Preparing for a Pandemic Outbreak: Lessons Learned from H1N1 Flu

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The recent outbreak of H1N1 flu, most commonly known as swine flu, demonstrates how quickly a virus can spread due to increased globalization. While it is still uncertain where the virus originated, what is clear is that the swine flu has been rapidly spreading across the globe. It has claimed victims in over forty countries, affecting over ten thousand people with eighty reported fatalities. While it may appear that the swine flu outbreak is now somewhat contained, by their very nature, flu viruses are unpredictable and notorious for their rapid mutation. The swine flu continues to claim new victims everyday, and has officially reached pandemic levels. The consequences of H1N1 have been less severe than originally anticipated, but there are some important lessons to be learned. Should the worst occur, most companies would be caught without the necessary policies and plans in place to deal with a deadly outbreak. This article outlines the steps that an employer can take in order to prepare for a pandemic and ensure business continuity.

Implementation of an Employee Health Policy

An employee has been sneezing and coughing constantly for the last few days. Other employees have expressed concern that the employee has swine flu. Some employees have requested that the employer ask the employee to stay home. The employer has no formal policies concerning a pandemic illness.

The first step a company must take in order to minimize its exposure to a possible outbreak is to develop and implement a comprehensive employee health policy. The health policy should:

- Identify who at the company employees should contact if they are infected or have come into contact with an infected individual;
- Explain the procedure for reporting a related absence or applying for a leave of absence;
- Explain the procedure for certifying that the employee is healthy and can medically return to work; and
- Explain how employees will be compensated if they must take time-off (e.g., sick pay, vacation, FMLA)

Moreover, companies should review their attendance policies. Most attendance policies are written to address excessive absenteeism; however, in the face of a pandemic, the company may wish to prohibit employees from working until they are well. As such, employers should consider adding language to attendance policies authorizing the company to send an
employee home if he is sick or has been exposed to a contagious illness.

**Implementation of an International Travel Policy**

Management at a French corporation recently discovered that one of their employees is planning a vacation, during which she will visit several South American countries. The corporation would like to find out exactly where the employee is going, and if necessary, restrict her from traveling to cities where H1N1 flu rates are very high. The employee balks at disclosing such information, noting that the firm has no policy on international travel, and arguing that she cannot be restricted from going anywhere, as it is an invasion of her privacy.

Employers would be well advised to develop an international travel policy. Such a policy should explain the process by which the company tracks where employees travel internationally for business and pleasure. The travel policy should also outline how and when the company may restrict an employee's travel to outbreak areas. In addition to drafting a travel policy, companies should consider purchasing or implementing emergency travel assistance programs, especially for key employees or employees who constantly travel, such as evacuation insurance or providing international emergency medical assistance.

**Assessing Business Needs During an Emergency**

A large firm in New York City currently employs 200 people. Sixty-five of those employees have been infected with avian flu, including several high level executives. Management is considering requiring all employees to telecommute during the outbreak. They contact Human Resources to see if telecommuting is possible for 95% of the employees.

In addition to employing policies designed to limit exposure to a pandemic virus, employers must look closely at the needs of their company and the challenges of business continuity in times of emergency. Assessing the company's ability to survive during an outbreak will allow it to stay viable if shutdowns or travel restrictions are announced on a state, country, or regional level. Companies should assess their personnel needs and determine how long, if at all, they can survive with skeletal staff. Management also should be prepared to switch as many employees as possible to telecommuting, if necessary, by taking steps such as testing the home networks of key employees and drafting a telecommuting policy.

Employers should also determine how the economic stability of the company would be affected if employees could not travel or if travel was significantly restricted. Depending on their findings, employers should investigate the possibility of investing in alternatives such as video conferencing equipment. Importantly, in the event of a pandemic it is likely that rental equipment may not be available. Moreover, companies should assess whether their key vendors are prepared for pandemics, and if not, research other possible vendors. One of the key issues to evaluate is whether the company could survive if the US and/or other countries closed their borders. For example, during the swine flu outbreak, the United States Congress criticized the Homeland Security Secretary for not shutting its borders with Mexico and it is rumored that some Asian countries considered blocking entry to citizens of any country with reported cases of H1N1 flu.

