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An Ounce of Prevention: Tips for Addressing H1N1 Flu At Work

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With flu season quickly approaching, employers have been forced to grapple with a variety of issues implicated by a possible H1N1 flu pandemic. What if an employee has been exposed or becomes ill at work? What if an employee refuses to come to work? How should external issues such as school closure or transportation shut-downs be handled? What if there is a major disruption in materials or services that are essential to business operations? These are just a few of the many issues that employers will undoubtedly face in the coming months.

The Centers for Disease Control estimates that as many as 25% of small businesses will be unable to reopen following a pandemic disaster. Considering this, it is imperative that every employer carefully consider how to address H1N1 flu in the workplace. And if an ounce of prevention is worth a pound of cure, employers are quickly realizing that they may also need a few ounces of planning, preparation, and practicality as well.

Planning: Set up a “Pandemic Plan”

According to the Centers for Disease Control, the most important thing that employers can do in preparing for pandemic flu is to formulate a written plan. While plans may vary depending on company size and estimated risk levels, all plans should contain certain information.

First, it is imperative that the plan identifies a workplace coordinator and/or response team charged with keeping up to date on developments, communicating with local health departments, and responding to specific employee situations. In addition, a “go-to” person should be identified who can take immediate action in order to minimize exposure should an employee become ill at work.

The plan should also address preventative measures that are being adopted, such as reporting symptoms promptly, staying home if ill, washing hands frequently, reporting possible exposures, and so on. Other precautionary measures, such as providing hand sanitizers, using no-touch trash cans, increasing the workplace cleaning regimen, and circulating vaccine information may also prove helpful.

The plan must clearly communicate how existing policies may be implicated in the event of an outbreak. Sick leave, kin care, and attendance policies should be reviewed with an eye toward a flexible, non-punitive approach that encourages employees to stay home rather than spread illness. Other policies, such as telecommuting and remote access, should be considered especially for employees who work in areas critical to business operations. Employers may want to institute other measures, such as requiring forced leave for incubation periods, suspending non-essential travel, requiring a doctor's note prior to returning to work, social-distancing, and so on.

Finally, the plan should account for continuity issues in the event that materials, supplies, services, or personnel become unavailable on a large-scale basis. It may be useful to establish threshold levels at which absenteeism or decreased supplies actually threaten operations in order to quickly identify these critical points. Some employers have gone as far as identifying and training an ancillary workforce which can step in if needed.

Preparation: Address Likely Scenarios

In the event of an H1N1 pandemic, certain scenarios will be unavoidable. Employees and their family members will get ill and/or become exposed to the flu. Employees will be affected by other factors, such as school closures or shut-downs of public transportation. Still others may simply refuse to come to work out of fear that they will get exposed. Employers should take time to identify those scenarios that are most likely to impact their workplaces, and take precautions to limit attendant legal risks.

Among the more common legal dilemmas that employers are likely to face are the following: 1) coverage under the Family and Medical Leave Act and/or California Family Rights Act; 2) disability rights and accommodation requirements under the Americans with Disabilities Act and/or California Fair Employment and Housing Act; 3) wage deduction issues for employees who are away from work for extended periods; 4) time-keeping concerns for individuals who must work from home; 5) privacy considerations related to requesting medical information and how that information must be protected; and 6) discipline options for employees who fail to come to work or fail to adhere to precautionary measures.

As a general matter, employers must educate themselves regarding leave rights and disability protections, remembering that a flu pandemic is a unique situation which may demand additional accommodation. Employers should also develop procedures and infrastructure to allow for alternative work arrangements (such as telecommuting), while

carefully considering potential wage and hour issues that may be implicated (such as time tracking for non-exempt staff). Employers should also educate supervisors regarding what medical information can be solicited and how such information must be safeguarded. Finally, employers should consider temporary expansions of sick leave, kin care, or other paid time off if possible.

Practicality: Revise Plans as Needed

Despite continued research, scientists cannot predict the likely severity of H1N1 flu. For this reason, employers must be prepared to revise prevention and response plans as may be warranted. For some employers, this can create a quandary: the need to act swiftly and decisively in order to limit exposure versus the need to continually reassess ever-changing conditions.

As a practical matter, education and communication may be the employer's greatest tools in confronting H1N1 flu. Staying abreast of the current conditions, taking a proactive approach toward both prevention and response, and engaging employees in focused discussions related to leave rights, pay issues, exposure, and other items of concern must become on-going workplace practices.

The H1N1 virus has already demonstrated that it can adapt. Can you?

See the Centers for Disease Control website (www.flu.gov) for the latest information related to H1N1 flu.