

H1N1 preparations

How to make sure your workplace is prepared for the anticipated H1N1 outbreak **Interviewed by Troy Symphon**

It should come as no surprise to any business owner that the world is facing the very real prospect of an H1N1 (also known, although not appropriately, as “swine flu”) pandemic this coming flu season.

Employee health-related absences always present a challenge to employers, and this challenge will become that much greater depending upon the eventual severity of the outbreak. In a survey recently published by the Harvard School of Public Health, researchers found that a mere one-third of businesses believed they could sustain their operations without severe disruptions should a significant segment of their work force be out sick.

“Everyone from the Center for Disease Control (CDC) to President Obama to Sesame Street’s Elmo are offering advice on dealing with H1N1,” says Peter B. Maretz, a shareholder with Stokes Roberts & Wagner ALC. “Wash hands frequently with soap and water or at least use hand sanitizer, cough into your elbow, stay home if you’re sick, keep your distance from people who are sick, etc. In other words, use common sense.”

Smart Business spoke with Maretz about H1N1 and what you can do to make sure your company is prepared.

What are the first steps to take to minimize the risk of H1N1?

In terms of steps you can take to minimize the risk of H1N1 running through your workplace, common sense should prevail. Of course, make hand sanitizer available around the office; tell people to go home if they appear sick; provide information on vaccination sites and allow people time off to get vaccinated; or, better yet, arrange to have flu shots administered at your workplace.

Get a sense for what your absence levels are typically like for past flu seasons, so you can better gauge if you are reaching abnormal levels. Look for opportunities to cross-train employees to better cover critical positions when key people are out. This is particularly critical when it comes to functions such as payroll. ‘My paymaster was sick’ is no defense to a late payment claim.

How can you educate employees on H1N1?

Make it clear to your employees that they should not come to work if they feel



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sick, and confirm to them that there is no penalty or retaliation for taking this time off. While there is no legal requirement to provide paid sick days, it does make for a good practice, so if your business does not afford its employees that benefit, consider extending it in advance of the flu season.

There is a fair amount of flexibility in how these policies are crafted. To avoid the problem of employees using them for every bump or bruise or, as is more common, nursing a hangover, consider making the first sick day unpaid, and then the sick days immediately following paid. Along similar lines, consider requiring a doctor’s note for it to count as a paid sick day and/or a doctor’s note to return to work. Some agencies are suggesting suspending the requirement of a doctor’s note should medical facilities become inundated with patients, so be mindful of that. Absent a doctor’s note, according to the CDC, a flu patient is safe to be back in the workplace 24 hours after his or her fever breaks.

Are there other ways employers should alter their time-off practices?

Oftentimes, sick leave is lumped in under the broad category of ‘paid time off’ along with leave such as vacation. While that may make it easier on payroll and account-

ing, there is no requirement that unused sick days roll over each year. So-called ‘use it or lose it’ policies are permissible. Such policies are not, however, permissible for vacation days. If you lump sick days in with vacation days, they will roll over and accrue from year to year (with some capping permissible) like vacation days.

Finally, clarify that sick days can be used to care for children or spouses who are sick, or to care for children if schools are closed due to the pandemic. Of course, there is a potential for abuse, but the impact of an employee getting away with a sick day is minor compared with the risk of a truly sick employee infecting the rest of the workplace.

Are there any time-off concerns under the Family Medical Leave Act?

Yes, you have to be mindful of the parameters for leave under the Family Medical Leave Act (FMLA). As of this year, for leave to qualify under FMLA, the employer has five days to request the employee to provide medical certification of his or her condition, and then five days to notify the employee whether the requested leave qualifies for FMLA. The employee’s condition must be ‘a serious health condition,’ which, under FMLA, means he or she must miss at least three consecutive days of work, go to the doctor within seven days of onset of the condition, and then their doctor must call them back for follow up within 30 days. While some employers may choose not to strictly follow these parameters during the flu season, understand those same employers may be stuck with those lax standards or face discrimination or disparate treatment claims should they try to tighten things up once the flu season is passed.

Is an H1N1 outbreak truly possible?

To be sure, the hope is that the fears of a pandemic are overblown, much like the Y2K doomsday predictions. Nevertheless, you have to be prepared for anything. Let common sense be your guide, and administer policies consistently from employee to employee. <<

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