

HR Alert: Swine Flu Preparations

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From the law firm of Quarles & Brady.

Swine Flu Preparations: CDC Issues New Guidelines For Employers

On August 19, 2009, the U.S. Department of Health and Human Services' Centers for Disease Control and Prevention ("CDC") issued updated guidelines¹ for employers on how to plan for and respond to the upcoming 2009–2010 influenza season. Though the full extent of the upcoming flu season and, in particular, the severity and scope of the H1N1 virus (commonly known as the "Swine Flu") cannot be predicted at this time, employers are encouraged to begin taking steps now to prepare for the fall and winter flu season.

Because the intensity of a flu outbreak may differ greatly from place to place, the guidelines stress that all employers must be flexible and should be in contact with state and local health officials in the areas in which they have operations, who may issue guidance specific to particular communities. In addition, employers should recognize that certain occupations may subject employees to heightened exposure risks to an influenza outbreak. [The Occupational Safety and Health Administration's *Guidance on Preparing Workplaces for an Influenza Pandemic* classifies potential occupational exposure risks as follows:](#)

Very high exposure risk occupations are those with high potential exposure to high concentrations of known or suspected sources of pandemic influenza during specific medical or laboratory procedures (e.g., health care employees performing aerosol-generating procedures on known or suspected pandemic patients, health care or laboratory personnel collecting or handling specimens from known or suspected pandemic patients).

High exposure risk occupations are those with high potential for exposure to known or suspected sources of pandemic influenza virus (e.g., health care delivery and support staff exposed to known or suspected pandemic patients, medical transporters of known or suspected pandemic patients in enclosed vehicles).

Medium exposure risk occupations include jobs that require frequent, close contact (within 6 feet) exposures to known or suspected sources of pandemic influenza virus such as coworkers, the general public, outpatients, school children or other such individuals or groups (e.g., employees in schools, high-population density work environments and some high-volume retail).

Lower exposure risk (caution) occupations are those that do not require contact with people known to be infected with the pandemic virus, nor frequent close contact (within 6

feet) with the public (e.g., office employees). Even at lower risk levels, however, employers should be cautious and develop preparedness plans to minimize employee infections.

For workplaces with Medium, High or Very High exposure risks, the OSHA guidance includes specific workplace practices and engineering and administrative controls as well as applicable personal protective equipment designed to minimize infection. Irrespective of assessing any occupational risks, an employer should also consider taking appropriate measures to help protect people at the workplace who are at higher risk for complications from influenza such as pregnant women; children under 5 years of age; adults and children who have chronic lung disease (such as asthma), heart disease, diabetes, diseases that suppress the immune system and other chronic medical conditions; and those who are 65 years old or older.

Regardless of an employer's perceived threat of exposure to an influenza outbreak, the CDC guidelines list the following actions that all employers should take now, in preparing for a potential flu pandemic:

Review or establish a flexible influenza pandemic plan and involve your employees in developing and reviewing your plan.

Conduct a focused discussion or exercise using your plan, to find out ahead of time whether the plan has gaps or problems that need to be corrected before flu season.

Have an understanding of your organization's normal seasonal absenteeism rates, and know how to monitor your personnel for any unusual increases in absenteeism through the fall and winter.

Engage your state and local health departments to confirm channels of communication and methods for dissemination of local outbreak information.

Allow sick workers to stay home without fear of losing their jobs.

Develop other flexible leave policies to allow workers to stay home to care for sick family members or for children if schools dismiss students or child care programs close.

Share your influenza pandemic plan with employees, and explain what human resources policies, workplace and leave flexibilities, and pay and benefits will be available to them.

Share best practices with other businesses in your communities (especially those in your supply chain), chambers of commerce and associations to improve community response efforts.

Add a "widget" or "button" to your company Web page or employee Web sites so employees can access the latest information on influenza.

The guidelines also provide various other recommendations for employers on how to respond to the flu season under two scenarios: 1) if the severity of the upcoming flu season remains similar to current conditions and 2) if the severity of the upcoming flu season becomes far greater than current conditions. To the extent the latter scenario occurs, CDC recommends, among other things, the following:

Consider active screening of employees who report to work.

Consider alternative work environments for employees at higher risk for complications of influenza during periods of increased influenza activity in the community.

Consider increasing social distancing in the workplace.

Consider canceling non-essential business travel and advising employees about possible disruptions while traveling overseas.

Prepare for school dismissal or closure of child care programs.

As noted in the May 2009 Quarles & Brady Labor and Employment Law Alert, employers should also take this time to think proactively about a number of employment-related issues that could arise from an influenza pandemic, such as HIPAA and state medical privacy concerns, FMLA and other leave provisions, potential discrimination and harassment claims, and potential workers' compensation claims.

