

# EMPLOYMENT LAW ALERT

September 2009

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## Employer Concerns Over Possible Spread of H1N1 Virus

By: Jeffrey M. Schlossberg



The United States Department of Health and Human Services' Centers for Disease Control and Prevention (CDC) has developed guidance for employers to use as they develop plans to respond to the H1N1 virus relative to its anticipated impact in the workplace.

Naturally, the severity of the 2009 H1N1 - or the amount of illness that may occur from standard seasonal influenza - cannot be predicted with a high degree of certainty. The CDC therefore recommends that employers respond in a flexible way to varying levels of severity. In considering various options, employers must balance the concerns of reducing transmission among employees with the need to maintain business operations.

Some of the suggestions offered by the CDC include:

- Understand that normal seasonal absenteeism will occur
- Monitor personnel for unusual increases in absenteeism
- Assess essential business functions to determine at what level of absenteeism those functions would be threatened
- Allow sick workers to remain home without fear of losing their jobs
- Instruct employees not to return until at least 24 hours after their fever has passed
- Consider the effect of absenteeism resulting from employees staying home to care for ill family members or to watch children dismissed from school due to closure

In addition, employers should be aware that some flu-related illnesses may qualify employees for Family and Medical Leave or accommodation under other applicable laws, which would require companies to offer employees time off. Further, the CDC suggests that employers develop flexible leave policies to encourage affected workers to stay home. One example of such a modification includes permitting additional paid sick leave.

Employers also must be mindful that, despite the societal obligation to protect the workplace from the spread of illness, federal, state and local laws prohibit employers from discriminating against those with disabilities or medical conditions. Thus, it would generally not be advisable to require employees to produce a medical note stating the specific illness.

It is also highly recommended that prevention techniques be distributed to all employees. These measures include:

1. Avoid close contact with people who appear unwell and/or who have fever and cough.
2. Wash hands with soap and water frequently and thoroughly. Alcohol-based hand cleaners may also be effective.
3. Practice good health habits, including adequate sleep, eating nutritious food, and keeping physically active.
4. Cover nose and mouth with a tissue - or the inside of elbow (not hands) - when coughing or sneezing. Dispose of tissues in the trash after they are used.
5. Avoid touching eyes, nose or mouth because germs spread that way.

Additional employer-related information can be obtained from the CDC website:

[www.cdc.gov/swineflu](http://www.cdc.gov/swineflu)  
[www.flu.gov/faq/workplace\\_questions/equal\\_employment](http://www.flu.gov/faq/workplace_questions/equal_employment)

### **Federal Contractors Must Use E-Verify**

Effective September 8, 2009, covered federal contractors must enroll in E-Verify within 30 days from the date of a contract award. E-Verify is an Internet based system operated by the Department of Homeland Security in partnership with the Social Security Administration that allows participating employers to verify electronically the employment eligibility of their newly hired employees. Covered contracts are those with a period of performance longer than 120 days and a value above \$100,000.

Covered contractors have 90 days from the enrollment date to initiate verification for employees on staff who will be working on the contract and to use the system to verify newly hired employees. Contractors already enrolled in E-Verify for more than 90 days must continue verifying all new hires within 3 days of hire and verify all existing workers assigned to a new federal contract within 90 days from the contract award. Subcontractors are covered if a prime contract includes the clause. If so, subcontractors must enroll with E-Verify if the subcontract is for services or construction with a value greater than \$3,000.

If we can be of assistance on these or any employment law issue, please do not hesitate to contact us.

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