



One Minute Memo[®]

An Update on the Legal and Workplace Implications of H1N1

With the 2009-10 flu season officially upon us, there is increasing concern about the spread, treatment, and prevention of H1N1 Influenza (H1N1), and employers face new and greater challenges in responding to the many legal and workplace implications associated with the virus. In previous Seyfarth alerts (*Environmental & Safety Report* and *Management Alert*), we addressed many of those implications. Because experts predict that the virus will likely become more widespread as the current flu season progresses, it is even more important that employers consider the nature and scope of H1N1, identify potential legal liabilities, develop action and communications plans, and identify and address related labor and employee relations issues.

What Do We Know About H1N1?

H1N1 is a highly communicable virus that was first detected in humans in the United States in April 2009. It spreads from person to person in a similar manner as seasonal flu—primarily through coughing, sneezing, hand or face contact, or contact with something that an infected person has already touched. Once an individual contracts the virus, the symptoms have ranged from typical seasonal influenza symptoms such as fever, extreme fatigue, coughing, sore throat, and muscle and joint aches to eye infections, pneumonia, severe respiratory diseases, and other potentially life-threatening complications (including death). Generally, people infected with either seasonal or H1N1 flu can infect others from one day before showing symptoms to five to seven days after.

Unlike the seasonal flu, for which there is a vaccine, until recently there was no vaccine for H1N1, creating even more challenges to managing H1N1. However, on September 15, 2009, the FDA approved a vaccine for H1N1, which has just become available. The Centers for Disease Control and Prevention (CDC) has issued detailed guidelines regarding H1N1, including groups of individuals that it recommends should receive the vaccination. To date, only one state (New York) mandates that its health care workers receive the vaccination, although some employers—both within and outside the health care arena—are electing to require vaccination of their employees.

How Should an Employer Respond to H1N1?

As we previously discussed in our *Environmental & Safety Report* and *Management Alert*, H1N1 may implicate a host of employment-related laws and issues, including the Occupational Safety and Health Act (OSHA); workers' compensation and disability benefit laws; the Family and Medical Leave Act (FMLA); the Americans with Disabilities Act (ADA); common law principles, such as premises liability; employee relations/union issues; and travel and cross-border issues that affect

multinational employers. The Equal Employment Opportunity Commission recently issued updated *guidance* that addresses H1N1 in the workplace. Because of the growing and diverse concerns regarding how employers should address these issues, Seyfarth has formed a multidisciplinary task force—comprising attorneys who are experts in all areas related to H1N1—to assist employers with respect to employment-related H1N1 issues.

In this regard, we can provide assistance in complying with the various safety and health obligations associated with H1N1, such as developing feasible action plans to protect employees and others in the workplace from H1N1. We also can assist in analyzing and evaluating the numerous employment-related issues associated with H1N1, such as:

- the pros and cons associated with relaxing attendance policies to accommodate ill workers or caregivers;
- how to effectively encourage employees with flu-like symptoms to stay home;
- when to permit employees with flu-like symptoms to return to work;
- what information an employer may disclose to the workforce when an employee is infected with H1N1;
- how to develop ADA-compliant employee surveys to set parameters for contingency planning;
- how to institute telecommuting and flexible work arrangements in compliance with wage and hour and other pertinent laws, in order to reduce the risk of transmission in the workplace;
- deciding whether to mandate that employees be vaccinated, and addressing related OSHA, collective bargaining agreement, privacy, religious, and/or ADA concerns;
- determining employer obligations under the ADA, FMLA, and state and local laws with respect to accommodating an employee who is ill, recovering from illness, or providing care to an ill family member; and
- responding to OSHA Alleged Hazards Letters and OSHA inspections.

As the flu season continues, it is critical that employers understand the legal and workplace implications associated with the virus, and take a proactive approach to managing the concern.

For more information or for assistance in addressing employment-related H1N1 issues, please contact the Seyfarth attorney with whom you work or any member of our [H1N1 Task Force](#).



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