PREVENTION & PREPARATION FOR INFLUENZA

May 8, 2009

Presenters:
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Centers for Disease Control and Prevention (CDC)
H1N1 Flu (also known as swine flu)

What is H1N1 (swine flu)?
H1N1 (referred to as “swine flu” early on) is a new influenza virus causing illness in people. This new virus was first detected in people in the United States in April 2009. Other countries, including Mexico and Canada, have reported people sick with this new virus. This virus is spreading from person-to-person, probably in much the same way that regular seasonal influenza viruses spread.

Why is this new H1N1 virus sometimes called “swine flu”?  
This virus was originally referred to as “swine flu” because laboratory testing showed that many of the genes in this new virus were very similar to influenza viruses that normally occur in pigs in North America. But further study has shown that this new virus is very different from what normally circulates in North American pigs. It has two genes from flu viruses that normally circulate in pigs in Europe and Asia and avian genes and human genes. Scientists call this a “quadruple reassortant” virus.

Are there human infections with this H1N1 virus in the U.S.?
Yes. Cases of human infection with this H1N1 influenza virus were first confirmed in the U.S. in Southern California and near Guadalupe County, Texas. The outbreak intensified rapidly from that time and more and more states have been reporting cases of illness from this virus. An updated case count of confirmed novel H1N1 flu infections in the United States can be found on the CDC website at http://www.cdc.gov. CDC and local and state health agencies are working together to investigate.

Is this new H1N1 virus contagious?
CDC has determined that this new H1N1 virus is contagious and is spreading from human to human. However, at this time, it is not known how easily the virus spreads between people.

What are the signs and symptoms of this virus in people?
The symptoms of this new H1N1 flu virus in people are similar to the symptoms of seasonal flu and include fever, cough, sore throat, runny or stuffy nose, body aches, headache, chills and fatigue. A significant number of people who have been infected with this virus also have reported diarrhea and vomiting. Also, like seasonal flu, severe illnesses and death has occurred as a result of illness associated with this virus.

How severe is illness associated with this new H1N1 virus?
It’s not known at this time how severe this virus will be in the general population. CDC is studying the medical histories of people who have been infected with this virus to determine whether some people may be at greater risk from infection, serious illness or hospitalization from the virus. In seasonal flu, there are certain people that are at higher risk of serious flu-related complications. This includes people 65 years and older, children younger than five years old, pregnant women, and people of any age with chronic medical conditions. It’s unknown at this time whether certain groups of people are at greater risk of serious flu-related complications from infection with this new virus. CDC also is conducting laboratory studies to see if certain people might have natural immunity to this virus, depending on their age.

How does this new H1N1 virus spread?
Spread of this H1N1 virus is thought to be happening in the same way that seasonal flu spreads. Flu viruses are spread mainly from person to person through coughing or sneezing by people with influenza. Sometimes people may become infected by touching something with flu viruses on it and then touching their mouth or nose.

How long can an infected person spread this virus to others?
At the current time, CDC believes that this virus has the same properties in terms of spread as seasonal flu viruses. With seasonal flu, studies have shown that people may be contagious from one day before they develop symptoms to up to 7 days after they get sick. Children, especially younger children, might potentially be contagious for longer periods. CDC is studying the virus and its capabilities to try to learn more and will provide more information as it becomes available.

What can I do to protect myself from getting sick?
There is no vaccine available right now to protect against this new H1N1 virus. There are everyday actions that can help prevent the spread of germs that cause respiratory illnesses like influenza.
Take these everyday steps to protect your health:

- Cover your nose and mouth with a tissue when you cough or sneeze. Throw the tissue in the trash after you use it.
- Wash your hands often with soap and water, especially after you cough or sneeze. Alcohol-based hand cleaners are also effective.
- Avoid touching your eyes, nose or mouth. Germs spread this way.
- Try to avoid close contact with sick people.
- Stay home if you are sick for 7 days after your symptoms begin or until you have been symptom-free for 24 hours, whichever is longer. This is to keep from infecting others and spreading the virus further.

