Pandemic: plan or panic?

By Anne G. Scheer

Along with the baseballs and black flies flying around this spring a new strain of flu emerged. At first, the new virus, H1N1, looked like it would cause a global outbreak that would be prolonged, widespread and deadly to many because humans have no immunity to it. Luckily, to date, it hasn’t spread as quickly or been as deadly as first feared. But this outbreak and scare should be a wake-up call for all employers to develop or review their company’s plan for a mass disaster/outbreak of a deadly communicable disease.

Occupational Health and Safety Administration regulations require that employers take “all reasonable steps” to provide and maintain a safe work environment. To prepare for a mass outbreak of a deadly communicable disease, employers should develop and have in place a plan that addresses the needs of company employees, the company’s need to function and any duty the company has for the safety of non-employees such as customers and clients.

How detailed a plan an employer needs in order to meet the standard of providing a safe work environment will depend on many factors about the company, including the type of business, its size and number of employees, location and travel requirements of employees. The federal government has prepared and placed on its Web sites a huge amount of information and advice for employers on how to plan and handle issues that might arise from a pandemic. It has set up a “one-stop” site at pandemicflu.gov. In addition, information from OSHA can be found osha.gov. A pandemic plan

A company’s pandemic plan should include:

- Those who are responsible for implementation – it should be a team because any single individual may be affected by the pandemic or be otherwise unavailable when needed
- Steps and strategies to stop/minimize spread of the disease
- Cross training of employees of job functions
- Analysis and listing of available leaves, including any flexibility the employer wants to allow
- Any flexible work arrangement options available to reduce contact, such as telecommuting, flexible work hours and reduced travel
- Any alternative work locations
- Who and how information will be conveyed to employees and anyone outside the company
- Drafts of communications to employees and outsiders on concerns, preparations and strategies
- Plans for disruptions in services (phone, electricity, etc.) and supply and distributions chains
- If the company has a union or unions, consider including it in planning and get agreements on any changes to collective bargaining agreements

It’s estimated that in a pandemic about 40 percent of the workforce would be affected by the disease.

Available leave, depending on the circumstances, may or may not include Family Medical Leave Act leave and/or accommodations under the American with Disabilities Act. If an employee doesn’t have leave time available, the employer should consider whether as a matter of public policy it will grant employees paid or unpaid leave beyond its usual policies in this unusual circumstance. Employer flexibility on absences in this situation is very important.

Generally, OSHA and other federal and state laws do not allow employees to stay out of work because they are
afraid of contracting the disease. However, employees can refuse to work if they have a “good faith” belief that by working they would be exposed to “imminent” danger.

“Good faith” does not mean there has to actually be an “imminent” danger. Rather, it means only that the employee has reasonable grounds to believe the danger exists. Faced with such a claim, a company should consider what government officials are advising citizens about the dangers of the disease and what they should do to avoid it and prevent its spread.

Also, in considering an employee’s “good faith” belief of “imminent” danger, an employer must consider whether the individual has any disabilities that might make the disease more dangerous for that person, and if so whether any reasonable accommodations should be considered. Employers should think outside of the box as to how/where the employee might be able to perform the job with less risk and should be flexible with regard to in-office/facility attendance.

A pandemic will rarely be a good time to terminate or impose other discipline for employee absences. It is very easy to imagine an employee terminated or otherwise disciplined for missing work during a pandemic bringing an action against the employer on the basis of public policy. Videos of the president or governor advising citizens to stay home if they suspect they might have or have been exposed to the disease will not help in defending discipline imposed for an absence during a pandemic.

That is not to say an employer would never be justified in taking disciplinary action for absences during a pandemic. But extreme caution should be taken if doing so. Yes, some problem employees will probably take advantage of the situation, but unless their absence is very egregious it will almost always be better to wait until they repeat such behavior at another time, which they will do, and impose discipline then. At that point, there will be great evidence of what a good and understanding employer and citizen the company was during the pandemic.

Hopefully your company will never have to put its pandemic plan into effect, but if the worst happens, it’s far better to be prepared than panic.

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