



MANAGEMENT ALERT

WHAT TO DO ABOUT THE FLU

Much has been written about the H1N1 flu and the potential threat that this virus poses to the United States. Regardless of whether the H1N1 virus itself becomes a serious threat, the potential of this virus to disrupt your Company's business and operations provides an opportunity to plan your Company's response to this and any other crisis that may arise. This Management Alert briefly summarizes the actions that should be taken now to plan for the effects of this virus or for the next pandemic or emergency situation.

Executive Summary

- A. **Plan now for this potential pandemic and future emergencies.** Take this opportunity to assess your Company's emergency or contingency plans.
- B. **Educate your employees about disease transmission.** This training should include modes of transmission, symptoms, hygiene and a reporting process if an employee is infected with the virus. This training is important for several reasons. First, it may help prove that the Company complied with OSHA's requirement to provide a workplace that is free from recognized hazards. Second, and most important, it may prevent the onset or spread of disease in your Company. See Attachment A.
- C. **Assemble an Operations Planning Team.** This team should address the following general issues: Notification and Communication of Information between the Company and Employees; Development or Modification of Policies Regarding Employees; Development or Modification of Policies Regarding Operations; List of Resources for Employees. Please see Attachment B for a more detailed list of questions to consider as you plan your Company's emergency response.
- D. **Monitor recent developments regarding the H1N1 using the following resources:** www.pandemicflu.gov; or www.cdc.gov.
- E. **Advise your employees** that you are concerned about their well-being and are taking action to plan for the flu or other emergencies.



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ATTACHMENT A

Training Ideas

Provide training for employees about the H1N1 flu and how it is spread. Use the Fact Sheet and Hygiene Poster attached. Consider purchasing tissues, soap, sanitizing wipes and hand gel for employees and placing in many locations throughout your Company. Consider having extra cleaning services. Discourage use of other people's phones, work areas or pens. Establish a reporting process for employees who become sick and notify employees of that process, bearing in mind that HIPPA may apply.

ATTACHMENT B

The following checklist is designed to act as a catalyst for the planning team's discussions:

- A. **Notification/Communication Process for Employees.** Develop a system for employees to use to notify the Company of their symptoms and status. Consider whether this function should be centralized with one or two people rather than reporting to each respective supervisor. Note that this list may be needed to comply with OSHA requirements. What process will the Company use to inform employees of the status of the Company — ie shutdowns, reduced hours, etc. Consider using the same mechanism as extreme weather. Obtain/verify emergency contact information from employees and schedule regular updates of such information. Note that some employees may no longer have a home phone and be sure to obtain home e-mail addresses.
- B. **Develop Policies Regarding Employees.** Hint: While doing so, keep in mind the Company's primary objectives: to minimize disruptions of the business and to safeguard the health and well-being of the Company's employees.
 - Reporting to Work when the Employee is Sick. What will the Company's policy be for those employees who choose to report to work when showing symptoms of the flu? What happens if an employee becomes ill while at work?
 - Reporting to Work when a member of the Employee's family is Sick. What will the Company's policy be regarding attendance at work if a member of the employee's immediate family is ill?



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- Concern for other Employees. How will the Company address employees who are concerned about the health of other employees or worried about other employees who may have recently travelled to an infected area? How will the Company address employees who refuse to report to work? Note that failing to report to work may constitute protected concerted activity under the National Labor Relations Act — and yes, this applies to non-union companies.
- Compensation. Will Employees be compensated if they are ill with the flu? What about if a family member is sick and the Company requires the employee to stay home? What compensation arrangements will be made if the employees work from home? How will the hours worked from home be recorded? Please note that exempt and non-exempt employees may be treated differently under the Fair Labor Standards Act. Consider your policies in light of the hint above: do you want to encourage employees to stay home? Is the risk of attendance by one sick employee enough to balance the risk of those employees who might abuse the system? How will you balance the two issues?
- Modifications of Policies. Consider whether the Company's policies regarding vacation, paid time off, attendance and leave should be revised to reflect a potential crisis and perhaps provide more flexibility for both employer and employee. Will you permit employees to donate PTO to other employees?
- Alternative Arrangements. What type of alternative arrangements will be allowed? Will staggered schedules be productive? Will Employees be allowed to telecommute? If so, is there enough infrastructure to support widespread use of the Company's communications systems? Has this been tested?
- Returning to Work. When will Employees Be Allowed to Return to Work? How will the Company determine whether the employees are "safe" to return to work? Consider requiring a fitness for duty certificate from a doctor, bearing in mind that these might be difficult to obtain if there is a true pandemic.