Other important actions that you can take are:

- Follow public health advice regarding school closures, avoiding crowds and other social distancing measures.
- Be prepared in case you get sick and need to stay home for a week or so; a supply of over-the-counter medicines, alcohol-based hand rubs, tissues and other related items might could be useful and help avoid the need to make trips out in public while you are sick and contagious.

What is the best technique for washing my hands to avoid getting the flu?
Washing your hands often will help protect you from germs. Wash with soap and water or clean with alcohol-based hand cleaner. CDC recommends that when you wash your hands -- with soap and warm water -- that you wash for 15 to 20 seconds. When soap and water are not available, alcohol-based disposable hand wipes or gel sanitizers may be used. You can find them in most supermarkets and drugstores. If using gel, rub your hands until the gel is dry. The gel doesn't need water to work; the alcohol in it kills the germs on your hands.

What should I do if I get sick?
If you live in areas where people have been identified with new H1N1 flu and become ill with influenza-like symptoms, including fever, body aches, runny or stuffy nose, sore throat, nausea, or vomiting or diarrhea, you should stay home and avoid contact with other people, except to seek medical care.

If you have severe illness or you are at high risk for flu complications, contact your health care provider or seek medical care. Your health care provider will determine whether flu testing or treatment is needed. If you become ill and experience any of the following warning signs, seek emergency medical care.

In adults, emergency warning signs that need urgent medical attention include:

- Difficulty breathing or shortness of breath
- Pain or pressure in the chest or abdomen
- Sudden dizziness
- Confusion
- Severe or persistent vomiting
- Flu-like symptoms improve but then return with fever and worse cough

Are there medicines to treat infection with this new virus?
Yes. CDC recommends the use of oseltamivir or zanamivir for the treatment and/or prevention of infection with the new H1N1 flu virus. Antiviral drugs are prescription medicines (pills, liquid or an inhaler) that fight against the flu by keeping flu viruses from reproducing in your body. If you get sick, antiviral drugs can make your illness milder and make you feel better faster. They may also prevent serious flu complications.

How long can influenza virus remain viable on objects (such as books and doorknobs)?
Studies have shown that influenza virus can survive on environmental surfaces and can infect a person for up to 2-8 hours after being deposited on the surface. Influenza virus is destroyed by heat (167-212°F [75-100°C]). In addition, several chemical germicides, including chlorine, hydrogen peroxide, detergents (soap), iodophors (iodine-based antiseptics), and alcohols are effective against human influenza viruses if used in proper concentration for a sufficient length of time. For example, wipes or gels with alcohol in them can be used to clean hands. The gels should be rubbed into hands until they are dry.

*Note: The above FAQs are part of a longer list available on the CDC website at: http://www.cdc.gov/h1n1flu/qa.htm
Much of the information in this document is based on studies and past experience with seasonal (human) influenza. CDC believes the information applies to the new H1N1 (swine) viruses as well, but studies on this virus are ongoing to learn more about its characteristics. This document will be updated as new information becomes available.
Pandemic Planning at the Organizational Level

Getting a Grip on Flu

Chip Dawson, RBA Coordinating Consultant for Health and Safety

Hazard Analysis

This is the problem

Not this

How Viruses Work

- Transmission is generally by air-borne droplets from human to human (not from pigs, birds, other animals)
- Hands are the most effective transfer medium device
- Surfaces can stay contaminated for a few minutes up to two hours or more
- People may be infectious from one day prior to seven days after becoming sick
Pandemic Assumptions

- 30% overall infection rate (20% of working age)
- Illness will come in multiple waves over weeks or months
- Community health care providers will be overwhelmed

Employer Responsibilities

- OSHA obligation to limit employee risk applies here
- Business obligation to have continuity of operations
- Health threats must be addressed as an element of the facility emergency planning process
- Facility plan must be consistent with community plan

Business Role in County Plan

- As coordinated by the Rochester Business Alliance and county agencies
- Expedite the procurement of commodities, services, labor and emergency purchases
- Develop contingency plans with businesses to support critical needs during an emergency
Facility Checklist
- Have a current, comprehensive emergency management plan
- Include a pandemic/health emergency annex in the plan
- Have a leave policy that encourages ill employees to stay home
- Plan for ways to minimize employee exposure
- Stockpile needed supplies
- Cross train for all essential functions

