His firing fears were unfounded. Examiner/Paul Glines

Fight against fear in the work place

Despite legal protection and health assurances, discrimination still exists

By Paul Shinoff
OF THE EXAMINER STAFF

Last September, Bob Thompson, a systems analyst for the Bank of America, told his boss the truth about the illness for which he had been hospitalized. It was not, as he had told co-workers, pneumonia. It was AIDS.

"I was afraid I would lose my job," Thompson recalls.

Four months later, Thompson continues to work at the Bank of America.

"They have not treated me differently," Thompson said. "I have no problems at all."

The explosion of acquired immune deficiency syndrome cases has created moral, legal, scientific and economic dilemmas for AIDS patients, businesses and the community at large.

Fears of contacting the often fatal illness has sparked efforts to ostracize victims of the "gay plague" from the work place. Gay advocates fear an surge of discrimination based on the disease's "at risk" status.

In the midst of this confusion, a hopeful trend is developing. Assured by medical evidence that the disease cannot be passed through casual contact on the job and prodded by legislation protecting the rights of AIDS victims, many California employers are allowing patients to return to work.

Dr. David Werdegar, San Francisco's director of public health, estimates that there are at least 500 AIDS victims working in San Francisco. "I can't think of any occupational situation in which it would be transmitted," he said. (There is not a single documented case in the United States of AIDS being transmitted in the work place.)

"The City and the state of California deserve a pat on the back for preventing what could have been a major hysterical crisis," said attorney Matthew Coles, who has represented homosexuals.

Firms such as BankAmerica Corp., Crocker National Bank, Pacific Telesis Group, PG&E, and Levi Strauss & Co. have developed special programs to handle AIDS victims, including support services and forums conducted by health experts.

"Management has been very supportive of my return to work," said a Crocker employee and AIDS sufferer who asked not to be identified. "We talked about modifying work hours. . . We do not stand on the desk tops and say, 'Walt has AIDS.' But there are a number of people here who know."

The city's Human Rights Commission reports that complaints filed by AIDS sufferers alleging discrimi-

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S.F. Examiner, Jan. 19, '86



WORKERS

— From D-1

nation in employment have declined in the past six months to six from October through December, compared with 14 in the previous three months. "There is a strong move by employers to responsibly handle AIDS in the work place," said Eileen Gillis, who represents the gay and lesbian communities on the commission.

The trend, according to those who champion the rights of AIDS patients, has seen the alleviation but not the elimination of discrimination. Insensitivity, fear, employee or customer pressure and financial considerations have caused employers to force AIDS patients off the job or into less public positions, they say.

Attorney Gary Woods of the Bay Area Lawyers for Individual Freedom said he recently represented a bank teller who was moved to a job in the vault and a bartender who was demoted to storeroom clerk, both because they exhibited lesions of Kaposi's sarcoma, a once-rare skin cancer associated with AIDS. "An employer cannot change agreed-upon terms and conditions of employment because a person has AIDS," Woods said.

Executives and gay rights advocates interviewed agree that federal, state and local laws now protect AIDS patients from work-place discrimination. "Employers have to show there is a business necessity that a person not have AIDS — and that is very difficult to show," said attorney Robert A. Dolinko, who specializes in management issues for Epstein Becker Borsody Stromberg & Green.

Businesses also are willing to accommodate AIDS patients because they are often young, productive professionals. And because AIDS victims often cannot stay on the job many months before their degenerating conditions forces them to seek medical leave, many employers prefer to keep them on the job rather than risk litigation.

Businesses and AIDS victims often must make serious choices when negotiating medical leaves because some group medical insurance policies limit sick-leave coverage or disqualify AIDS victims.

"Insurance companies are going to cut the person off as quickly as they can," said attorney Kent Jonas at Corbett and Kane, a firm that represents hospitals and other businesses. An employer that continues to carry an AIDS patient on the books as a working employee in violation of insurance company stipulations could be committing insurance fraud, he said.

The impact of AIDS in the corporate setting has forced employers to reassess policies toward workers with other serious illnesses. "It has made many managers sensitive to how we deal with life-threatening situations," said Kevin Wadsworth, an assistant vice president at Crocker Bank.

Reflecting programs now in place at other corporations, Crocker responded to its first known case of AIDS last year by holding "panic-intervention" sessions directed by Dr. Linda Clever, chairwoman of the department of occupational health at Pacific Presbyterian Medical Center.

"We try to smooth the patient's return to work," Clever said.

Not everyone's fears are alleviated. Marcy Bender, a financial analyst at Crocker, said only half her co-workers were comfortable working near an AIDS patient after such sessions. "At the time, I didn't know much about the disease except that people panicked," she said.

"People knew," she said. "That kind of rumor goes

be around him, they wanted him fired. Others treated him normally."

The U.S. Centers for Disease Control has repeatedly said that AIDS is not transmitted through casual contact in the work place and that sufferers should not be excluded from any job, including food service. "If it were transmitted by food, we would see a lot more cases," Clever said.

There are exceptions. Public health laws prevent any person with open sores, including AIDS patients, from working around food. "I don't think I would have AIDS patients working as a scrub nurse or a technician in the operating room," Werdegar said.

Noting the lack of evidence of the disease among medical workers caring for AIDS patients, the public health service last August discontinued its program of keeping track of employees who have been exposed to AIDS victims' body fluids through needle-punctures or other incidents.

"I stand to catch more from them than they stand to catch from me," Thompson said of his fellow employees. "The irony of AIDS is that the victim is far more at risk from catching something from people he works with."

Medical evidence notwithstanding, there is abundant evidence that public fears of the disease remain. Seventy-two percent of those questioned in a national Gallup Poll released earlier this month said the blood test that indicates previous exposure to the AIDS virus should be given to the general population, and 79 percent wanted tests for homosexuals seeking jobs as food handlers.

In their efforts to avoid discrimination, AIDS victims are seeking shelter under the following statutes:

- **Federal Rehabilitation Act.** This obligates certain employers not to discriminate against the handicapped. The law has been expansively interpreted to cover those with epilepsy, suicidal tendencies, stress disorders and back problems. Attorneys expect AIDS will be included.

- **The California Fair Employment and Housing Act** prohibits employers from discriminating on the basis of physical handicap or medical condition. In a case now before the commission that will test the law, the family of John Chadbourne, a quality-control analyst at Raytheon Co.'s Santa Barbara electronics plant, is contending that he should not have been barred from the work place because he had AIDS. Chadbourne died last year.

- **State AIDS-testing law.** Introduced last year by Assemblyman Art Agnos, D-San Francisco, it prevents employers or insurance companies from learning the results of a blood test.

- **Local anti-discrimination ordinances.** The San Francisco Board of Supervisors in November approved a measure banning discrimination against AIDS victims in housing, employment and education. Other cities, including Los Angeles and Hayward, have adopted similar measures.

