

Employment law services

Guidance Note: Dealing with a Swine Flu Pandemic



The Government has recently announced that swine flu can no longer be contained and as such it is anticipated that outbreaks will become commonplace. Some experts are suggesting that in the worst case scenario, up to 75% of the work force could be affected. According to figures released by the Health secretary, Andy Burnham, it is estimated that there could be up to 100,000 new cases per day by August this year.

At the same time, there is also scepticism expressed by some who consider that the media has been responsible in the past for exaggerating other similar health concerns. Nevertheless, prudent employers who spend time now putting measures in place to alleviate the impact of a swine flu pandemic on their business, will be best placed to 'weather the storm' in the event that the worst case predictions do become a reality.

1. Plan for workplace disruption

The main practical issue for most businesses at this stage, is to consider and plan for potentially very high levels of staff absence. Some businesses already have contingency or disaster plans in place, however these should be reviewed and tailored to the current threat. In particular, points to consider include:

- Investing in additional technology to encourage working from home;
- Reviewing your existing IT system - can it cope with additional users logging on from home;
- Identifying key roles and responsibilities within the business. Are enough people trained to carry out those key roles?
- Considering cross-training staff to ensure that key roles can be maintained despite high absence levels;
- Assessing your main suppliers. In the event that they are unable to service your needs are there other companies that could assist?
- Considering the alternatives to face-to-face meetings in the event that travel becomes imprudent;
- Considering staffing levels, the use of temporary staff or paying healthy staff overtime to work additional hours.

2. Review and update your policies

It is important that businesses review relevant policies such as sickness, absence, travel and dependant leave to assess how these might need to be modified in light of recent guidance.

Sickness

Consideration will need to be given as to whether your existing sickness policy will assist in times of widespread illness. It may be appropriate to temporarily suspend some of the normal practices around sickness reporting, return to work or sick pay. The practicality of each policy should be scrutinised. For example, is it really necessary to require employees to phone in sick on each day of their absence? What do you require in terms of a doctors note and how soon must this be provided to you? Furthermore, many company sickness policies may require an employee to return to work as soon as they are feeling well enough (assuming any sick note has expired), however a person suffering from swine flu should not be pressurised into returning to work sooner than they are fit.

Dependant Leave

Employers are likely to experience a large increase in employees requesting time off to care for dependants. The statutory right to dependant leave is quite limited and designed only to allow a carer to put in place arrangements for the care of a dependant. If dependants become very seriously ill, or care arrangements become difficult to make, it would be unrealistic for employers to expect employees to take only their minimum entitlements. As such, employers are going to be likely to find themselves being more generous than might otherwise be the case.

Paid or unpaid time off

The question of whether time off should be paid or unpaid as well as the length of any leave has the potential to be contentious. Where discretion is exercised it should be done so consistently, so that the chance of potential discrimination claims is minimised.

3. Keep staff updated

It is important to communicate with staff about the current health risks and ensure systems of communication with staff are reliable. If a workplace closure does become necessary, do you have the means to communicate with all employees easily? For large organisations a dedicated telephone number with a recorded message can be a useful way of keeping people updated. Good communication will ensure that employees feel well informed and advised of the current situation which in turn, should help to alleviate any anxiety that 'well-worriers' are experiencing.

4. Reduce the risk of contamination

The health and safety of your employees is a key consideration. It is therefore important to take steps to ensure that there is good hygiene in the workplace and that working practices do not pose undue risks to employees.

Employers should carry out risk assessments, considering whether there are any factors which make employees particularly vulnerable to infection (such factors might include a high level of contact with the public or a high incidence of travel).

If there is an incidence of flu in the work place or else if a pandemic develops in the wider population, consideration should be given to alternative ways of working. Home working may become necessary or travel bans may be imposed, depending on the circumstances.

Educating employees in line with the Government's "Catch it, Bin it, Kill it" campaign is recommended along with displaying signs and notices in the workplace.

When reviewing hygiene practices consider the following:

- Installing anti-bacterial hand gel at entrances to the building and displaying signage requesting employees, clients and customers to sanitise their hands upon entering the building;
- Providing employees with telephone, keyboard and desk antibacterial wipes;
- Providing staff with individual bottles of hand gel to use following their journey to and from work. This is particularly relevant where you have a high number of public transport users;
- Requesting that cleaning staff intensify the cleaning of hard surfaces, particularly door handles, banisters, lift buttons and any 'hot desk' equipment.

It is most important to keep up-to-date with current Health Protection Agency "HPA" guidance. The HPA can be accessed by following the attached link: [Click Here](#)

Current HPA guidance states the following:

If a member of staff attends work and is obviously unwell with flu-like symptoms they should be sent home and asked to call NHS Direct (0845 46 47) or call the Swine Flu information line on 0800 1 513 513. If still concerned, they should call their GP, who can provide a diagnosis over the phone.

People who have had contact with a person with swine flu but are showing no symptoms do not need to be excluded from the workplace.

5. Dealing with Staff Absence

Staff absence may be high for the following reasons:

- Genuine employee sickness;
- Employees refusing to attend work or travel due to fear of contracting swine flu;
- Employees needing time off to care for dependants;
- Employees who are off sick when they are not really ill.

Employers always face a conflict between the need to keep genuinely sick employees away from the workplace and the need to prevent unauthorised absence. Employers who have a practice of encouraging employees to “struggle in” despite not feeling well will need to change their approach as potentially not doing so could lead to claims for breach of contract.

A well-advertised sickness policy along with clear communication might help employers reassure healthy, but worried, staff that work is relatively safe and as such maintain a higher level of attendance throughout the pandemic.

An employee who refuses to carry out an employer’s reasonable request (i.e. not carrying out a particular task because he/she is concerned about contracting swine flu) could find themselves facing disciplinary action. Such action is likely to be justified unless the employee can establish that they are facing a serious and imminent threat. However, at the same time, it is also possible that an employee’s refusal could be reasonable and, of course, employers are advised to investigate each case thoroughly before deciding if disciplinary action is warranted. Pregnant employees and those with other health concerns should be given special consideration.

6. Managing employee fear

Managing employees’ anxiety and concerns is likely to be one of the biggest challenges employers will face. This is going to be particularly difficult if fear becomes widespread and there is public consensus that staying at home is safest.

At present and in line with current HPA recommendations, employees should be required to attend work as normal, unless there is a particular risk posed in that workplace which means that this is not recommended. Employers are advised to check the HPA website regularly to keep up-to-date with current guidance.

If you would like further guidance on this or any other aspect of Employment law, please do not hesitate to contact a member of the team below.

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