

Protecting Your Employees and Business from the Spread of Flu

Table of Contents

Contagious diseases and the workplace

The rights of exposed employees

Can an employer order a sick employee to go home?

Application of the Americans with Disabilities Act (ADA)

Discrimination based on ethnicity

Safety obligations and liability for employee exposure

The swine flu is dominating news outlets across the country, as new cases are reported daily. Schools and workplaces are typically considered high risk locations for the spread of viral infections. As an employer, what are your rights and responsibilities when it comes to protecting your workforce from contagious diseases?

Contagious diseases and the workplace

The risk of illness spreading in workplaces is nothing new. The flu and common cold often make the rounds of a department or building, with little impact for most employees beyond a few days' absence and some late projects. But what if the illness in question posed more of a hazard to your employees' long-term health? What if it were potentially fatal?

Influenza, commonly known as the flu, is for many a potentially fatal illness. At-risk populations, such as the very young, the elderly and those with compromised immune systems or underlying health issues often succumb to the more deadly aspects of the flu. The World Health Organization estimates that over a quarter of a million people worldwide die each year from the flu or complications of the flu, with some 10,000 flu-related fatalities in the United States annually.

Any area with high population density is considered a higher-risk location for contagious disease transmission. This includes schools, nursing homes, dormitories and workplaces. Airports and airplanes are also high risk locales due to both crowding and the transient nature of the population, many of whom may have just come from areas where disease incidence is high.

As an employer, you want to limit the risk to your staff and customers. Before you create a policy, there are some important legal and ethical issues you need to consider.

The rights of exposed employees

At a recent luncheon, the discussion turned to a colleague who was due to return from a vacation in Mexico. Several of the staff members present voiced their concern about the risk his return created, and suggested that he shouldn't be allowed to come into work until he was sure he wasn't infected. Is it legal to require someone to stay at home if he or she may have been exposed to a potentially dangerous contagious illness?

Although it's understandable that employees or even management might be concerned about a staff member's exposure, an employer cannot legally require employees to take time off of work solely because of where they traveled or the persons with whom they may have come in contact.

It is acceptable to offer an exposed employee the option of working from home, but the choice should be left up to the employee and should not result in loss of pay, status or a lesser performance evaluation. Banning employees from the workplace because they have recently visited a certain part of the world may lead to discrimination claims.

The exception is in health care positions, where potential exposure could reasonably endanger patients or other high-risk individuals. A temporary reassignment could be mandated in these case, but only if it does not result in loss of pay, status or seniority, and is within the employee's reasonable job duties.

Can an employer order a sick employee to go home?

One of our employees came to work with a fever and cough. She had limited sick leave and a lot of work to do, but the rest of the staff complained. I wanted to send her home, but I was worried that it was illegal to make an employee leave. In the next few weeks, three more employees got sick. Could I have legally made her leave?

An employer generally has the right to order a sick employee to leave the office or workplace. If the employee is a salaried exempt employee, you are obligated to pay for the full day's work, regardless of what time you asked them to leave. You may also require a medical certification before an employee who displayed symptoms is permitted to return to work.

To avoid charges of discrimination or preferential treatment, be sure your company's employee handbook covers the procedure for situations where a staff member comes to work while ill, or becomes ill during work hours, or wants to return to work after a contagious illness.

Application of the Americans with Disabilities Act (ADA)

During a pandemic health crisis, an employer is permitted to require proof of health before allowing an employee who displayed symptoms to return to work. Typically, one of these would be considered legally acceptable:

- A doctor's note
- A medical exam
- A period of time during which the employee is symptom-free

Proof of health (as described above) is allowable as a prerequisite for an employee to return to work when an employer has a reasonable belief that an employee's medical condition could:

Impair his or her ability to perform essential job functions with or without reasonable accommodations

Pose a direct threat to the safety of the workplace or to other persons in the workplace

Discrimination based on Ethnicity

The media may focus on one country as the origin of a given infection, but excluding, furloughing, firing or refusing to hire employees or job applicants because they are from a certain country or ethnic group could be perceived as ethnic profiling and may be grounds for a discrimination claim. [Title VII of the Civil Rights Act of 1964](#) prohibits workplace discrimination based on religion, national origin, race, color, or sex.

At this time, employers should be particularly sensitive to potential discrimination or harassment against individuals who are – or are perceived to be – Mexican.

The law includes harassment or any other employment action based on any of the following:

Affiliation: Harassing or otherwise discriminating because an individual is affiliated with a particular ethnic group.

Perception: Harassing or otherwise discriminating because of the perception or belief that a person is a member of a particular ethnic group whether or not that perception is correct.

Make sure your entire staff is aware of the possible legal consequences for ethnic or racial discrimination.

Safety obligations and liability for employee exposure

Employers have been held to have an obligation to provide a safe workplace for employees. OSHA, the Federal Occupational Safety and Health Act, mandates that employers maintain a certain level of workplace safety and wellness.

Any employees harmed as a result of negligent hiring, retention or employment policies may have recourse to sue for damages. OSHA fines could also result from negligent health and wellness practices. In the case of infectious diseases, this could mean an employer who does not establish clear policies for dealing with contagious infections could be liable for employees who become sick as a result.

Establishing a safe workplace policy

Employers should review their personnel policies to make sure there is a clear procedure for dealing with sick employees. Make sure the specifics for when an employee can be sent home, what kind of leave hours are to be used, and how employee can certify that they can safely return to work are all clearly defined.

Offer disease prevention training, including instruction on identifying disease symptoms, hand washing procedures, use of Personal Protective Equipment and biohazard clean up techniques.

Provide employees with hand sanitizing stations or stock restrooms with sanitizing hand soap.

Maintain an open dialog with employees about any specific bio-risks in the workplace, including influenza.

Offer clear and accurate information about the symptoms of any currently widespread illnesses that may impact your workforce. Media coverage may create false fears or

even panic, so balanced accurate information is necessary to help employees make rational choices about their health.

Create an official travel policy that will address postponing or rescheduling travel in times of increased health concerns.

Help prevent the spread of flu and other contagious diseases at your workplace by raising awareness among your employees of sanitary procedures. [Learn more](#) about all of G.Neil's flu prevention and workplace safety products.