



Employers : Have You Flu-Proofed Your Business?

If you are an employer, it is essential to develop a plan now to manage swine flu in the workplace. The HSE anticipates absenteeism rates of at least 15% in large organisations and 30% in small businesses during the swine flu pandemic. The Department of Enterprise Trade and Employment is cautioning employers to prepare for absenteeism rates of 40% at peak times of the pandemic.

Top 10 Tips To Deal With Swine Flu In The Workplace

1. Take Preventative Steps

Take precautions to prevent the spread of swine flu in the workplace.

- Educate staff on the symptoms of swine flu
- Provide hand-hygiene facilities, tissues and tissue disposal at all work stations
- Provide hand-sanitizers, tissues and tissue disposal facilities in communal areas
- Ensure frequent cleaning of the workplace to minimise the risk of employees contracting the infection from contaminated surfaces

2. Review Sick Leave Policies

Review sick leave policies dealing with absenteeism due to swine flu.

- Clarify specific reporting procedures for employees with swine flu
- Emphasise that an employee suffering from swine flu should stay at home until they have recovered in full to prevent spreading the infection.
- Remind employees that they have an obligation under the Safety, Health and Welfare at Work Act 2005 to protect the health and safety of others in the workplace.
- Reconsider the requirement that employees must produce a medical certificate when absent due to illness. The HSE is encouraging the public to use the HSE 24 hour flu help-line rather than attending their GPs.
- Advise employees that a breach of the sick leave policy may result in disciplinary action.



3. Consider Sick Pay Schemes

There is no statutory obligation on employers to pay employees while absent due to illness. In practice, many employers operate sick pay schemes which give employees a contractual right over and above their statutory rights to paid sick leave.

Where an employee has become infected with swine flu, it is recommended that he/she remains at home for at least 7 days in mild cases to minimise the spread of infection. Employers should consider introducing paid sick leave for those employees suffering from swine flu as an incentive for the employee to remain at home until fully recovered. However it must be emphasised to employees that any change to a sick pay policy is a temporary measure only for the current swine flu pandemic and that change does not form part of their terms and conditions of employment.

4. Consider Your Health & Safety Obligations

Remember that you have a common law duty to provide a safe place of work for your employees as well as a statutory duty to do so under the Safety Health & Welfare at Work Act 2005 ("the 2005 Act"). The 2005 Act obliges an employer to do whatever is reasonably practicable to ensure the safety, health and welfare of their employees. This duty obliges an employer to carry out a risk assessment of the workplace in light of the swine flu pandemic and to implement preventative measures to deal with it.

5. Implement Additional Precautions For High-Risk Employees

The HSE advises that most people will be able to recover from swine flu at home without the need for medical attention. However swine flu is particularly serious for people suffering from a chronic illness, suppressed immune systems, aged over 65 or under 5, pregnant women and severely obese people with a Body Mass Index of 40 or more.

Consider additional precautions to ensure that high-risk employees are adequately protected. Such measures might include; reduced face-to-face contact with customers, staggered working hours or allowing employees to work from home where it is feasible to do so.



6. Eliminate The Risk To Pregnant Employees

Pregnant women are considered high-risk employees. Furthermore the 2005 Act places additional obligations on employers in relation to pregnant employees.

The risks in the workplace to a pregnant employee must be removed and where it is not possible to do so, the working conditions or working hours of the employee should be temporarily adjusted so that the risks are avoided. If it is not possible to eliminate the risk, the pregnant employee should be placed on health and safety leave. An employee on health and safety leave is entitled to pay as normal for the first three weeks of leave, after which health and safety benefit should be claimed from the Department of Social Welfare.

7. Assess Staffing Needs

Assess your staffing needs in the event of high levels of absenteeism to maintain business continuity. Consider if overtime is required whether employees will be paid for overtime or given time in lieu thereof. Cross training your staff will improve flexibility of roles. Assess the impact of the absence of key personnel and train others to cover the roles of key personnel where necessary. In order to implement these measures you must get the employees' consent as you cannot unilaterally alter employees' terms and conditions of employment.

8. Consider Absenteeism To Attend To Sick Relatives

You may face circumstances where employees have to take leave to attend to sick relatives and children. Under the Parental Leave Act, 1998 an employee is entitled to take force majeure leave for a maximum of 3 days in any 12-month period or 5 in any 36-month period. An employee is entitled to take force majeure leave for urgent family reasons owing to the injury or illness of any of the following:

- a child, adoptive child or a loco parentis situation
- the spouse of the employee or the person with whom the employee is living as husband and wife
- a brother or sister
- a parent or grandparent
- persons in a relationship of domestic dependency including same-sex partners.



Entitlement to force majeure leave is limited to circumstances where the immediate presence of the employee at the place where the ill or injured person is situated is indispensable. Force majeure leave is paid leave and cannot be treated as part of an employee's annual leave.

9. Remember Your Data Protection Obligations

Where an employee has notified an employer that he or she is absent due to swine flu there may be an automatic reaction to warn other employees. Be mindful that information about an employee's illness is sensitive personal data under the Data Protection Acts and cannot be disclosed without the employee's written consent.

10. Limit Foreign Travel

Restrict business travel to essential business trips, in particular to areas affected by swine flu. Where an employee is travelling to an area affected by swine flu outside working hours, you can't prevent them from travelling to such a place. Consider implementing a system whereby if the employee is suffering from any flu-like symptoms following a trip abroad, the employee should not return to work until the symptoms cease.

For further information on this article or any employment law queries please contact Eimear Branigan – ebranigan@rcmck.com

Disclaimer

This information is for guidance purposes only. It does not constitute legal or professional advice. Professional or legal advice should be obtained before taking or refraining from any action as a result of the contents of this publication. No liability is accepted by Reddy Charlton McKnight for any action taken in reliance on the information contained herein. Any and all information is subject to change.