

IS YOUR COMPANY PREPARED TO DEAL WITH H1N1 IN THE WORKPLACE?

Several of our clients have contacted Holland & Holland LLC with questions regarding the much-reported onset of the H1N1 influenza season. H1N1, often referred to as “swine flu,” can be highly contagious, and the Centers for Disease Control (CDC) warns of the potential for H1N1 to reach pandemic status. A proactive response by an employer to H1N1 can help promote employee safety, as well as avoid disruptions in productivity. Here are some of the most commonly asked questions by employers wanting to know their rights and responsibilities with regard to H1N1:

What is H1N1?

H1N1 is a viral disease that is transmitted through person-to-person contact, by touching something which someone with a virus has already touched, or from droplets in the air which come from a sneeze or a cough of a person who has the virus. Symptoms of swine flu are the same as typical flu symptoms: fever, cough, sore throat, body aches, headache, chills and fatigue are the most prevalent symptoms. Some patients report diarrhea and vomiting, too. Most patients recover within three to five days, but for some individuals, especially the very young or elderly, H1N1 can potentially be very dangerous.

Why Should H1N1 be a Concern to Employers?

Swine flu differs from normal seasonal influenza, to which some employees have developed a level of immunity. While a vaccine for swine flu has recently been developed, the media reports that shortages of the vaccine have occurred in some areas of the country. Thus, because H1N1 is a relatively new strain of virus, some employees may not have any natural immunity, and it can be rather easily transmitted to individuals working in close contact. Employers have an overall duty to maintain a reasonably safe workplace on behalf of employees, and so the Occupational Safety and Health Administration (OSHA) has issued guidelines for employers to combat the spread of swine flu in the workplace.

What are the Recommended Actions to Help Prevent H1N1 in the Workplace?

OSHA recommends that you communicate to your employees the steps you are taking to prevent the spread of communicable diseases in the workplace. Let employees know that you are monitoring the spread of swine flu and are trying to take preventative measures. Educate employees about symptoms and the need to seek medical treatment. Also, require employees to wash their hands frequently, and to use a tissue to cover their mouth and nose when they cough or sneeze, and then dispose of tissues in containers lined with plastic bags. A good idea might be to post this information in employee break rooms, or via electronic mail.

What if an Employee Thinks He or She May Have Swine Flu, or Swine Flu Affects a Family Member?

Encourage sick employees to **stay home from work**. Make sure your managers are setting the example and remaining home from work when illness or symptoms first appear. Review your company's sick and/or other leave policies to ensure that employees who have influenza-related symptoms are not unduly penalized for staying home so that they do not infect other employees. Due to the critical nature of the swine flu virus, it may be necessary to create a situational exception to some sick leave policies for absences related to swine flu. Of course, you as an employer always have the right to ask an employee for a return to work statement from his or her physician. Also, recognize that some ill employees or employees with ill family members may need to stay home and, in some cases, such absences may be covered by the Family and Medical Leave Act (FMLA).

Can We Require Employees to be Vaccinated Against Swine Flu?

Regulations interpreting the Americans with Disabilities Act (ADA) indicate that employers may violate the statute by requiring that employees undergo vaccination. Nonetheless, it is a good idea to communicate to employees the importance of receiving a flu shot. Larger employers may take the additional step of setting up free, voluntary vaccinations for employees. Office buildings may also host "vaccination fairs," so it may be worth your while to ask about such opportunities on behalf of your employees.

What Else Can We Require of Employees to Help Prevent an Outbreak of Swine Flu in the Workplace?

Communicate to employees the need to frequently wipe down their work areas, light switches, door handles, phone receivers and other touched objects with sanitizing wipes. Develop practices that distance employees from each other by using email and/or teleconferences. When possible, minimize employee travel. Ask custodial or cleaning staff and services to disinfect all surfaces in the workplace on a daily basis. Finally, provide convenient access to health and safety information and equipment such as sanitary wipes, sanitary liquids, cleaning products, tissue and plastic garbage bags.

I Have Specific Concerns Regarding H1N1 in the Workplace ... Where Can I Find Additional Information?

The CDC has developed additional guidelines for employers and businesses dealing with the H1N1 virus, located at www.cdc.gov/h1n1flu/business. **For other questions regarding the legal rights and responsibilities of employers facing the prospect of swine flu in the workplace, feel free to contact any of the attorneys at Holland & Holland LLC at (210) 824-8282, www.hollandfirm.com**