Critical Behaviors
- Ill employees willingly remain away from work until better
- All employees follow hand washing guidelines
- Employees avoid “close contact” with others where possible (6 feet generally)
- Employees stay healthy with plenty of sleep, avoiding stress, plenty of fluids, and nutritious foods

Hand Washing Guidance
- Hand washing removes viruses, does not kill them
- Lather with soap in running warm water
- Wash 20 seconds and rinse completely
- Damaged skin can host pathogens
- Dry completely with disposable towel or air dryer
- Use alcohol (hand sanitizer) after washing
Resource Documents

- OSHA 3327, Guidance on Preparing Workplaces for an Influenza Pandemic
- OSHA 3328-05, Pandemic Influenza Preparedness and Response Guidance for Healthcare Workers and Healthcare Employers
- CDC What's New on the H1N1 Flu Site, [www.cdc.gov/h1n1flu/whatsnew.htm](http://www.cdc.gov/h1n1flu/whatsnew.htm)
- CDC Recommendation on Face Mask and Respirator Use, [www.cdc.gov/h1n1flu/masks.htm](http://www.cdc.gov/h1n1flu/masks.htm)
- CDC H1N1 Home Page, [www.cdc.gov/h1n1flu](http://www.cdc.gov/h1n1flu)

RBA Resources

- Chip Dawson, RBA Coordinating Consultant for Health and Safety, (585) 425-1639 or ChipDawson@aol.com
- Managing the Emergency, an eight-hour workshop with tools, resources, exercises and discussion. Offered on Wednesday, June 10, 2009. Contact RBA Registrar Edna Smith at 256-4641 or Edna.Smith@rballiance.com
Swine flu and other communicable illnesses in the workplace: A proactive response

By Jeffrey M. Tanenbaum

On Sunday, April 26, 2009, the U.S government declared a public health emergency concerning the outbreak of swine influenza A (H1N1; “Swine Flu”). As of the date of this Alert, only a limited number of cases of swine flu infection in the United States have been confirmed. The largest outbreak has occurred in Mexico.

The declaration of a public health emergency is obviously important and indicates that public health officials view this outbreak as a potential serious threat. However, it is also important for employers to put the declaration in perspective and help employees avoid undue fear. This declaration does not mean that the outbreak has become a pandemic or that a pandemic is imminent. In fact, the declaration is actually a standard early step procedure that results in monitoring and testing of suspect cases, triggers additional reporting protocols, and increases media and public outreach to get information and warnings out.

Employers should likewise now take early stage action to educate employees and prepare for the impact of a swine flu outbreak in the workplace. This recommendation is particularly true for high-risk workplaces such as hospitals, medical offices, schools, and workplaces that provide services to high-risk populations. However, it is prudent for all employers now to take precautionary steps. Most employers can best do so through a written communicable illness response plan, which then serves as a guide for management and employees. For those employers who have such a program in place, now is the time to review and update your program and activate it. For those employers who do not yet have a program, now is the time to implement one. Waiting until a crisis occurs is waiting too long. It is virtually impossible to develop and effectively implement such a program under crisis conditions, and by waiting, you will miss the opportunity to take proactive preventative steps.

Background

Swine flu viruses do not normally infect humans. However, there are documented cases of human infections with swine flu, and cases of human-to-human spread of swine flu viruses have been documented. The World Health Organization (WHO) recently raised its threat level for the current outbreak of swine flu from Phase 3 (documented cases of human infection) to Phase 4 (evidence of sustained human-to-human transmission). The next step, Phase 5 would indicate that a pandemic may be imminent. The Centers for Disease Control (CDC) recently issued a travel advisory discouraging nonessential travel to Mexico.
Prudent employers should regularly monitor developments here from reputable sources. Two of the best are the CDC at www.cdc.gov and the WHO at www.who.int.

Although the number of confirmed cases is still relatively small, employers can and should now be taking proactive steps to help protect their employees and prepare for the potential impact of swine flu on the workplace. This plan is best done through implementation of a communicable illness response program that provides a structure for responding to the current swine flu outbreak, as well as future outbreaks of other communicable illnesses.

