

Managing Through a Pandemic: Implications of the Swine Flu (H1N1) On Your Business

Michelle B. Ferguson, Esq. and Laura J. Hazen, Esq.

Ireland Stapleton Pryor & Pascoe, P.C.

www.irelandstapleton.com

The onset of a pandemic has widespread implications, yet few businesses have communicable disease policies to address the implications a pandemic can have in the workplace. As of July 24, 2009, the Centers for Disease Control and Prevention ("CDC") reported that 171 cases of H1N1 flu, commonly called swine flu, were confirmed in Colorado. While 171 is a relatively small number, the cost of failing to contain an outbreak could be catastrophic. As workplaces provide a fertile breeding ground for any virus, employers must step up and play a role in preventing the spread of communicable diseases such as the swine flu.

The CDC cautions all to stay informed, follow public health advice and take everyday precautions to stay healthy, including staying home if you get sick. The CDC also encourages families to "develop a family emergency plan" including storing a supply of food, medicine, face masks, alcohol-based hand rubs and other essential supplies.

How can employers help? Employers can serve as an information source, passing on important information from the CDC. In addition, employers should update policies that could come into play when employees fall ill and be prepared to address employees' questions. Consider the following:

- **FMLA and/or Other Sick Leave Policies.** Policies should be reviewed to address the potential illness, and resulting absence from work, associated with a pandemic.
- **Discipline.** What will you do if employees refuse to come to work because they are afraid of exposure? Will they be punished for job abandonment, or will exceptions be made?
- **Pay.** If a workplace is closed, what portion of the workweek will be paid? What wages is the employer required to pay?
- **Staffing.** At what point will you encourage employees to stay home or institute alternative work arrangements? What if staffing is drastically reduced? What duties

may employees need to complete outside of their normal job description? What staff is “critical” and how will your business operate with an essential-staff-only crew?

- **Military.** If employees are called up for service during a pandemic, what are your obligations under Federal and state law?
- **Scheduling.** If the goal is to avoid crossing paths, should employees work on split schedules? Should some work from home?
- **Family Issues.** If employees request leave to care for sick family members, what information are you allowed to request, and what information is off-limits?
- **Medical Examinations.** Under what circumstances may an employer request medical examinations of employees who are well? Those who are returning from leave due to illness? What if employees insist on returning to work? The EEOC recently issued guidance to help employers stay compliant with the Americans with Disabilities Act in response to issues raised by the H1N1 virus. (See www.eeoc.gov/facts/h1n1_flu.html). HR professionals should study this guidance and be prepared.
- **Leave Policies.** Is there leave employees can use in such a situation?
- **Other Assistance.** If employees need help dealing with the crisis, do you have an EAP or other counseling resources in place or readily available?
- **Discrimination.** Employers also should be prepared to address any hostile environment or adverse action taken based on national origin, i.e. against those employees from Mexico.

Employers must be prepared, and designate appropriate staff, to address these issues and prevent a workplace crisis. A potential pandemic presents unique issues, and must be managed appropriately. Policies provide guidance for staff in tough times. Taking the time to sort out the answers to some of these issues before the true crisis arrives is the best defense.

Sources: www.cdc.gov/h1n1flu; www.pandemicflu.gov

“This article is intended as general discussion and information on the topic covered, and is not to be construed as rendering legal advice. If legal advice is needed, you should consult an attorney. This article may not be reprinted or reproduced in any manner without prior written permission of the author.”