Attorneys believe AIDS victims also may be protected under defamation laws if they are unfairly made the subject of derogatory comments, and by privacy statutes that assure confidentiality of medical records. AIDS victims also can file claims for wrongful discharge if fired against their will, the attorneys say.

Given the confusing social climate, AIDS victim Thompson says he is surprised at the reasonable treatment he has received at the Bank of America. "There is very little adverse reaction," he says. "I'm glad it's not an issue."

S.F. Firms Lead Nation In Humane AIDS Policies

By Katy Butler April 9, 1986

When she handled her first AIDS case at BankAmerica Corp., a manager made what a corporate vice president later called "a compassionate mistake."

She told her 25 subordinates that "Bill" would need understanding when he returned to work because he had acquired immune deficiency syndrome.

It did not work. Not only had she violated Bill's privacy, but she also had failed to deal with the fears about AIDS among the other workers.

Ripples of panic moved through the office. A pregnant woman whose father was a labor lawyer refused to work. Two days later, the lawyer threatened to file a complaint with the state's Division of

Occupational Safety and Health (Cal-OSHA) for the bank's failure to provide a safe workplace.

The bank stood its ground, and the legal complaint never materialized. If it had, the complaint would probably have been rejected, because the national Centers for Disease Control in Atlanta says that AIDS is spread by blood and semen, not by workplace contact.

However, in response to the crisis, the bank and many other major local corporations developed the most sophisticated and compassionate policies in the country for dealing with employees who have AIDS.

They now keep AIDS sufferers on the job, do-

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nate thousands of dollars to AIDS groups, such as the San Francisco AIDS Foundation, and extend liberal disability policies to employees with AIDS.

Many pay disabled employees, including those with AIDS, 60 percent of their salaries for months after they leave their jobs. BankAmerica allows some employees with AIDS to work part time, and its policy manual tells managers, "Be sensitive to the fact that continued employment for an employee with a life-threatening illness... may help prolong an employee's life."

That point of view is echoed by a BankAmerica systems programmer with AIDS, who has worked full time, with only one two-week absence, since his diagnosis three years ago.

"I get a lot of personal value out of working," said the man, who did not want his name used because only his manager knows he has the disease. "I always wake up in the morning singing, and ready to go to work. There's a real intellectual pleasure to my work."

The bank will not publicly discuss exactly how many of its 80,000 employees have AIDS, citing the employees' rights to privacy. But health experts estimate that 93 percent of San Francisco's 1840 AIDS victims, including those who have died, were employed at the time of their diagnosis, and more than half of them had private health insurance, usually through their jobs.

Local business's leadership role on the AIDS issue is in marked contrast to employers in New York City, most of whom refuse to admit publicly that any of their employees has AIDS.

There have been 5521 known cases of AIDS in New York City, the highest number and concentration in the nation. However, 33 percent of New York's cases involve intrave-

nous drug users, so fewer are likely to have held down jobs.

"It's a real corporate issue in California, because 98 percent of the people with AIDS here are gay men, and likely to be gainfully employed," said Michael Eriksen, director of preventive medicine and health education at Pacific Bell.

Pacific Bell faced the AIDS issue after a minicrisis. A coin telephone service technician balked at entering a bathhouse, and an installer was suspended six months ago for refusing to put in a telephone in the home of an AIDS patient.

After those occurrences, the workers' union, the Communications Workers of America, put together a list of volunteers willing to do similar work under such circumstances involving AIDS patients and gay businesses.

"I went into the workplace and said, 'Would you do this as an act of love?'" said CWA executive board member Tim O'Hara, a gay man and telephone technician who helped organize the list. "It wasn't strictly gay men who responded, it was men and women, gay and straight."

Then Pacific Bell — like Levi Strauss, BankAmerica, Pacific Bell and Wells Fargo Bank — printed a three-page article about AIDS in its company newsletter. The article reassured workers that AIDS is spread through blood and semen — through unprotected sexual intercourse and shared hypodermic needles — not through shaking hands and sharing phones with other employees.

"We did talk about exchanging bodily fluids, which are not typical words used in corporate communications," said Eriksen, who helped supervise the PacBell newsletter.

Pacific Bell also invited the San Francisco AIDS Foundation to give a noontime lecture to workers.

"At first, we were afraid that

putting a couple of hundred people in the same room to hear about AIDS would lead to hysteria," said Eriksen.

"We found just the opposite. There was almost a peaceful, satisfied feeling afterwards. It was a very powerful experience."

Pacific Bell also helped produce, with the AIDS Foundation, a \$50,000 videotape to allay fears about AIDS in the workplace.

(The tape is available, along with sample personnel manuals and medical facts about AIDS, from the foundation at 864-4376.)

Other large local corporations gave the foundation \$80,000 last year, up from \$13,000 the year before.

"The biz (San Francisco) employers have come to their senses,"

said attorney James Wood, chairman of the AIDS legal referral panel of Bay Area Lawyers for Individual Freedom.

"They've talked to their lawyers, they've done the research, and they've come up with good policies. Now, it's mostly the smaller, less-informed employers that we're having trouble with — the same kind of problems we had with some of the big employers three years ago."

In the past year, 130 San Franciscans have complained that they have been fired for having, or simply for being suspected of having, AIDS. One of Wood's clients, an accountant for a local furniture maker, was fired but turned out to have Hodgkin's disease, a form of lymphatic cancer.

Wood said that most employers now know that they are likely to lose such cases in the courts, and the cases are usually settled for the equivalent of two or three years' worth of wages and benefits.

No such cases have come to trial in California, but the Florida Human Relations Commission recently ruled that AIDS patients are protected against job discrimination as disabled people, and lawyers believe they are protected by similar laws in 39 other states, including California.

California's law prohibits job discrimination against people who are disabled or are perceived to be disabled. Employers are required to make "reasonable accommodations" — sometimes including reduced work schedules — for employees who become disabled. San Francisco also has a tough AIDS anti-discrimination law, as do Los Angeles and West Hollywood.

The Florida case involved Todd Shuttleworth, who asked for \$4 million in damages after he was fired as a budget analyst for Broward

County, which includes Fort Lauderdale, Pompano Beach and Hollywood.

Even though Shuttleworth was an energetic, athletic man suffering only from a minor case of Kaposi's sarcoma, he was put on enforced medical leave for two weeks and then fired without receiving disability pay or medical benefits. A month later, with \$200 and some credit card bills in his pocket, he drove his heavily financed pickup truck to San Francisco.

Shuttleworth, who now lives on Social Security benefits in the Mission District, is especially bitter because Broward County discovered that he had AIDS when he tried to avoid exposing a dentist to the disease. He had sought insurance reimbursement for a visit to an AIDS clinic in Miami for dental treatment, and the insurance company told his employer.