Implementing a communicable illness response program

An effective communicable illness response program will be simple and clear, and should cover each of the elements listed below. Of course, high-risk work environments will need a more comprehensive program, and lower-risk environments will need only a limited program. However, the same eight fundamental elements are a necessary part of all programs. Please note that if you are implementing a new program or making revisions that change working conditions, you may have a bargaining obligation if you have a unionized workforce.

1. **Scope:** The program should cover any communicable illnesses or diseases that pose a credible threat of transmission in your particular workplace. Examples might include swine flu, active TB, SARS, seasonal flu, etc. And the program should not be limited to currently known illnesses and diseases. Typically, the program would exclude any communicable illnesses that do not pose a credible threat of transmission in the particular workplace (e.g., HIV in an office environment). Such exclusions will help avoid violations of the ADA and, with proper explanation, should help alleviate any unnecessary employee concerns and fears.

2. **Responsibility:** The program should assign responsibility to one or more individuals to maintain and implement the program and to keep it updated as necessary. This responsibility would include regular monitoring of developments through news reports and information from the CDC, WHO, local public health authorities, and other appropriate governmental agencies and health organizations.

3. **Following applicable regulations and instructions by appropriate governmental agencies:** Typically, the program would note that the company will follow all applicable regulations or instructions issued by appropriate agencies, but might distinguish between a government regulation and a non-mandatory guideline. The program might also specifically provide discretion for the company to modify guidelines to best fit the needs of the particular workplace.

4. **Information and education:** The program should provide a method for distributing appropriate information to employees about communicable illnesses generally and about particular outbreaks specifically.

With specific regard to the current swine flu outbreak, we recommend early communication now. This quick dissemination will help ensure that employees understand that you are monitoring the situation and are prepared to respond. We recommend providing employees with information that will help them keep not only themselves but also their families safe and healthy. The safety of one's family is often the number one concern of employees in a communicable disease outbreak, and you should address it early. At this early stage, you should provide employees with a list of credible resources, such as the CDC and WHO websites, so they can readily access good information. You should specifically instruct them to be alert for symptoms and encourage them to consult with their own medical providers if they have any questions or concerns. Here, swine flu symptoms have been very similar to
seasonal flu (fever, sore throat, cough, stuffy nose, chills, aches and pains, and fatigue). Severe diarrhea and vomiting have also been reported.

You should also instruct employees to take universal precautions as noted below, and instruct them as to their reporting obligations, also noted below.

5. Requiring universal precautions: The program should mandate the use of universal precautions. Although every illness is different, there are certain simple, yet very effective, steps that every employee can follow to minimize the potential for infection and the potential for transmission of swine flu and other communicable illnesses. These universal precautions include the following:

   a. Frequent hand washing. Since access to soap and water is not always convenient (and some employees are allergic to antibacterial and/or other soaps), ready access to a hypoallergenic hand sanitizer should be provided. As an example, in an office environment, a company might provide containers of such hand sanitizers at workstations. In other environments, employers might put wall hand sanitizer dispensers in convenient locations. Employees should be instructed to wash or sanitize their hands frequently, and particularly to do so after shaking hands, using a phone, handling money, etc. Employers may want to provide sanitizing towelettes so that employees can wipe down phones, chair arms, and the like before use.

   b. Minimizing exposure to others who are ill. Minimizing exposure to others who are ill is obviously critically important. Employees who appear ill when they are at work should be sent home. And, when employees are ill, they should be encouraged, or perhaps required, to stay home. This approach can, of course, create an enforcement problem with employees who try to take advantage of this policy. But the cost of having a widespread illness in the workplace can be very high. And employees who attempt to misuse the policy can be subject to discipline, up to and including discharge. To further minimize misuse, an employer may also want to have a policy requiring medical certification when an employee calls in ill for an extended period. Clear absenteeism policies can often serve to minimize misuse. All applicable leave laws (FMLA, etc.) must also be followed, as well as the terms of any applicable collective bargaining agreement.

