



# EMPLOYMENT LAW ALERT

January 2013

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## Flu Epidemic Impacts Workplace

By: Jeffrey M. Schlossberg



This season's flu outbreak is already being called an "epidemic" by the director of the National Institute of Allergy and Infectious Diseases at the National Institutes of Health. According to the Centers for Disease Control and Prevention weekly influenza update, as of the week ending January 12, 2013, forty-eight states have widespread incidence of the flu.

Health and safety officials advise that employers should implement controls to protect workers and reduce the transmission of the seasonal flu virus in the workplace. According to OSHA, employers should:

- Promote vaccination.
- Encourage sick workers to stay home.
- Promote hand hygiene and cough etiquette.
- Keep the workplace clean.
- Address travel concerns.

OSHA advises employers to develop flexible leave policies that encourage workers to stay home, without penalty, if they are sick. Expressly or implicitly requiring employees to show up for work may compound the problem not only in terms of spreading disease but also in terms of lack of productivity.

The Department of Health and Human Services recommends that workers who have a fever and respiratory symptoms stay at home until 24 hours after their fever ends without the use of medication.

Other steps employers can take are to limit meetings, expand telecommuting, and provide hand sanitizer.

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Employers must also keep in mind that an employee who is sick or whose family members are sick may be entitled to leave under the Family and Medical Leave Act (FMLA) under certain circumstances. However, leave taken by an employee for the purpose of avoiding exposure to the flu would not be protected under the FMLA.

The seasonal flu epidemic also implicates the Americans With Disabilities Act as employees may need time off as a reasonable accommodation.

As always, we stand ready to assist employers on this and any other employment law issue.



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