

KNOW-HOW > Expert advice for business leaders

Avian Flu Challenges

Act now to create communicable illness policies

IN ADDITION TO ITS DEADLY REPERCUSSIONS, AN AVIAN flu outbreak could have a serious impact on the U.S. work force. As reported by the Congressional Budget Office, the virus could sicken 90 million people, leaving about one-third of all employees at home for three weeks.



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In the event of such a pandemic, businesses with no communicable illness policy and response plan could be faced with a laundry list of operational challenges and HR-related legal concerns. Some of the most

pressing legal, human resources and employee relations issues include:

Employee Relations

Recent projections show that in the event of a severe pandemic that reaches the U.S., as much as 40 percent of a company's workforce may be out sick at any given time. With no communicable illness policy in place, employers would be unprepared to adjust benefits plans for employees who exceed their sick days. Employers might also trigger labor contract restrictions if they use contract employees or re-hire retirees, or may suffer adverse and long-term employee relations harm by requiring fearful employees to come to work, particularly if other alternatives (like telecommuting) are available.

Regulatory Concerns

The Occupational Safety and Health Act (OSHA) requires employers to ensure that employees are not exposed to conditions which will cause death or serious physical harm. If an

infected employee with a communicable condition comes to work and spreads the virus to others, the employer could potentially face OSHA violations, workers compensation claims and—in some jurisdictions—additional worker lawsuits, unless precautions are taken to lessen the threat.

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Privacy Issues

Observing the health privacy regulations under the Health Insurance Portability and Accountability Act could raise new and challenging issues for employers during a pandemic. Without a clear understanding of what illnesses—or exposure to illness—an employee is obligated to disclose, employers could leave themselves wide open to privacy invasion and discrimination claims.

The actions of public health authorities—critical in many respects for the nation's reaction to these important health issues—will have a bearing on reporting requirements, and potential insulation for employers.


Plan Now

In addition to protecting employees and preventing legal problems, creating a communicable illness policy now will put companies in a better position to ensure business continuation. Employers should develop a policy that addresses multiple areas.

Education: Answer major questions about avian flu and clearly define what employees should do if they become infected. Identify when an employee should stay at home or will be sent home, and when it is safe for them to return to work.

Corporate travel policies: Spell out travel restrictions and steps to take should an employee contract the virus while on the job. Discourage travel to infected areas.

Operating procedures: Review the company's existing infrastructure and identify how existing policies, procedures and operations would continue during an outbreak.

Hygiene/health etiquette: Suggest preventative measures to avoid infection and outline the latest scientific and public health guidance provided by the Centers for Disease Control and Prevention, OSHA and related organizations. 

Dale Deitchler is a shareholder in Littler Mendelson's (www.littler.com) Minneapolis office. Deitchler represents, advises and provides practical solutions to management in all aspects of employment and labor law, relations and standards. Littler Mendelson is the largest law firm in the United States devoted exclusively to representing management in employment, employee benefits and labor law matters.