C. Develop Policies Regarding Operations.

- Communications Systems: Will the Company's systems be protected in the event of a closing? Is there sufficient back-up of information? What about generators and other lab equipment? What will happen if no one can monitor the experiment or determine that the generators are working? How will the Company's intellectual property be protected?
- Customers/Suppliers: Who are your primary customers or suppliers? What would happen if the Company were not able to contact them or receive supplies? What concerns do your customers have about your availability?
- Cross-Training of Employees: Consider cross-training employees to cover any functions that may not be covered if an employee is out sick. What are the essential functions of the Company? Who will be cross-trained to perform those functions?
- Travel Restrictions: Does the Company want to revise its policies regarding business travel?
- Social Distancing: How can the Company re-arrange the workplace to allow for less interaction among employees? Does the Company want to close the break room? Can your Company encourage less meeting time and more communications by e-mail? Can you limit the flow of unnecessary visitors to your Company?
- Contract Review: What deliverables or milestones does the Company have in the next few months? Will the Company be able to meet the deadline if a majority of the workforce is out of the office? Does the contract contain force majeure language and if so, will this language apply to a flu pandemic? Will you need to re-locate to another facility to meet deadlines?
- Employee Ideas: Be open to ideas for reducing infection and managing work from your employees. In fact, seek their input.



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D. Develop Resources for Employees.

- Employee Assistance Plans: Consider adopting an Employee Assistance Plan or review your current plan to determine whether it is sufficient to provide counseling and support to employees if the pandemic occurs.
- Protective Equipment: What type of protective equipment does the Company wish to provide for employees? Masks? Respirators? Note that OSHA may govern the use of such equipment like respirators.
- Useful Reference: www.pandemicflu.org is an excellent resource for frequently asked questions regarding payment of employees and other policies and we strongly encourage you to review it as you work through the planning process. Other helpful references are www.osha.gov; and www.hhs.gov.

Request for Input: If, as you work through these issues, you become aware of other issues that have not been addressed here or would be helpful to others, please send me an e-mail at Kathy@wormlaw.com so that I can add it to the list. I will then send updates to all so that we can all be better prepared.

Please note that this checklist is just a starting point for planning your Company's approach to a pandemic or other emergency. There are numerous laws that govern these issues such as the Americans with Disabilities Act, the Fair Labor Standards Act, the Family Medical Leave Act, HIPPA, OSHA standards, the National Labor Relations Act, WARN, Worker's Compensation and state privacy laws.

This Management Alert is not intended to be, and should not be considered to be, legal advice. Please contact Kathy Worm at 919-926-1428 if you have any questions regarding this Management Alert or need assistance in drafting your policies and procedures.

H1N1 INFLUENZA FACT SHEET

What is H1N1 flu?

It is a respiratory disease of pigs created by type A influenza viruses. People do not normally get the H1N1 Virus, but this virus is now being spread human to human.

What are the signs and symptoms of the H1N1 virus in people?

The symptoms of swine flu in people are similar to the symptoms of regular human flu and include fever, cough, sore throat, body aches, headache, chills and fatigue. Some people have reported diarrhea and vomiting associated with swine flu. Like seasonal flu, swine flu may cause a worsening of underlying chronic medical conditions.

How does it spread?

Spread of this swine influenza A (H1N1) virus is thought to be happening in the same way that seasonal flu spreads. Flu viruses are spread mainly from person to person through coughing or sneezing of people with influenza. Sometimes people may become infected by touching something with flu viruses on it and then touching their mouth or nose.

How can someone with the flu infect someone else?

Infected people may be able to infect others beginning 2 days before symptoms develop and up to 7 or more days after becoming sick. That means that you may be able to pass on the flu to someone else before you know you are sick, as well as while you are sick.

Are there medicines to treat swine flu?

Yes. CDC recommends the use of oseltamivir or zanamivir (Tamilflu or Relenza) for the treatment and/or prevention of infection with these H1N1 influenza viruses. Antiviral drugs are prescription medicines (pills, liquid or an inhaler) that fight against the flu by keeping flu viruses from reproducing in your body. If you get sick, antiviral drugs can make your illness milder and make you feel better faster. They may also prevent serious flu complications. For treatment, antiviral drugs work best if started soon after getting sick (within 2 days of symptoms). Contact your physician for prescription medications.

