

ClientAlert

Employment Law

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Employers Should Prepare Now for the 2009 – 2010 Flu Season

Under the “General Duty Clause” of the federal Occupational Safety and Health Act (“OSHA”), employers in the United States have a legal obligation to provide their employees with a safe work environment that “[is] free from recognized hazards that are causing or are likely to cause death or serious physical harm to [their] employees.” Given the requirements of OSHA’s General Duty Clause, and for other important business reasons, employers should take steps now to prepare for the effects of a possible 2009 – 2010 flu pandemic.

In this connection, employers should be aware that the Centers for Disease Control and Prevention (“CDC”) recently released a new “[Guidance for Businesses and Employers to Plan and Respond to the 2009 – 2010 Influenza Season](#)” and, in conjunction with the Department of Health and Human Services and the US Department of Homeland Security, also issued “[Preparing for the Flu \(Including 2009 H1N1 Flu\)—A Communication Toolkit for Businesses and Employers](#).” The Guidance recommends that employers take actions now to decrease the spread of seasonal flu and 2009 H1N1 flu in the workplace.* The Toolkit contains such things as questions and answers about the Guidance, fact sheets for employers and employees, a workplace poster (“STOP! Do You Feel Sick?”) for workplace entrances and template e-mails/letters for companies to send to their employees.**

Among other things, the Guidance recommends that employers: (i) review or establish flexible influenza pandemic plans; (ii) allow sick workers to stay home without fear of losing their jobs; (iii) develop other flexible leave policies for employees who have to stay home to care for sick family members or for children if schools dismiss students or child programs close; (iv) share their influenza pandemic plans with employees and explain what human resources policies, workplace and leave flexibilities and pay and benefits, will be available to them and (v) add a “widget” or “button” to company Web pages or employee Websites so employees can access the latest information (e.g., www.cdc.gov/widgets/).

* The Guidance does not apply to healthcare employers and those with “high and very high exposure risk tasks and operations.” Separate information is available for such employers.

** Other resources include, but are not limited to, OSHA’s previously issued “[Guidance on Preparing Workplaces for an Influenza Epidemic](#),” the Department of Homeland Security’s “[Planning for 2009 H1N1 Influenza: A Preparedness Guide for Small Businesses](#)” and the website www.flu.gov (“one-stop access to US Government H1N1, avian and pandemic flu information”). Employers also should be aware that the federal Equal Employment Opportunity Commission previously issued [Employment Discrimination and the 2009 H1N1 Flu Virus \(Swine Flu\)](#) and [ADA-Compliant Employer Preparedness for the H1N1 Flu Virus](#) to assist employers in complying with discrimination laws while addressing potential H1N1 flu issues.



Our Employment Practice

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For more information, please contact:

Tal Marnin
Counsel
New York
+ 1 212 819 8916
tmarnin@whitecase.com

White & Case LLP
1155 Avenue of the Americas
New York, NY 10036
United States
+ 1 212 819 8200

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If the current flu conditions remain at a similar severity as in Spring/Summer 2009, the Guidance recommends the following employer responses, among others:

- Advise employees to be alert to signs of fever and other signs of flu-like illness (such as fevers or chills and cough or sore throat, which may also be accompanied by a runny nose, body aches, headache, tiredness, diarrhea or vomiting) before reporting to work each day and stay home if they are ill. Employees who appear to have flu-like illness upon arrival at the office should be promptly separated from other employees and asked to go home. Employees who are ill also should not travel.
- Employees who become ill with flu-like illness during the work day should be promptly separated from other employees and asked to go home. If they can tolerate it, provide such employees with a surgical mask to wear before they go home if they cannot be separated from other employees. Inform fellow employees of their possible exposure to flu-like illness but maintain confidentiality as required by federal (and state) law.
- Employees with flu-like illness should stay at home until at least 24 hours after they are free from fever (100° or greater), or signs of a fever, without the use of fever-reducing medications. [The CDC had previously recommended that employees stay home for the longer of seven days after becoming ill or 24 hours after the symptoms resolve, which the CDC now recommends only if the flu conditions increase in severity (see below).] Expect sick employees to be out for about three to five days in most cases.
- Ensure that sick leave policies are flexible and consistent with public health guidance and that employees are well aware of the policies. “Allow and encourage sick workers to stay home without fear of losing their jobs.” Do not require a doctor’s note for employees who are ill with flu-like illness because doctors’ offices may be too busy to provide such documentation on a timely basis.
- Employees who are well but have family members at home with flu-like illness can go to work as usual, but these employees should monitor their health every day. Employers should maintain flexible policies to permit employees to stay home to care for their ill family members.
- Educate employees on proper cough and sneeze etiquette and hand hygiene and provide such things as tissues, no-touch disposal receptacles, and alcohol-based hand sanitizers (including in conference rooms). Educate employees that some people are at a higher risk (e.g., pregnant women,

employees who are 65 years of age or older and adults with chronic lung disease such as asthma, heart disease, diabetes, diseases that suppress the immune system and other chronic medical conditions) and encourage such employees to contact their health care provider as soon as possible. Frequently clean all commonly touched surfaces in the workplace, such as workstations, countertops and doorknobs. Encourage employees to get vaccinated for seasonal flu and, when available, for 2009 H1N1 flu.

- Prepare for increased numbers of employee absences because of illness of the employees and/or their family members. Be prepared to allow employees to stay home to care for children if schools are dismissed or child care programs are closed, but strongly recommend that parents not bring their children with them to work while schools are dismissed. Ensure that leave policies are flexible and not punitive.

If the flu conditions increase in severity compared to the Spring/Summer 2009, the Guidance recommends the following additional or different employer responses, among others:

- At the beginning of the workday or with each new shift, ask all employees about symptoms consistent with a flu illness, such as fevers or chills AND cough or sore throat. Employees with flu-like illness should be advised not to come to work or travel and to remain at home for at least seven days, even if symptoms resolve sooner. If employees are still sick seven days after they become ill, they should remain at home until at least 24 hours after symptoms have resolved.
- Consider how to reduce the number of people that high-risk employees come in contact with—for example, by permitting telecommuting, reassigning duties or allowing such employees to stay home from work. Consider increasing social distancing for all employees by avoiding crowded work settings, canceling business-related face-to-face meetings, spacing employees farther apart, canceling non-essential travel, increasing telecommuting and staggering shifts.

If we can assist you with your pandemic flu planning or any employment issues relating to the 2009 – 2010 flu season, please do not hesitate to contact us.

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