**Creation of a Contingency Team**

Amid worldwide concern over a new, unidentified strain of pandemic flu, management at a global software company would like to prepare itself in the event of an outbreak. To that end, the company designates a group of employees who will be responsible for ensuring the firm's readiness. The group begins stockpiling flu medications, pain relievers, and other various preventative items at all of the company's subsidiaries. In some locations, however, the
local government officials confiscate the medications.

Creation of crisis management and contingency teams is an important step on the path to communicative disease preparedness. Companies can respond faster and more effectively if they have an emergency response team ready. The team can be responsible for a number of tasks that will allow the company to manage crises effectively and calmly. At the beginning of an outbreak, team members can monitor the situation, ensuring that the company has the most up-to-date factual information. Companies also benefit from advance consideration of how to communicate to employees during an emergency. Members of a contingency team should be tasked with obtaining contact information from all employees. They should also be charged with developing a consistent message from the company during an emergency. The team can also consider whether the company wants to obtain and provide anti-viral medication to its employees and can identify who at each facility has medical capabilities. The contingency team can take other proactive measures to reduce a company’s exposure level, such as arranging to offer the flu shot, offering educational sessions and health prevention classes, considering the space between employee work stations and its possible impact on transmission, and considering the company’s practices on tool and equipment sharing.

Teams must consider, however, the interplay between their actions and the law. The opening scenario provides a good example of what consequences can follow when a contingency team is not mindful of local and national laws.

**Ensuring Harmony Between Preparedness Plans and the Law**

An employer becomes aware that one of its employees has recently vacationed in India, which has been hit very heavily by a resurgent form of Spanish flu. The employee’s manager sends out an e-mail to all other employees, stating that one of their co-workers may have been exposed to the Spanish flu, identifying the affected employee by name.

An employer has legitimate concerns about protecting the health of its other employees when it fears that someone may be infected with a serious virus. An employer cannot, however, run afoul of domestic and international laws while trying to address those concerns. The laws surrounding employers’ responsibilities during a pandemic can often seem contradictory. For example, if an employer learns that an employee in the US has been infected, it has a general duty to protect its employees against recognized hazards pursuant to OSHA. It also has a responsibility to prevent occupational exposure to illness under most state workers compensation laws, and a reasonable expectation to prevent obvious health hazards under premises liability law. However, if a company reveals the identity of an infected employee through an express or implied communication, it could expose itself to claims of perceived disability under the ADA and violations of state privacy laws and/or common law tort claims.

The challenge of integrating the laws involved in an employer’s obligations during an outbreak is even more difficult globally. For example, strict European data privacy laws present challenges with European subsidiaries sharing medical information with a parent company outside Europe. In some countries, such as China, employers are required to pay for extended sick leave. In contrast, Mexican law can sometimes require the suspension of an employment relationship if an employee contracts a contagious illness. Due to the complexity of the law on this topic, it is important to assure that a preparedness plan is reviewed for compliance with all relevant laws. Further, if a pandemic were to occur, it is advisable to include an attorney on the contingency team in an effort to limit the company’s exposure to potential liability and criminal wrongdoing.
Conclusion

H1N1 flu has not had the disastrous consequences many experts initially feared. However, it is important to plan for the constant evolution of viruses such as influenza. Swine flu may transform into a deadly global threat at some point, debilitating businesses across the world. Employers must heed the lessons of this scare and recognize that preparedness in the present is essential. By implementing comprehensive policies and investigating the strengths and weaknesses of their businesses before any real crisis hits, employers can ensure a relatively smooth transition into a state of emergency, should they be faced with the worst.

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