Swine Flu: Are You Prepared?

The World Health Organisation has warned of a global swine flu pandemic. At the time of writing, nearly 10,000 cases have been reported in the United Kingdom with 26 confirmed deaths.

The implications of a pandemic would be enormous. Transport and supply systems, utilities and workforces would be likely to be severely disrupted. Some sectors (such as travel and entertainment) would experience a downturn in trade, while others (such as pharmaceutical supplies) would inevitably experience unprecedented demand.

Staff absence during a pandemic may prove crippling to business survival unless basic contingency plans are put in place. Government estimates suggest that, at a pandemic’s peak, an estimated 15–20% of the workforce would be absent.

Many larger employers will already have contingency plans in place. Some global organisations have stockpiled Tamiflu, face masks and gloves to help reduce the risk of infection. Whilst more modest resources will mean that smaller businesses are not able to go to the same lengths, some basic business continuity planning in relation to staff absence is likely to pay dividends.

In any business, there are core functions that are essential to survival. A sensible contingency plan will identify those functions and which employees are capable of performing them. It may be that managers will need to train staff to perform different functions in anticipation of large-scale absence.

Quite apart from securing the viability of the business, employers owe a duty of care to take reasonable steps to provide a safe system of work and to protect employees from unnecessary risk of injury from reasonably foreseeable dangers. Employees enjoy certain legislative safeguards that require their employer to:

- carry out an assessment of risk to employees’ health;
- have in place a clear emergency procedures policy should there be an event that results in ‘serious and imminent danger to persons at work’;
- communicate relevant information about the emergency procedures to all employees; and
- provide appropriate training to all employees to ensure that the emergency procedures have been understood.

Many employers have taken steps to address their health and safety obligations and prevent the spread of infection. Workplace hygiene standards have been improved by the installation of antiseptic hand-gel dispensers, posters encouraging staff to wash their hands and the introduction of more thorough and regular cleaning routines.

It goes without saying that managers must make it clear that infected employees should not attend work and should not return to work until fully recovered to avoid infecting colleagues. To curb the spread of infection, employers may consider imposing a quarantine period before which employees who have had flu may not return. Whilst it may not be practicable to make changes to employees’ contracts of employment, an ability to impose a compulsory quarantine period (and provisions as to how employees would be paid during any quarantine period) could usefully be introduced into sickness absence provisions.

Less straightforward is a situation where staff members stay away not because they are ill, but...
because they fear catching the virus from colleagues who have contracted the disease. Employers are left with a difficult choice—either they require employees to attend work (risking resignations and potential constructive dismissal claims) or they accept that no-shows are inevitable and risk productivity (and profits) dropping further. Each workplace and each individual’s specific personal situation and concerns (whether with regard to their own health, that of their children or in relation to their daily travel arrangements) need to be assessed sensibly to avoid a stampede of employees refusing to come to work. Where feasible, enabling employees to work productively from home seems to be the most effective way to meet employee concerns and to ensure business continuity.

Absenteeism levels will also be driven by illness amongst children and other dependants of staff members. Whilst employees enjoy a statutory right to take reasonable unpaid time off work to make arrangements for the care of a dependant (rather than undertake the care themselves), logic dictates that alternative carers will be in short supply in the event of a flu pandemic. Employers are likely to have little alternative but to respond to requests for time off to care for relatives leniently in many cases.

For those in work, business travel to affected areas should be monitored carefully by reference to the most up-to-date government advice. For example, some employers have prohibited business travel to Mexico where the flu virus broke out and is most prevalent. Where possible, video conference technology might be substituted for travel. In anticipation of disruption to local travel to and from work or the imposition of restrictions on movement, some organisations have secured temporary accommodation for key workers near the workplace.

In a perfect world, many of the measures introduced by employers to minimise the impact of swine flu on their businesses would be implemented and managed by the human resources function. Clearly, however, there is no guarantee that an employer’s HR professionals are any more likely to be in work than their colleagues. With a depleted workforce, it may be that everyday HR issues of discipline and grievance take a back seat, and HR officers are likely to be heavily involved in managing and policing absence.

If the Government’s emergency initiative to allow employees with swine flu to self-certify illness absence of up to two weeks becomes reality (the proposal is currently under Cabinet Office review), the spread of swine flu is likely to provide employees with an easy opportunity to malinger. In reality, short of incontrovertible evidence that an absent employee is fit and healthy, the ability and inclination of employers to challenge absence ostensibly on grounds of swine flu is likely to be modest.

Another area of HR focus is likely to be the hours worked by those who can attend work such that, by covering for sick colleagues, they are not exceeding the maximum working week and are taking the requisite rest breaks laid down by the Working Time Regulations.

Finally, communication with staff will be key to the success of any business continuity plan and to minimising uncertainty and disruption. Employers might consider disseminating information via representatives in larger workforces. To minimise time answering individual queries, a comprehensive Q&A style document, in which the employer raises awareness of flu symptoms, sets out its flu sickness policy and includes key person contact details, may prove an invaluable tool in keeping employees informed.

The websites of the Department of Health (www.dh.gov.uk), Department of Business Innovation and Skills (www.bis.gov.uk) and the World Health Organisation (www.who.int) all contain useful guidance on swine flu.

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