



H1N1: Where Safety and Health and the Real World (and Everything Else!) Meet

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Preventive Strategies and
Positive Solutions for the Workplace

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“Lack of Paid Sick Days May Aid Flu Pandemic”

- **“Public health experts worried about the spread of the H1N1 flu are raising concerns that workers who deal with the public, like waiters and child care employees, are jeopardizing others by reporting to work sick because they do not get paid for days they miss for illness.”**
- **“Tens of millions of people, or about 40 percent of all private-sector workers, do not receive paid sick days, and as a result many of them cannot afford to stay home when they are ill. Even some companies that provide paid sick days have policies that make it difficult to call in sick, like giving demerits each time someone misses a day.”**

- **OSHA and Workplace Safety Precautions**
- **Common Human Resources Questions**
- **Wage and Hour Issues**

- OSHA Requirements and Guidance
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 - No specific OSHA standard covering H1N1
 - OSHA's personal protective equipment (PPE) and respiratory protection rules may be applicable
 - OSHA's General Duty Clause may be applied by OSHA
 - OSHA Guidance
 - "Guidance on Preparing Workplaces for an Influenza Pandemic" (<http://www.osha.gov/Publications/OSHA3327pandemic.pdf>)
 - "Pandemic Influenza Preparedness and Response Guidance for Healthcare Workers and Healthcare Employers" (http://www.osha.gov/Publications/OSHA_pandemic_health.pdf)
 - "What Employers Can Do to Protect Workers from Pandemic Influenza" (<http://www.osha.gov/Publications/employers-protect-workers-flu-factsheet.pdf>)
 - "Healthcare Workplaces Classified as Very High or High Exposure Risk for Pandemic Influenza" (<http://www.osha.gov/Publications/exposure-risk-classification-factsheet.pdf>)
 - "Respiratory Infection Control: Respirators Versus Surgical Masks" (<http://www.osha.gov/Publications/respirators-vs-surgicalmasks-factsheet.pdf>)

Exposure Risk Categories

- **Very High Exposure Risk:** Health care employees (for example, doctors, nurses, dentists) performing aerosol-generating procedures on known or suspected pandemic patients and health care or laboratory personnel collecting or handling specimens from known or suspected pandemic patients
- **High Exposure Risk:** Health care delivery and support staff exposed to known or suspected pandemic patients; medical transport of known or suspected pandemic patients in enclosed vehicles; and employees performing autopsies on known or suspected pandemic patients
- **Medium Exposure Risk:** Employees with high-frequency contact with the general population (such as schools, high population density work environments, and some high volume retail)
- **Lower Exposure Risk:** Employees who have minimal occupational contact with the general public and other coworkers (for example, office employees)

- **Key OSHA guidance for medium and low exposure work environments:**
 - **Social distancing**
 - **Telework**
 - **Barriers/guards between customers and employees**
 - **Hand sanitizers, no-touch trash cans**
 - **Encouraging vaccinations**
 - **Personal protective equipment**

- **CDC Interim Guidance for H1N1 In Healthcare Settings:**
 - **Applies to hospitals, long-term care and outpatient facilities, and other settings where healthcare is provided**
 - **Implement hygiene and cough etiquette**
 - **Isolate confirmed cases and take precautions if procedures will likely generate aerosols**
 - **During transport of cases, put surgical masks on ill persons**
 - **Use N95 or better respirators!**
- **OSHA will be enforcing this under the General Duty Clause of the OSH Act**

Pandemic Planning

- **Establish task force of key decision makers**
 - **Human resources, safety, legal, field managers**
- **Assess the risk in your workplace**
- **Take precautions based upon that risk assessment and OSHA and CDC recommendations**
- **Communicate to your employees on the steps you are taking to ensure their safety and health**
- **Prepare for the thorny human resources issues**

- **Question 1: Can I ask employees specific information about how they feel, if they report feeling ill at work or call in sick?**

- **Answer:**
 - **Normal Pandemic – ADA-covered employers may ask such employees if they are experiencing influenza-like symptoms (fever, chills and a cough or sore throat)**
 - **Severe Pandemic – Inquiries are justified based on reasonable belief and objective evidence that there is a direct threat**

- **Question 2: May I require all my employees to take the flu vaccine?**

- **Answer: No. An employee may be entitled to an exemption for a mandatory vaccine based on an ADA disability or under Title VII of the Civil Rights Act of 1964.**

- **Question 3: May I ask an employee why he or she has been absent from work if I suspect it is for a medical reason?**

- **Answer: Yes. Such an inquiry is not a disability-related inquiry.**



- **Question 4: May I take my employees' temperatures to determine if they have a fever?**



- **Answer: Maybe. During a normal pandemic, employers may not do this, as it is a medical examination. However, during a severe pandemic, the indication from the federal government is that employers can take employee temperatures.**

- **Question 5: May I send a sick employee home during a pandemic?**

- **Answer: Yes. OSHA and the CDC recommend that sick employees go – and stay home – once they develop symptoms.**

But . . .

- **Exempt employees: main concern is compliance with “salary basis” test**
 - **If an employee performs any work at all during a workweek, he or she is entitled to the full salary for that week**
 - **Workplace closures or furloughs for less than a full workweek do not allow employers to pro-rate the weekly salary if an employee performs at least some work during that workweek**

- **Exempt employees (cont'd):**
 - **Workplace closure for less than a workweek — under federal law an employer can have a worker use PTO or other paid leave so long as the worker receives money equal to the weekly salary (watch for state-law or contractual limitations)**
 - **If the workplace is open but a worker stays home as a precaution, the employer may pro-rate the salary on the basis of a full-day absence for personal reasons other than sickness or disability**

- **Exempt employees (cont'd):**
 - **For full-day absences due to sickness or disability, whether an employer can pro-rate salary depends on whether there is a bona fide plan, policy, or practice of providing compensation for salary lost for those reasons**
 - **Remember: no salary deductions for partial-day absences unless the absences are pursuant to the Family and Medical Leave Act**

- **Non-exempt employees: main concern is tracking hours worked**
 - **Becomes an issue if an employer allows employees to work from home or other remote sites**
 - **Need to devise policies regarding what tasks workers are authorized to perform remotely, in what quantity, and at what times**

- **Non-exempt employees (cont'd):**
 - **Need to develop protocols for accurately tracking and recording hours worked remotely**
 - **Do not rely on exception reporting**
 - **Require workers to maintain and to report hours worked on a daily basis**
 - **Monitor working time closely**
 - **Have a strong policy barring off-the-clock work**



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