

IS YOUR WORKPLACE PREPARED TO DEAL WITH A SWINE FLU PANDEMIC?

On April 24, 2009, the World Health Organization (“WHO”) reported that in Mexico, the number of cases of Influenza-Like Illness (ILI) had reached 854. Of those, 82 had died, most of them in Mexico City. WHO also reported that the United States had 7 confirmed human cases of Swine Influenza A/H1N1 and 9 suspected cases.¹ This was only the beginning of what the world now fears may become a pandemic.²

By April 29, 2009, WHO raised the pandemic alert phase to a level 5 out of 6. Phase 5 is characterized by human-to-human spread of the virus into at least two countries in one WHO region. While most countries will not be affected at this stage, the declaration of Phase 5 is a strong signal that a pandemic is imminent and that the time to finalize the organization, communication, and implementation of the planned mitigation measures is short.³

Swine Flu - Facts

Swine Influenza A/H1N1, also known as “Swine Flu”, is a highly contagious acute respiratory disease of pigs, caused by one of several swine influenza A viruses. Symptoms are generally similar to seasonal influenza but can range broadly from respiratory infection to severe pneumonia resulting in death.⁴ Starting in late March and early April 2009, cases of human infection with swine influenza A (H1N1) viruses were reported in Mexico and southwestern United States.⁵

By April 25, 2009, the Director-General of WHO declared the Swine Flu illness as a “public health emergency of international concern”.⁶

By April 26, 2009, WHO reported that the number of confirmed human cases of the A/H1N1 virus in the United States rose to 20. In Mexico, suspected clinical cases of Swine Flu were reported in 19 of the country’s 32 states.⁷

On April 27, 2009, WHO warned that the current situation regarding the outbreak of Swine Flu was evolving rapidly. Confirmed human cases of Swine Flu in the United States increased to 46.

1 http://www.who.int/csr/don/2009_04_24/en/index.html

2 For regular developments regarding the Swine Flu outbreak, visit the Public Health Agency of Canada’s website at: <http://www.phac-aspc.gc.ca/index-eng.php> and the World Health Organization’s website at: <http://www.who.int/en/>

3 http://www.who.int/csr/disease/avian_influenza/phase/en/index.html

4 <http://www.who.int/csr/disease/swineflu/faq/en/index.html>

5 <http://www.cdc.gov/swineflu/>

6 http://www.who.int/mediacentre/news/statements/2009/h1n1_20090425/en/index.html

7 http://www.who.int/csr/don/2009_04_26/en/index.html

Mexico confirmed 26 cases of infection with the same virus, including 7 deaths. Six cases were reported in Canada and 1 in Spain.⁸

By April 28, 2009, the number of cases and countries affected by Swine Flu increased to include 3 cases in New Zealand, 2 in the United Kingdom, 2 in Israel, 1 in Spain, 64 in the United States and 26 in Mexico.⁹

By April 29, 2009, the number of confirmed human cases and deaths continued to climb to more than 100.¹⁰ In Canada, there were a total of 19 confirmed cases of human Swine Flu.¹¹ In Mexico, the number of confirmed Swine Flu cases rose to 99.¹² The number of suspected Swine Flu deaths in Mexico rose to 159, with 2,498 more people thought to be infected.¹³ In addition, the United States had its first death caused by the Swine Flu.¹⁴

Impact on the Workplace

The rapid spread of Swine Flu and growing public health emergency is a serious concern to the public, governments, and all members of the community, including employers.

This public health emergency could not have come at a worse time for employers given the current economic conditions; nonetheless, employers have a clear obligation to prepare for the public health emergency that Swine Flu may cause.

As the effects of a pandemic are unpredictable, there are a number of potential consequences that employers should be ready to combat. In the event of a Swine Flu pandemic, employers should expect high levels of absenteeism, illness and disability. There may be large numbers of employees who become ill at the same time and such illnesses may persist for long periods of time. In addition, workplaces may have to be quarantined. As the threat of infection grows, people may refuse to report for work for fear of contracting the virus. Furthermore, healthy employees, particularly in the health care services, may decide to stay at home to care for their ill family members. The longer the pandemic lasts, the greater will be its impact on employers.

Contingency Measures

In order to prepare for a public health emergency, such as Swine Flu, employers should consider the contingency measures they will need to put in place in order to limit the losses and liability that will inevitably accompany a pandemic.

8 http://www.who.int/csr/don/2009_04_27/en/index.html

9 http://www.who.int/csr/don/2009_04_28/en/index.html

10 <http://www.cbc.ca/world/story/2009/04/29/health-swine-flu-world285.html>

11 <http://www.phac-aspc.gc.ca/alert-alerte/swine-porcine/surveillance-eng.php>

12 http://news.yahoo.com/s/ap/med_swine_flu

13 http://www.timesonline.co.uk/tol/life_and_style/health/article6189805.ece

14 <http://www.cbc.ca/world/story/2009/04/29/health-swine-flu-world285.html>

Legal Obligations

Employers must also consider their legal obligations when dealing with medical emergencies in the workplace. Legal obligations arise from various statutes that at times appear to conflict. On the one hand, an employer has obligations under applicable health and safety legislation to ensure a safe workplace. On the other hand, these obligations must be met without violating human rights or privacy legislation. Obligations such as accommodating a disability or a duty not to disclose personal health information about an employee may at times appear to conflict with the duty to ensure the health and safety of employees, the workplace and general public. There are also legal obligations arising out of employment standards legislation for dealing with employees who are absent as a result of medical issues.

Moral Obligations

Legal obligations aside, employers also have moral responsibilities to the individuals in the workplace and the community at large. Every employer can and should take proactive steps to help prevent employees from contracting various diseases that are currently prevalent, including Swine Flu. It is in the best interests of every business to stay abreast of developments in the community, particularly from a public health perspective. Good employers will want to find out what the public health issue is, who is at risk, what are the causes, what are the symptoms, and what should be done to protect your workforce.

Employers should draw on important lessons learned from previous public health emergencies, such as the SARS experience and the ongoing threat of Avian Flu. Employers should take preventative measures now, including the review of existing contingency plans or the development of new plans in order to better prepare for a potential Swine Flu pandemic.

For information on developing a contingency plan for your workplace as well as information on an employer's rights and obligations under various employment related legislation, please contact our firm. We would also refer you to our text by James G. Knight and Laura Karabulut, *Public Health in the Workplace*, 2d ed., A CLV Special Report (Toronto: Thomson Canada Limited, 2007).