



# THE WORKPLACE WORD

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## The 2009 H1N1 Flu – Are You Prepared?

The recent increase in the number of confirmed cases of H1N1 Influenza A (swine flu) illustrates the necessity and importance of employer preparedness for a potential influenza pandemic. Regardless of whether the H1N1 Influenza A reaches pandemic proportions or instead fizzles out, employers should consider taking action and implementing policies now, to protect their employees' health and safety, while at the same time minimizing business interruption and potential liability.

Employers should begin by reviewing the websites of the Centers for Disease Control (CDC) and the Occupational Safety and Health Administration (OSHA) daily for updates on steps to take during an outbreak. Employers should communicate to their employees that they are cognizant of the situation, are monitoring it closely, and will take all necessary steps to ensure employee safety and health.

Employees should be reminded of the importance of maintaining good workplace hygiene (e.g., washing hands frequently, avoiding touching one's eyes, nose and mouth, and coughing or sneezing into a tissue). Employers should also consider making antibacterial hand sanitizer and/or paper masks available to employees.

Leave policies should be modified, where appropriate, so that sick employees are not coming to work out of fear that they will be terminated. For example, employers may want to consider implementing telecommuting policies or expanding upon paid time off (PTO) policies in the event of an outbreak. Employees



should be encouraged to report any flu-like symptoms to human resources, and to stay at home if they experience flu-like symptoms.

Employers should ensure that they continue to comply with applicable law. Employers with more than 50 employees, for example, are obligated to provide up to 12 weeks of unpaid leave under the Family and Medical Leave Act (FMLA), because of an employee's (or employee's child's, parent's or spouse's) "serious health condition." Although FMLA does not apply to an employee who takes off of work to care for a healthy child (whose school or daycare has been closed because of an outbreak, for example), employers should consider modifying their leave policies to provide increased flexibility to employees and their families in these scenarios.

Employers should also be careful that they do not discriminate against protected groups, such as individuals with ties to Mexico (where the H1N1 Influenza A is alleged to have originated) or those with a disability. Although the flu is generally not considered a disability under the Americans with Disabilities Act (ADA), with the recent lowered thresholds for disability under the ADA Amendments Act, employers should consider accommodating employees

whose flu symptoms may be longer term and/or chronic.

Finally, employers should also be mindful that they do not violate the National Labor Relations Act (NLRA). A decision by a group of employees not to go to work, out of concern that they could risk becoming infected, might be deemed concerted activity protected under the NLRA.

More information on pandemic preparations in general, as well as the H1N1 Flu specifically, may be found at the CDC's website at [www.pandemicflu.gov](http://www.pandemicflu.gov) and the OSHA website at [www.osha.gov](http://www.osha.gov). For questions regarding the content of this newsletter or the implementation of a pandemic flu plan tailored to your worksite, please contact a Snell & Wilmer attorney.