6. Reporting requirements: The program should require employees to report to the company when (a) they are experiencing symptoms or are diagnosed with an illness communicable in the workplace, or (b) they believe they may have been exposed to a person so diagnosed, or (c) they have recently visited a location where there has been an outbreak of a communicable illness. The policy should note that the information reported will be kept confidential to the extent reasonably possible, but must make clear that full confidentiality cannot be guaranteed. The policy should also urge employees to consult with their medical providers under these same circumstances.

The program should also describe when the employer will make a report of a known or suspected communicable illness to local health authorities.

7. Travel Procedures: Typically, a communicable illness response program would note that the company will generally follow the travel advisories issued by the CDC or other appropriate agencies. Distinctions can be made between work travel and personal travel, for example, with regard to whether employees will be paid during a period of incubation and quarantine.
In the case of swine flu, it appears there may be a period of up to seven days between infection and the appearance of symptoms. This period should be taken into account in setting policies for return to work after travel to an area where there has been an outbreak.

8. Return-to-work procedures: The program should require certification from a medical provider that it is safe for an employee to return to work after (a) being diagnosed with a communicable illness, (b) returning from an area where there has been an outbreak of a communicable illness, and (c) being quarantined in association with such an illness.

9. Business continuation preparation: The program should include critical business continuation plans. These plans would vary widely from employer to employer, but should generally include backup plans for supply and distribution chains, and contingent workers in the event of mass absences.

Conclusion

We are just now observing the early stages of a swine flu outbreak, and it is unclear how quickly or far it will spread. However, it is prudent for employers to adopt or update a written communicable illness response program now. Doing so will allow an employer to address current employee concerns and respond quickly and effectively to the outbreak, should it affect the workplace.

If you would like more information about responding to swine flu in the workplace or developing, revising, or activating your communicable illness response program, please contact your NP attorney or:

- Jeffrey M. Tanenbaum at 415-984-8450 or jtanenbaum@nixonpeabody.com.
**BUSINESS PANDEMIC INFLUENZA PLANNING CHECKLIST**

In the event of pandemic influenza, businesses will play a key role in protecting employees’ health and safety as well as limiting the negative impact to the economy and society. Planning for pandemic influenza is critical. To assist you in your efforts, the Department of Health and Human Services (HHS) and the Centers for Disease Control and Prevention (CDC) have developed the following checklist for large businesses. It identifies important, specific activities large businesses can do now to prepare, many of which will also help you in other emergencies. Further information can be found at [www.pandemicflu.gov](http://www.pandemicflu.gov) and [www.cdc.gov/business](http://www.cdc.gov/business).

### 1.1 Plan for the impact of a pandemic on your business:

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- Identify a pandemic coordinator and/or team with defined roles and responsibilities for preparedness and response planning. The planning process should include input from labor representatives.
- Identify essential employees and other critical inputs (e.g. raw materials, suppliers, sub-contractor services/products, and logistics) required to maintain business operations by location and function during a pandemic.
- Train and prepare ancillary workforce (e.g. contractors, employees in other job titles/descriptions, retirees).
- Develop and plan for scenarios likely to result in an increase or decrease in demand for your products and/or services during a pandemic (e.g. effect of restriction on mass gatherings, need for hygiene supplies).
- Determine potential impact of a pandemic on company business financials using multiple possible scenarios that affect different product lines and/or production sites.
- Determine potential impact of a pandemic on business-related domestic and international travel (e.g. quarantines, border closures).
- Find up-to-date, reliable pandemic information from community public health, emergency management, and other sources and make sustainable links.
- Establish an emergency communications plan and revise periodically. This plan includes identification of key contacts (with back-ups), chain of communications (including suppliers and customers), and processes for tracking and communicating business and employee status.
- Implement an exercise/drill to test your plan, and revise periodically.