"The county found out that I had AIDS because I was trying to protect someone else," said Shuttleworth. "Then, in essence, they told me, 'We're going to make sure you live like a pauper.'"

Broward County has appealed the ruling, and Shuttleworth is now suing for \$15 million. Even though he is still healthy — if somewhat isolated and bored by not working — he worries that he may die before the case comes to trial.

The county's reaction is almost diametrically the opposite of that at Levi Strauss & Co. in San Francisco, where AIDS education began before a crisis erupted.

There, President Robert Haas helped hand out AIDS leaflets at lunchtime in the company of gay workers who were afraid of nervous reactions from fellow employees.

Levi Strauss, which is self-insured, also pays for hospice and

home health care among its health benefits. Such care is ideally suited for people with AIDS, because the disease has no known cure, and its sufferers need compassionate nursing care more than expensive high-tech hospital beds.

The company watches medical bills closely, to make sure that employees do not stay in the hospital when home nursing would do.

In 1984, one employee with AIDS spent five months in the hospital and ran up a bill of more than \$200,000 — more than four times the average \$47,000 bill for an AIDS patient in San Francisco. The hospital repeatedly told the company that the patient was "at a critical stage" and could not be moved.

The clothing company recently was host for, and helped organize, a conference on AIDS in the workplace attended by 200 representatives of smaller businesses. An additional 100 were turned away from the conference organized by the Bay Area Business Leadership Task Force.

Haas closed the conference with a moving speech that was almost spiritual in its tone. One personnel manager began to cry, and another said afterwards, "I felt as though I was in a church."

"This conference wasn't about a deadly and debilitating disease, AIDS," Haas said. "It was about life and living ... in discussing ways of making the remaining lives of those afflicted with AIDS more fulfilling and comfortable."

"As you enjoy the beautiful weekend that lies ahead, think of the life-enhancing messages of this conference ... and all that you can do to affirm life in your companies or agencies."

"... It's up to each of us to make a difference, to use the knowledge we've received to affirm life."

New Survey Measures Corporate Policy on AIDS

Most Corporations Sympathetic to PWAs; Ban Bias; Provide Education, Insurance

by Will Snyder

Corporate giants Citicorp, Chevron, Bank of America, CBS, Dupont, Westinghouse, Trans-america and GTE all have something in common. Most gay people should be pleased, too, because these companies have announced their opposition to mandatory HIV testing.

That's just one of the things National Gay Rights Advocates (NGRA) found out about AIDS-related discrimination. NGRA surveyed Fortune 1,000 employers and found that two-thirds of the respondents reject any kind of mandatory HIV testing. Many of the companies also announced they would pay for an employee's AIDS-related medical benefits.

"The companies were virtually unanimous in their responses," said Jean O'Leary, NGRA's executive director. "Employers have a moral and legal responsibility to protect employees with AIDS or AIDS-related conditions."

O'Leary went on to say that picking up that moral and legal responsibility means not only rejecting mandatory HIV testing, but also paying for AIDS-related medical expenses and developing company-wide policies of non-discrimination. "Unfortunately," said O'Leary, "policies of benign neglect or outright antagonism by other companies less willing to address the issue of AIDS in a compassionate manner remain an acute problem."

O'Leary may have been referring to the response rate. NGRA polled 995 companies for its survey entitled American Corporate Policy: AIDS and Employment. Only 164 companies bothered to respond.

One of the most positive statistics in the entire survey concerned itself with medical plans. Only one of the 164 companies indicated that its medical plan does not pay for AIDS-related expenses. Similarly, only one insists on testing employees or job applicants for antibodies to HIV.

The four questions asked were:

- Does your company have a policy which forbids employment discrimination against employees with AIDS or related conditions?
- Does your company's medical plan cover AIDS-related medical expenses?
- Does your company require some or all employees or job applicants to take the AIDS antibody test as a condition for employment?
- Has your company developed a written policy on AIDS?

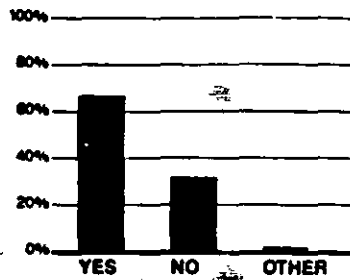
In the nondiscrimination question 110 of the 164 compa-

nies (67 percent) said they forbid employment discrimination. Only 18 percent have developed written policies on AIDS while eight companies (5 percent) say they have written policies under development.

NGRA received its best response from both coasts. Twenty-five New England companies out of 95 (26.3 percent) returned

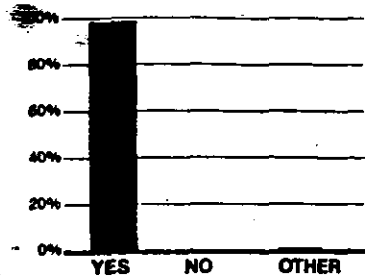
from Benjamin Schatz, director of NGRA's Civil Rights Project. "When dealing with the AIDS crisis, the optimal approach is to educate more and litigate less," Schatz said.

But even with the many positive responses, others indicated a level of deep hostility toward gays. When asked about nondiscrimination, one anonymous



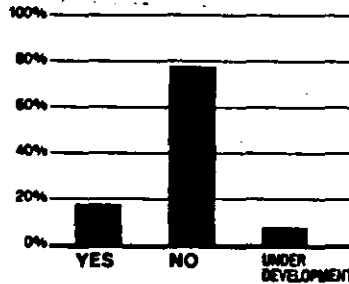
NON-DISCRIMINATION

YES	110	67%
NO	51	31%
OTHER	3	2%



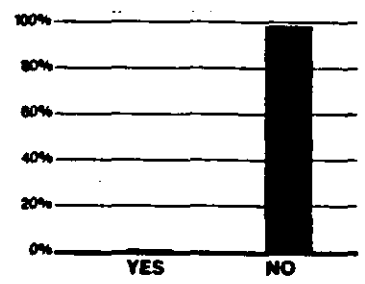
MEDICAL BENEFITS

YES	163	99.5%
NO	0	0.0%
OTHER	1	.5%



WRITTEN POLICIES

YES	30	18%
NO	126	77%
UNDER DEVELOPMENT	8	5%



REQUIRE TESTING

YES	1	.5%
NO	163	99.5%

surveys. The five Western states of Alaska, California, Hawaii, Oregon and Washington were sent 126 surveys and 31 (24.6 percent) responded. The weakest response came from the South where only 15 of 183 companies (8.2 percent) bothered to send back a reply.

Some of the comments received from the companies show the level of thought which has gone into research on AIDS. Transamerica Life Companies, for example, said that since the AIDS virus does not discriminate by gender, race, or religion, "we will not discriminate against any employee with this condition." Westinghouse said that it views AIDS as an illness, "not as a crime or a punishment. We encourage compassion for the victims, and the provision of accurate, appropriate information to all employees as an antidote to ungrounded fears or unreasoning exaggerations."

