

Prepare Your Workplace for H1N1 Flu

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Q: Our employees are in a panic over the anticipated H1N1 flu pandemic. Is there anything we should be doing to prepare?

A: Although the seasonal flu affects a larger number of people than the H1N1 flu, the H1N1 flu has caused a significant scare among employers, particularly because it remains uncharted territory for employers and employees alike. Accordingly, the best way to prepare your workplace for the H1N1 flu pandemic is to create a plan of action and put it into play.

The H1N1 flu pandemic will be felt by employers in many ways. Some of the most tangible employment issues include dealing with employee absenteeism and managing a contagious workplace.

ABSENTEEISM

The H1N1 flu is expected to keep workers home for various reasons — because they are: sick, caring for a sick family member, caring for a child who must stay home because of school closures, or afraid of catching the H1N1 flu at work. Employers must develop policies and procedures for ensuring that these absences are treated in accordance with the Family and Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA), the Fair Labor Standards Act (FLSA) and the National Labor Relations Act (NLRA).

CONTAGIOUS WORKPLACE

Even more disconcerting is the likelihood of sick employees coming to work despite their illness and spreading the infection. Employ-

ers must enact policies and procedures to maintain a safe and healthy workplace consistent with the Occupational Safety and Health Act (“OSHA”), while preventing liability under anti-discrimination laws and the NLRA.

OSHA requires employers to maintain a safe and healthy workplace and to safeguard their employees from “recognized hazards” to their health or safety. An H1N1 flu pandemic could qualify as a recognized hazard that employers must take action against. As a result, employers must actively plan for the H1N1 pandemic.

RECOMMENDED SOLUTIONS

The anticipated H1N1 pandemic presents significant legal issues for employers. Employers should consider the following in preparing their workplace for the pandemic:

1. Evaluate Current Policies and Practices. Review policies and practices currently in place. If you do not have a communicable disease policy, seek legal advice to develop and implement an appropriate policy for your workplace. Such policy should, at a minimum, describe the disease control practices your employees are expected to adhere to; the symptoms linked to the H1N1 flu; and your employees’ obligation to stay home, leave work and inform a designated company official if they become infected with or are exposed to the H1N1 flu. Consider revising your leave policies to encourage employees exhibiting H1N1 flu-like symptoms to stay home without fear of reprisal. The likelihood of a significant portion of your work force becoming infected with the H1N1 flu — or staying home to care for an infected family member or because of a fear of contagion at work — may call for the development of flexible work and telework arrangements. These would allow your workplace to remain operational despite a decreased work force. Carefully assess your business operations to determine the lowest number of employees

necessary to remain operational. It may be necessary to outsource or at least develop a plan for temporarily supplementing your work force to counteract absenteeism.

2. Implement Disease Control Practices. Educate your employees about good hygiene as a tool for preventing the spread of the H1N1 flu. For example, encourage employees to cover their coughs and sneezes with a tissue and, if possible, provide easy access to tissues and trash cans. Encourage employees to wash their hands frequently and, if possible, establish hand sanitizing stations throughout your workplace. Revisit cleaning practices to ensure that surfaces and items that are frequently touched are cleaned routinely. Encourage employees to get vaccinated for both the influenza and the H1N1 flu. Employers can also provide employees with leave to get vaccinated and/or provide on-site vaccinations for both the flu and the H1N1 flu. Another important step in disease control is to implement social distancing methods that reduce the number and length of time employees are in close contact with each other.
3. Open Communication and Information Dissemination. Maintain open lines of communication with your work force. Conduct trainings and put up posters that describe your disease control practices and encourage employees to prevent the spread of the H1N1 flu. Train Human Resource personnel and other management-level employees to implement policies in an effective and non-discriminatory manner.

The H1N1 flu pandemic poses significant labor and employment issues for employers. Take steps to develop and implement an appropriate strategy for dealing with the impending pandemic before it hits your workplace. ■

The answers provided here should not be construed as legal advice or a legal opinion. Consult a lawyer concerning your specific situation or legal questions.