

LABOR & EMPLOYMENT

>> ALERT

EMPLOYERS SHOULD TAKE SIMPLE PREVENTATIVE MEASURES TO REDUCE EXPOSURE TO H1N1

Many businesses have already been impacted by the outbreak of the 2009 H1N1 influenza virus (also known as Swine Flu). The Centers for Disease Control (CDC) anticipates that this fall and winter, more communities may be affected than were in the spring and summer, with possibly wider transmission and greater impact. In addition, seasonal influenza viruses may cause illness at the same time as H1N1. However, despite the World Health Organization's designation of a global pandemic, there is no need for employers, or employees, to panic.

The CDC and other health-related administrative agencies have prescribed a variety of guidelines and recommended actions, and developed workplace posters and websites, to educate the public in an effort to limit the spread of the H1N1 influenza virus.

ACCORDING TO THE CDC, EMPLOYERS SHOULD:

- >> Encourage sick employees to stay home and not to return until at least 24 hours after they are free of fever, or signs of a fever, without the use of fever-reducing medications
- >> Provide tissues and no-touch disposal receptacles for use by employees
- >> Provide soap and water and alcohol-based hand sanitizers in the workplace, ensure that adequate supplies are maintained, and place hand sanitizers in multiple locations or in conference rooms to encourage hand hygiene

- >> Frequently clean all commonly touched surfaces in the workplace, such as workstations, countertops, and doorknobs, using regular cleaning agents (no additional disinfection beyond routine cleaning is recommended)
- >> Post the following posters in appropriate places: <http://www.cdc.gov/h1n1flu/pdf/handwashing.pdf> and http://www.cdc.gov/H1N1flu/business/toolkit/pdf/StopDoYouFeelSick_8x11.pdf
- >> Offer opportunities at their worksite for influenza vaccination and consider granting employees time off from work to get vaccinated if not offered at their worksite
- >> Plan for how their business will operate if there is increasing absenteeism
- >> Cross-train personnel to perform essential functions so that the workplace is able to operate even if key staff are absent

THE BOTTOM LINE

The CDC reports that most people who have become ill with this new influenza virus have recovered without requiring medical treatment. Nevertheless, it is prudent for employers and employees to take appropriate precautionary measures to help prevent exposure.

- >> Consider adding a “widget” or “button” to their company intranet so employees can access the latest information on influenza: www.cdc.gov/widgets or www.cdc.gov/SocialMedia/Campaigns/H1N1/buttons.html

In addition, in the event that the severity of the virus increases, public health officials may recommend a variety of methods for increasing the physical distance between people

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(called social distancing) to reduce the spread of the flu, such as canceling large business-related meetings, spacing workers farther apart in the workplace, canceling non-essential travel, and recommending work-from-home strategies for workers that can conduct their business remotely. Please note, however, that at this time, the CDC is not recommending implementation of social distancing or closing offices – the recommendation is only to be prepared in the event such actions are necessary. Employers should explore whether they can establish policies and practices, such as flexible worksites (e.g., telecommuting) and flexible work hours (e.g., staggered shifts), when possible, to increase the physical distance among employees and between employees and others, if local public health authorities recommend the use of social distancing strategies. Make sure to work with IT personnel to determine if you have the information technology and infrastructure needed to support multiple workers who may be able to work from home.

Employers might also consider asking employees to complete an EEOC-approved, ADA-compliant, pre-pandemic employee survey, available at:

http://www.eeoc.gov/facts/pandemic_flu.html, which would enable employers to assess the impact of a pandemic on employee attendance.

Finally, employers should be aware that workplace influenza implicates a variety of employment laws. Medical complications due to the flu may constitute a serious health condition entitling eligible employees to leave under the Family and Medical Leave Act (FMLA) and/or analogous state laws if, for example, the flu requires a continuing course of treatment from a health care provider. Similarly, employees who need time off to care for a child, spouse or parent who has complications due to the flu may be entitled to protected leave even if such leave is not permitted under the company's policies. Indeed, in certain circumstances, employers may be required to provide protected leave even for employees who are not entitled to FMLA as a reasonable accommodation under the Americans with Disabilities Act and similar state and local laws.

In addition, employers should be aware that health issues may implicate Health Insurance Portability and Accountability Act (HIPAA) and state privacy laws,

especially when employees are revealing details about their medical conditions and treatments to their employer. And employers should note that the Occupational Safety and Health Act generally requires that all employers provide a safe working environment for their employees. Therefore, employers should take reasonable steps to limit their employees' exposure to the flu, and they should consult their employment counsel if issues arise relating to employee illness or workplace safety.

FOR MORE INFORMATION

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IN ADDITION TO CONSULTING EMPLOYMENT COUNSEL...

Employers and employees may visit www.flu.gov or the CDC's website at: www.cdc.gov/niosh/topics/h1n1flu

For New York employers, the New York City Department of Health has information at:

http://www.nyc.gov/html/doh/downloads/pdf/cd/h1n1_workplace_faq.pdf

For California employers, the California Department of Industrial Relations has information at:

<http://www.dir.ca.gov/dosh/SwineFlu/SwineFlu.htm>