Westinghouse's comment brought an affirmative response

company said, "We shoot gays, much less gays with AIDS." When asked whether its medical plan covered AIDS-related medical expenses, the same company said, "Just enough to defray the cost of the bullet." The same company said it does not require HIV testing because "we just watch how they react to women and other men, then make a decision." The employer added that "any person contracting AIDS through homosexual activities will be terminated with extreme prejudice."

The respondent said that "I refuse to lick this envelope."

NGRA said that its 34-page report, which includes detailed listings of companies and their individual responses to the survey can be obtained for \$15 per copy. Interested parties should write to National Gay Rights Advocates, 540 Castro St., San Francisco, CA 94114, or 8380 Santa Monica Blvd., #202, W. Hollywood, CA 90069. Volume discounts are available. ●

**LONG
DISTANCE
WARS**
TELECOMMUNICATIONS
SPECIAL REPORT PAGE 150

THE BIG BOARD'S CRUSADE AGAINST PROGRAM TRADING PAGE 134

BusinessWeek

MARCH 23, 1987

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AIDS AND BUSINESS

PAGE 122

HOW
COMPANIES
DEAL WITH
STRICKEN
EMPLOYEES

NEW DRUGS:
ARE THEY
HELPING?



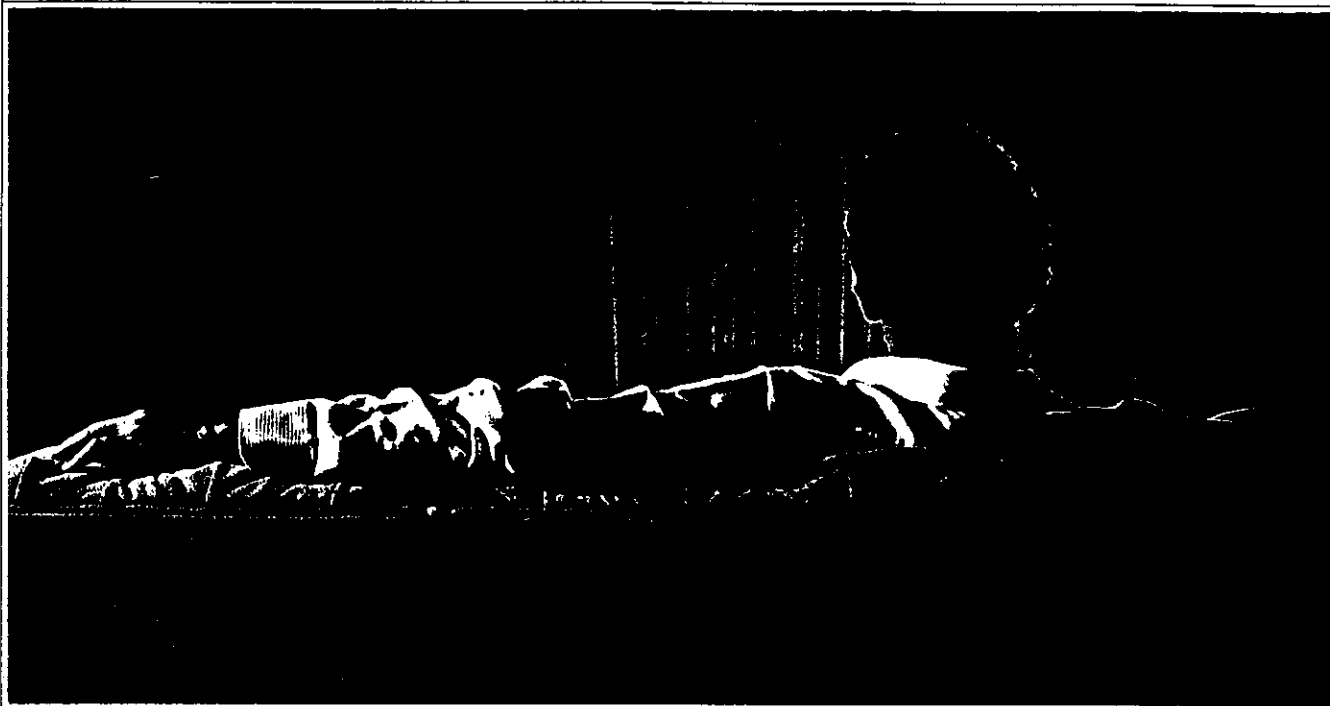
WILL
INSURERS
FOOT THE
BILL?

A MODEL
FOR
CORPORATE
POLICY



THE AIDS EPIDEMIC AND BUSINESS

A FRIGHTENING DISEASE POSES DELICATE QUESTIONS FOR EMPLOYERS



Kyle always makes sure he laughs when his colleagues make crude jokes about AIDS. That way, he hopes, they won't realize he has the disease. Since he was diagnosed as having acquired immune deficiency syndrome in December, the once ambitious 24-year-old employee of a Florida financial services firm has led an uncertain—and secret—life. To Kyle, there is one thing almost as bad as having the deadly illness: losing his job. And he has little doubt that would be the outcome. “They’re so naive about this that they’ll fire me on the spot,” says Kyle, who asks that his real name not be printed. “They believe you can catch AIDS through the air or from handling the same sheet of paper.”

So far, Kyle has toughed it out. He fabricates excuses to explain his many medical appointments and puts in overtime to cover his absences. Even if he doesn't get fired when his employer

‘ They are so naive about this that they’ll fire me on the spot. They believe you can catch AIDS through the air or from handling the same sheet of paper ’

—Kyle
AIDS patient

learns of his disease, he probably would not find work a pleasant place to be once his secret got out. Although a Mar. 3 ruling by the U.S. Supreme Court now makes dismissal less likely, workers who have fought and reversed dismissal through the courts often have found reinstatement to be a hollow victory. One AIDS sufferer recently returned to work to find anonymous notes on his desk carrying such messages as “Don’t use our water fountains.” Rather than face fearful co-workers, many employees with AIDS simply disappear from their jobs and eventually join the growing ranks of unemployed AIDS patients who are already straining social services in some cities.

No one knows for sure how many Kyles there are. But statistics make it plain that almost every major employer in the U.S. will soon have to grapple with AIDS among its workers. By 1991, the Centers for Disease Control in At-

GERALD DAVIS

lanta estimates, nearly 100,000 people will be living with the disease. In addition, as many as 10 million people by then may be carrying the virus even though they show no symptoms. Current research indicates that at least half of them will eventually develop the disease, which destroys the body's immune system, leaving it prey to a host of lethal infections.

