

With full onset of the 2009-2010 flu season, employers need to get informed, make a plan

Our region is already impacted by the H1N1 Influenza Virus. As we proceed through the Fall and Winter months, employers are likely to encounter this strain of the flu or the seasonal flu in their workplaces. Therefore, employers are encouraged to educate themselves and their employees about the flu, plan for absences and contingencies, and respond flexibly during this season.

Key facts about influenza (seasonal flu and H1N1)

The seasonal flu is a contagious respiratory illness. It is typically spread by infected people, from person to person by coughing or sneezing.

Sometimes, people may become infected by touching something with flu viruses on it, and then touching their mouth or nose. The 2009 H1N1 virus (sometimes called Swine Flu) is a new influenza virus, first detected in the United States in April 2009. The spread of the H1N1 virus is thought to occur in the same way the seasonal flu spreads.

People infected with seasonal and H1N1 flu can infect others beginning one day **before** symptoms develop, and up to 5 to 7 days **after** becoming sick. **That means you may be able to pass on the flu to someone else before you know you are sick, as well as while you are sick.**

Symptoms of Influenza

- Fever (often high)
- Headache
- Extreme tiredness
- Dry cough
- Sore throat
- Runny or stuffy nose
- Muscle aches
- Stomach symptoms, such as nausea and vomiting may occur, but are more common in children than adults. Some people infected with 2009 H1N1 flu virus have also reported diarrhea and vomiting

Prevention and treatment

1. Get vaccinated: According to the CDC, the most effective method of protecting yourself against influenza is by getting the flu vaccine. The seasonal flu vaccine protects you against the three seasonal viruses that research suggests will be most common. Vaccination is especially important for people at high risk for seasonal flu complications, including young children, pregnant women, people with chronic health conditions, and individuals 65 years and older. The seasonal flu vaccine will **not** protect against H1N1 virus.

The first doses of the H1N1 vaccine are now available. A limited supply of the vaccine is being distributed throughout the United States. The CDC recommends that specific groups of people get vaccinated first. These groups include health care workers, children, and people who care for infants. Once the H1N1 flu shot becomes available, all priority groups should be vaccinated, including pregnant women, people from 6 months to 24 years of age, and people from age 25 to 64 years of age with chronic health conditions or compromised immune systems. For people 10 years and older, only one dose of the vaccine is needed.

2. Take everyday precautions:

- Cover your nose and mouth with a tissue when you cough or sneeze, then dispose of the tissue.
- Wash your hands often with soap and water. Use alcohol based hand sanitizer if soap and water are not available.
- Avoid touching your nose and eyes, as germs are easily spread this way.
- **If you are sick with a flu-like illness, stay home for at least 24 hours after your fever is gone (your fever should be gone without the use of fever-reducing medicine.)**
- Follow public health advice regarding school closures, avoiding crowds and other measures to lessen the spread of the flu.

3. Take flu antiviral drugs if your doctor recommends them: If you get the seasonal or H1N1 flu virus, antiviral drugs can treat the flu. Antiviral drugs are prescription medications (pills, liquids, or inhaled powder) that fight against the flu by keeping flu viruses from reproducing in your body. These drugs can make illness milder and shorten the time you are sick. They may also prevent serious flu complications. Antiviral drugs are not sold over-the-counter and are different from antibiotics. For treatment, antiviral drugs work best if started within the first two days of symptoms.

Commonly asked workplace questions

Can an employee take Family Medical Leave Act (FMLA) leave if they are sick with the flu?

The FMLA protects eligible employees who are incapacitated by a **serious health condition**, as may be the case with the flu where complications arise, or who are needed to care for covered family members who are incapacitated by a serious health condition.

Leave taken by employees because they are ill with the flu or need to assist family members, may or may not fall within the coverage of the FMLA. It will depend on the circumstances of each case. A “serious health condition” is an illness, injury, impairment or physical or mental condition that involves either inpatient care (hospitalization) or continuing treatment from a health care provider. If leave is taken to care for a family member (child, spouse, or parent) who suffers from a “serious health condition,” the family member must be incapable of self-care.



Can an employee take Family Medical Leave Act (FMLA) leave to stay home to avoid getting the flu?

Leave taken for the purpose of avoiding exposure to the flu would NOT be protected under the FMLA.



