

SWINE FLU AND THE WORKPLACE

Swine flu (SF) is an infectious and sometimes deadly viral disease. Several deaths have been attributed to its current outbreak in North America, although as of this writing, public health officials are struggling to assess the breadth of the new threat. While SF commonly affects the respiratory system, it can also afflict other bodily systems and functions. As more cases of swine flu are reported in various parts of the world, governments and health officials have scrambled to take precautions to prevent the contagion from crossing their borders. The World Health Organization (WHO) has urged countries worldwide to look out for “unusual” outbreaks of flu following a recent emergency meeting. On April 27, it raised its pandemic alert level from Phase 3 to Phase 4, indicating sustained human-to-human transmission.

The origins of the new swine influenza strain are unknown. One theory is that Asian and European strains traveled to Mexico in migratory birds or in people, then combined with North American strains in Mexican pig factory farms before jumping over to farm workers.

The Centers for Disease Control (CDC) recently noted that as the swine flu spreads, businesses and governments must not only address the health care issues but the economic and business disturbances that a pandemic – or simply fear of a pandemic – can easily create. The spread of a dangerous virus presents many challenges to the workplace. Employers should become familiar with the nature of swine flu and the risks it may pose.

Relatively few cases of swine flu have been reported in the U.S. and no fatalities have resulted. The outbreak and the media reporting about it, however, remind us that employers should have procedures in place to deal with infectious diseases in the workplace and among their employees.

WHAT EMPLOYMENT ISSUES ARE INVOLVED?

At present, business travel to SF-prevalent areas poses the greatest concern. Workplace liability experts say that employers may have a legal obligation under the Occupational Safety and Health Act (OSHA) to take steps to protect the health of employees traveling to such areas on business. OSHA regulations offer limited guidance about pandemic health problem, mostly concerning record-keeping requirements and mandatory protective equipment. However, a “general duty clause” requires employers to provide a workplace “free from recognized hazards that are causing or are likely to cause death or serious physical harm.” Although some employers will be hard-pressed to provide a workplace absolutely free of all recognized hazards, employers should train employees about travel safety.

When travel to high-risk areas cannot be postponed, employees should be informed of the risks and of the protocols for reducing the incidence of infection. In addition to recommending common sense steps, such as making sure all vaccinations are up to date before departing, travelers should be advised to assemble a health kit containing basic first-aid and medical supplies. Travelers should also review their health plans for medical evacuation coverage and identify health care resources available at their destination.

After returning, travelers should carefully monitor their health. If they exhibit symptoms, they should immediately consult with a health care provider and report their recent travel. Employers should emphasize common sense policies that encourage workers to stay home if they are sick so that they will not infect others. Input from legal counsel should be part of the process of responding to a pandemic threat, as well as any potential business interruption issue.

POTENTIALLY COLLIDING RULES

Employers should proactively respond to conditions created by their unique operations, work environment and geographic locations. Doing so will help keep employers from running afoul of OSHA guidelines relating to any workplace health threat. Employers familiar with the Americans with Disabilities Act (ADA) and other federal nondiscrimination laws may worry that such laws run counter to OSHA rules if they suggest different treatment for those that might be infected by or even exposed to a potentially dangerous virus. However, most of the laws, and the ADA in particular, contain exceptions for situations where someone poses a “direct threat” to workplace safety.

Still, employers must use caution to avoid violating federal and state employment laws, particularly those governing the use of employee medical information and prohibiting discrimination on the basis of a perceived disability. Again, input from legal counsel should be part of the process.

LOCKS ON THE DOORS

An employer may require workers who are at a higher risk for SF, or who may exhibit symptoms, to obtain medical certification before returning to work in order to ensure the safety of other employees in the workplace. Wage and hour laws may present challenges for employers who prohibit employees from returning to work after traveling to SF-affected areas – particularly in cases where workers are being asked to stay home without pay. When affected employees are represented by a union, an employer may have a duty to consult with the union before implementing SF-related measures.

Should employers encounter a contagious health threat that demands immediate action, workers should be given time off with pay if they are required to stay home due to SF concerns. Above all, the employer should fully document the basis for its decisions and use reasonable care to ensure that workers are treated fairly and that their privacy rights are respected. Once more, we strongly advise obtaining the advice of legal counsel.

EVERYDAY PRECAUTIONS

Like most flu viruses, swine flu is thought to spread mainly person-to-person through coughing or sneezing by infected people. Taking everyday precautions has been proven to help people stay healthy.