Some companies are already acutely aware of AIDS. San Francisco-based Pacific Telesis Group has been averaging 40 to 50 employees absent with AIDS in its 75,000 statewide work force; last year 20 PacTel employees died of AIDS-related illnesses. But to most, the disease still seems remote. So far, 39% of AIDS cases in the U.S. have been in New York and San Francisco. And the disease continues to be concentrated among homosexual and bisexual males (66%) and intravenous drug users (17%). As a result, many companies do not believe it will become a problem for them. Ford Motor Co. is not atypical when it says it has no reason to believe any of its 382,000 employees worldwide has AIDS.

Yet the steady spread of AIDS has already carried it into all 50 states and most countries of the world. It now has a toehold in the heterosexual population, especially among minority groups, and is spreading. No drug has been found that can cure the disease, but treatments are improving. That means that AIDS patients will be living—and working—longer, making it more difficult for companies to ignore the epidemic. "The consequences of AIDS for the corporation have not been realized yet," says Gary M. Rankila, a Minneapolis attorney and gay-rights activist.

NO-POLICY POLICY. According to current projections, productivity lost because of illness and premature deaths caused by AIDS could cost U.S. industry more than \$55 billion in 1991. So far, a handful of companies, including Syntex, BankAmerica, AT&T, Eaton, Transamerica, and Pacific Telesis, have adopted specialized personnel policies to handle the problem AIDS poses in the workplace. Others have decided to treat AIDS just like any other fatal disease. Control Data Corp. is typical of these companies. It conducted a study that predicts that, at most, 104 of its 34,000 employees will die of AIDS in the next five years—fewer than will die of other major killers. And it believes the best way to handle the situation is to treat it the usual way. "We wouldn't have a policy on AIDS any more than we'd have a policy on heart attacks," says Bob Jones, director of the company's health services department.

Other executives, such as Albert Bowers, president of Syntex Corp., believe they should play a broader role. "Some executives feel we shouldn't get involved

in such a 'messy business' as this," says Bowers, who unstintingly lobbies other chief executives to educate their employees and support community efforts to halt the spread of the disease. "But people who don't realize the magnitude of this disease are being ostriches." William J. Schneider, corporate medical director for Morgan Guaranty Trust Co. in New York, agrees: "We need to take a much more aggressive stand to help curb the spread of the disease."

One executive who has declared war on AIDS is Robert D. Haas, chief executive of San Francisco's Levi Strauss & Co. "AIDS is not somebody else's problem," insists Haas, who first became aware of the crisis in 1983 when a group

of gay employees wanted to run an information program at Levi Strauss but feared the reaction of other workers. Haas and members of senior management helped staff a booth and distribute materials, and he now urges other executives to do the same. "It's a social disease, not a homosexual disease," he says. "With good education you can promote a work environment free of disruption and fear."

LOTS TO LEARN. Companies trying to alleviate the fear are finding that misconceptions about the disease die hard. "In spite of all the information pouring out, there are a lot of people who are completely ignorant," declares Brian V. Beaudin, director of human resource ser-



'I had to do an unpopular thing: Suggest AIDS is a community-wide problem we business leaders need to take seriously. It's part of our professional lives'

—Robert D. Haas
CEO, Levi Strauss & Co.

vices for the Connecticut Business & Industry Assn. For example, despite efforts by blood banks to refute the idea that giving blood can be dangerous, one woman at a recent seminar on AIDS at a law firm in Los Angeles asked: "Can you get the virus by donating blood?"

Stephen Wroblewski, who is the AIDS coordinator in the Massachusetts Public Health Dept., says employers and employees alike have a lot to learn about AIDS. At sessions with employees, he says, "we talk to people who won't share pens, who are afraid of going into restrooms used by employees with AIDS, or who are afraid of sharing water fountains." As for employers, many are still unrealistic, he says. They "still think people with AIDS will come and tell them they have it."

Yet many AIDS patients resign rather than face the often unpleasant outcome of telling their managers they have the disease. Take Walter, a former computer

Cover Story

programmer in Atlanta. His managers have not forbidden his return, but "they don't really want me to come back," he says. "They said it'd be real ugly." But not all AIDS sufferers can give up their financial security—and risk their medical benefits—so easily. Companies that handle the situation carelessly often find themselves in court for trampling on their employees' civil rights.

PHONE THREATS. Paul Cronan, an employee of New England Telephone & Telegraph Co., told his supervisor he was infected with the virus. The supervisor allegedly told some of his co-workers. And some of them left threatening telephone messages for him. Cronan sued in 1985, charging that the phone company violated his privacy.

Frequently, a case like that is enough to make an employer change its policy. After the case was settled out of court last October, Cronan was reassigned to the company's Needham (Mass.) facility. Because "fear was rampant among our employees," says New England Telephone spokeswoman Ellen Boyd, the company held educational sessions for employees and is now "looking at an AIDS education policy."

Employers who solved the problem of AIDS in their workplace by firing those with the disease—and sometimes even those who they believed might get the disease—are finding that this option no longer works. The Justice Dept. muddied the issue last June with a memorandum stating that acting on an irrational fear of contagion was not prohibited by federal law and thus not discriminatory. That led to a surge of dismissals, particularly in small companies. "Employers thought, 'Now we can fire anyone with AIDS,'" notes Mauro A. Montoya, legal services coordinator for the Washington (D.C.)-based Whitman-Walker Clinic.

But more AIDS patients are fighting for their rights. Last year, the New York City Human Rights Commission received 314 complaints of AIDS-related discrimination. San Francisco's Human Rights Commission handled 65. Los Angeles deputy city attorney David I. Schulman had 140 such complaints cross his desk.

AIDS activists are finding that the law is increasingly on their side. Already, 21 states and several cities have legislation or court rulings that make AIDS a "pro-

tected handicap," a distinction that prohibits employers from firing people simply for having the disease. And many attorneys believe that the Mar. 3 Supreme Court ruling in *School Board of Nassau County vs. Arline* effectively negates the Justice Dept. opinion.

In that case, Gene H. Arline, a Florida schoolteacher, suffered from recurring bouts of tuberculosis but claimed she was not contagious. She argued that her firing by the school district violated Section 504 of the Rehabilitation Act of

1973, which prohibits discrimination based on a handicap. The high court agreed, extending the act's protection to those with transmissible diseases. The opinion bars employers from deciding what constitutes a contagious disease.

Testing prospective employees to determine if they have antibodies against the AIDS virus—which means they have been exposed to AIDS but are not necessarily actively infected—is also extremely controversial. Proposals to require such antibody tests as a public health

measure were quashed at a meeting held by the Centers for Disease Control in early March. There was a strong consensus that such testing violated the public's right to confidentiality, especially because a positive test does not necessarily mean the person will develop AIDS. And to many companies, such testing looks like a sure way to attract discrimination lawsuits. "That witch-hunt mentality is wrong," says San Francisco attorney Victor Schachter, who counsels corporations on employment issues. "We advise against testing."

