

# Dinsmore & Shohl LLP

ATTORNEYS

## H1N1 - Is Your Business Ready?

August 27, 2009

[Anna M. Dailey](#)

The fall flu season is here and it may soon affect your business.<sup>[1]</sup> The CDC, Homeland Security, the Department of Labor and the Department of Health and Human Services have prepared guidance documents and have a website: [www.flu.gov](http://www.flu.gov), which has separate areas with advice for businesses, schools, healthcare providers, families and communities. There you will find a brochure: *Guidance for Businesses and Employers to Plan and Respond to the 2009-2010 Influenza Season*. You can also sign up for immediate updates by e-mail. There is a link to a *Communication Toolkit for Businesses and Employers*. Homeland Security has published a *Guide for Critical Infrastructure and Key Resources* that can be accessed on the flu.gov link. The Equal Employment Opportunity Commission (EEOC) has also published an ADA-Compliant Employer Preparedness Advice Memo. Meanwhile, here is a quick reference guide if you are just getting started.

### **Do You Have a Pandemic Flu Plan?**

A flu response plan will help you ensure your business' continuity. You will want to identify your essential business functions and your critical supply chains. You will want to think about how you plan to compensate in these areas if a high number of your employees or those you do business with must stay home.

Review your current and possible policies for sick leave (paid or unpaid); teleworking if possible; staggering shifts; social distancing to minimize exposure; and having a communication processes. Do you know your local health officials? Will you send people home and how long will they need to stay away before you allow them back to work?

### **What Does the CDC Recommend Under Current Flu Conditions?**

1. Advise employees to stay home if sick until 24 hours after their fever is gone.
2. Encourage respiratory etiquette and hand hygiene. (*Consider installing a complimentary dispenser of anti-bacterial gel for employees' regular use.*)
3. Separate employees who become sick and ask them to go home.
4. Routinely clean surfaces that get frequent hand contact. (*Have cleaning materials readily available so it gets done.*)
5. Encourage sick employees at risk for complications to seek medical care as soon as possible.
6. Prepare your business: cross-train employees. (*If the receptionist is the only one who knows how to transfer a call, your business will be in trouble when they're out sick.*)
7. Encourage flu vaccines. (*Consider arranging to have them available at work through your wellness program.*)

8. Provide information to employees working out of state or overseas.

### **What the CDC Says If the Flu Season Worsens?**

1. Actively screen employees when they arrive at work. You can ask, then tell sick workers to go home until a medical provider says they are not a risk to their co-workers.
2. Consider extending sick time so that employees with flu symptoms stay home for 7 days.
3. Consider changing duties, work spaces or schedules for employees at higher risk for complications.
4. Have a plan for continuance of essential business functions. (*Phones can be rolled over to a home line, etc.*)
5. Make contingency plans for increased absenteeism. (*Line up temp service and perform cross-training now.*)
6. Increase social distances at work by cancelling non-essential face-to-face meetings and business travel; use conference calls instead. Offer telework and flexible hour options.

### **How Will You Handle Your Absenteeism Policies?**

If you are worried about either the abuse of the company's absenteeism policy or are worried about employees who insist on reporting to work despite flu symptoms, you may want to seek guidance. First, look at:

1. Your current absenteeism policy
2. The Family Medical Leave Act (FMLA) and Americans With Disabilities Act (ADA)

Note: The EEOC's *ADA-Compliant Guide for Employers Preparing for the H<sub>1</sub>N<sub>1</sub> Virus* provides guidance for conducting a lawful pre-pandemic employee survey. It also gives guidance on handling infection control issues in the workplace, especially with employees who insist on working may endanger others.

3. If you have unique needs not readily answered by these sources, consult your employment attorney to avoid non-compliance with these laws. Note, pandemic issues bring many laws into play, such as the Occupational Safety and Health Act (OSHA), HIPAA Privacy Rule, various anti-discrimination laws, Worker Compensation and the Fair Labor Standards Act (FLSA) for employees working over 40 hours from home or staying long hours to cover for absent employees.

---

1. As I write this, my son's 12,000 student university in North Carolina announced it may close for 1-2 weeks because of an outbreak of H<sub>1</sub>N<sub>1</sub>. An employer in Kentucky called that same day and wanted to know if they can keep an employee from coming to work whose child has H<sub>1</sub>N<sub>1</sub>.