### 1.2 Plan for the impact of a pandemic on your employees and customers:

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- Forecast and allow for employee absences during a pandemic due to factors such as personal illness, family member illness, community containment measures and quarantines, school and/or business closures, and public transportation closures.
- Implement guidelines to modify the frequency and type of face-to-face contact (e.g. hand-shaking, seating in meetings, office layout, shared workstations) among employees and between employees and customers (refer to CDC recommendations).
- Encourage and track annual influenza vaccination for employees.
- Evaluate employee access to and availability of healthcare services during a pandemic, and improve services as needed.
- Evaluate employee access to and availability of mental health and social services during a pandemic, including corporate, community, and faith-based resources, and improve services as needed.
- Identify employees and key customers with special needs, and incorporate the requirements of such persons into your preparedness plan.
### 1.3 Establish policies to be implemented during a pandemic:

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- Establish policies for employee compensation and sick-leave absences unique to a pandemic (e.g. non-punitive, liberal leave), including policies on when a previously ill person is no longer infectious and can return to work after illness.
- Establish policies for flexible worksite (e.g. telecommuting) and flexible work hours (e.g. staggered shifts).
- Establish policies for preventing influenza spread at the worksite (e.g. promoting respiratory hygiene/ cough etiquette, and prompt exclusion of people with influenza symptoms).
- Establish policies for employees who have been exposed to pandemic influenza, are suspected to be ill, or become ill at the worksite (e.g. infection control response, immediate mandatory sick leave).
- Establish policies for restricting travel to affected geographic areas (consider both domestic and international sites), evacuating employees working in or near an affected area when an outbreak begins, and guidance for employees returning from affected areas (refer to CDC travel recommendations).
- Set up authorities, triggers, and procedures for activating and terminating the company’s response plan, altering business operations (e.g. shutting down operations in affected areas), and transferring business knowledge to key employees.

### 1.4 Allocate resources to protect your employees and customers during a pandemic:

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- Provide sufficient and accessible infection control supplies (e.g. hand-hygiene products, tissues and receptacles for their disposal) in all business locations.
- Enhance communications and information technology infrastructures as needed to support employee telecommuting and remote customer access.
- Ensure availability of medical consultation and advice for emergency response.

### 1.5 Communicate to and educate your employees:

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- Develop and disseminate programs and materials covering pandemic fundamentals (e.g. signs and symptoms of influenza, modes of transmission), personal and family protection and response strategies (e.g. hand hygiene, coughing/sneezing etiquette, contingency plans).
- Anticipate employee fear and anxiety, rumors and misinformation and plan communications accordingly.
- Ensure that communications are culturally and linguistically appropriate.
- Disseminate information to employees about your pandemic preparedness and response plan.
- Provide information for the at-home care of ill employees and family members.
- Develop platforms (e.g. hotlines, dedicated websites) for communicating pandemic status and actions to employees, vendors, suppliers, and customers inside and outside the worksite in a consistent and timely way, including redundancies in the emergency contact system.
- Identify community sources for timely and accurate pandemic information (domestic and international) and resources for obtaining counter-measures (e.g. vaccines and antivirals).

### 1.6 Coordinate with external organizations and help your community:

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- Collaborate with insurers, health plans, and major local healthcare facilities to share your pandemic plans and understand their capabilities and plans.
- Collaborate with federal, state, and local public health agencies and/or emergency responders to participate in their planning processes, share your pandemic plans, and understand their capabilities and plans.
- Communicate with local and/or state public health agencies and/or emergency responders about the assets and/or services your business could contribute to the community.
- Share best practices with other businesses in your communities, chambers of commerce, and associations to improve community response efforts.
In light of the swine flu (A H1N1) outbreak, employers are asking questions about how they should handle situations in which an employee or family member has the illness.

Because of the swine flu outbreak, the World Health Organization (WHO) has raised the pandemic alert to Phase 5, one phase below that of a pandemic. A designation of Phase 6 would indicate that a global pandemic is under way. If a pandemic does occur, employers will play a key role in protecting employees' health and safety as well as limiting the negative effects on the economy and society.

On PandemicFlu.gov, the federal government answers some frequently asked questions about workplace-related issues regarding pandemic flu.

Please note that overall, employers should be guided in their relationship with their employees not only by federal employment law, but by their own employee handbooks, manuals, and contracts (including bargaining agreements), and by any applicable state or local laws, such as New York State Human Rights law.

Q. May employers mandate employees stay home if they or members of their family are known or suspected to have pandemic influenza or been exposed to someone with pandemic influenza?