DROPOUTS. Nonetheless, some companies are using the tests. Dallas-based Enserch Corp., for one, screens food-service employees even though a spokesman admits there is no medical evidence that AIDS can be transmitted through food or casual contact. Some experts charge that companies are surreptitiously testing employees' blood samples that were taken for other reasons. Others believe some employers are illegally using such common employment application questions as "Are you married?" in an attempt to screen out potential AIDS patients.

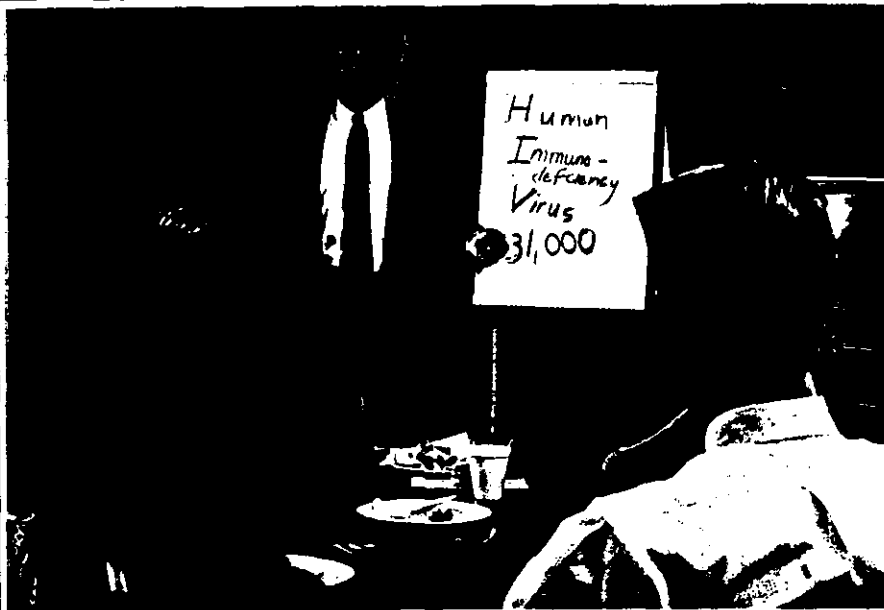
The most controversial use of AIDS testing is by insurance companies. So far, insurers have been prohibited from excluding coverage of AIDS in their policies. But as payouts in medical benefits and life insurance for AIDS sufferers mount, insurers are trying to protect themselves from risk. And many, including Aetna, John Hancock, and Metropolitan, require the AIDS antibody test as a prerequisite for some types of individual health and life insurance policies.

The insurers' use of the test draws angry charges of discrimination from gay activists. And some cities and states, including California, Wisconsin, and the District of Columbia, have banned testing. The insurance compa-



'The consensus is, AIDS discrimination is contrary to law. I've had about 75 cases. All settled out of court'

—Gary M. Rankila
Attorney



AN EDUCATION SESSION AT A WASHINGTON LAW FIRM: MISCONCEPTIONS DIE HARD

nies retaliated by dropping out of those markets. In the nation's capital, which has the strictest law, an estimated 80% of the 600 insurance companies in business there no longer write policies. Others have replaced the antibody test with a more accurate test that pinpoints those with active AIDS infections by analyzing the disease-fighting white blood cells that are affected by AIDS. "The category of people who have a poor T-cell count are rejected as a class," says David E. Gooding, executive vice-president for individual insurance at Transamerica Occidental Life Insurance Co.

'LOADED DICE.' Gays charge that discrimination by the insurance companies goes much further than the use of the sometimes imprecise antibody test. They accuse the insurance companies of what might be called "lavender lining"—denying policies to men who live in postal Zip Code districts known to have a high percentage of gays. In addition, Mark S. Senak, a lawyer at the Gay Men's Health Crisis in New York, charges that insurers are refusing to pay health care claims of AIDS patients by invalidating policies on technicalities. He cites one client who was denied compensation because he failed to mention on his application that he had once been treated by an acupuncturist. "Insurers by far have been the worst corporate citizens" in the AIDS crisis, says Senak.

The insurers deny any discrimination. However, they claim they face an impossible

burden of claims unless they screen out high-risk applicants. The American Council of Life Insurance contends that those who test positive for AIDS antibodies have a 20 times greater chance of dying within five years than those who do not. Moreover, a 1985 survey of 325 life insurance companies found that health benefits claims were heavily concentrated in the first and second year after the policies were issued. "If you know something insurers don't, it's a problem," says James C. Hickman, an actuary and the dean of the University of Wisconsin Business School. "The system doesn't work with loaded dice."

But attorney Benjamin Schatz of the National Gay Rights Advocates' AIDS Civil Rights Project says he spends a lot of time on insurance discrimination cases. Working out of a small office decorated with posters advertising condoms

in San Francisco's Castro district, Harvard-trained Schatz says he gets 30 inquiries each week from people around the nation who feel they've been victimized. One of his current suits is against Great Republic Insurance Co., of Santa Barbara, Calif., on behalf of a healthy gay client. Great Republic sent a letter to agents in 1985 telling them to ask additional questions of single men "in occupations that do not require physical exertion," specifically citing occupations including antique dealers, interior decorators, consultants, and florists. James Pritchett, president of Great Republic, denies discrimination but says the company has discontinued the policy.

Whether or not insurers are discriminating, the fact remains that it is nearly impossible for someone to get medical or life insurance coverage after being diagnosed with the disease. So some companies are helping employees with AIDS retain their benefits for as long as possible. "I don't want an employee quitting out of panic," says Nancy L. Merritt, vice-president and director of equal opportunity programs at Bank of America. "He's going to need our benefits."

HOPEFUL. For employees with AIDS who don't work for companies that have adopted special policies to cover the disease, some relief is on the way. A provision of the 1986 Budget Reconciliation Act requires companies with more than 20 workers to offer employees group insurance rates for 18 months after they leave the company, whether they leave voluntarily or not. Although rates can still be expensive, the bill is a boon for AIDS patients who might otherwise be unable to get coverage.

Nick Latham, 43, a management consultant in San Francisco for New York consulting firm Towers, Perrin, Forster & Crosby Inc., continues to work. He was diagnosed with AIDS last October

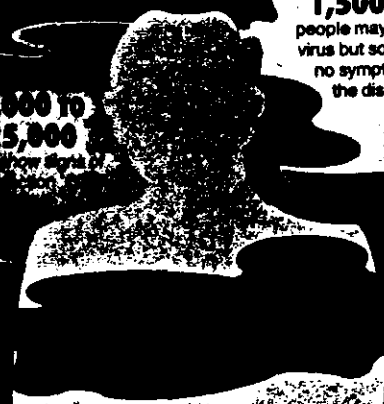
and is now taking the experimental drug AZT, the first shown to prolong the lives of patients with AIDS. He is hopeful about the future: "So much of society's attention is now based on death and how many people are dying of AIDS," Latham observes. "I think we should be focusing on how many people will be living with AIDS. That is the much more powerful issue." And one that corporations can no longer avoid.

