

The current H1N1 flu threat provides strong impetus to review corporate (or personal) preparedness for a possible pandemic. The major difference between a pandemic and other disasters (whether natural – hurricanes, tornados, earthquakes, tsunamis; or man-made – terrorist attacks) is that it will primarily affect people. Your Disaster Preparedness Plan should outline procedures to address:

#### **Employee Absences**

- Know your operating critical mass, ie., at what point do you need to cease operating.
- Have alternate reporting methods in the event that essential people are missing.
- Should you develop the capability of allowing employees to work from home? If so, what parameters should be in place?
- Have programs for employees who need to take time to care for sick family members. FMLA and other state programs should be considered.
- Have a relationship with a temporary agency that can supply trained workers for staffing shortfalls
- Have a policy for working with employees who refuse to work because they believe that they are being exposed to imminent danger. Note: you may be unable to terminate an employee who takes this position unless you have adequate plans for insuring that the risk does not exist.

#### **Workplace Precautions**

- Have guidelines for modifying frequency and type of face-to-face contact due to a pandemic – such as refraining from handshaking, minimizing meetings, etc.
- Provide hand-sanitation fluid dispensers or wipes with receptacles for their disposal
- Educate your employees on the need to seek medical attention for flu-type symptoms and encourage them to stay home from work when feeling ill

#### **Policies**

- Review your leave and disability policies to accommodate pandemic issues
- Make certain you have incorporated FMLA and ADA requirements into your policies
- Consider that contracting the flu in the workplace might trigger a Worker's Compensation claim
- Understand the terms of your company's medical, life and disability plans as they relate to pandemics
- Know the laws in your operating states regarding premises liability issues

**BULLETIN** May 1, 2009  
**Disaster Preparedness**  
**H1N1 Influenza Virus**



An effective Disaster Preparedness Program should incorporate the above items and others you find appropriate after you have had a chance more thoroughly research the pandemic issue. Keep in mind that the number of cases of reported H1N1 Flu in the United States is still negligible. Following are links to sites where you can learn more:

<http://www.fema.gov/plan/index.shtm>

<http://www.ready.gov/business/downloads/sampleplan.pdf>

<http://www.pandemicflu.gov>

<http://www.osha.gov/dsg/guidance/avian-flu.html>

[http://www.cdc.gov/swineflu/swineflu\\_you.htm](http://www.cdc.gov/swineflu/swineflu_you.htm)

The Department of Health and Human Services has developed pointers that can help prevent the incidence of disease, that you can communicate to your employees to better educate them:

There are everyday actions that can help prevent the spread of germs that cause respiratory illnesses like influenza. Take these everyday steps to protect your health:

1. Cover your nose and mouth with a tissue when you cough or sneeze.
2. Wash your hands often with soap and water, especially after you cough or sneeze. Alcohol-based hand cleaners are also effective.
3. Avoid touching your eyes, nose or mouth. Germs are spread this way.
4. Avoid close contact with sick people.
5. If you get sick, stay home from work or school and limit contact with others to keep from infecting them.
6. Keep informed about agency-specific updates.
7. If you live in areas where H1N1 influenza cases have been identified and become ill with influenza-like symptoms, including fever, body aches, runny nose, sore throat, nausea/vomiting or diarrhea, contact your health care provider. Your health care provider will determine where influenza testing or treatment is needed.

If you have questions please contact your Hays representative.

**Is there insurance for pandemics?**

Hays has developed an insurance program for pandemics but insurers will not underwrite the current H1N1 flu exposure.

## **YOUR INSURANCE COVERAGES**

### **Higher Risk Industry Groups**

Certain industry groups have greater risks from H1N1 flu. Higher than average risk industries have locations where a large number of people are attracted and are in close proximity to each other (a high level of human-to-human contact). This can include sports and entertainment venues, restaurants, retailers, hospitals, airlines and others.

### **Workers Compensation**

Should an employee contract the H1N1 flu it is imperative to establish that it was contracted in the workplace for coverage to apply. The key is, did contracting the disease "arise out of" and "in the course of" employment and was the employee at greater risk than the general public?

A caveat, the likelihood of H1N1 flu being covered by workers compensation can be diminished because of differences in workers compensation laws that vary dramatically by jurisdiction.

If an employer believes that an employee may have contracted H1N1 flu in the course and scope of employment, we recommend that the employer immediately report the incident to their workers compensation insurer. Even if the facts of how the illness arose are unclear you may be best served to let the insurer investigate the claim and determine compensability.

### **General Liability**

General liability policies include coverage for bodily injury to third parties resulting from the products and premises of an insured when the insured is found to be negligent. Certainly, one can foresee potential lawsuits against higher risk industries alleging that individuals contracted the H1N1 flu at an insured's premises or due to the general negligence of the insured. Should a claim or lawsuit brought by a third party allege that H1N1 flu was contracted due to the negligence of the insured, in most instances your insurer will defend you and in the event of an adverse judgment pay the claim.

### **Management Liability**

It is possible that litigation could be brought against directors and officers (or in certain instances, the company itself) alleging that their company's lack of preparedness for an H1N1 flu outbreak resulted in a loss of shareholder value. Ignoring the merits of any such claim, to the extent that a claim alleges that the loss in shareholder value was as a result of the negligence of the insureds in failing to ensure that the company was adequately prepared for an H1N1 flu outbreak, there may be coverage under a directors and officers insurance policy. As with a general liability policy, the directors and officers policy can cover defense costs as well as any settlements or judgments related to the claim.

### **Property**

While property policies vary greatly from one insurer to the next, there is little potential for coverage for pandemic situations under a typical property policy. Property policies only respond when there is direct physical damage to covered property caused by a covered peril.

*These are general comments intended to give you a brief overview of your insurance protection. Please contact your insurance representative with specific questions.*