Yes. Even if an employer believes that individual would pose a direct threat in the workplace due to a disability, the employer would not violate the Americans with Disabilities Act (ADA) if it required a qualified individual with a disability to stay home. A direct threat is a significant risk of substantial harm to safety that cannot be eliminated or reduced by a reasonable accommodation. A determination of direct threat must be based on the most recent and reputable medical information. If a pandemic illness did not rise to the level of a disability, then a decision to require infected employees to stay home would not implicate the ADA.

It is important to prepare a plan of action specific to your workplace, given that a pandemic influenza outbreak could affect many employees. It would also be prudent to notify employees (and if applicable, their bargaining unit representatives) about decisions made under this plan or policy at the earliest feasible time. Also, remember that any employment decision mandating that certain employees stay home must comply with federal laws prohibiting discrimination in the workplace on the basis of race, sex, age (40 and over), color, religion, national origin, disability, or veteran status.

Q. During a pandemic, may an employer track whether or not employees and their family members or associates have contracted pandemic influenza? If so, and as part of that tracking, may the employer require them to disclose whether they have, or have been exposed to, pandemic influenza?

Yes. During a pandemic, the Americans with Disabilities Act (ADA) permits employers to require employees to disclose whether they have or have been exposed to pandemic influenza. Employers also may ask about employee's family members and associates.

Employers should be aware, however, that treating an employee adversely because of a family member's or associate's disability is prohibited by the ADA. To protect privacy rights, the ADA requires employers to keep medical information confidential (i.e., maintained on a separate form and in a separate medical file).
Q. May an employer require an employee who is out sick with pandemic influenza to provide a doctor's note, submit to a medical exam, or remain symptom-free for a specified amount of time before returning to work?

Yes. However, employers should consider that during a pandemic, healthcare resources may be overwhelmed and it may be difficult for employees to get appointments with doctors or other health care providers to verify they are well or no longer contagious.

During a pandemic health crisis, under the ADA, an employer would be allowed to require a doctor's note, a medical examination, 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 of an employee where it has a reasonable belief – based on objective evidence – that the employee's present medical condition would:

- impair his 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 in which an employee's leave is covered by the Family and Medical Leave Act, the employer may have a uniformly-applied policy or practice that requires all similarly-situated employees to obtain and present certification from the employee's health care provider that the employee is able to resume work. Employers are required to notify employees in advance if the employer will require a fitness-for-duty certification to return to work. If state or local law or the terms of a collective bargaining agreement govern an employee's return to work, those provisions shall be applied. Employers should be aware that fitness-for-duty certifications may be difficult to obtain during a pandemic.

Q. During an influenza pandemic, can a healthy employee refuse to come to work, travel, or perform other job duties because of a belief that by doing so, he or she would be at an increased risk of catching pandemic influenza?

The circumstances under which employees have a right to refuse to work are very limited. Refusing to do a job because of potentially unsafe workplace conditions is not ordinarily an employee right under the Occupational Safety and Health Act (OSH Act). (A union contract or state law may, however, provide for 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 call the Department of Labor's Occupational Safety and Health Administration (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. "Good faith" means that even if an imminent danger is not found to exist, the worker had reasonable grounds to believe that it did exist.

In addition, employers should be aware that an employee's inability to attend work or perform certain duties could be related to a disability. In this instance, the employer may need to 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 (e.g., telework, changes in shift times), then an employer would need to provide the accommodation, in lieu of termination, unless it would pose an undue hardship. (See the U.S. Equal Employment Opportunity Commission's Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act at: http://www.eeoc.gov/policy/docs/accommodation.html for additional information.)
We would encourage employers to prepare a plan of action specific to your workplace. As a practical matter, employers will likely want to be flexible regarding attendance during a pandemic. It would also be prudent to notify employees and, if applicable, their bargaining unit representatives about decisions made at the earliest feasible time.

Q. What legal responsibility do employers have to allow parents or care givers time off from work to care for the sick or children who have been dismissed from school?