By Joan O'C. Hamilton in San Francisco, with Julie Flynn in Los Angeles, Patrick Houston in Minneapolis, Reginald Rhein Jr. in Washington, and bureau reports

AIDS: NOW ... AND TOMORROW?

0,000 to
25,000
a year

1,500,000
people may carry the
virus but so far show
no symptoms of
the disease



DATA CENTERS FOR DISEASE CONTROL

PHOTOGRAPH BY KATHERINE LAMBERT; CHART BY HAYES COHEN/BW

BANK OF AMERICA'S BLUEPRINT FOR A POLICY ON AIDS

In 1983, Bank of America made what Nancy L. Merritt now calls a "compassionate mistake." An employee diagnosed with AIDS had recovered from his initial sickness and wanted to return to work. His manager, fearing the reaction of co-workers, called a meeting to explain his illness. "She didn't realize she was violating his privacy," says Merritt, vice-president and director of equal opportunity programs. Two pregnant women refused to work with him. After talking to public health and medical experts, the company invited the AIDS patient to return—and the women resigned. "We took our stand," says Merritt. "It is not a contagion issue. And the employee can come back and work as long as he or she is able."

That incident became the basis of one of the first and most sweeping corporate policies for dealing with AIDS. Developed with the input of benefits specialists, human resources experts, the corporate health department, and company attorneys, it has since become a blueprint for other companies grappling with the issue of AIDS in the workplace. Here Merritt discusses that policy.

AIDS raises a myriad of questions in the workplace: How do you manage an employee with AIDS? How should managers separate the attitudes of employees from the realities of the disease? How do you balance the needs of business and ethical issues? And such questions will become more and more pressing as the tragic AIDS epidemic continues.

A goal of any employer is to provide a safe work environment for all workers. With AIDS that should be simple: It is not a casually contagious disease, and there is little risk of transmission in the workplace. But given the irrational fear that AIDS often inspires, the best way to avoid a difficult and disruptive situation is to prepare and educate both management and employees before the first employee gets AIDS.

The first thing to keep in mind is that an employee's health condition is personal and confidential. A company must take reasonable precautions to protect such information. At Bank of America, employees are not required to tell their managers that they have AIDS or other life-threatening illnesses. But they are assured they can work with the human resources department to facilitate benefits and discuss other illness-related concerns.

TALKING AND READING. We have taken pains to make sure that our human resources department is well-informed about AIDS. Managers are encouraged to contact that department if they or members of their staff need information about any life-threatening illness, not just AIDS. That department is ready to answer any questions managers may have about an AIDS-related situation or about the contagious nature of an illness.

We also ask that managers contact human resources personnel before they make any demands of an employee—such as asking a worker to obtain a physician's statement regarding ability to continue work or assessing whether that person's continued presence poses a threat to the employee, co-workers, or customers. In all cases, Bank of America reserves the right to require an examination by a medical doctor ap-

pointed by the company. Providing a supportive work environment for people with life-threatening illnesses not only helps them financially, it can even prolong their lives.

As long as employees with AIDS are able to meet acceptable performance standards—and their condition is not a threat to themselves or others—they should be treated like other employees. If warranted, we make reasonable accommodations for the employee—flexible work hours, for example—so long as these do not hamper the business needs of the work unit.

The fact remains, however, that some employees will be uncomfortable with a co-worker's life-threatening illness. Although managers must be sensitive to these concerns, special consideration is not usually given beyond normal transfer requests. Apprehension is usually based on a lack of information. Since we published our policy, we have not had any requests for a transfer based on fear of a co-worker's illness.

An employee who becomes sick with AIDS should be encouraged to seek assistance from established community support groups for medical treatment and counseling. Bank of America has a worldwide directory of AIDS resources and services that we make available to our employees. Sometimes we assist employees in getting help such as grief counseling or advice on how to talk to or treat a co-worker with AIDS. Nobody is comfortable with issues of death and dying—not managers, not co-workers, and not people with a life-threatening illness.

Bank of America believes that companies can also play an important role in the benefits arena for people with AIDS. It is clear that the best and most cost-effective way to treat a person with AIDS is through "case management" programs that provide for home or hospice care. However, such flexible benefits coverage is a fairly recent development, and many insurance companies still do not reimburse these expenses. We have been pleased with the outcome of working with third-party insurers to provide this flexibility.

Education is critical. If you look at the numbers coming out of public health departments, we seem to be at the edge of the forest looking in. Prevention is currently the only way to stop the spread of this disease. And large companies are well-positioned to provide this education.

It is important to make educational materials available to all employees in a systematic way through newsletters, informal sessions at lunchtime, and other vehicles. The key is to make sure that all educational efforts are appropriate to the company's culture. You don't want to send out frantic alerts to employees. In some companies, holding mandatory sessions might cause alarm. Our strategy is to make information available and handle more specific needs as they arise.

We also believe the bank's role in education extends into the community. We see an exponential benefit of having well-informed employees. Many of our branch managers, for example, sit on school boards or are active in the local chambers of commerce. They can carry the message even further. It goes without saying that it's critical to have management support for these programs. Fortunately, our board and top management committee's main concern was "Are we doing enough?"



BoJA'S MERRITT: "WE TOOK OUR STAND"

VOLUNTEERS, HOME CARE, AND MONEY: HOW SAN FRANCISCO HAS MOBILIZED

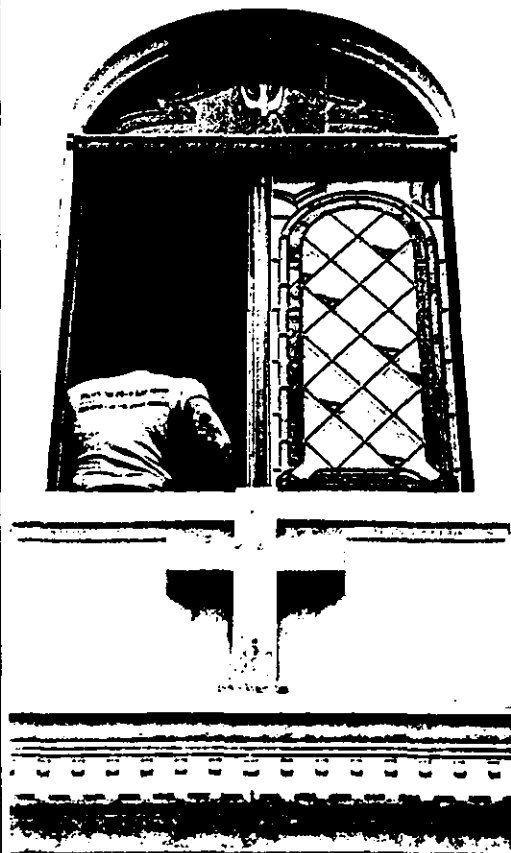
The hammers are still pounding at the 15-bed Coming Home hospice in San Francisco. There, volunteers are converting a former Catholic convent into the nation's first residential care facility for AIDS patients in the terminal stage of illness. For \$140 per day, Coming Home will look after patients who would otherwise live out their remaining weeks in hospitals charging up to 10 times as much.

