

Attention HR Professionals: Are Your Records in Order?

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Some H1N1 Absences Are Reportable Illnesses

Staying in business during a long recession is challenging enough without having to prepare for a worldwide flu pandemic. While the business world's response to pandemic flu concerns has managed the H1N1 threat to this point, many businesses should be monitoring employee absences related specifically to H1N1. Businesses with ten 10 or more employees are required to record illnesses and injuries unless they operate in an exempt category, and the Occupational Safety and Health Administration ("OSHA") has made it clear that employers are responsible for recording H1N1 illnesses when three conditions are met:

1. The illness must be a confirmed case of H1N1. It cannot be a simple case of a sick employee with a fever that thinks he or she has H1N1; it has to be confirmed.
2. The employee's case of H1N1 must have resulted in days away from work, restricted work or transfer, medical treatment beyond first aid, loss of consciousness, or death. Each business may deal with H1N1 cases differently, but if an employee has a confirmed case of H1N1, he or she will likely be absent for several days due to physical incapacity and contagion concerns.
3. The case must be "work-related" as defined by OSHA's regulations. H1N1 may be "work-related" if it was contracted due to exposure in the work environment.

This may sound straightforward, but determining whether an employee's H1N1 came from "work-related" exposure can be very difficult. OSHA could well believe that H1N1 was contracted at work if the situation involved facts such as: a health care provider treating H1N1 patients at a hospital; a teacher with several H1N1-diagnosed children in their class; or a bus driver that had to assist several H1N1 passengers at length. Job duties often take employees outside their normal work areas where they could be exposed to the virus, but they could also be exposed in many different places while off the clock. For example, if an employee diagnosed with H1N1 was exposed to the virus at work, at home, at a movie theater, while shopping, and while traveling out of town, did the employee get H1N1 because of exposure at work or because of exposure elsewhere?

Once an employee has taken a few days off with a confirmed case of H1N1, the employer must evaluate whether an employee's H1N1 illness is "work-related." It remains unclear how much investigation into the source of that illness is enough. OSHA has not provided specific guidance on how businesses can best deal with this task. Nevertheless, businesses cannot afford to ignore the issue of recording H1N1 illnesses in light of OSHA's new emphasis on accurate recordkeeping, especially if OSHA would likely find the business's operations required exposure to persons diagnosed with H1N1 or if the business is being targeted by OSHA.

OSHA's Ongoing Targeted Recordkeeping Inspection Program

OSHA has made proper recording of workplace illnesses and injuries and is targeting certain businesses in an ongoing nation-wide program. While the number of reported workplace illnesses and injuries in the United States has continued to decrease for several years, OSHA believes the reason for this decrease is not increased workplace safety, but rather inaccurate reporting by employers.

On September 30, 2009, OSHA started an Injury and Illness Recordkeeping National Emphasis Program ("the Program"). The Program is targeting employers in high injury-rate industries that report low rates of injuries and illnesses. For example, in 2007, the soft drink manufacturing industry had one of the highest incidence rates for cases with days away from work, restricted work activity, or job transfer. For this example, OSHA will use other data to identify specific soft drink manufacturing establishments that reported low rates of injuries and illnesses, then inspect some number of the establishments as part of the Program. OSHA projects approximately 350 inspections will be conducted for the Program. Businesses can expect these inspections to occupy significant time, dig deep into records, possibly lead to questioning of employees, and carry potentially serious penalties.

If you or your business has ten employees or more, it's important to familiarize yourself with OSHA's renewed recordkeeping focus and its position on H1N1 illnesses so that your records are in order if (or when) OSHA decides to inspect your business.