

Swine Flu – Advice for Employers

Legal Questions and Answers for Employers

The onset of the swine flu pandemic has raised numerous questions for employers about how they can protect their employees' health. Below you can find the most common questions asked and the corresponding answers.

Q. How do we deal with staff absence as a result of swine flu?

A. During a pandemic there is a high likelihood that there will be staff absences which will inevitably affect business continuity and performance. Whilst employers must remember restrictions on working hours listed in the Working Time Regulations 1998, strategies for dealing with this issue include:

- Develop an order of succession, that is, plan which functions or services can be carried out by personnel other than those normally given the task and train non-essential back-up staff to perform essential tasks. You may also consider retraining recently retired employees.
- Identify staff with interchangeable skills who could provide cover for absent colleagues.
- Invest in and/or use technology that will allow employees to work from home. You may also need to check that the IT system can cope with large numbers of employees working remotely. This continuity strategy is particularly relevant for professional services firm.
- Devolution planning, that is, plan which functions can be carried out by other work sites.

Q. How can we protect the Health and Safety of our employees?

A. In the contingency plan provided you can see that there are many ways to reduce the risk of employees developing swine flu and manage those who do develop the symptoms. By undertaking these strategies correctly, it will be possible to keep your business running smoothly:

- Establish a pandemic response team who will be responsible for all aspects of managing the response to the pandemic.
- Remain abreast of all government advice and literature (some of which is included in this pack) and communicate this advice to your employees and all stakeholders, including employees' family members and suppliers.
- Train your employees and develop awareness within your organisation.
- Ensure good hygiene practices in your workplace, with particular emphasis on personal hygiene such as; covering your mouth and nose when coughing or sneezing, throwing away all used tissues, washing hands regularly with soap and water and regularly cleaning all surfaces.
- Display signs advising of the symptoms of flu and the steps that should be undertaken by all employees to reduce the risk of spreading the virus.
- Assess each member of the workforce in terms of; the number of school age children in their family, their reliance on single income and reliance on public transport. Flexible working practices could be adopted as a result of this research.
- Ask employees to report to the pandemic response team if they have flu-like symptoms.

- Tell all employees who suspect that they have symptoms to stay at home.

Q. How will the threat of swine flu affect our current policies and procedures?

A. Employers must review and update any policies or procedures that could be affected by an outbreak of swine flu. The relevant policies, amongst others, are likely to include; flexible/home working, sickness absence and dependent care leave. Employers should particularly consider:

- What employee support services are in place, particularly grief counselling and psychiatric care;
- Does the organisation have timelines which dictate how long it will be possible to carry out essential functions without critical supplies, materials and equipment;
- Whether an employee who has contracted swine flu should be certified as fit to return to work by a doctor before returning;
- What flexible working or home working arrangements should be put in place to handle emergency situations;
- Whether any special leave should be paid or unpaid by the organisation.

Employers should also note that the Department of Health may introduce emergency regulations which will allow employees to self-certify themselves for up to 14 days. Employees could also take an additional 5 days on top of this leave as a 'quarantine period'.

Q. Can we purchase and provide anti-viral drugs for our employees?

A. Employers are not allowed to distribute prescription-only drugs to employees. Drugs can only be prescribed by qualified medical practitioners and dispensed by qualified pharmacists. In order for employers to facilitate the prescription of a specific medication, employers can;

- i. Request that employees obtain a prescription from their individual GP or
- ii. Establish a network of private medical practitioners who can prescribe the medication to staff. Note that these private practitioners must have the correct qualifications and credentials.

In order for the drugs to be dispensed, employers can;

- i. Ensure that the private medical practitioners can also dispense drugs
- ii. Enter into a partnering arrangement with a chain or network of pharmacists who can dispense the drug
- iii. Rely on normal retailing pharmacists to provide the drug.

If the employer relies on retail pharmacists to provide the drug then the employer will have to pay high-street retail prices and is subject to normal public availability of the drug.

Q. Can we require employees to take anti-viral drugs and what can we do if they refuse to do so?

A. The likelihood of being able to require an employee to take medication and to discipline this employee for refusing to do so is extremely rare. If, however, there are real and proven risks that the employee might contract swine flu and the

employee refuses to receive anti-viral drugs, then you as the employer have the right to exclude this employee from the workplace to protect his/her health and safety and the health and safety of others.

Q. Can we quarantine our employees?

A. The answer to this question depends on the provisions in the employee's contract of employment. If the contract does not make provision for imposing changes on an employee's working conditions then by preventing them from coming into work, there is likely to be a breach of contract. Following previous periods of concern over SARS and Bird Flu, companies have made provision for certain circumstances (i.e. if they pose a threat to Health and Safety of other employees) to stop certain staff members from coming to work. This is often termed an "exclusion" clause.

Another aspect of swine flu is the very rapid development of symptoms that may occur with individuals who have contracted the disease. If this happens during working hours, employers are advised to place the employee into an adequate quarantine room and make provision to get this employee home. This 'quarantine room' must be properly cleaned and decontaminated after the employee has been safely removed.

Q. If we change our employees' working practices, do we have to consult with these workers?

A. In terms of non-contractual changes to working practices, there is no obligation to consult with employees. Employers should, however, effectively communicate important changes to employees. If the working practice change is deemed to be a contractual change, then employers must gain consent from employees to facilitate any change unless there is sufficient flexibility in the terms of the contract.

If employees do not gain consent from their employees and independently change working practices, there could be grounds for breach of contract and/or constructive dismissal claims.

Q. What must I consider if employees have to stay away from work?

A. If employees have a confirmed diagnosis of swine flu then employers must pay sick pay in accordance with your company's existing Sick Pay Policy. Payments to employees will include any entitlement to Statutory Sick Pay.

If you, the employer, decide that employees should stay away from work as they have been in contact with the disease or are showing symptoms of the disease, then you must continue to pay them. You might also consider trying to take reasonable steps to allow the quarantined employee to continue to work from home if this is practicable.

If an employee has a dependent, such as a child, who has been sent home as a swine flu precaution, then that employee must take emergency leave until they can find a suitable carer for the dependent. This leave must be granted in line with the company's Emergency Leave Policy. If an employee is the designated carer for someone diagnosed with swine flu then they should be paid in line with the company's Absence Rules. Examples include; authorised unpaid leave, holiday, agreed time off with pay or other similar terms.