

SPECIAL BULLETIN

May 1, 2009

Responding to the H1N1 Influenza (Swine Flu).

The World Health Organization and extensive media coverage warn that we are facing a possible pandemic. On April 29, 2009, the World Health Organization (WHO) announced that the current H1N1 influenza (swine flu) outbreak meets the criteria for a Phase 5 Pandemic. The elevation to Phase 5 signals that "a pandemic is imminent and that the time to finalize the organization, communication, and implementation of the planned mitigation measures is short."

Liebert Cassidy Whitmore has received numerous inquiries from public agencies on how to respond to potential employment issues arising from the flu outbreak. In this Special Bulletin, we address steps employers can take to decrease the likelihood of transmission and to limit the impact of the pandemic on the workplace.

What is H1N1 Influenza?

H1N1 influenza is a respiratory virus. In the past, it has been confined mainly to pigs. Recently, it has begun to spread through the human population via person-to-person transmission in the same way as a "seasonal" flu - e.g., coughing, sneezing, and contaminated surfaces.

Individuals infected with the virus may be able to transmit the disease to others about one day before symptoms develop and up to seven or more days after becoming ill. Symptoms of H1N1 influenza include fever, cough, sore throat, body aches, headache, chills, fatigue and possibly diarrhea and vomiting.

What actions can employers take to prevent the transmission of influenza and limit the impact of the current outbreak?

- Remind staff that frequent and thorough hand washing can help prevent the spread of infection, as can proper hygiene techniques like covering one's coughs and sneezes and avoiding touching one's eyes, nose and mouth.
- Direct employees to stay home if they, or a member of their household, become ill with flu-like symptoms.
- Prepare for the possibility that some employees may have to stay home in the event of school closures or childcare concerns.
- Provide staff with information about how to prepare themselves for a pandemic. Resources are available at www.pandemicflu.gov/plan/individual/checklist.html
- Identify essential job functions that must continue to be performed even if absenteeism rises as the result of a pandemic.

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- Consider telecommuting and similar options that allow employees to work at home and avoid close contact with others who may be infected.
- Ensure that common areas in the workplace, including computer keyboards that are used by more than one person, are kept clean and disinfected.
- Inform employees that information regarding medical conditions is kept strictly confidential and they will not suffer retaliation for reporting that they are ill or if they need to take a family or medical leave.
- If applicable, refer to the agency's pandemic or health protection policy for further guidance.

What if an employee has been, or may have been, exposed to H1N1 influenza?

- Follow federal, state and local laws, as well as any agency policies and/or collective bargaining agreements provisions, covering family and medical leave entitlements, and confidentiality requirements.
- Review any applicable guidance from the Occupational Safety and Health Administration (OSHA) on precautions to protect other employees from occupational exposure to influenza.
- Review the "Human Resource Policies and Pandemic Planning Workplace Questions" issued by the U.S. Department of Health & Human Services ("HHS"), available at http://www.pandemicflu.gov/faq/workplace_questions/human_resource_policies/index.html
 - The HHS website discusses issues such as leave policies (including FMLA), return to work, layoff/termination/firing, sending workers home, refusal to work, pay policies, work restrictions, working at home and social distancing, re-employment rights, child care at the workplace, liability issues and pre-pandemic workplace planning
 - Because California law may differ significantly from federal law, consult with legal counsel before implementing or applying new policies or procedures.
- In general:
 - Avoid asking employees questions about any known or suspected medical condition or medical history.
 - Report known or suspected cases of H1N1 infection to your county public health department or other appropriate agency.
 - Adhere to your agency regulations and all laws regarding privacy of medical information.
 - If applicable, refer to the agency's pandemic or health protection policy for further guidance.

Liebert Cassidy Whitmore continues to monitor employment issues related to H1N1 influenza and will issue ongoing bulletins.

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*If you have questions about this issue, please contact our
Los Angeles, Fresno or San Francisco office.*