

LABOUR & EMPLOYMENT UPDATE

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THE IMPACT OF INFLUENZA A (H1N1) VIRUS IN THE WORKPLACE

On April 29, 2009, the World Health Organization ("WHO") raised the pandemic alert from Phase 4 to 5 in regard to Influenza A (H1N1). As of Wednesday, May 6, 2009, 201 cases of Influenza A (H1N1) have been confirmed in Canada in the provinces of Alberta, B.C., Ontario, Quebec, Manitoba, New Brunswick and Nova Scotia.



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The Influenza A (H1N1) outbreak, and the rising number of Canadian cases, raises a number of practical and legal issues for employers. When an employee becomes sick with the Influenza A (H1N1) the legal considerations will be the same as those which arise when employees become generally ill. This will involve considerations under occupational health and safety legislation, employment standards, human rights, privacy legislation and possibly workers' compensation.

An employer's obligations under the *Occupational Health and Safety Act*, the *Occupational Health and Safety Code* and the *Occupational Health and Safety Regulations*, play a particularly important role in dealing with the Influenza A (H1N1) situation. In order for an employer to fulfill its obligations under this legislation, it is important to understand what Influenza A (H1N1) is, how it is spread, and the symptoms to watch out for.

What is Influenza A (H1N1)?

Influenza A (H1N1) is a highly contagious type of influenza that can be communicated person-to-person, mainly through the coughing or sneezing of infected people. Often times a person will become infected after touching something with the Influenza A (H1N1) virus on it and then touching their mouth or nose.

What obligations does an Employer have to its Employees?

OHS legislation provides that an employer has an obligation, as far as is reasonably practicable to do so, to ensure the health and safety of workers and to make workers aware of their duties and obligations under that legislation. In order to ensure that it fulfills its duties, an employer should take proactive action to develop policies to deal with a potential Influenza A (H1N1) outbreak. Additionally, the employer should inform its employees about the Influenza A (H1N1) and about prevention measures that should be taken to avoid spreading and contracting it.

Proactive Strategies

- Designate a person or team to be responsible for developing a plan for dealing with a possible pandemic, maintaining awareness, alerting others in the organization, and implementing the plan if a pandemic arises.
- This person or team should act as the point of contact for employees who have questions about Influenza A (H1N1) and will be responsible for informing and updating employees about the Influenza A (H1N1) situation.
- Employers should also consider the benefits available to any employee who becomes ill with Influenza A (H1N1) or symptoms of the Influenza A (H1N1), including sick leave, short term disability, long-term disability, employment insurance, or workers' compensation.

Prevention Measures

- Inform employees about Influenza A (H1N1), its symptoms and prevention measures. Encourage employees to practice healthy hygiene habits such as

washing their hands frequently using soap and water for a period of at least 15 seconds, as well as using alcohol based hand sanitizers. Additionally, advise employees that they should cough or sneeze into their sleeve and not their hand.

- Consider providing alcohol based hand sanitizers in public areas and/or to employees as well as providing antimicrobial wipes for cleaning work surfaces
- Suggest that employees adopt social distancing practices in the workplace including keeping at least three feet apart from other employees and from customers.
- Develop policies and procedures that will allow employees to work from home, where possible. The duties, expectations and deadlines for such employees should be clearly set out, as should hours of work.
- Consider introducing a policy that requires all employees who have recently traveled to a Influenza A (H1N1) "hotspot", i.e. Mexico, to inform the employer. The employer may also want to consider introducing return to work guidelines that require the employee to stay home after their return from the "hotspot" for a period of time and which specifies whether they will be compensated through sick pay or in some other manner while they are absent.

Keep in mind that human rights issues may arise if a person is required to stay home without pay as a result of having traveled to a "hotspot". Accordingly, an employer will want to consider placing such an employee on a paid leave of absence or finding some alternative way to compensate the employee.

Dealing with an Employee who has Influenza A (H1N1) or its Symptoms

- Employees who are experiencing any of the symptoms listed above should be advised to remain at home and immediately contact their supervisor or the responsible individual or team.
- Employees also have obligations under OHS legislation. Accordingly, where an employee who has symptoms of the Influenza A (H1N1) refuses to remain at home, when ordered to do so, he or she may be prevented from entering the workplace and may be disciplined accordingly.
- Similarly, when an employee who has traveled to a "hotspot" refuses to stay at home for the period of time indicated by the employer, the employer may have grounds to discipline that employee accordingly. However, as mentioned above, when requiring such an employee to remain at home the employer will have to consider the possible human rights implications,

particularly where the employer does not intend to compensate the employee during his or her absence.

- Advise the ill employee of any benefits they may be entitled to, based on the list of benefits compiled, as set out above.

Refusal of Work

Under occupational health and safety legislation an employee has a right to refuse work that he or she believes is unsafe. The employee may be entitled to pay during the work refusal.

- An employer is required to investigate any work refusal in accordance with OHS legislation and an employee may be entitled to pay during the investigation.
- If no one in the workplace has Influenza A (H1N1) or symptoms of it, and the employee refuses to work out of fear of contracting Influenza A (H1N1), the employee will not likely be entitled to pay for the period of the work refusal.

Conclusion

The recent Influenza A (H1N1) outbreak should serve to remind employers of their legal obligations to their employees, particularly in regard to the applicable occupational health and safety legislation. Even if the employer's workplace is not ultimately affected by Influenza A (H1N1), this outbreak is a good opportunity for employers to review their practices and procedures and to be prepared in the event another illness outbreak occurs.

DISCLAIMER

This article should not be interpreted as providing legal advice. Consult your legal adviser before acting on any of the information contained in it. Questions, comments, suggestions and address updates are most appreciated and should be directed to:

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