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Swine Flu in the Workplace: Top Four Questions and Answers Employers and Employees Need to Know About the H1N1 Virus and the Workplace

Employees with H1N1 may be required to stay away from the workplace, but must an employee disclose they have swine flu? Is it a disability or an infringement of an employee's right to privacy?

TORONTO, ONTARIO--(Marketwire - Sept. 8, 2009) - As recently as June 2009, [the World Health Organization](#) announced a pandemic alert, Phase 6, which now means that the H1N1 virus is a widespread human infection.

As the flu season approaches, "There may be serious employment law implications," says Christine Thomlinson, an employment & human rights lawyer and founding partner of [Rubin Thomlinson LLP](#)

"We have compiled the most commonly asked questions that we've been getting from employers about the swine flu and the workplace, says Thomlinson. "[Here are the top questions and answers](#)"

1. If an employee has swine flu, can the employer require them to stay home?

Answer: An employer has an obligation to maintain a safe and healthy workplace for its employees. Therefore an employer must take every reasonable precaution to ensure that infectious diseases are not spread including requiring employees to stay away from the workplace. However, other legal issues may arise relating to Human Rights and or Privacy issues when an employee is temporarily removed from the workplace.

2. Is an employee who is home sick with H1N1 entitled to be paid?

Answer: Employees generally do not have the legal right to be paid unless they work, or there is a prior agreement, sick leave or disability policy or legislation stating otherwise. If an employee wishes to be paid while off with the flu, an employer can insist they either work from home or take paid vacation time. Without access to sick leave or disability benefits, employees may be required to take an unpaid medical leave while away from the workplace.

3. Is an employee required to disclose the nature of an illness to their employer?

Answer: Employers are only allowed to request information that is relevant to the accommodation of a disability. While the flu has not historically been considered a disability, it is unclear whether H1N1 will be considered a disability under human rights legislation, given its recent classification as a pandemic virus.

The issue then becomes whether an employer can request information about the employee's medical condition.

Thomlinson advises, "An employer should be aware of the potential for human rights complaints arising from mandatory disclosure of H1N1. However, if an employee is exhibiting swine flu symptoms, an employer should request the employee obtain medical documentation indicating whether they are fit to work or if they require accommodations for the safety of themselves or other workers."

4. Can an employer make an employee get vaccinated?

Answer: While generally an employer cannot require an employee to get a vaccination, employers can encourage vaccination through free on-site vaccine clinics.

Thomlinson also suggests that employers encourage employees to get vaccinated by sending out a memo outlining the risks of contracting the illness as well as letting them know about the availability of flu clinics.

About Rubin Thomlinson, LLP www.rubinthomlinson.com

Rubin Thomlinson LLP, a boutique law firm in Toronto, specializing in employment law and human rights issues.

For more information, please contact

MJW Communications

Marjorie Wallens

416-961-5924

mwallens@mjwcommunications.com

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