Projects like Coming Home, a nonprofit facility financed through community fund-raising, have earned San Francisco what U.S. Surgeon General C. Everett Koop called a "pioneering role" in caring for AIDS sufferers. And they have made this city a model for public health experts now girding to combat the AIDS epidemic in other communities.

IMPRESSIVE RESULTS. At the core of San Francisco's AIDS effort is a close-knit fraternity of health care professionals, volunteers, researchers, and service organizations. They marshal support for people with the disease and get them out of the hospital as quickly as possible after bouts of illness. The network has yielded impressive results: In San Francisco a typical AIDS patient runs up about \$40,000 in medical expenses between diagnosis and death, compared with a bill as high as \$140,000 in other parts of the nation.

The gay community is behind the city's rapid mobilization against the disease. In contrast to such urban centers as New York, where intravenous drug users account for 30% or more of all AIDS cases, in San Francisco more than 95% of AIDS patients have been homosexual men. They are predominantly young, well-educated, and employed. And they wield political clout. Ever since the disease took hold in the city, they have been a force for action by the municipal government. "It was clear in 1981 that we had something unusual and explosive on our hands and had to act," says San Francisco Mayor Dianne Feinstein.

As a result, the city of San Francisco will spend \$11 million in AIDS-related education, research, care, and other services this year—more than \$15 per resident. Those dollars help support such activities as the San Francisco



THE COMING HOME HOSPICE: THE CITY WILL SPEND \$11 MILLION ON AIDS-RELATED SERVICES THIS YEAR

AIDS Foundation, a clearinghouse of information that has become a national resource.

Business has not only supported the AIDS Foundation financially, it has also led the nation in forging progressive corporate policies. Last year, Levi Strauss, BankAmerica, Pacific Telesis, Wells Fargo, Chevron, Mervyn's Department Stores, and AT&T pitched in to make a videotape, *An Epidemic of Fear*. The AIDS Foundation has since sold some 650 "AIDS in the workplace" kits, which include that videotape.

City funds also finance the AIDS program at San Francisco General Hospital, which treats more than one-third of the city's AIDS sufferers. Led by University of California at San Francisco hematologist Paul Volberding, clinicians provide both care and research aimed at treating AIDS sufferers outside of the hospital. Patients are released into a network of organized home health care that provides complete daily assistance for as little as

\$90 per day. Coming Home will fill any gaps between such home care and hospitalization by providing closer medical supervision in a homelike environment.

A pool of volunteers is indispensable to the city's success in coping with the epidemic. Last year approximately 450 volunteers organized by the Shanti Project, a volunteer organization, provided 110,000 hours of emotional and practical support for 80% of San Francisco's AIDS patients. They offer everything from housecleaning to transportation and visits for the homebound. "In San Francisco if you have a fire you call the Fire Dept., but if you have AIDS you call Shanti," says one patient. "Its resources are invaluable."

OVERWHELMED. Can the system that works so well in San Francisco be transplanted? The Robert Wood Johnson Foundation is betting that it can with \$17.2 million in grants for similar programs in 10 cities including New York, Seattle, Atlanta, and Miami.

But even San Francisco's system can be overwhelmed by the swelling number of patients. More than 2,800 people have been diagnosed with AIDS in the city so far, and more than 1,700 have died. At least 50% of the estimated 80,000 to 150,000 gay and bisexual men are believed to be infected. By 1991, experts predict, the city will have 18,000 people with AIDS. "I have real concerns as to where we are going to care for these people," says Volberding. Already, absenteeism and turnover, a warning of burnout, are on the rise among his staff. Moreover, it is getting harder to find volunteers, and the hospitals are overflowing. In SF General's AIDS ward, patients wait to be treated in the hallways: The hospital has just 20 beds reserved for AIDS.

Volberding is convinced that soon the city—and the nation—must forge a new system to meet the crisis. During a packed gathering at the annual meeting of the American Association for the Advancement of Science in February, he called for federal planning and advocated the establishment of national regional hospitals that specialize in treating AIDS. He warned: "The San Francisco model works for now but not in the future."

By Joan O'C. Hamilton in San Francisco

Top businesses unready to do battle with AIDS

By John King
ASSOCIATED PRESS

BOSTON — Most of the country's top businesses are unprepared to deal with AIDS despite growing evidence that the fatal disease could eventually cost corporate America billions of dollars, according to a survey released Wednesday.

Of 100 Fortune 1000 companies surveyed in late July, only 29 had policies for dealing with employees with acquired immune deficiency syndrome. Nine were considering adopting guidelines, according to research by the Boston office of TeleSearch Inc.

"It is almost as though most of these companies don't want to admit that AIDS exists or that it will only affect the 'other' company," said Ellen Kinlin, president of TeleSearch, a national executive search firm owned by Fidelity Investments.

Three of the companies surveyed said they would fire employees who contracted AIDS, while one-quarter of the companies surveyed said they might do so.

A majority of 67 companies said they would not fire employees with AIDS. Five refused to answer the question.

Of the 14 companies requiring employees to have regular medical checkups, only one required an AIDS antibody test, TeleSearch said.

One-third of the companies said they expected health-insurance costs to increase dramatically because of AIDS. But one-quarter said they believed insurance costs would not increase, the survey showed.

TeleSearch would not release

the names of the companies it had surveyed, saying it had promised them confidentiality. The surveyed companies are in New England, New York, Washington and Chicago. They represent manufacturing, insurance, health care, utilities and consumer products, TeleSearch said.

A random survey of a dozen major companies Wednesday by the Associated Press found varying efforts to deal with AIDS, which attacks the body's ability to fight disease and infection.

Several company spokesmen said constant developments in research and the uncertainty among government and the insurance industry about how to respond to the disease were slowing corporate policy about AIDS.

"We have a very broad AIDS policy," said William Kennedy, spokesman for General Electric Co. in Lynn, Mass. General Electric does not test current or prospective employees for AIDS and would not fire a worker who had the disease, Kennedy said.

Kennedy said he was not aware of any company workers who had AIDS but said GE's health benefits would cover treatment.

He said it was premature to speculate whether AIDS would significantly increase the cost of health insurance for major corporations.

"Obviously, if it did reach the pandemic proportions some predict, it would cost a great deal of money," he said.

Raytheon Co., a major defense contractor that has 78,000 employees worldwide, does not have a formal AIDS policy, spokesman Ed Powers said.

"Our approach to AIDS is on a case-by-case basis," Powers said.
