

Labor and Employment E-news

May 1, 2009

Swine Flu -- Guidance for Employers

**** For more information about the situation in Mexico, please review our recent Mexico Update E-news at <http://www.butzel.com/pdf/090429enMEX.pdf> ****

Attention to the spread of the swine flu (H1N1) in the United States and elsewhere is intensifying. The United States government has declared a public health emergency. As of 11:00 a.m. on May 1, 2009, the Center for Disease Control (CDC) had confirmed 141 cases in the United States. While the numbers of cases are expected to increase, there is no cause to panic. However, since this can affect the workplace, it is wise for employers to be proactive now. The government has a comprehensive website which contains answers to a wide range of questions, updated information on the status of the virus, and resources to help employers prepare for a pandemic at: www.PandemicFlu.gov.

There is no "one size fits all" response to the swine flu for all companies. The actions taken may vary based on a company's size, its business and the composition of its workforce. There are some basic actions that all companies can take.

One simple step is to educate employees about the swine flu. This should include basic information, such as knowing and recognizing the symptoms; understanding how the virus is spread; preventative measures that can be taken to avoid contracting or spreading the virus; knowing how long someone is contagious; and knowing what to do in the event of illness. Employers can provide employees links to helpful websites, including www.PandemicFlu.gov and www.cdc.gov/swineflu/, distribute handouts with commonly asked questions and answers, and hold meetings to educate employees, especially about precautions that can be taken in the workplace.

Another critical step employers can take is to encourage employees who are sick or who live with others who are sick to stay home. Decisions will have to be made about how to handle this, including: whether to allow employees work from home; whether to exempt such employees from any potential discipline for excessive absenteeism; whether to pay employees who are absent due to the swine flu; and whether to require employees to bring clearance from a health care provider before returning to work.

Employers can also implement preventative measures in the workplace, such as having hand sanitizer, disinfectant wipes, and tissues readily available. Employers may also want to have

additional cleaning measures taken, especially with regard to items commonly handled by multiple persons, such as doorknobs and copy machines.

For some companies, it may be necessary to decide whether to impose travel restrictions and what to do about employees who have recently traveled to or will be traveling to affected areas. Consideration must be given to both business and personal travel. Companies should be aware that as of May 1st, there have been no restrictions on travel or closure of borders with Mexico. (For more information about the situation in Mexico, and the actions taken by the Mexican Government, please visit our April 29, 2009 Mexico Update Enews at: <http://www.butzel.com/pdf/090429enMEX.pdf>.)

In addition, it is advisable to develop or review the company's emergency preparedness plan to be able to respond quickly in case of a significant outbreak at the workplace. Employers should also make sure they have up-to-date contact information for all employees. While employers should act prudently, they should not overreact and unnecessarily scare employees.

Of course, there also are legal risks involved. Issues potentially can arise under the Occupational Safety & Health Act (OSHA), the FMLA, the Americans With Disabilities Act, Title VII, the Workers' Compensation Act and other statutes. A key to defending a company's actions will be showing that the company implemented a reasonable response plan, acted in a consistent manner and did not discriminate against any employees.

If you have questions regarding the information contained in this E-Alert, or want assistance in developing and implementing an action plan for your company, please contact your Butzel Long attorney or the author of this E-Alert.

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