

IT'S THE LAW

Swine Flu or H1N1

Whatever It's Called, You Don't Want It

By: Trey Wood

The Occupational Safety & Health Administration (OSHA) governs the health and safety of workers and their environments. As an employer you have a legal duty to provide a workplace that is safe for employees and others. The H1N1 "swine flu" pandemic posed a potential threat to this responsibility. During a pandemic you must anticipate that employees and/or customers may come into contact with the virus—but the good news is—there are measures you can take to reduce the risk of infection in your workplace. During future threats similar to the one posed by the swine flu, simple adjustments can help maintain a healthy and safe work environment. By protecting your employees and customers, you also protect yourself and your company.

Administrative Adjustments

An easy protective measure you can take as an employer is to adjust employees' schedules and tasks to minimize risk of infection. Simple steps may be taken to promote health within the office:

- During a pandemic threat, encourage employees that are ill to stay home.
- Communicate with your employees that they should not fear being reprimanded for this decision.
- Stay current on highly infected areas and postpone all nonessential travel within those areas.
- In order to reduce anxiety, create a website or bulletin board where workers can go to get information regarding flu procedures for your workplace, regarding the virus, and a local number they can call to get more information.

Workplace Adjustments

The flu virus, and future threats, may be spread before the person infected knows they are ill. There are procedures that can be set up in the workplace to reduce the exposure to the virus. Encourage all employees to follow simple procedures to reduce spreading or contracting the infection.

- Provide resources around the office that promote health, such as: tissues, no touch trash cans, hand sanitizers and cleaning supplies for employees to maintain sanitary work stations.
- Encourage employees to wash their hands, cover their mouth when they cough or nose when they sneeze and dispose of tissues properly.
- Encourage employees to get their flu vaccines which will reduce the risk of the seasonal flu. Provide information on where the vaccine is available.
- Provide all information in a way that is easy to understand and in the appropriate language and literacy level for all employees.
- Ask employees for their suggestions to help reduce exposure in the work place.

Preventing Discrimination Related to Swine Flu and other pandemic situations

The U.S. Equal Employment Opportunity Commission (EEOC) has posted two concerns regarding discrimination that are applicable to H1N1 flu and other potential pandemics. The first concern is regarding employment discrimination based on national origin such as those of Mexican origin. Title VII of the Civil Rights Act of 1964 prohibits such discrimination. The second area of concern is employment discrimination related to medical disabilities. Title I of the American with Disabilities Act (the ADA) regulates disability related questions and requests for medical examinations among applicants and employees. Employers are prohibited from treating employees unfavorably or dismissing an employee based on a dis-

ability or origin. Anti-discrimination concerns should be taken into account when requiring an employee suspected of swine or other flu to stay home or asking pandemic related questions. As an employer you should be aware of what constitutes discrimination in the workplace and also what you are allowed to ask of an employee suspected of carrying the swine flu or other virus. The following are guidelines provided by the EEOC website regarding discrimination related to H1N1, and which could possibly be associated with future pandemic situations.

Discrimination Based on Origin

The news and media emphasized that swine flu originated and was most hazardous throughout Mexico; it is essential that as an employer you emphasize that it is illegal to discriminate based on origin. As a safety precaution you need to make clear in your office that associating the virus with employees and customers of Mexican origin is strictly prohibited. Explain that treating anyone unfavorably by associating them with swine flu based on origin is discrimination. By clarifying to employees what constitutes discrimination you reduce the risk of discrimination from occurring in the work place.

Discrimination Regarding Medical Inquiries and Examinations

The ADA regulates whether an employer may ask medical related questions or request a medical examination for applicants and employees. This affects information sought by employers regarding swine flu or other pandemic-related illness among applicants and employees. Although the ADA prohibits asking applicants or employees disability related questions it does not prohibit asking questions about an employee's general well being or health. Asking broad questions regarding missed work related to the pandemic but not related to a disability is allowed as well. Questions that may be asked include:

- Asking an employee if s/he is feeling ill if s/he looks tired or sick.
- Asking an employee who is sneezing or coughing if s/he has allergies or a cold.
- Asking an employee if s/he is able to perform his/her job requirements.
- Questions regarding care available for dependents if schools or other business were closed due to the pandemic.
- Questions regarding travel arrangements if public transportation were not available due to the pandemic.

The ADA allows employers to require a medical exam after they have made a conditional offer of employment. This must occur before the new employee starts working and must be required of all entering employees in the same job field. The ADA does not prohibit requiring the workplace to adopt infection control practices such as hand washing or wearing protective masks.

If an employee requests medical leave, employers are entitled to request a physician's note or other documentation to substantiate the request. Employers may make inquiries of the employee's health status while on leave. Upon request to return to work, employers are permitted to request an examination if there is a present risk that the employee is still a threat to the workplace due to the illness.

Conclusion

Part of being a responsible employer is anticipating future problems in order to avoid them. The above suggestions allow you to anticipate the effects of H1N1 or other pandemic type illnesses and create a plan to protect your employees, customers and workplace. By maintaining a healthy, safe and respectful work environment you uphold your responsibility as an employer. For further information regarding workplace policies and producers related to H1N1 (swine flu) please visit the EEOC or OSHA websites at:

<http://www.osha.gov/Publications/employers-protect-workers-flu-factsheet.html>

<http://eeoc.gov/facts/hini.html>

The author would like to acknowledge the assistance of Teia Moore in the preparation of this article.