- Cover your nose and mouth with a tissue when you cough or sneeze. Throw the tissue in the trash after you use it.
- Wash your hands often with soap and water, especially after you cough or sneeze. Alcohol-based hand cleaners are also effective.
- Avoid touching your eyes, nose or mouth.
- Avoid close contact with sick people.

HELPFUL INFORMATION

Employers should consult several excellent sources to obtain international travelers' health information. The CDC maintains a useful website that provides both general and geographically specific information. General travel considerations can also be found at the Mayo Clinic's website, which features a special section on staying healthy far from home. The Mayo Clinic site covers general topics such as vaccinations, health coverage review, prescription medication reminders and safer eating choices. The WHO website has information geared for educating resources professionals and employees wanting to learn more about SF.

- <http://www.cdc.gov/travel/content/SwineFluTravel.aspx>
- <http://www.mayoclinic.com/>
- <http://www.who.int/en/>

Other useful sources:

- <http://www.osha.gov/>
- <http://www.pandemicflu.gov/>
- <http://www.hhs.gov/>
- <http://www.nlm.nih.gov/medlineplus/medlineplus.html>

KEY CONTACTS

US BENEFITS OFFICE LOCATIONS

NEW ENGLAND

Bangor, ME
207 942 4671

Boston, MA
617 557 7517

Hartford, CT
860 756 7365

Shelton, CT
203 924 2994

NORTHEAST

Buffalo, NY
716 856 1100

Cranford, NJ
908 931 3005

Florham Park, NJ
973 410 4622

Morristown, NJ
973 829 6374
973 829 6465

New York, NY
212 915 8802

Norwalk, CT
203 523 0501

Philadelphia, PA
610 260 4351

Radnor, PA
610 254 7289

Wilmington, DE
302 397 0171

ATLANTIC

Baltimore, MD
410 584 7528

Bethesda, MD
301 581 4261

Knoxville, TN
865 588 8101

Memphis, TN
901 248 3103

Nashville, TN
615 872 3716

Norfolk, VA
757 628 2303

Reston, VA
703 435 7078

Richmond, VA
804 527 2343

Rockville, MD
301 692 3025

SOUTHEAST

Atlanta, GA
404 224 5000

Birmingham, AL
205 871 3300

Charlotte, NC
704 344 4856

Gainesville, FL
352 378 2511

Greenville, SC
704 344 4856

Jacksonville, FL
904 355 4600

Marietta, GA
770 425 6700

Miami, FL
305 421 6208

Mobile, AL
251 544 0212

Orlando, FL
352 378 2511

Raleigh, NC
704 344 4856

Savannah, GA
912 239 9047

Tallahassee, FL
850 385 3636

Tampa, FL
813 490 6808
813 289 7996

Vero Beach, FL
772 469 2842

MIDWEST

Appleton, WI
414 259 8837

Chicago, IL
312 527 6482
312 621 4843
312 621 4704

Cleveland, OH
216 357 5921

Columbus, OH
614 326 4788

East Lansing, MI
517 349 3226

Grand Rapids, MI
248 735 7249

Green Bay, WI
414 259 8837

Milwaukee, WI
414 203 5248
414 259 8837

Minneapolis, MN

763 302 7131
763 302 7209

Moline, IL

309 764 9666

Pittsburgh, PA

412 645 8537
412 586 3524

Schaumburg, IL

847 517 3469

SOUTH CENTRAL**Amarillo, TX**

806 376 4761

Austin, TX

512 651 1660

Dallas, TX

972 715 2194
972 715 6272

Denver, CO

303 765 1564
303 773 1373

Houston, TX

281 584 1672
281 584 1676
713 625 1017

McAllen, TX

956 682 9423

Mills, WY

307 266 6568

New Orleans, LA

504 581 6151

Oklahoma City, OK

405 232 0651

Overland Park, KS

913 498 4423
913 339 0800, ext. 108

San Antonio, TX

210 979 7470

Wichita, KS

316 494 6174

WESTERN**Aliso Viejo, CA**

949 461 3996

Fresno, CA

559 256 6212

Las Vegas, NV

602 787 6235
602 787 6078

Los Angeles, CA

213 607 6300

Novato, CA

415 493 5210

Phoenix, AZ

602 787 6235
602 787 6078

Portland, OR

503 274 6224

Rancho/Irvine, CA

562 435 2259

San Diego, CA

858 535 1800
858 678 2130

San Francisco, CA

415 291 1567

San Jose, CA

415 291 1567

Seattle, WA

800 456 1415

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