Covered employers must abide by the Family and Medical Leave Act (FMLA) as well as any applicable state FMLA laws. An employee who is sick, or whose family members are sick, may be entitled to leave under the FMLA. The FMLA entitles eligible employees of covered employers to take up to 12 weeks of unpaid, job-protected leave in a designated 12-month leave year for specified family and medical reasons which may include the flu where complications arise that create a “serious health condition” as defined by the FMLA.

There is currently no federal law covering employees who take off from work to care for healthy children, and employers are not required by federal law to provide leave to employees caring for dependents that have been dismissed from school or child care. However, given the potential for significant illness under some pandemic influenza scenarios, employers should review their leave policies to consider providing increased flexibility to their employees and their families. Remember that federal law mandates that any flexible leave policies must be administered in a manner that does not discriminate against employees because of race, color, sex, national origin, religion, age (40 and over), disability, or veteran status.

Q. Are employers required to provide employees with infection control supplies and personal protective equipment (PPE) to prevent or slow the transmission of influenza?

Workplace safety law requires employers to provide a workplace free from hazards likely to cause death or physical harm. The Department of Labor's Occupation Safety and Health Administration has provided detailed guidance, Guidance on Preparing Workplaces for an Influenza Pandemic at the website: http://www.osha.gov/Publications/OSHA3327pandemic.pdf on how to prepare the workplace for pandemic flu.

It is recommended that you provide sufficient and accessible infection control supplies and, if needed, PPE to control the spread of disease among your employees. (Where the employer has evaluated the work site and determined that PPE is required to be worn by employees, it is the employer's responsibility to assure that PPE is provided at that site. For guidance on selecting PPE, employers can consult the Guidance referenced above.)

There are various levels of control that can be used to protect employees including, engineering controls, work practices, administrative controls, and PPE. Some examples of these controls include: barriers/sneeze guards, promoting personal hygiene measures, minimizing face-to-face contact, and gloves/respirators. A combination of these controls is likely to be used by most employers. Signage in common areas around the workplace encouraging and explaining how to use these controls may increase awareness and good hygiene behavior.

Employers should also educate their workers about good hygiene and infection control practices. See also: “What kinds of information should be conveyed to employees to prepare them for the issues that are likely to be of concern to them should a pandemic occur?” which can be found at: http://www.pandemicflu.gov/faq/workplace_questions/human_resource_policies/w1.html
Q. Is an employer required by law to provide paid sick leave to employees who are out of work because they have pandemic influenza, have been exposed to a family member with influenza, or are caring for a family member with influenza?

Federal law does not require employers to provide paid leave to employees who are absent from work because they are sick with pandemic flu, have been exposed to someone with the flu or are caring for someone with the flu. Certain state or local laws may have different requirements, which should be independently considered by employers when determining their obligation to provide paid sick leave.

If the leave qualifies as Family and Medical Leave Act protected leave, the statute allows the employee to elect or the employer to require the substitution of paid sick and paid vacation/personal leave in some circumstances. Employers should encourage employees that are ill with pandemic influenza to stay home and should consider flexible leave policies for their employees.

Q. Must an employer grant leave to an employee who is sick or who is caring for a family member that is sick?

An employee who is sick or whose family members are sick may be entitled to leave under the Family and Medical Leave Act (FMLA) under certain circumstances. The FMLA entitles eligible employees of covered employers to take up to 12 weeks of unpaid, job-protected leave in a designated 12-month leave year for specified family and medical reasons which may include the flu where complications arise that create a “serious health condition” as defined by the FMLA. Employees on FMLA leave are entitled to the continuation of group health insurance coverage under the same conditions as coverage would have been provided if the employee had been continuously employed during the leave period.

Workers who are ill with pandemic influenza or have a family member with influenza are urged to stay home to minimize the spread of the pandemic. Employers are encouraged to support these and other community mitigation strategies and should consider flexible leave policies for their employees. (See Community Strategy for Pandemic Influenza Mitigation.)

The U. S. Department of Labor and other federal agencies are currently reviewing federal statutes and regulations that may affect employers and employees during the unique circumstance where the U.S. experiences a severe influenza pandemic. Decisions have not yet been made as to whether any changes are needed. Answers to questions such as this one are based on current laws and regulations.