

## **Investigation Report No. 3-6/2019**

**Subject: Discrimination against people living with HIV when applying for a job with a private company**

### **Complaint Issues**

The National Human Rights Commission of Thailand (NHRCT) has received complaints from six persons requesting an investigation into the case they claim that private companies require job applicants to have pre-employment HIV testing. If found with HIV, the person will be denied employment, even though the nature of the job does not involve the transmission of or has potential to transmit HIV in any way. They claim that this requirement is regarded as discrimination against people living with HIV.

### **Actions Taken**

NHRCT has considered the above case and views that the requirement of private companies for applicants to be tested for HIV as part of the recruitment process is an act of discrimination against the complainants on the basis of health status, which could be considered as discrimination on the basis of other status. One private company clarified that it had no policy for applicants to test for HIV; the process of pre-employment HIV testing was conducted by another private company, which was hired for the recruitment of new employees. However, since such an arrangement forced a complainant to get pre-employment HIV testing, it can be concluded that there was discrimination like in other cases. What the six private companies did was not in compliance with the Constitution of the Kingdom of Thailand B.E. 2017, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). This is in violation of human rights of all six complainants. In accordance with Section 247 (1) and (3) of the Constitution of the Kingdom of Thailand B.E. 2017, and Section 26 (1) and (3) in conjunction with Sections 36 and 42 of the Organic Act on the National Human Rights Commission B.E. 2017, the Commission has come up with a resolution to recommend appropriate measures or guidelines to prevent or address human rights violations, to recommend measures to promote and protect human rights, and to amend law and regulations to comply with human rights principles, to all six private companies, the Ministry

of Public Health, the Department of Labor Protection and Welfare of the Ministry of Labour and the Cabinet, as follows:

### **Appropriate Measures or Guidelines to Prevent or Address Human Rights Violations**

(1) The complained private companies 1, 2, 4, 5 and 6 should consider discarding the requirement for pre-employment HIV testing for any job position and following the National Guidelines for the Prevention and Management of AIDS in the Workplace and the Announcement of the Ministry of Labour Regarding Guidelines for the Prevention and Management of AIDS and Tuberculosis in the Workplace dated 25 July 2012, as well as establishing the standard of AIDS management in the workplace (AIDS - response Standard Organization: ASO Thailand). The complained private company 3 should make sure that its recruitment agency does not recruit employees through any means which discriminates against people living with HIV/AIDS.

(2) The Ministry of Public Health should ensure law enforcement to protect the rights of people living with HIV, i.e., through the use of mechanisms under the Medical Facilities Act, B.E.1998 and the Announcement of the Ministry of Public Health No. 3 (1999) regarding types or categories of medical care, other hospital services, and patient rights, which a licensee must display according to Section 32 (3), with medical facilities that provide HIV testing services and reveal test results to other people with or without consent. The Ministry should also set strict punitive measures to medical facilities that violate the provisions.

### **Recommended Measures or Guidelines for the Promotion and Protection of Human Rights**

The Ministry of Labour and the Department of Labour Protection and Welfare should ensure that private enterprises follow the National Guideline for the Prevention and Management of AIDS in the Workplace and the Announcement of the Ministry of Labour Regarding Guidelines for the Prevention and Management of AIDS and Tuberculosis in the Workplace dated 25 July 2012, particularly in relation to the call to drop pre-employment HIV testing and the establishment of the standard of AIDS management in the workplace (AIDS - response Standard Organization: ASO Thailand) to yield result immediately.

### **Recommended Improvements to Law, Regulations, or Orders**

The Cabinet should make improvements to law, regulations or orders related to labour protection in the private sector to cover the rights of people living with HIV, whether they are job seekers who are not currently in employment or are employees according to the labor protection law and other laws, from the process of recruitment to the setting of conditions of employment, promotion and termination of employment, so that people with HIV have equal rights and opportunities as others. This effort should use the relevant areas of the International Guidelines on HIV/AIDS and Human Rights as guidelines for implementation.

A mechanism to protect and monitor discrimination against people living with HIV in the workplace should be set up to receive complaints, investigate, and take action to provide remedies for those with HIV who are discriminated. This will help enforce the law to effectively protect the rights of people living with HIV.

### **Achievement/Progress in Human Rights Protection**

(1) One private company has informed that it has dropped pre-employment HIV testing in all job positions of the company since April 1, 2019.

(2) Deputy Prime Minister, Mr. Wissanu Krua-ngam, acting on behalf of the Prime Minister, assigned the Ministry of Labour as the main agency together with the Ministry of Public Health, the Office of the Council of State and relevant agencies to consider the measures and recommendations. The Ministry of Labour shall summarize and submit the results of the consideration to the Secretariat of the Cabinet within 30 days from the date of receiving the order to present to the Cabinet.