Are employers required to allow parents time off from work to care for sick children, or children who have been dismissed from school?

As noted above, an employee who is sick, or whose family members are sick, may be entitled to leave under the FMLA. Whether the FMLA applies will depend on the facts of each situation. There is currently no federal law covering employees who take time off work to care for healthy children and employers are not required by federal law to provide leave to employees caring for dependents who have been dismissed from school or child care. However, given the potential for significant illness under some

pandemic flu scenarios, employers should review their leave policies to consider providing increased flexibility to their employees.



What may an employer require from an employee who has been out sick?

Employers may require returning employees to provide certification from their health care providers that they pose risk of infecting others and are fit to return to work. Employers should consider that during this particular flu season, healthcare resources may be overwhelmed and it may be difficult for employees to get appointments with healthcare providers to verify that they are well or no longer contagious.

During a pandemic crisis, under the Americans with Disabilities Act (ADA), an employer would be allowed to require a doctor's note or a time period during which the employee has been symptom free, before it allows the employee to return to work. Specifically, an employer may require the above actions when there is a reasonable belief, based on objective evidence, which the employee's **present** medical condition would:

- Impair his or her ability to perform essential job functions (i.e., fundamental job duties) with or without reasonable accommodation; OR
- Pose a **direct threat** (i.e., significant risk of substantial harm that cannot be reduced or eliminated by reasonable accommodation) to safety in the workplace.

In situations where the an employee's leave is covered by the FMLA, the employer may have a uniformly applied policy that requires all similarly-situated employees to obtain certification from their health care provider that the employee is able to resume work. Note that employers are required to notify employees in advance if the employer will require a fitness-for-duty certification to return to work.



During a flu pandemic, can a healthy employee refuse to come to work because he or she believes they are at an increased risk of catching the flu?

The circumstances under which an employee has a right to refuse to work are limited. Refusing to do a job because of potentially unsafe workplace conditions is not ordinarily an employee right under the Occupational Health and Safety Act (OSHA). (A union contract may, however, provide such rights.)

Employees may refuse an assignment only if 1) they reasonably believe that doing the work would put them in serious and immediate danger; 2) they have asked their employer to fix the hazard; 3) there is no time to contact OSHA and 4) there is no other way to do the job safely. Employees are not protected for simply walking off the job.

An employer can impose disciplinary action for refusing to work. However, employees do have the right to refuse to do a job if they believe in good faith that they are exposed to an imminent danger.

In addition, employers should be aware that an employee's inability to attend work or perform certain duties could be related to a disability. The employer should consider the implications of its actions under the ADA before proceeding. For example, if an employee with a disability could safely perform the essential functions of the job with a reasonable accommodation (i.e., telework, changes in shift times,) then an employer would need to provide the accommodation, in lieu of termination, unless it would impose an undue hardship.



May employers change work hours or schedules to minimize contact between employees?

Yes, unless the workforce is represented by a labor union and the collective bargaining agreement covers work hours or scheduling policies, or if the employees are covered by other employment contracts that specify work hours and schedules.



During a pandemic, may an employer require its employees to adopt infection control practices?

Yes. Requiring infection control practices, such as regular hand washing, coughing and sneezing etiquette, and tissue usage and disposal does not implicate the ADA.



If an employer bars employees from the workplace because of pandemic flu and requires the employees to work at home, does the employer have to pay those employees who cannot work from home?

Under the Fair Labor Standards Act (FLSA), employers generally have to pay employees for hours they actually work, whether at home or at the employer's place of business. However, employers must pay minimum wage for all hours worked and at least time and one half the regular rate of pay for hours worked in excess of 40 hours in a workweek. Salaried employees must receive their full salary in any week in which they perform any work, whether at home or the employer's place of business.

When not all employees can work from home, employers are encouraged to consider additional options to decrease employee interaction and contact, such as staggered work shifts.



Can an employer require its employees to get vaccinated against the season flu and/or H1N1 virus?

No. The employer cannot require its employees to receive the seasonal flu or H1N1 vaccine. There are not state or federal laws that require vaccination. Employers are encouraged, however, to provide their employees with the most current information regarding the status of the seasonal flu and H1N1 virus, including vaccination information.

Additional information regarding these topics can be found at the CDC website: <http://www.cdc.gov>.