

Insight

This issue

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Flu – It's a bit of a swine!!

With the risk of another pandemic currently being assessed, the time is right for employers to ensure that they have a plan for dealing with any increased risk to employees and for dealing with the potential risk of infection within the workforce.

This edition of Insight focuses on the key areas of concern when drafting such a plan or dusting off plans formulated to deal with significant health risks.

Why have a plan?

Whilst the potential risk of a swine flu pandemic should not be overstated, it makes sense for organisations to have contingency plans in place.

How would your organisation deal with issues such as operating with a skeleton staff, maximising home working, dealing with infection in the workplace and the particular risks faced by customer-facing organisations?

What key areas should be covered?

Many employers will already have a policy for dealing with sickness absence but these policies will not enable a business to deal effectively with a global pandemic. Your thinking should cover:-

Communication

Any plan developed must be properly communicated to all employees. Where a recognised trade union, employee representative body or health and safety representative body are in place, they should be involved in the communication and, preferably the preparation of the plan.

Communication should:-

- be to all employees;

- provide details of where employees can go to for further guidance;
- inform employees of steps that you will take in dealing with the risk of infection;
- not cause panic.
- be run past your in house legal team and/or your employment lawyers

In addition, strategies for communicating urgent updates/ developments/ news on the Swine Flu situation should be devised whether this be by email comms, intranet or more traditional means.

Prevention

Inevitably, the working environment brings people together for a prolonged period of time, much of which is spent in internal confined areas often with artificial air circulation.

Employers should evaluate how they might help prevent infections occurring between employees. The Department of Health has coined the phrase "Catch It, Bin It, Kill It," - using a tissue to cover mouth and nose when coughing or sneezing, binning the tissue after use, and washing hands regularly to kill off germs.

An internal hygiene plan which mirrors the Department of Health's guidance could be implemented by providing tissues, closed bins



and handwash. Some employers are also providing anti-bacterial sanitiser gel or wipes for increased personal hygiene. Increased cleaning of contact areas such as door handles, light switches etc. can also be considered.

Face Masks

The Health Protection Agency ("HPA") guidelines state that scientific evidence does not suggest that wearing a face mask is an effective preventative measure. Indeed they suggest that wearing masks could discourage the wearer from carrying out proper personal hygiene and lead to infected people wrongly believing that wearing a mask prevents them spreading the infection to others.

So what can employers do if employees insist on wearing face masks?

Employees should be made aware that:-

- the advice from the HPA is that wearing masks is not considered effective;
- there is no need for them to wear masks;
- masks should not be worn; and
- if they insist on wearing a mask they will be asked to remove it and consideration should be given to affording them access to the HPA guidance on this point. If they fail to remove it after this request they should be advised that this will be treated as misconduct (as failure to follow a reasonable instruction).

Of course some employers may decide that wearing masks is a personal issue for employees and that it will have no impact on their business. But many employers, particularly those who are customer facing, will not wish employees to wear masks

Potential Infections

NHS Direct have issued guidance for those suffering from or suspecting that they are

suffering from any flu like symptoms.

Contingency plans should inform employees that if they suspect or suffer from symptoms they should:

- Go Home!;
- Phone their GP or NHS Direct for advice;
- Maintain good personal hygiene practices;
- Follow instructions given by their GP;
- Remain out of contact with people until they are well.

Planning for Staff Shortages

It will be necessary to be sensitive to reasonable fears employees may have and, where possible to allay them by provision of information. However whilst there may be a number of workers genuinely unable to come to work due to infection it must be made clear that a simple fear of contracting flu will not be enough to excuse the employee from attendance at work. Be clear on how such absences will be handled.

Contingency arrangements should address the possibility of a large number of employees being absent at the same time. Staff should be informed that during such a time, flexibility will be required, and they may be called upon to cover shifts for ill colleagues and that you will be seeking co-operation from them. The commercial importance of this should be clear so that employees are aware that this is essential for the business. Of course employers still need to consider potential discrimination and working time issues, as well as the terms of the contract of employment.

Some practical tips include:

- Keeping up to date contact details for all staff;
- Permitting employees to work from home where possible, either to prevent unnecessary working in the office or

where someone suspects that they may have flu symptoms or have come into contact with someone who has;

- Putting in place a central contact point to update employees;
- Addressing how any shut down (caused by staffing issues or because of a Government order) would be dealt with. It may be that employees agree to a shut down, but they may still be entitled to a Guarantee Payment.

Discipline/Absence Management

Employees should be made aware that being absent for an unauthorised reason (for example where they simply did not want to risk coming into work), will be treated as unauthorised absence and will be subject to normal disciplinary procedures.

For employees genuinely off with flu an employer may make a decision to discount any period medically certified as flu from absence management provisions. However, this is not a legal obligation, and an employee who falls ill with flu could still be subject to absence

management procedures if the appropriate triggers are hit. This may however impact on the reasonableness of any decision to dismiss for having transgressed the procedures.

Privacy

Employees should be informed that existing guidelines for reportable illnesses when they exist (such as chicken pox or german measles) are being extended or such guidelines should be introduced, and employees must inform the employer if they or someone they have been in contact with have flu symptoms. There is no requirement for the employee to disclose the identity of the contact, so no data protection issues should arise in relation to non-employees.

Summary

These practical issues should be considered so that appropriate contingency plans can be put in place should a pandemic occur. Hopefully given the precautions people are taking and the latest information on the virus these will not need to be used.



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