How long can an infected person spread this flu to others?

People with swine influenza virus infection should be considered potentially contagious as long as they are symptomatic and possibly for up to 7 days following illness onset. Children, especially younger children, might potentially be contagious for longer periods.

What surfaces are most likely to be sources of contamination?

Germs can be spread when a person touches something that is contaminated with germs and then touches his or her eyes, nose, or mouth. Droplets from a cough or sneeze of an infected person move through the air. Germs can be spread when a person touches respiratory droplets from another person on a surface like a desk and then touches their own eyes, mouth or nose before washing their hands.

Source: Centers for Disease Control and Prevention

What You Can Do to Stay Healthy

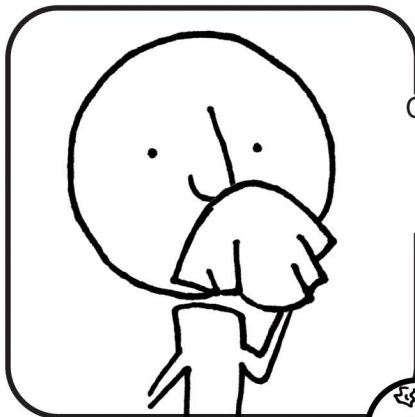
Influenza is thought to spread mainly person-to-person through coughing or sneezing of infected people. Take everyday actions to stay healthy.

- Cover your nose and mouth with a tissue when you cough or sneeze. Throw the tissue in the trash after you use it.
- Wash your hands often with soap and water, especially after you cough or sneeze. Alcohol-based hands cleaners are also effective.
- Avoid touching your eyes, nose or mouth. Germs spread that way.
- Stay home if you get sick. CDC recommends that you stay home from work or school and limit contact with others to keep from infecting them.
- Follow public health advice regarding school closures, avoiding crowds and other social distancing measures.
- Develop a family emergency plan as a precaution. This should include storing a supply of food, medicines, facemasks, alcohol-based hand rubs and other essential supplies.

Source: Centers for Disease Control and Prevention

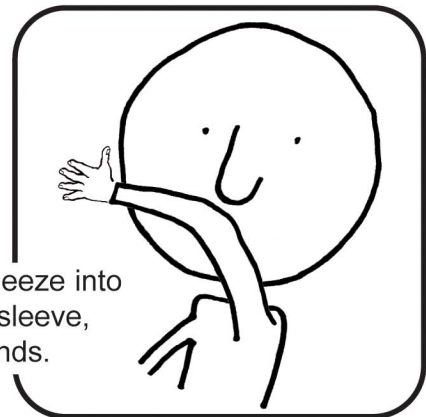
Stop the spread of germs that make you and others sick!

Cover your Cough



Cover your mouth and nose with a tissue when you cough or sneeze

or
cough or sneeze into your upper sleeve, not your hands.

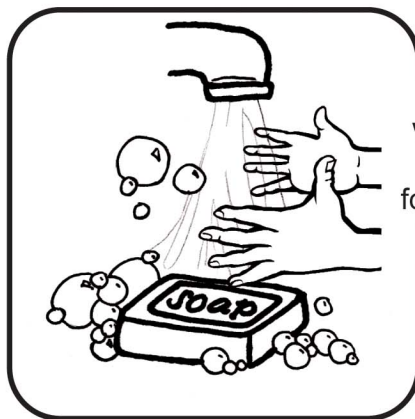


Put your used tissue in the waste basket.



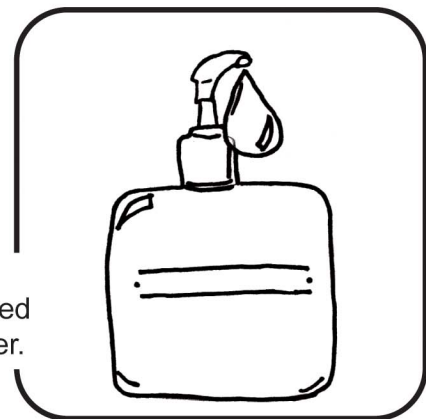
Clean your Hands

after coughing or sneezing.



Wash hands with soap and warm water for 20 seconds

or
clean with alcohol-based hand cleaner.



Minnesota Department of Health
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